

**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 CERTIFICATES OF PUBLIC )  
CONVENIENCE AND NECESSITY FOR SYSTEM )  
RESOURCES IN 2026, )  
)  
PUBLIC SERVICE COMPANY OF NEW MEXICO, )  
)  
Applicant )  
\_\_\_\_\_ )**

**Case No. 23-00xxx-UT**

**DIRECT TESTIMONY  
OF  
JEREMY W. HESLOP**

**October 25, 2023**

**NMPRC CASE NO. 23-\_\_\_\_\_-UT  
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JEREMY W. HESLOP**

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

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1

**I. INTRODUCTION AND PURPOSE**

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

3 **A.** My name is Jeremy W. Heslop. I am a Senior Contracts Manager within PNM’s  
4 Generation Engineering Group. My business address is Public Service Company  
5 of New Mexico, 2401 Aztec Road NE, Albuquerque, New Mexico 87107.

6

7 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**  
8 **PROFESSIONAL QUALIFICATIONS.**

9 **A.** I have over eight years of experience with PNM, serving as a Power Production  
10 Engineer, Team Manager, Financial Modeling Project Manager, Project Manager  
11 for Utility Request for Proposal (“RFP”), and Senior Contracts Manager. My  
12 experience spans renewable energy, energy storage, coal, and natural gas  
13 technologies. I graduated with a Bachelor of Petroleum Engineering degree from  
14 Texas Tech University and a Master of Business Administration from Western New  
15 Mexico University. A copy of my Educational and Professional Summary is  
16 attached as PNM Exhibit JWH-1.

17

18 **Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AS SENIOR**  
19 **CONTRACTS MANAGER.**

20 **A.** As Senior Contracts Manager, I am responsible for executing new generation  
21 resource requests for proposal (“RFPs”) for PNM’s generation portfolio. I am also  
22 responsible for the negotiation, implementation, and oversight of Power Purchase

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1           Agreements (“PPA”) and Energy Storage Agreement (“ESA”) contracts resulting  
2           from these RFPs for generation resources. I am currently responsible for the  
3           oversight and management of over 25 PPA and ESA contracts that have been  
4           awarded as a result of RFPs and other PNM resource procurement activities.

5

6   **Q.       HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE COMMISSION?**

7   **A.**     Yes. I have provided testimony in Case No. 22-00020-UT and in Case No. 23-  
8           00071-UT, and an affirmation in Case No. 21-00215-UT.

9

10   **Q.                       WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

11   **A.**     I describe and support the selection of resources PNM is proposing for availability  
12           in 2026 to help meet current minimum planning requirements for system reliability.  
13           These include 100 MW of new solar resources and 249.5 MW of new battery  
14           storage ESA resources. I also describe and support 60 MW of new PNM-owned  
15           battery storage that will help with the transition of PNM to zero-carbon by 2040.  
16           My testimony provides support for approval of the PPA, ESAs, and certificate of  
17           public convenience and necessity (“CCNs”) for the resources being proposed.

18

**II.    RECOMMENDED NEW RESOURCES**

19   **Q.       WHAT SPECIFIC NEW RESOURCES IS PNM PROPOSING IN THIS**  
20           **APPLICATION?**

21   **A.**     As I discuss in more detail below, PNM issued competitive solicitations and  
22           conducted extensive analyses to determine the optimum mix of generation

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1 resources that will be available by May 2026 to economically and reliably serve  
2 retail customers, as summarized in PNM Table JWH-1 below. The selected  
3 portfolio includes 100 MW of solar energy and 309.5 MW of battery storage  
4 capacity.

5 PNM Table JWH-1

Name	Resource Type	Nameplate Capacity	Ownership	County
Quail Ranch Solar	Solar	100 MW	PPA	Bernalillo
Quail Ranch Energy Storage	Battery	100 MW (400 MWh)	ESA	Bernalillo
Route 66 Storage	Battery	49.5 MW (198 MWh)	ESA	Cibola
Sky Ranch Energy Storage II	Battery	100 MW (400 MWh)	ESA	Valencia
Sandia Storage Project	Battery	60 MW (240 MWh)	PNM	Bernalillo

6

7

**III. EVALUATION PROCESS FOR PROPOSED RESOURCES**

8

**Q. PLEASE DESCRIBE THE RFP THAT WAS ISSUED FOR THE  
9 POTENTIAL 2026 RESOURCES.**

9

10

**A.** On November 3, 2022, PNM issued an “all resources” RFP for firm capacity  
11 resources to serve its New Mexico system. The exact quantity of resources selected  
12 and the timing of implementation of the resources is dependent upon resource  
13 characteristics and resource modeling, regional economic development load  
14 growth, and PNM’s most recent load and planning forecasts. Proposals were  
15 requested for capacity and energy resources that could guarantee the delivery of  
16 new, incremental, firm capacity by or before May 1, 2026, May 1, 2027, or May 1,  
17 2028. This filing is only for resources that can guarantee commercial operation

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1 prior to May 2026. PNM Witness Roger Nagel discusses the development and  
2 issuance of the RFP in more detail.

3  
4 **Q. PLEASE DESCRIBE THE METHODOLOGY THAT PNM TOOK WITH**  
5 **RESPECT TO THE RFP EVALUATION AND SELECTION PROCESS.**

6 **A.** Per Rule 551.8(D)(10), the evaluation was conducted in three phases with “Phase  
7 One” being an initial screening of the Proposals for compliance with the RFP  
8 minimum requirements. Proposals that provided the required data and satisfied the  
9 minimum Proposal and schedule requirements were passed to “Phase Two” of the  
10 evaluation. Phase Two of the evaluation focused primarily on price and  
11 deliverability, including consideration of pricing factors associated with each  
12 Proposal, the overall viability of the Proposal with respect to its ability to achieve  
13 commercial operation by the required Guaranteed Start Date, and overall  
14 compliance with the objectives of NMSA 1978, Section 62-13-16, the REA, and  
15 the IRP Rule. Both price and non-price criteria for each Proposal were summarized  
16 and evaluated. Proposals were ranked on a total evaluated delivered cost of energy  
17 and total evaluated delivered cost of capacity basis with non-price evaluation  
18 factors considered in establishing a “short-list” of Proposals. Short-listed Proposals  
19 underwent further assessment in the Phase Three evaluation. The Phase Three  
20 evaluation involved portfolio system modeling, more in-depth assessment of the  
21 pricing factors noted above, additional due diligence assessment of the ability to  
22 achieve the project schedule, as well as comparison and ranking of additional non-  
23 price factors. All factors were ranked in a Proposal ranking matrix to assist in the

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1 final selection of Proposals. A more detailed evaluation of each phase is presented  
2 in the testimony of PNM witness Nagel.

3  
4 **Q. PLEASE GENERALLY DESCRIBE THE PROFESSIONAL SERVICES**  
5 **THAT PNM USED TO IDENTIFY AND EVALUATE THE RESOURCES**  
6 **BEING PROPOSED IN THIS APPLICATION.**

7 **A.** PNM used a very robust and competitive resource solicitation and evaluation  
8 process to identify, evaluate and select suitable resources. PNM enlisted the  
9 services of qualified experts to assist and conduct portions of the solicitation and  
10 evaluation processes. PNM engaged Aion Energy LLC (“Aion”) to assist in the  
11 development of the all-resource RFP and to screen and qualify the bid responses.  
12 As part of their modeling evaluation, PNM resource planning hired Astrape  
13 Consulting, LLC (“Astrape”) to model proposed resource portfolios in their  
14 SERVIM model to determine system reliability and portfolio economics as  
15 discussed further by PNM witness Phillips. PNM also engaged in the services of  
16 an independent evaluator, Bates White Economic Consulting (“Bates White”).  
17 Bates White’s role was to review and report on the reasonableness,  
18 competitiveness, and fairness of the RFP process in order to identify PNM’s best  
19 options to meet its service needs in compliance with applicable law. Bates White  
20 provided an independent report on each phase of the RFP process; these Phase I,  
21 Phase II and Phase III reports are attached to my testimony as PNM Exhibits JWH-  
22 7, JWH-8 and JWH-9.

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**IV. REQUESTED APPROVALS FOR 2026 RESOURCES**

**Q. PLEASE IDENTIFY THE APPROVALS THAT PNM IS SEEKING FOR THE PROPOSED RESOURCES.**

**A.** The selected portfolio includes 100 MW of solar energy and 309.5 MW of battery storage capacity which are summarized below:

***Quail Ranch Solar PPA*** - The Quail Ranch Solar PPA is between PNM, as buyer, and Quail Ranch Solar LLC, as seller, for 100 MW<sub>AC</sub> of solar energy. A copy of the Quail Ranch Solar PPA is attached as PNM Exhibit JWH-2.

***Quail Ranch Storage ESA*** - The Quail Ranch Storage ESA is between PNM, as buyer, and Quail Ranch Energy Storage LLC, as seller, for 100 MW<sub>AC</sub> 4-hour battery storage. A copy of the Quail Ranch Storage ESA is attached as PNM Exhibit JWH-3.

***Route 66 Storage ESA*** – The Route 66 Storage ESA is between PNM, as buyer, and Route 66 Energy Storage LLC, as seller, for 49.5 MW<sub>AC</sub> 4-hour energy storage. A copy of the Route 66 Storage ESA is attached as PNM Exhibit JWH-4.

***Sky Ranch Energy Storage II ESA*** - The Sky Ranch Energy Storage II ESA is between PNM, as buyer, and Sky Ranch Energy Storage II LLC, as seller, for 100 MW<sub>AC</sub> 4-hour energy storage. A copy of the Sky Ranch Energy Storage II ESA is attached as PNM Exhibit JWH-5.

***Sandia Storage EPC*** – The Sandia Storage is an EPC agreement, between PNM and DEPCOM Power Inc, for a 60 MW<sub>ac</sub> 4-hour energy storage system (“Sandia



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1 Storage”). A copy of the Sandia Storage agreement is attached as PNM Exhibit  
2 JWH-6

3

4 **Q. ARE THERE TIME SENSITIVITIES ASSOCIATED WITH THE**  
5 **PROPOSED RESOURCES?**

6 **A.** Yes. Each of these projects have approval date provisions written into their  
7 associated contracts either to ensure the renewable tax credits can be fully utilized,  
8 or in order to ensure project engineering and equipment purchases can occur to  
9 meet the 2026 installation dates. It is important to have an unappealable Final Order  
10 prior to these dates because the costs of the projects otherwise may increase or  
11 become unavailable. These specified approval dates, or Regulatory End Date, are  
12 outlined below:

- 13 • The Quail Ranch Solar Project: June 3, 2024
- 14 • The Quail Ranch Storage Project: June 3, 2024
- 15 • The Route 66 Storage Project: October 1, 2024
- 16 • The Sky Ranch Energy Storage II Project: October 1, 2024
- 17 • The Sandia Storage Project: June 1, 2024

18

19 **Q. IS RULE 551 APPLICABLE TO THE ESAS AS WELL AS THE PPA?**

20 **A.** Yes. Rule 17.9.551.7(F) NMAC applies to an “agreement for the purchase of  
21 energy or capacity, or both”, and the PPA is an agreement to purchase energy while  
22 the three ESAs are long-term agreements for the purchase of capacity.

23

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1 **Q. IS PNM REQUIRED TO OBTAIN COMMISSION APPROVAL FOR THE**  
2 **PROPOSED PPA AND ESAS?**

3 **A.** Yes. Under Rule 551 an electric utility is required to obtain the Commission’s  
4 written approval before becoming irrevocably bound under a long-term PPA, which  
5 is defined as a PPA with a term of five years or more and for which the utility  
6 intends to seek rate recovery from New Mexico retail customers. (Rule 551.7(E)  
7 and 8(A)). All of the PPA and ESAs presented in this application are greater than  
8 five years.

9  
10 **Q. HAS PNM COMPLIED WITH THESE PROVISIONS OF THE PPA RULE**  
11 **WITH RESPECT TO THE FILING OF THE PPA AND ESAS (RULE**  
12 **551.8(B))?**

13 **A.** Yes. Rule 551 also requires that a utility file an application for approval with the  
14 Commission within thirty days after the execution of a long-term PPA. (Rule  
15 551.8(B)). All of the agreements were executed between September 27, 2023 and  
16 October 25, 2023 so PNM’s Application is filed timely. In addition, under Section  
17 6.1 of the PPA and ESAs, they become effective only after satisfaction of  
18 conditions precedent, including NMPRC approval.

19  
20 **Q. DOES PNM HAVE ANY EXISTING AGREEMENTS WITH ANY OF THE**  
21 **SELECTED BIDDERS FOR SOLAR ENERGY AND/OR STORAGE?**

22 **A.** Yes. PNM has PPAs with Route 66 Solar Energy Center, LLC and Sky Ranch  
23 Solar, LLC and an ESA with Sky Ranch Energy Storage, LLC. All three of these

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1 projects were developed by NextEra Energy. The Sky Ranch Energy Storage II  
2 and Route 66 Storage are projects bid into the RFP by NextEra Energy. PNM also  
3 has agreements with Atrisco Energy Storage, LLC and Atrisco Solar, LLC, which  
4 are being developed by Clenera. Quail Ranch Solar and Storage are projects bid  
5 into the RFP by Clenera.

6

7 **Q. HOW WILL YOU DESCRIBE THE TERMS OF THE PPA AND ESAS IN**  
8 **RESPONSE TO SPECIFIC REQUIREMENTS OF RULE 551?**

9 **A.** The terms of the PPA and ESAs are generally the same, and my testimony will  
10 address the PPA and ESAs jointly in response to the Rule 551 requirements, except  
11 where necessary to address them separately.

12

13 **Q. PLEASE DESCRIBE THE TERMS OF THE PPA AND ESAS INCLUDING**  
14 **ANY OPTIONS TO EXTEND (RULE 551.8(D)(2)(A)).**

15 **A.** There are no options to extend any of the PPA's or ESAs' beyond the term of the  
16 contract.

17

18 **Q. WHAT IS THE NAMEPLATE CAPACITY OF THE PPA AND ESA**  
19 **PROJECTS AND THE AMOUNT OF ENERGY OR CAPACITY PNM**  
20 **WILL PURCHASE UNDER THE PPA/ESA (RULE 551.8(D)(2)(B))?**

21 **A.** *Quail Ranch Solar PPA* - The nameplate capacity of the Quail Ranch Solar Project  
22 is approximately 100 MW and the project is expected to produce approximately  
23 276,000 MWh of energy in the first full year of operation. Under Section 8.1 of

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1 the Quail Ranch Solar PPA, PNM is required to purchase net solar energy generated  
2 by the facility and delivered to PNM, plus Deemed Delivered Energy resulting from  
3 Buyer Curtailment, after successful commissioning of the facility with the full  
4 capacity beginning on the Commercial Operation Date.

5 ***Quail Ranch Storage ESA*** - The nameplate capacity of the Quail Ranch Storage  
6 facility is approximately 100 MW, 4-hour storage, 365 equivalent charge/discharge  
7 cycles per year. Under Section 8.1 of the Quail Ranch Storage ESA, PNM is  
8 required to pay a monthly energy payment, for Metered Output from the solar  
9 facility under the PPA plus ESS Deemed Energy, beginning on the Commercial  
10 Operation Date.

11 ***Route 66 Storage ESA*** - The nameplate capacity of the Route 66 Storage facility  
12 is approximately 49.5 MW, 4-hour storage, 365 equivalent charge/discharge cycles  
13 per year. Under Section 8.1 of the Route 66 Storage ESA, PNM is required to pay  
14 a monthly energy payment, for Energy Output plus ESS Deemed Energy, beginning  
15 on the Commercial Operation Date.

16 ***Sky Ranch Energy Storage II ESA*** - The nameplate capacity of the Sky Ranch  
17 Energy Storage II facility is approximately 100 MW, 4-hour storage, 365 equivalent  
18 charge/discharge cycles per year. Under Section 8.1 of the Sky Ranch Energy  
19 Storage II ESA, PNM is required to pay a monthly energy payment, for Solar  
20 Energy Output plus ESS Deemed Energy, beginning on the Commercial Operation  
21 Date.

22

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

5 **A. *Quail Ranch Solar PPA*** - The Solar Energy Output Payment Rate over the twenty-  
6 year term of the PPA is \$29.84/MWh<sub>AC</sub>, which includes payment for metered  
7 energy, capacity, Deemed Delivered Energy, Ancillary Services, Environmental  
8 Attributes and RECs. This price will remain fixed over the term of the PPA with  
9 no escalations and cannot be reopened once the PPA has been approved by the  
10 Commission and is in effect. Charges will begin on the Commercial Operation  
11 Date as defined above and PNM will purchase test energy at the Test Energy  
12 Payment Rate, which is 50% of the Solar Energy Output Payment Rate.

13 ***Quail Ranch Storage ESA*** - The Quail Ranch Storage ESA has a monthly  
14 volumetric payment over the twenty-year term of the ESA equal to the ESS Energy  
15 Payment Rate of \$49.20/MWh multiplied by the Metered Output plus the ESS  
16 Deemed Energy, which includes payment for Energy Storage Services and  
17 Capacity, Ancillary Services, and Future Environmental Attributes. This price will  
18 remain fixed over the term of the ESA with no escalations and cannot be reopened  
19 once the ESA has been approved by the Commission and is in effect. Charges will  
20 begin on the Commercial Operation Date.

21 ***Route 66 Storage ESA*** - The Route 66 Storage ESA has a monthly volumetric  
22 payment over the contractual term of the ESA equal to the ESS Energy Payment  
23 Rate of \$48.95 / MWh multiplied by the Energy Output plus the ESS Deemed

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1 Energy, which includes payment for Energy Storage Capacity, Ancillary Services,  
2 and Environmental Attributes. This price will remain fixed over the term of the  
3 ESA with no escalations and cannot be reopened once the ESA has been approved  
4 by the Commission and is in effect. Charges will begin on the Commercial  
5 Operation Date.

6 *Sky Ranch Energy Storage II ESA* - The Sky Ranch Energy Storage II ESA has a  
7 monthly volumetric payment over the twenty-year term of the ESA equal to the  
8 ESS Energy Payment Rate of \$28.04 / MWh multiplied by the Solar Energy Output  
9 plus the ESS Deemed Energy, which includes payment for Energy Storage  
10 Capacity, Ancillary Services, and Environmental Attributes. This price will remain  
11 fixed over the term of the ESA with no escalations and cannot be reopened once  
12 the ESA has been approved by the Commission and is in effect. Charges will begin  
13 on the Commercial Operation Date.

14  
15 **Q. DO THE PPAS OR ESAS OBLIGATE PNM TO PAY ANY FIXED OR**  
16 **VARIABLE ADMINISTRATIVE COSTS, TRANSACTIONAL,**  
17 **OPERATION AND MAINTENANCE COSTS, OR ANY COSTS OTHER**  
18 **THAN FOR DELIVERED ENERGY (RULE 551.8(D)(2)(D))?**

19 **A.** Neither the PPA nor ESAs require PNM to pay any administrative costs,  
20 transactional, or operation and maintenance costs. For each of the PPA and ESAs,  
21 PNM will pay for Deemed Delivered Energy which is energy that could have been  
22 delivered if the facility was not curtailed by PNM; however, PNM does not pay for

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1 Deemed Delivered Energy due to reliability curtailments, transmission curtailments  
2 or Seller curtailment.

3  
4 **Q. PLEASE DESCRIBE THE PPA AND ESA PROVISIONS RELATING TO**  
5 **NON-PERFORMANCE (RULE 551.8(D)(2)(E)).**

6 **A.** The default provisions addressed in Article 12 of the PPA and ESAs, including the  
7 cure period for each type of default and the remedies, are similar between all the  
8 PPA and ESA agreements. Typically, a default becomes an Event of Default if not  
9 cured within the applicable cure period, or immediately, if no cure period is  
10 specified. Potential Events of Default may include but are not limited to: (1) the  
11 sale, dissolution, or abandonment of the facility; (2) failure to maintain required  
12 security; (3) bankruptcy; (4) failure to maintain the interconnection to the PNM  
13 system; and (5) failure to make any payment when due. More details are provided  
14 in the PPA in Article 12. Upon the occurrence of an Event of Default, PNM may  
15 collect damages incurred prior to the termination date as a result of the Event of  
16 Default, as well as terminate the PPA or ESA and receive a termination payment.  
17 Such damages would include the cost of replacement energy for the renewable  
18 energy and/or capacity the project failed to deliver under the terms of the  
19 agreement. Article 12 also defines Events of Default related to non-performance  
20 of the facility. Performance-related Events of Default include: (1) failure to achieve  
21 the Commercial Operation Date on or prior to the Guaranteed Start Date; and (2)  
22 the failure of the facility to maintain, after the Commercial Operation Date, an  
23 Actual Solar Availability percentage or ESS Capacity during the twenty-year term.

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1           The project is liable for liquidated damages for non-performance. Article 3.7  
2           provides that, if the Commercial Operation Date has not occurred by the Expected  
3           Commercial Operation Date as such date may be extended pursuant to terms of the  
4           agreement, the project will pay PNM liquidated damages on a dollar per day for  
5           each MW of capacity that is delayed. The project must pay liquidated damages if  
6           it has not cured all delayed capacity to achieve Commercial Operation by the  
7           Guaranteed Start Date.

8

9   **Q.    ARE THERE ANY APPROVALS OR PERMITS REQUIRED TO**  
10   **CONSTRUCT AND OPERATE THE PROJECTS THAT ARE THE**  
11   **SUBJECT OF THE PPAS (RULE 551.8(D)(5)(C)(I))?**

12   **A.**    The permits required for each project are listed in Exhibit E of the respective PPA  
13           and the ESAs.

14

15   **Q.    PLEASE DESCRIBE THE FACILITIES THAT ARE THE SUBJECT OF**  
16   **THE PPA AND ESAS (RULE 551.8(D)(5)(C)(II), (III), AND (IV)).**

17   **A.**    *Quail Ranch Solar PPA* - The Quail Ranch Solar Project is a new 100 MW solar  
18           photovoltaic facility that will be located in Bernalillo County, New Mexico. A  
19           project description is included in Exhibit A to the PPA and additional site  
20           descriptions are provided in Exhibit C to the PPA (provided as PNM Exhibit JWH-  
21           2). Construction is anticipated to begin upon Commission approval of the PPA and  
22           the Expected Commercial Operation Date for the facility is November 2, 2025.



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1        ***Quail Ranch Storage ESA*** - The Quail Ranch Storage Project is a new 100 MW,  
2        4-hour energy storage facility that will be located in Bernalillo County, New  
3        Mexico. A project description is included in Exhibit A to the ESA and additional  
4        site descriptions are provided in Exhibit C to the ESA (provided as PNM Exhibit  
5        JWH-3). Construction is anticipated to begin upon Commission approval of the  
6        PPA and the Expected Commercial Operation Date for the facility is November 2,  
7        2025.

8        ***Route 66 StorageESA*** - The Route 66 Storage Project is a new 49.5 MW, 4-hour  
9        energy storage facility that will be located in Cibola County, New Mexico. A  
10       project description is included in Exhibit A to the ESA and additional site  
11       descriptions are provided in Exhibit C to the ESA (provided as PNM Exhibit JWH-  
12       4). Construction is anticipated to begin upon Commission approval of the ESA and  
13       the Expected Commercial Operation Date for the facility is February 1, 2026.

14       ***Sky Ranch Energy Storage II ESA*** - The Sky Ranch Energy Storage II Project is  
15       a new 100 MW, 4-hour energy storage facility that will be located in Valencia  
16       County, New Mexico. A project description is included in Exhibit A to the ESA  
17       and additional site descriptions are provided in Exhibit C to the ESA (provided as  
18       PNM Exhibit JWH-5). Construction is anticipated to begin upon Commission  
19       approval of the ESA and the Expected Commercial Operation Date for the facility  
20       is February 1, 2026

21

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1 **Q. DO THE PPA AND ESAS PROVIDE FOR PNM ACQUIRING**  
2 **OWNERSHIP OF THEIR RESPECTIVE PROJECTS DURING OR AFTER**  
3 **THE TERM OF THE AGREEMENT (RULE 551.8(D)(5)(C)(V))?**

4 **A.** PNM does not have any purchase or acquisition option under the PPA or ESAs.  
5

6 **Q. HOW WILL THE ENERGY FROM EACH PPA/ESA PROJECT BE**  
7 **TRANSMITTED ON PNM'S SYSTEM (RULE 551.8(D)(3))?**

8 **A.** *Quail Ranch Solar PPA* - The Quail Ranch Solar Project will interconnect to  
9 PNM's Rio Puerco – West Mesa 345 kV line. This project plans to use an amended  
10 interconnection agreement already executed for the Atrisco Solar 300 MW facility  
11 and the Atrisco Energy Storage 300 MW facility.

12 *Quail Ranch Storage ESA* - The Quail Ranch Storage Project will share the Quail  
13 Ranch Solar Project interconnection to PNM's Rio Puerco – West Mesa 345 kV  
14 line. This project plans to use an amended interconnection agreement already  
15 executed for the Atrisco Solar 300 MW facility and the Atrisco Energy Storage 300  
16 MW facility.

17 *Route 66 Storage ESA* -The Route 66 Storage Project will have the Point of  
18 Delivery at the Route 66 115 kV Switching Station on PNM's Bluewater to West-  
19 Mesa 115kV Line.

20 *Sky Ranch Energy Storage II ESA* - The Sky Ranch Energy Storage II Project will  
21 have the Point of Delivery at the Sun Ranch 115kV Switching Station.  
22

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

3 **A. *Quail Ranch Solar PPA*** - The Quail Ranch PPA includes a specific ramp rate of  
4 not greater than 20 MW per minute and curtailment rights for the solar facility for  
5 reasons that include transmission and system management. In addition to the  
6 system benefits provided under the PPA, Article 19 requires Quail Ranch Solar to  
7 post security, which increases the monetary incentive to meet its capacity and  
8 schedule requirements. Quail Ranch Solar is required to post development security  
9 equal to \$80,000 per MW multiplied by the guaranteed capacity (100 MW) or \$8  
10 million. Additionally, no later than the Commercial Operation Date, Quail Ranch  
11 Solar will be required to post and maintain security equal to \$100,000 per MW  
12 multiplied by the guaranteed capacity or \$10 million.

13 ***Quail Ranch Storage ESA*** - The Quail Ranch Storage ESA includes ancillary  
14 services including, frequency response black start, load following, contingency  
15 reserve, spinning reserve, and 100 MW charge/discharge capability. In addition to  
16 the system benefits provided under the ESA, Article 19 requires Quail Ranch  
17 Storage to post security, which increases the monetary incentive to meet its capacity  
18 and schedule requirements. Quail Ranch Storage is required to post development  
19 security equal to \$80,000 per MW multiplied by the guaranteed capacity (100 MW)  
20 or \$8 million. Additionally, no later than the Commercial Operation Date, Quail  
21 Ranch Storage will be required to post and maintain security equal to \$100,000 per  
22 MW multiplied by the guaranteed capacity or \$10 million.

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1        ***Route 66 Storage ESA*** - The Route 66 Storage ESA includes ancillary services  
2 including, frequency response black start load following, contingency reserve,  
3 spinning reserve, and 50 MW charge/discharge capability. In addition to the system  
4 benefits provided under the ESA, Article 19 requires Route 66 Storage to post  
5 security, which increases the monetary incentive to meet its capacity and schedule  
6 requirements. Route 66 Storage is required to post and maintain development  
7 security equal to \$125,000 per MW multiplied by the guaranteed capacity  
8 (49.5MW) or \$6,187,500 million. Additionally, no later than the Commercial  
9 Operation Date, Route 66 Storage will be required to post and maintain security  
10 equal to \$90,000 per MW multiplied by the guaranteed capacity or \$4,455,000  
11 million.

12        ***Sky Ranch Energy Storage II ESA*** - The Sky Ranch Energy Storage II ESA  
13 includes ancillary services including, frequency response black start load  
14 following, contingency reserve, spinning reserve, and 50 MW charge/discharge  
15 capability. In addition to the system benefits provided under the ESA, Article 19  
16 requires Sky Ranch Energy Storage II to post security, which increases the  
17 monetary incentive to meet its capacity and schedule requirements. Sky Ranch  
18 Energy Storage II is required to post and maintain development security equal to  
19 \$125,000 per MW multiplied by the guaranteed capacity (100 MW) or \$12.5  
20 million. Additionally, no later than the Commercial Operation Date, Sky Ranch  
21 Energy Storage II will be required to post and maintain security equal to \$90,000  
22 per MW multiplied by the guaranteed capacity or \$9 million.

23

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

4 **A.** PNM is seeking approval for a PPA, three ESA, as well as a PNM-owned battery  
5 storage. This diverse portfolio provides a benefit to ratepayers economically as  
6 well as improving system reliability through a PNM-owned battery. Regarding the  
7 PPA and ESA bids received, the Quail Ranch Solar PPA, the Quail Ranch Storage  
8 ESA, the Sky Ranch Energy Storage II ESA and the Route 66 Storage ESA were  
9 the most competitive. PNM Witness Phillips more fully supports the analysis for  
10 choices of resources including net public benefits.

11

12 **Q. HAS PNM COMPLIED WITH THE PROVISIONS OF THE PPA RULE?**

13 **A.** Yes, as detailed above.

14

15 **Q. DO YOU HAVE ANY FURTHER COMMENTS ABOUT THE PPA AND**  
16 **THREE ESAS?**

17 **A.** In general, the terms and conditions in the PPA and ESAs are typical in that they  
18 are market-based and similar terms and conditions are generally found in any long-  
19 term PPA/ESA entered into by PNM. These ESAs differ from previous PNM  
20 agreements primarily in the use of volumetric pricing, the need for which has been  
21 explained previously in the testimony of PNM witnesses Monroy and Phillips. The  
22 terms of the PPA should be deemed reasonable, and approval should be granted.  
23 The ESAs share essentially the same commercially reasonable terms as the PPA,

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1 including the provisions for volumetric pricing. As with the PPA, the terms of the  
2 ESAs should be deemed reasonable, and approval should be granted.

3 **V. REQUESTED CCN APPROVALS**

4 **Q. WHAT CCN APPROVALS IS PNM REQUESTING IN THIS CASE?**

5 **A.** PNM is seeking a CCN for the Sandia Storage Project, described in more detail  
6 below.

7  
8 **Q. WHO IS THE EPC CONTRACTOR ON THE SANDIA STORAGE  
9 PROJECT?**

10 **A.** DEPCOM Power Inc is the EPC contractor on this battery project. The EPC  
11 agreement for the Sandia EPC agreement is attached as PNM Exhibit JWH-6.

12  
13 **Q. PLEASE DESCRIBE THE SANDIA STORAGE PROJECT.**

14 **A.** The Sandia Storage Project is a 60 MW, 4-hour battery storage facility that will be  
15 located near the Sandia Substation in southeast Albuquerque, New Mexico.  
16 Construction is anticipated to begin upon Commission approval and the Substantial  
17 Completion Guaranteed Date for the project is April 1, 2026 and Substantial  
18 Completion Deadline Date 30 days later.

19  
20 **Q. WHAT IS THE ESTIMATED COST OF THE SANDIA STORAGE  
21 PROJECT?**

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1 **A.** PNM Table JWH-2 provides a summary itemization for the RFP estimated cost of  
2 the Sandia Storage Project.

3 PNM Table JWH-2

<b>Sandia Storage Cost</b>	
EPC Price	\$ 113,170,096
Transmission & Interconnection	\$ 5,181,259
Owner's Cost	\$ 13,016,864
<b>Total</b>	<b>\$ 131,368,219</b>

4

5 **Q. IS PNM SEEKING RATEMAKING TREATMENT FOR THE SANDIA**  
6 **STORAGE PROJECT?**

7 **A.** Not at this time. As described in more detail in the testimony of PNM Witness  
8 Henry Monroy, PNM will seek approval to place the costs of the Sandia Storage  
9 Project in rates during its first general rate case following commercial operation of  
10 the facility.

11

12 **Q. IS THE COST OF THE SANDIA STORAGE PROJECT REASONABLE?**

13 **A.** Yes. The estimated cost for this project is reasonable. As noted previously, this  
14 project was selected as a result of a competitive procurement process with proper  
15 vetting by experts to ensure the reasonableness of the cost.

16

17 **Q. WHAT SITING AND PERMITTING ACTIVITIES NEED TO TAKE**  
18 **PLACE IN CONNECTION WITH THE SANDIA STORAGE PROJECT?**

19 **A.** The specific permits needed for the Sandia Storage Project are noted in Exhibit C-  
20 1 and C-2 for the EPC contract of PNM Exhibit JWH-6. The Sandia Storage Project

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1 is located at an existing PNM site near PNM’s Sandia Substation. To the extent  
2 applicable, PNM will work closely with the local municipal authority with respect  
3 to the building permit processes during the design, construction, and operational  
4 phases of the project.

5

6 **Q. WILL THE SANDIA STORAGE PROJECT BE CONSTRUCTED AND**  
7 **OPERATED TO COMPLY WITH APPLICABLE ENVIRONMENTAL**  
8 **PROTECTION REQUIREMENTS?**

9 **A.** Yes. The contractor is responsible for site construction permits during the  
10 construction phase of the project.

11

12 **Q. PLEASE DESCRIBE HOW THE SANDIA STORAGE PROJECT WILL**  
13 **REDUCE COST TO RATE PAYERS BY AVOIDING OR DEFERRING**  
14 **NEED FOR INVESTMENT IN NEW GENERATION AND FOR**  
15 **UPGRADES TO SYSTEMS FOR THE TRANSMISSION AND**  
16 **DISTRIBUTION OF ENERGY.**

17 **A.** The Sandia Storage Project is intended to be utilized primarily to provide capacity  
18 to PNM customers during peak demand periods thus reducing the need to build  
19 additional generation capacity or add transmission resources. With utility  
20 ownership, the storage project can be charged during off peak periods, during  
21 periods of high renewable penetration, and provides the ability to manage utility  
22 curtailment. The Sandia Project will assist in reducing the use of fossil fuels for  
23 meeting peak load periods thus helping New Mexico transition to zero-carbon by



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1           2040. In addition to providing energy to cover peak demand, the Sandia Storage  
2           Project also provides spinning reserve, contingency reserve, and other ancillary  
3           services. Finally, as discussed by PNM witness Duane, the location of the Sandia  
4           Project will provide certain transmission benefits to the system as well.

5

6   **Q.     PLEASE DESCRIBE HOW THE SANDIA STORAGE PROJECT WILL**  
7           **SUPPORT DIVERSIFICATION OF ENERGY RESOURCES AND**  
8           **ENHANCE GRID SECURITY.**

9   **A.**    The Sandia Storage Project is specifically designed as a 4-hour system to meet load  
10          ramps, short duration high peak periods, and respond to EIM market demands. This  
11          diversification offsets need for additional flexible gas and also complements  
12          renewable penetration by providing a tool to manage curtailments, thus helping to  
13          integrate renewable energy into the grid.

14

15   **Q.     PLEASE DESCRIBE HOW THE SANDIA STORAGE PROJECT WILL**  
16          **PROVIDE THE UTILITY DISCRETION TO OPERATE, MAINTAIN AND**  
17          **CONTROL ENERGY STORAGE TO ENSURE RELIABLE AND**  
18          **EFFICIENT SERVICE TO CUSTOMERS.**

19   **A.**    The utility-owned Sandia Storage Project will allow the utility to charge and  
20          discharge on a 24/7 basis. This provides the utility the ability to, by managing grid  
21          stability, use the resource for balancing area regulation, improve customer  
22          reliability, and effectively manage renewable penetration.

23

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1 **Q. IS THE SANDIA STORAGE PROJECT IN THE PUBLIC INTEREST AND**  
2 **DOES IT RESULT IN A NET PUBLIC BENEFIT?**

3 **A.** Yes, for the reasons stated above.

4 **VI. CONCLUSION**

5 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

6 **A.** Yes.

*GCG#531703*

Résumé of Jeremy Heslop

# PNM Exhibit JWH-1

Is contained in the following 1 page.

**Jeremy W. Heslop**  
**EDUCATIONAL AND PROFESSIONAL SUMMARY**

Name: Jeremy W. Heslop

Address: Public Service of New Mexico  
2401 Aztec Road NE  
Albuquerque, NM 87107

Position: Senior Contracts Manager

Education: Bachelor of Petroleum Engineering  
Texas Tech University, 2015

Master of Business Administration  
Western New Mexico University, 2018

Employment: Employed by PNM Resources since 2015

Positions held within the Company include:  
Power Production Engineer I, II, and III  
Team Manager II  
Financial Modeling Project Manager  
Senior Contracts Manager

Quail Ranch PPA

# PNM Exhibit JWH-2

Is contained in the following 111 pages.

Solar Facility PPA with Energy Storage Agreement # 1079295

**POWER PURCHASE AGREEMENT —QUAIL RANCH SOLAR FACILITY**

**by and between**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**and**

**QUAIL RANCH SOLAR LLC**

**Dated as of October 24, 2023**

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## **EXHIBITS**

- Exhibit A Description of Seller's Generation Facilities, Site Map and Project Schedule
- Exhibit B One-Line Diagram 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 Insurance Coverages
- Exhibit H Annual Generation Forecast
- Exhibit I Availability Guarantees
- Exhibit J Form of Seller Guaranty
- Exhibit K Commercial Operation Form of Certification
- Exhibit L Solar PPA Functional Mapping

## POWER PURCHASE AGREEMENT—QUAIL RANCH SOLAR FACILITY

This Power Purchase Agreement—Quail Ranch Solar Facility, as may be amended from time to time, is entered into on October 24, 2023 (“**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 Quail Ranch Solar LLC, a Delaware limited liability company (“**Seller**”), whose principal place of business is 800 W Main St #900, Boise, ID 83702. Buyer and Seller may be referred to in this PPA individually as a “**Party**” and collectively as the “Parties.”

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

WHEREAS, Seller desires to develop, design, construct, own and operate a solar powered electricity generating facility having a designed net power output capability of 100 MW, 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,

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

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

### ARTICLE 1

#### Definitions and Rules of Interpretation

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

“**Abandonment**” means (a) a cessation of work and operations at or in respect of the Project for more than ninety (90) Days by Seller or Seller’s contractors but only if such cessation is not in accordance with Prudent Utility Practices or caused by a Force Majeure Event or not in accordance with Seller’s Project Schedule, or (b) the relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this PPA.

“**AC**” means alternating electric current.

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

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

“**Affiliate**” of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Buyer**” has the meaning set forth in the Preamble.

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

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

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

“**Buyer Termination Payment**” means the sum of (a) the aggregate of all amounts then owed from Seller to Buyer less any amounts owed from Buyer to Seller, plus (b) the positive difference, if any, between (i) the net present value of the Replacement Energy Costs and (ii) the Contract Value, plus (c) Buyer Costs all 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. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this PPA, and similar considerations. The Buyer Termination Payment does not include consequential incidental, punitive, exemplary or indirect or business interruption damages.

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

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

**“Commercial Operation”** means that (a) Solar Units with an aggregate capacity of at least ninety percent (90%) of the Guaranteed Solar Capacity have been constructed, commissioned, tested and proven capable of delivering Energy on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system, (b) all Seller required permits, required consents, and Governmental Approvals are in full force and effect; (c) Seller has obtained all necessary rights under the Interconnection Agreement for interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement, (d) Seller has satisfactorily completed 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; (e) Seller has obtained required insurance coverage as set forth in this PPA; and (f) 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 K, with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

**“Commercial Operation Year”** means a period of twelve (12) consecutive Months; provided that 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 the twelve (12) Month period commencing at the end of the prior Commercial Operation Year.

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

**“Contract Value”** means the sum of the present values of the Solar Energy Output, for each Commercial Operation Year (or portion thereof) in the then remaining term, determined without reference to the early termination, of (a) the quantity of Energy 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.



**“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 Delivered Energy”** has the meaning set forth in Section 4.1(B).

**“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.

**“Deficiency Period”** has the meaning set forth in Section 10.10(B).

**“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”** shall mean that the long-term credit rating of a Person’s long-term senior unsecured debt is not “Baa3” or higher by Moody’s or “BBB-” or higher by S&P.

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

**“Electric Interconnection Point”** means the physical point at which electrical interconnection is made between the Project and the Transmission Provider’s Transmission System.

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

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

**“Energy”** means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, generated by the Project and delivered to Buyer at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices.

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

**“Energy Storage Agreement”** or **“ESA”** means that certain Energy Storage Agreement by and between ESS Seller and Buyer dated as of the Execution Date hereof, including the exhibits and schedules attached thereto, as the same may be amended from time to time in accordance with the provisions thereof.

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

**“Energy Storage System”** or **“ESS”** has the meaning ascribed to it in the Energy Storage Agreement. For the avoidance of doubt, 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 nature that are created or otherwise arise from the Project’s generation of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil, gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes specifically exclude (i) Tax Benefits, (ii) depreciation

deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; and (iii) any Energy, reliability or other power attributes from the Project.

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

**“ESS Seller”** means Quail Ranch Energy Storage LLC.

**“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.

**“Federal Power Act”** means the Federal Power Act, as amended, 16 U.S.C. § 791a *et seq.*

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

**“First Year Performance Test”** has the meaning set forth in Section 10.8(A).

**“Force Majeure Event”** has the meaning set forth in Section 14.1(A).

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

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

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

**“Governmental Charges”** means any Taxes, charges or costs that are assessed or levied by any Governmental Authority or other Person, including local, state or federal regulatory or

taxing authorities that would affect the sale and purchase of Solar Energy Output contemplated by this PPA, either directly or indirectly.

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

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

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

“**Hazardous Materials**” means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (x) defined as a “pesticide” under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

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

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

“**Interconnection Agreement**” means that certain Amended and Restated Large Generator Interconnection Agreement dated as of October 19, 2023 by and among Atrisco Solar LLC, Atrisco Energy Storage LLC, Quail Ranch Solar LLC, Quail Ranch Energy Storage LLC, and the Transmission Provider, as such agreement may be amended from time to time.

“**Interconnection Facilities**” means the Transmission Provider’s Interconnection Facilities and Seller’s Interconnection Facilities.

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

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

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

“**kWh**” means kilowatt hour AC.

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

“**Letter of Credit**” means an irrevocable, unconditional, transferable standby letter of credit for the benefit of the receiving Party, issued by an entity meeting the Issuer Minimum Requirements.

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

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

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

“**Metered Output**” means the Energy produced by the Project and delivered to the Point of Delivery, as measured by the Electric Metering Devices, net of any 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.

“**Model Rated Power**” has the meaning set forth in Section 10.8(D)(4).

“**Month**” means a calendar month.

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

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

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

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

“**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, WECC, and all other applicable agencies, self-regulatory organizations and industry committees to which the Party is required to have membership and/or submit to jurisdiction in the performance of this PPA.

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

“**OATT**” means Open Access Transmission Tariff.

“**Operating Instruction**” has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

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

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

“**Operating Records**” means the final version of all operating logs, blueprints for construction, operating manuals, warranties on equipment, and other documents related to the manufacture and installation of the generating equipment and generator step-up transformer, material engineering drawings, and environmental permits, plans, and studies, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project.

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

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

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

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

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

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

“**PNM**” has the meaning set forth in the Preamble.

“**Point of 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 PPA as specified in Section 3.1 and Exhibit B to this PPA. For the avoidance of doubt, 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**” 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.

“**PPA Idle Losses**” means system uses that are integral to the operation of the Project, including transformers, inverters, and energy management systems during hours in which the solar generation is unable to serve these losses.

“**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 Solar Energy Output associated with the Project. Primary Metering Devices include the metering current transformers and the metering voltage transformers.

“**Project**” means Seller’s solar generation facility, located in Bernalillo County, New Mexico, with an expected total maximum solar power output of approximately one hundred (100) MW at the Point of Delivery which will produce the Solar Energy Output made available to Buyer under this PPA, including one or more of Seller’s Solar Units, and Seller’s Interconnection Facilities, as identified and described in Article 3 and Exhibit A to this PPA, including all of the following (and any additions, modifications or replacements), the purpose of which is to produce electricity and deliver such electricity to the Electric Interconnection Point: Seller’s equipment, buildings, all of the conversion and/or generation facilities, including the Solar Units, step-up transformers, output breakers, facilities necessary to connect to the Electric Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facilities that produce the Solar Energy Output subject to this PPA. The maximum export capability of the Project will be one hundred (100) MW.

“**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 solar power generation industry serving public utilities, WECC and/or NERC) 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. With respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

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

(B) sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Project properly, efficiently, and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency Conditions whether caused by events on or off the 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 similar solar power generation facilities serving public utilities in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Sites and under both normal and Emergency Conditions generally experienced in the solar generation industry; and

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

**"Qualified Operator"** is (a) a Person that has at least three (3) years' experience with operating at least three hundred (300) MW, in the aggregate, of solar generation, or (b) any other Person reasonably acceptable to Buyer.

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

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

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

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



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

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

**“Reliability Curtailment”** means any curtailment of the Project due to any of the following reasons: (a) the Transmission Provider and/or BAA direct a general curtailment, reduction or redispatch of generation in the area for any reason (other than as a result of Buyer Curtailment), even if such curtailment or redispatch Operating Instruction is carried out by the BAA, and (b) the BAA curtails or otherwise reduces the Metered Output in order to meet NERC/WECC standards criteria in regard to compliance obligations to the PNM Balancing Area and/or PNM Transmission Provider system to operate within system limitations or other operating areas as directed by the Reliability Coordinator, and (c) for safety or equipment failure situations. For the avoidance of doubt, a Reliability Curtailment includes curtailments associated with an oversupply of generation on Buyer or the Transmission Provider’s Transmission System during a period of time when generating facilities connected to the Transmission Provider’s Transmission System are interrupted or reduced in an equitable and non-discriminatory manner. If any of the conditions set forth in this definition subparts (a) through (c) are applicable, Buyer shall be rebuttably presumed not to be curtailing for economic reasons. Buyer, upon reasonable notice will provide reasonable documentation relating to any Reliability Curtailments pursuant to this definition.

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

**“Replacement Energy Costs”** means the actual costs incurred by Buyer following an Event of Default by Seller that are reasonable and necessary to replace Solar Energy Output (which includes RECs, Environmental Attributes and Ancillary Services as defined herein) which Seller, in accordance with this PPA, would have generated at the Project and delivered to Buyer, but failed to so provide pursuant to this PPA. Buyer shall not have to enter into a replacement contract to establish the Replacement Energy Costs. If Buyer does not enter into a replacement contract, then the Replacement Energy Costs will be based on the market price for Energy, Environmental Attributes (including RECs) and Ancillary Services delivered to Buyer’s system, as reasonably determined by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement Energy Costs for an Event of Default also include (i) the reasonable amounts paid or incurred by Buyer for transmission of replacement Solar Energy Output to the Point of Delivery and any associated transmission or

distribution costs, (ii) the reasonable amounts paid or incurred by Buyer for the purchase of RECs associated with the replacement Solar Energy Output, and (iii) Buyer's reasonable expenses, including reasonable outside attorneys' fees, suffered as a result of Seller's failure to perform under this PPA.

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

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

**“Scheduled Maintenance Outage”** means a time during which a Solar Unit is shut down or its output reduced to undergo scheduled maintenance in accordance with this PPA, or as otherwise agreed by Seller and Buyer.

**“SEC”** has the meaning set forth in Section 22.18.

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

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

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

**“Seller Excused Hours”** means those hours during which Seller is unable to schedule or deliver Energy to Buyer, as a result of: (a) a Scheduled Maintenance Outage, (b) a Transmission Provider Curtailment (other than due to an Emergency Condition caused by Seller's breach of its Interconnection Agreement with the Transmission Provider), (c) a Reliability Curtailment, (d) a Buyer Curtailment, (e) a Force Majeure Event, or (f) 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).

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

**“Seller Guarantor”** means any Person having a credit rating on such Person's long-term senior unsecured debt that is “Baa3” or higher by Moody's or “BBB-” or higher by S&P or insurance rating AM Best A- or better that has made a Seller Guaranty for the benefit of Buyer.

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

**“Seller Permitted Transfer”** means any of the following: (a) a Change of Control of Seller's Ultimate Parent or a Change of Control of Seller where Seller's Ultimate Parent is the same entity after such Change of Control ; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor; (c) a transfer of: (i) all or substantially all of the assets of Seller's Ultimate Parent in a single transaction; or (ii) all or substantially all of Seller's Ultimate Parent's solar generation portfolio in a single transaction; or (d) in connection with a Lender's exercise of remedies under its financing agreements for the Project, the direct or indirect transfer of shares of, or equity interests in, Seller (including a Change of Control), or assignment of this PPA or any of Seller's rights or obligations hereunder; *provided*, that in the case of each of clauses (a), (b), (c) or (d) of this definition, following such transfer (A) the entity that operates the Project

is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project), (B) such transfer does not have a material adverse effect on the Seller's creditworthiness (C) Seller continues to comply with the obligations to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this PPA and (D) both the Seller under this PPA and the "Seller" under the ESA are owned by the same ultimate parent upon transfer.

**"Seller Termination Payment"** means the sum of (a) aggregate of all amounts then owed from Buyer to Seller, less any amounts owed from Seller to Buyer, plus (b) the positive difference, if any, 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), plus (c) Seller's reasonable transactional costs of entering into a new supply or sales arrangement all 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. 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 Seller Termination Payment does not include consequential incidental, punitive, exemplary or indirect or business interruption damages.

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

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

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

**"Site"** means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this PPA. For the avoidance of doubt, this PPA is Site specific 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, not to be unreasonably withheld.

**"Solar Energy Output"** means Metered Output, Environmental Attributes (including RECs), Ancillary Services and associated electrical capacity rights generated by the Project.

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

“**Solar Period Hours**” has the meaning set forth in Exhibit I.

“**Solar Unit(s)**” means the photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary for the Project to collect sunlight at the Site and convert it into electricity. One Solar Unit includes all equipment associated with each inverter.

“**Supplemental Tax Incentives**” means any federal, state or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date that provides for additional or increased tax credits and is determined to be applicable to the Project, net of associated expenses, taxes, and lost Tax Benefits, if any. For the avoidance of doubt, Supplemental Tax Incentives do not and shall not include any real property tax abatements (including in connection with the issuance of industrial revenue bonds or other property tax abatement) or any benefits available under the Inflation Reduction Act of 2022 or any regulations promulgated thereunder, which, for the avoidance of doubt, are included in the Solar Energy Output Payment Rate.

“**System Control Center**” or “**SCC**” means Buyer’s representative(s) responsible for dispatch of generating units, including the Solar Units.

“**Tax Benefits**” means (a) federal and state investment and/or production tax credits Supplemental State Tax Incentives, and any other tax credits which are or will be generated by the Project and (b) any cash payments or outright grants of money made by a Governmental Authority relating in any way to such tax credits or the Project.

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

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

“**Taxes**” means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

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

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

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

“**Test Period**” means the period commencing on the day the Project or any part thereof is energized, operates in parallel with the Transmission Provider’s Transmission System and delivers metered Energy to the Point of Delivery and ending on the Commercial Operation Date.

“**Test Rated Power**” has the meaning set forth in Section 10.8(D)(3).

“**TP Forced Outage**” means an unplanned component failure or other condition that (a) requires all or a portion of the Transmission Provider’s Interconnection Facilities or Transmission Provider’s Transmission System to be removed from service immediately; and (b) impacts Seller’s operation of the Project.

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

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

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

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

“**Transmission Provider Curtailment**” means curtailments of Energy from the Project directed by the Transmission Provider resulting from (a) a TP Forced Outage that is not the result of a Force Majeure Event, (b) a TP Maintenance Outage, (c) a TP Planned Outage, (d) a TP Reliability Curtailment, (e) an Emergency Condition, or (f) any other event or circumstance not due to fault or negligence by Seller.

“**Transmission Provider’s Interconnection Facilities**” means the facilities necessary to connect the Transmission Provider’s Transmission System to the Electric Interconnection Point, including breakers, bus work, bus relays, and associated equipment installed by the Transmission Provider for the direct purpose of physically and electrically interconnecting the Project, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities.

Arrangements for the installation and operation of the Transmission Provider's Interconnection Facilities shall be governed by the Interconnection Agreement.

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

**"Ultimate Parent"** means Enlight LTD.

**"Weather Station(s)"** has the meaning set forth in Section 10.10(A).

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

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

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

**"WREGIS Operating Rules"** means the rules that describe the operations of WREGIS, as may be amended, which are currently available at [www.wregis.org](http://www.wregis.org).

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

## 1.2 Rules of Construction.

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

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

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

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

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (i) where the PPA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be

unreasonably withheld, conditioned or delayed, and (ii) wherever the PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

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

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

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

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

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

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

(C) Seller expressly recognizes that, for purposes of this PPA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This PPA does not provide for the supply of retail electric power or natural gas to the Project, for any purpose (“**House Energy**”). For the avoidance of doubt, the Parties agree that House Energy does not include energy that is used for PPA Idle Losses which may be served from the same source as the ESA Idle Losses (as defined in the ESA). Seller shall contract with the local utility in whose retail service territory the Project is located (“**Local Provider**”) for the supply of House Energy consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy must be separate from metering used to meter Solar Energy Output.

(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 for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least thirty (30) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller’s Interconnection Facilities. The terms of this PPA are not binding upon the Local Provider. For purposes of this PPA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this PPA, nothing in Seller's arrangements for the supply of House Energy 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 Facilities for House Energy provided that any such House Energy shall not be included in the accounting of Metered Output delivered to Buyer by Seller under the PPA. Seller shall have the right to co-locate additional facilities designed to supply House Energy; provided, however, that excess energy produced from such additional facility shall not be delivered by Seller to Buyer under this PPA. House Energy shall be real time measured by either (i) separate Electric Metering Devices for Metered Output and House Energy or (ii) a single Electric Metering Device that separately measures Metered Output and House Energy. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

(D) In the case that Seller is required to use backfeed power from the grid to serve PPA Idle Losses, Buyer shall be responsible for the resultant imbalance.

## ARTICLE 2 Term and Termination

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

## ARTICLE 3 Project Description

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

### COMMERCIAL TERMS

<b>Buyer:</b> Public Service Company of New Mexico	<b>Seller:</b> Quail Ranch Solar LLC
<b>Project:</b> Quail Ranch Solar	
<b>Point of Delivery:</b> The point within WECC Path 48 where Seller makes available to Buyer and delivers to Buyer the Solar Energy Output being provided under this PPA, as further described in Exhibit B.	
<b>Contract Term:</b> 20 Commercial Operation Years	<b>Product Type:</b> Bundled Energy, Ancillary Services, RECs and associated electrical capacity rights



<b>Solar Energy Output Payment Rate:</b> \$29.84 per MWh <sub>AC</sub>	<b>Guaranteed Solar Capacity:</b> 100 MW <sub>AC</sub> , as may be adjusted in accordance with Section 3.8.
<b>Day(s) of week:</b> Monday through Sunday, including NERC holidays	<b>Hours:</b> Hour Ending 0100 – Hour Ending 2400, Monday through Sunday MST
<b>Guaranteed Start Date:</b> One hundred eighty (180) Days after the Expected Commercial Operation Date, but in no event later than May 1, 2026	
<b>Expected Commercial Operation Date:</b> November 2, 2025, subject to extensions as set forth in Section 3.6	

### 3.2 Project.

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

(B) Exhibit H identifies the expected first year total annual Energy to be delivered from the Project to the Point of Delivery and the corresponding capacity factor.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery and the location of the Interconnection Facilities is included in Exhibit A to this PPA. Exhibit A also contains a preliminary indication of the location of the Solar Units at the Site. Seller will provide notice to Buyer of the final proposed location of the Solar Units at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller’s contractors at the Site. On or before the Commercial Operation Date, Seller may provide to Buyer a revised map and description of the Site removing unused and unnecessary portions of land that were previously included within the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project according to Prudent Utility Practice(s), the requirements of this PPA and the Interconnection Agreement. The Project shall at all times:

- (A) Have the required panel space and 125V DC battery-supplied voltage to accommodate metering, generator telemetering equipment and communications equipment;
- (B) be equipped for and capable of automated control via the AGC;
- (C) use redundant communication and metering circuits 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 being started and stopped automatically in response to a remote signal from the System Control Center;

(G) be capable of immediate and automatic disconnection in response to a remote signal from the System Control Center in the event of an Emergency Condition;

(H) be capable of operation over an ambient temperature range of -20°F to 110°F within a relative humidity range of five percent (5%) to ninety five percent (95%); and

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) 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-1547.1: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with PNM's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. To the extent reasonably necessary for Buyer's compliance with NERC requirements, Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with PNM's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to web servers, (iii) production change management, and (iv) CIP governance requirements.

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

3.6 Extension. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended by a number of Days, on a day-for-day basis up to a maximum of (a) one hundred eighty (180) Days, equal to the duration of any Force Majeure Event, or (b) one hundred eighty (180) Days, in the event of delay associated with the interconnection of the Project (other than work performed by Seller), in either case that delays commencement of operation of the Project. Seller will give written notice to Buyer describing any

such Force Majeure Event or interconnection delay within five (5) Business Days after the occurrence of the Force Majeure Event or interconnection delay. The number of Days of such extension is calculated from the date on which the Force Majeure Event or interconnection delay begins. If a Force Majeure Event will delay the Commercial Operation Date for more than one hundred eighty (180) Days, or if an interconnection delay will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this PPA without liability of either Party, and Buyer shall return the Development Security less any amounts due from Seller to Buyer. Notwithstanding the foregoing, the interconnection delay provided in clause (b) above shall not apply in the event that the required network upgrades as specified in the Interconnection Agreement and Transmission Provider's Interconnection Facilities associated with the 300 MW Atrisco Project are in service at least sixty (60) days prior to the Expected Commercial Operation Date.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller will use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages to Buyer in an amount equal to Two Hundred Dollars (\$200) per Day per each MW of Delayed Capacity for each Day of delay that occurs prior to June 1 and/or after September 30 of a calendar year and (ii) One Thousand Dollars (\$1,000) per Day per each MW of Delayed Capacity for each Day of delay that occurs on or after June 1 and on or before September 30 of a calendar year, ("**Delay Damages**") for each Day after the Expected Commercial Operation Date until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed Capacity**" means the difference between the Guaranteed Solar Capacity and the Installed Solar Capacity.

3.8 Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed Solar Capacity 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 ("**Capacity Shortfall Damages**"), in which case the respective 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. Seller shall give written notice to Buyer of its NERC registered Generator Owner, Generator Operator and operations and maintenance contractor, in accordance with Exhibit L, ninety (90) Days prior to providing written notice of intent to start the Test Period, such notice to be provided not less than thirty (30) Days prior to the date upon which Seller expects to begin delivering Test Energy. During the Test Period, Buyer agrees to accept and purchase all Test Energy generated at the Project and delivered by Seller to Buyer at the Point of Delivery at a rate equal to fifty percent (50%) of the Solar Energy Output Payment Rate. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to the initial delivery of Test Energy to Buyer.

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. Buyer shall in writing either accept or reject this notice in its reasonable discretion, and if Buyer rejects the notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that equipment, firmware, software, or any component thereof utilized in the Project is not prohibited by Applicable Law. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.11 by Seller, its contractors or subcontractors or any of their respective Affiliates.

#### ARTICLE 4

##### AGC; Buyer Curtailment; Reliability Curtailment

###### 4.1 AGC; Buyer Curtailment and Reliability Curtailment.

(A) Prior to the Commercial Operation Date or, if applicable, prior to the Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall maintain such AGC throughout the Delivery Term 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 Section 4.1(B) for a Buyer Curtailment and Section 4.1(C) for a Reliability Curtailment. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall commission the AGC at the Project and shall maintain the AGC in an operational state during normal Project operations such that the Project's AGC can receive remote instruction from Buyer to cause the Project to shut down, operate and ramp over its full operating capability in response to remote instruction. Buyer's curtailment rights under Sections 4.1(B) and 4.1(C) shall be implemented at the Project level and not in respect of each inverter.

(B) Seller shall reduce Solar Energy Output from the Project during and to the extent of any Buyer Curtailment, which shall include any curtailment (a) requested by Buyer with the intended purpose of achieving economic savings by not purchasing energy from the Project and (b) any curtailment resulting from Buyer's economic bidding, which includes the submission of output forecasts or schedules for less than the forecasted generation of the Project (each of (a), and (b) a "**Buyer Curtailment**"), but does not include reduced forecasts or reductions in scheduled generation due to a Reliability Curtailment. During the period within the first ten (10) Commercial Operation Years unless mutually agreed by the Parties for a period extending thereafter, Buyer's right to Buyer Curtailment shall be limited to 8,333 MWh in any given Commercial Operation Year. Such Buyer Curtailment rights do not provide the Buyer with any rights to direct the operation of the Project. For avoidance of doubt, PNM is not required to provide this Project as a participating resource in a regional market. For a Buyer Curtailment, Buyer shall pay Seller for the Deemed Delivered Energy in accordance with Section 8.1(A). For purposes of this Section 4.1(B), "**Deemed Delivered Energy**" shall mean the amount of Energy that was not delivered to Buyer by Seller but would have been so delivered but for the Buyer Curtailment as follows: Deemed Delivered Energy (MWh) shall be reasonably calculated by Seller taking into account 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 Buyer Curtailment but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review and approve Seller's calculations (including a calibration to the most recent Project Performance Test Ratio and actual availability as described in this Section 4.1(B)) of Deemed Delivered Energy.

(C) Seller shall reduce Solar Energy Output from the Project during and to the extent of any Reliability Curtailment, Transmission Provider Curtailment or Buyer Curtailment. With the exception of a Buyer Curtailment, Buyer shall not be required to pay Seller for any curtailed Energy during any Reliability Curtailment or Transmission Provider 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. As between Buyer and Seller under this PPA, Seller shall be responsible for the costs of interconnection and costs required to deliver the Solar Energy Output from the Project to Buyer at the Point of Delivery at the required voltage, including the costs of any associated network upgrades. As between Buyer and Seller under this PPA, Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to the Project's output up to the Point of Delivery. Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on, and jointly used by, the Project and the Energy Storage System, provided that delivery of Energy from the Project to the Transmission Provider's

Transmission System shall take priority over Energy discharged from the Energy Storage System, and the Project may not be curtailed during a period in which the Energy Storage System is concurrently being discharged, except as required to maintain reliability by the Balancing Area Authority.

(B) Buyer shall be responsible for costs required to deliver the Solar Energy Output from and beyond the Point of Delivery. Except as provided in this Section 5.1 and Section 7.4, Seller shall not be responsible for costs and charges related to scheduling and imbalances.

(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. In addition, Seller, or Seller's agent, shall establish and maintain (including any future technological improvements developed by Seller, or an agent of Seller) an interface with Buyer via a web-based file transfer protocol for the purpose of transferring to Buyer real-time forecasting data related to the Project (or any alternative transfer mechanism mutually agreed to by the Parties).

(D) Buyer shall be responsible for all necessary transmission service arrangements, including scheduling arrangements, if any, to take Metered Output at the Point of Delivery and deliver it to points beyond.

(E) Seller shall be responsible for separately sourcing, metering and payment for an electrical power supply and associated power consumption for the Project auxiliary loads.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the current 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 redundant metering with independent current transformers and potential transformers ("**Back-Up Metering**") are installed at or near the Electric Interconnection Point that measures the output of the Project before such Energy is commingled with the energy from any other project.

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

(C) All Electric Metering Devices used to measure the Energy made available to Buyer by Seller under this PPA and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this PPA. Electric Metering Devices shall be bi-directional and shall be capable of measuring and reading instantaneous, five minute, fifteen minute and hourly real and reactive Energy and capacity. The design of the Electric Metering Device system shall be subject to Buyer approval prior to commencement of construction of the Project. 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 Buyer.

(D) Either Buyer or Seller may elect to install and maintain, at its own expense, secondary backup metering devices (“**Secondary Metering**”) in addition to the 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) In the event that 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 installed on the low side of Seller's step-up transformer, the Secondary Metering data shall be adjusted for losses in the same manner as for the Electric Metering Devices. In the event that Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Metered Output from the Project to the Point of Delivery during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

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

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

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 Solar Energy Output

7.1 Sale and Purchase of Solar Energy Output. In accordance with and subject to the terms and conditions of this PPA, commencing on the first day of the Test Period 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 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 Solar Energy Output when and to the extent that (a) a Party’s performance is excused by a Force Majeure Event, (b) a Transmission Provider Curtailment is continuing, (c) a Reliability Curtailment is continuing, (d) a Seller Forced Outage is continuing, (e) a Buyer Curtailment is continuing, or (f) a Scheduled Maintenance Outage is continuing, provided further, that Buyer shall pay Seller for Deemed Delivered Energy in accordance with Section 8.1(A) in the event of a Buyer Curtailment. Furthermore, Buyer shall not be required to receive or purchase Solar Energy Output that corresponds to instantaneous generation that exceeds the Guaranteed Solar Capacity as adjusted for losses to the Point of Delivery.

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

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) additional Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this PPA all right and title to such additional Environmental Attributes is included in the Solar Energy Output Payment Rate as Solar Energy Output and (c) such additional Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this PPA. If in order for Buyer to receive the benefit of any additional Environmental Attributes Seller must incur any third-party costs not otherwise provided for in this PPA, 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 (i) its continued election to have Seller incur such costs, and in such case Buyer shall promptly reimburse Seller for such costs, or (ii) of its election to have Seller cease incurring the additional costs, in which case Buyer acknowledges that it may not receive the benefits of such additional Environmental Attributes; *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 to change its election to have Seller cease incurring the additional costs, in which case Buyer acknowledges that it may not receive the benefits of such additional Environmental Attributes. For the avoidance of doubt, Buyer shall remain liable to Seller for all costs incurred prior to Seller’s receipt of Buyer’s notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such additional Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services, in coordination with Seller's NERC verified functional mapping requirements identified in Exhibit L, necessary to ensure compliance with 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 Metered Output in accordance with WECC operating policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines in a manner maximizing Metered Output from the Project based on the then-most-current forecast of energy provided by Seller, except for Transmission Provider Curtailments, Reliability Curtailments, Seller Forced Outages, Scheduled Maintenance Outages, Force Majeure Events, and Buyer Curtailments. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Buyer with a good faith estimate of the quantity of Metered 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 good faith 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 twenty (20) MW per minute; provided if any Energy in excess of the ramp rate limit can be utilized to charge the ESS, Buyer shall receive and purchase such Energy at the Solar Energy Output Payment Rate. For the avoidance of doubt, Buyer shall not be obligated to maintain available capacity in the Energy Storage System to accept excess Energy that exceeds the ramp rate limit.

(B) If at any point during the Delivery Term, (i) an alternative market design is implemented in which the Project will or can participate in an energy market, or (ii) if either the Project, the Electric Interconnection Point or Buyer no longer reside in the same market (each of (i) and (ii), a "**Market Event**") and such Market Event materially changes the interconnection and delivery requirements in this PPA, the Parties shall cooperate in good faith to facilitate the delivery of Solar Energy Output from the Point of Delivery to Buyer, at the least possible cost to the Parties, consistent with this PPA to the extent possible.

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily quantity of Solar Energy Output to be delivered by Seller to the Point of Delivery for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and the SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly quantities of Solar Energy Output to be delivered for Buyer at the Point of Delivery for the next six (6) subsequent Days.

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

### 7.5 Forced Outages.

(A) Buyer and Seller shall promptly advise one another of events that may form the basis for a declaration of the existence or termination of Buyer Curtailment, Transmission Provider Curtailment, Reliability Curtailments, Seller Excused Hours or a Seller Forced Outage. Buyer or Seller (as appropriate) shall at the earliest practicable date provide the other Party written notice (“**Outage Notice**”) of the declaration of the existence of a Buyer Curtailment, Transmission Provider Curtailment, Reliability Curtailment, Seller Excused Hours or a Seller Forced Outage. Seller shall provide such notice to the System Control Center. An Outage Notice provided by either Party shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Metered Output, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Buyer or Seller (as appropriate) shall keep the other Party informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

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 I.

## ARTICLE 8 Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and will begin on the first day of the Test Period:

(A) Monthly Solar Energy Output Payment. Subject to the provisions of this PPA, Buyer shall accept and pay for Solar Energy Output generated at the Project and delivered by Seller to Buyer. Buyer shall pay Seller in accordance with Section 3.9 for all Test Energy, and in respect of all other Solar Energy Output an amount equal to the product of (a) the aggregate amount of Solar Energy Output (excluding any Test Energy) delivered for Buyer to the Point of Delivery from the Project plus the Deemed Delivered Energy resulting from any Buyer Curtailment multiplied by (b) the Solar Energy Output Payment Rate. For the avoidance of doubt, the Solar Energy Output Payment Rate also compensates Seller for the associated Environmental Attributes, RECs and Ancillary Services, in any Monthly Billing Period. The Solar Energy Output Payment does not include any amounts Buyer is responsible for paying or reimbursing Seller for under Section 9.7. Nothing herein confers on Buyer the right to, and Buyer may not, direct Seller to reduce the Solar Energy Output of the Project for the provision of Ancillary Services or other financial consideration. The Solar Energy Output Payment Rate includes all Taxes except as provided for in Section 9.7.

(B) If Supplemental Tax Incentives become available in connection with the Solar Energy Output, Seller shall, within thirty (30) Days of guidance regarding such availability, provide an analysis to Buyer of the benefits available under this PPA. At Buyer’s option, the Parties

shall work together in good faith to agree to those amendments and other modifications, excluding any price increase, to this PPA which are reasonably required to allow the Parties to receive the Supplemental Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such credits.

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

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

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. This Section 8.3 shall only apply to Section 8.1(C) to the extent such Supplemental Tax Incentives are applicable to the time period before the repudiation, termination or expiration of this PPA.

## ARTICLE 9 Billing and Payment Procedures

### 9.1 Statements and Payment of Electricity Payments.

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

(B) Payments due shall be determined and adjusted in accordance with Article 8 and Section 4.1(B). 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 Test Period commences, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this PPA (in Dollars) payable to Seller for the preceding Month. Each such invoice shall show information and calculations, in reasonable detail.

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

(E) If banks in the State of New Mexico are permitted to close on any date on which any payment by Buyer would otherwise have been due, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

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

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

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

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this PPA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the lower of (i) the “prime” rate as published in *The Wall Street Journal* on the first business Day of each Month plus one percent (1.0%) 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 forty-five (45) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. In the event that either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other

Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. 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 Solar Energy Output hereunder; however, in the event any such Tax is or becomes applicable, Buyer shall reimburse Seller for such Tax. During the Delivery Term, Seller and Buyer each covenant that it will take all actions required and refrain from taking any actions which are prohibited, which such action or inaction would cause the Energy delivered hereunder to Buyer to not qualify, for a New Mexico Nontaxable Transaction Certificate. Notwithstanding the foregoing, Buyer shall reimburse Seller for Gross Receipts Tax, if any, imposed on Seller's sale of and Buyer's purchase of Solar Energy Output and on Buyer's payment and Seller's receipt of amounts due under this PPA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Solar Energy Output to Buyer pursuant to this PPA.

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

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

(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this PPA or the Project that may be reasonably necessary in the

ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

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

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

9.9 Netting.

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

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

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

ARTICLE 10  
Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement, the PPA, Applicable Law and other applicable requirements and standards. Seller will be solely responsible for, and the Solar Energy Output Payment Rate will not be adjusted to accommodate, increased costs or any failure to obtain any Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule in Microsoft Project format within thirty (30) Days of the Execution Date, including key project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a 1 Month look-ahead of project activities, with each subsequent monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, the New Mexico Public Utility Act.

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15<sup>th</sup> Day of each month. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks. If Seller becomes aware of any critical milestone that will not be achieved by the required date, Seller must provide Buyer written notice and a recovery plan to eliminate any delay in the 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. 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; 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.

(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; or (ii) for modifications, alterations, expansions or other changes that would not be expected to materially and adversely alter the Guaranteed Solar Capacity, Annual Performance Ratio or availability of the Project, materially increase the Installed Solar Capacity over that commissioned as of the Commercial Operation Date or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including like-kind repairs and replacement of equipment, as determined to be reasonable or necessary by Seller.

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

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

## 10.2 Commissioning Tests.

(A) Seller shall provide proposed Commissioning Test procedures to Buyer at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Buyer shall provide any comments to the proposed Commissioning Test procedures to Seller within forty-five (45) Days of its receipt of the proposed Commissioning Test procedures. Seller shall incorporate Buyer's reasonable comments to such proposed Commissioning Test procedures in the final Commissioning Test procedures. 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**") as described in Exhibit F. Representatives of Buyer shall have the right to be present at all



such testing and Seller shall promptly provide raw data and preliminary results of all Commissioning Tests for verification by Buyer prior to the Commercial Operation Date. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

### 10.3 Access to and Inspection of the Project.

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

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this PPA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this PPA and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment nor as a warranty or guarantee.

### 10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this PPA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this PPA, and (ii) comply with reasonable requirements of Buyer regarding day-to-day or hour-by-hour communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Solar Energy Output delivered by Seller will meet all requirements for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this PPA. 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, 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 personnel test, calibrate and certify in writing the proper functioning of all protective equipment at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. PNM 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.

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

(B) 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 PPA. The protocols and procedures will be developed by Seller in accordance with the requirements of the PPA and the appropriate power test code standards. 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.

#### 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 semi-annual 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 PNM's participation in a regional market or program (including the Western Resource Adequacy Program), the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

With the 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 Plant'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 Plant's generation for any reason at any time during May 1<sup>st</sup> through September 30<sup>th</sup>, 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 must give Buyer no less than ninety (90) days' advance notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change. Notwithstanding any provision herein to the contrary, 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.

(B) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Solar Energy Output to the Point of Delivery. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. As of the start of the Test Period, Seller shall not sell or divert Solar Energy Output to a third Person.

10.8 Performance Tests. "**Performance Tests**" include any of First Year Performance Test, Annual Performance Tests, and Buyer-Requested Performance Tests as described in this Section 10.8.

(A) Seller shall conduct a performance test within the first three (3) calendar months of the first Commercial Operation Year (the "**First Year Performance Test**").

(B) Seller shall conduct a performance test in each Commercial Operation Year beyond the first year (the "**Annual Performance Tests**"). Annual Performance Tests shall be performed within the first three (3) calendar months of each Commercial Operation Year.

(C) An annual degradation rate of seven-tenths of one percent (0.7%) per year will be used in the Annual Performance Test PVSYST Model for the purpose of performance testing described in this Section 10.8.

(D) First Year Performance Tests, Annual Performance Tests, and Buyer-Requested Performance Tests shall be conducted in accordance with ASTM E2848-13, except where deviations are provided in this Section 10.8 (D).

(1) The reporting conditions (“RC”) will be developed in accordance with ASTM E2939-13 and will utilize site measured irradiance, ambient temperature, and wind speed data collected during the test. The same RC will be used for computing the Model Rated Power and Test Rated Power using their respective regression equations.

(2) The primary result from an Annual Performance Test or Buyer-Requested Performance Test is the ratio of Test Rated Power to Model Rated Power (the “**Performance Test Ratio**”).

(3) “**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 (RC), adjusted by Seller for any unavailable equipment during the test.

(4) “**Model Rated Power**” shall be the value produced by the regression of filtered Annual Performance Test PVSYST Model power and filtered model weather data evaluated at the reporting conditions (RC), adjusted by Seller for any unavailable equipment during the test.

(5) The Model Rated Power will be calculated using the Annual Performance Test PVSYST Model. Site measured GHI irradiance will be used as the irradiance input to the PVSYST model rather than site measured POA irradiance.

(6) The PVSYST model prepared by the independent engineer during project financing will be used as the PVSYST model for initial comparison to the actual site performance during the First Year Performance Test. Seller shall provide to Buyer the modifications to the PVSYST model after completion of the First Year Performance Test necessary to arrive at a set of regression coefficients that closely match those derived from test data as well as to achieve a Performance Test Rating of 1.000. The resulting modified PVSYST model together with a schedule of annual degradation will be the “**Annual Performance Test PVSYST Model.**”

(7) The Annual Performance Test PVSYST Model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer within one (1) month of the completion of the First Year Performance Test. The model will include annual degradation previously agreed to by the Parties. This mutually accepted model will be utilized without modification, unless agreed to by

both Parties, in all Annual Performance Tests and Buyer-Requested Performance Tests as well as determination of any Annual Performance Test Guarantee Damages as defined in Section 10.9.

(E) Within thirty (30) days of the completion of a Performance Test, Seller may elect to conduct a single re-test. Upon completion of the single re-test, Seller must choose for the results of either test to be used as the Annual Performance Test.

(F) For all Performance Tests and re-tests, Seller shall notify Buyer at least ten (10) Days prior to the initiation of the Performance Test or re-test, and Buyer shall have the option to inspect the Project during such Performance Test or re-test.

(G) For all Performance Tests and re-tests, Seller shall provide a “**Performance Test Report**” including all performance data, model simulations, calculations, and test reports to the Buyer for analysis and approval.

#### 10.9 Annual Performance Test Guarantee Damages.

(A) Seller guarantees that Annual Performance Tests shall meet or exceed the Annual Performance Test Guarantee. The “**Annual Performance Test Guarantee**” is met when the average of the Performance Test Ratio for the Annual Performance Test and the Performance Test Ratio for the previous Annual Performance Test, or the First Year Performance Test (i.e. 1.000) as applicable, results in a value greater than or equal to 0.950 (the “**Performance Test Guarantee Ratio**”) without the application of any commercial test tolerance or adjustment to the results for test measurement uncertainty. If an Annual Performance Test shows that the Annual Performance Guarantee was met, then Seller shall not owe Annual Performance Test Guarantee Damages.

(B) If any Annual Performance Test shows that the Annual Performance Guarantee was not met, then Seller shall owe Annual Performance Test Guarantee Damages calculated in accordance with this Section 10.9. The calculated energy shortfall (the “**Energy Shortfall**”) shall be the total energy delivered in the most recently completed Commercial Operation Year multiplied by the Shortfall Factor. The “**Shortfall Factor**” is one (1) minus the ratio of the average of the Performance Test Ratios of the most recently completed Commercial Operation Year and the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year and the Performance Test Guarantee Ratio.

$$ES = E_n \times SF$$

$$SF = 1 - \frac{\frac{1}{2}(PTR_R + PTR_{R-1})}{PTGR}$$

Where,

ES = Energy Shortfall

$E_n$  = Energy delivered in the most recently completed Commercial Operation Year

SF = Shortfall Factor

$PTR_n$  = Performance Test Ratio for the most recently completed Commercial Operation Year

$PTR_{n-1}$  = Performance Test Ratio for the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year

PTGR = Performance Test Guarantee Ratio

(C) If the Energy Shortfall calculation results in a positive number, Seller shall pay Annual Performance Test Guarantee Damages in accordance with Seller's obligations under the provisions of this Section 10.9. Liquidated damages associated with failure to meet the Annual Performance Test Guarantee shall be paid in the amount equal to (x) the Solar Energy Output Payment Rate, multiplied by (y) the Energy Shortfall as determined by the Annual Performance Test Guarantee ("**Annual Performance Test Guarantee Damages**"), but in no event in excess of the Annual Solar Capacity Guarantee Damages Cap and the Aggregate Solar Capacity Guarantee Damages Cap. In the event that Buyer-Requested Performance Test Guaranty Damages are due for an overlapping time period, the value for  $E_n$  in the above equation shall be reduced by any Energy delivered during the Deficiency Period ( $E_d$ ) as outlined in Section 10.10(B).

(D) Example energy shortfall calculation: A Performance Test is conducted and results in an average Performance Test Ratio of 0.930 (average of the Performance Test Ratios of the most recently completed Commercial Operation Year and the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year). The Solar Energy Output Payment Rate in the most recently completed Commercial Operation Year is \$29.84 /MWh and the total annual energy delivered by the project in the most recently completed Commercial Operation Year is 276,482 MWh. Damages shall be paid as a result of the Performance Test Ratio being less than the guaranteed value of 0.950. The amount of liquidated damages is calculated to be  $[276,482 \text{ MWh}] \times [1 - 0.930 / 0.950] \times [\$29.84 / \text{MWh}] = \$173,688.90$ .

(E) The aggregate Annual Performance Test Guarantee Damages payable by Seller for failure to meet the Annual Performance Test Guarantee in any Commercial Operation Year, plus the Buyer-Requested Performance Test Guarantee Damages, shall be capped annually at a value equivalent to Thirteen Thousand Five Hundred Dollars (\$13,500) per MW of Guaranteed Solar Capacity ("**Annual Solar Capacity Guarantee Damages Cap**") and in the aggregate over the Term of the PPA at a value equal to Forty Thousand Five Hundred Dollars (\$40,500) per MW of Guaranteed Solar Capacity ("**Aggregate Solar Capacity Guarantee Damages Cap**"). Amounts payable pursuant to this Section 10.9(E) shall constitute Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, in connection with any deficiency in connection with Annual Performance Tests or Buyer-Requested Performance Tests.

10.10 Buyer-Requested Performance Tests. Seller shall perform additional Buyer-Requested Performance Tests as requested by Buyer ("**Buyer-Requested Performance Tests**"), limited to the conditions described in this Section 10.10. Buyer-Requested Performance Tests will be conducted as described in Section 10.8, for tests performed within the second and subsequent Commercial Operation Years.

(A) Seller guarantees that the Performance Test Ratio for Buyer-Requested Performance Tests shall meet or exceed the Performance Test Guarantee Ratio without the application of any commercial test tolerance or adjustment to the results for test measurement uncertainty.

(B) The calculated energy shortfall (the “**Energy Shortfall**”) shall be the product of (i) total energy delivered from the date of a failed Buyer-Requested Performance Test until the date a subsequent retest confirms a Performance Test Ratio equal to or greater than the Performance Test Guarantee Ratio (a “**Deficiency Period**”), multiplied by (ii) the Shortfall Factor. The Shortfall Factor is one (1) minus the ratio of the Performance Test Ratio and the Performance Test Guarantee Ratio.

$$\underline{ES = E_d \times SF}$$

$$SF = 1 - \frac{PTR}{PTGR}$$

Where,

ES = Energy Shortfall

$E_d$  = energy delivered during the Deficiency Period

SF = Shortfall Factor

PTR = Performance Test Ratio for the current Buyer-Requested Performance Test

PTGR = Performance Test Guarantee Ratio

(C) If the Energy Shortfall calculation results in a positive number, Seller shall pay Buyer-Requested Performance Test Guarantee Damages in accordance with Seller’s obligations under the provisions of this Section 10.10. Liquidated damages associated with failure to meet the Buyer-Requested Performance Test Guarantee shall be paid in the amount equal to (x) the Solar Energy Output Payment Rate, multiplied by (y) the Energy Shortfall as determined by the Buyer-Requested Performance Test Guarantee (“**Buyer-Requested Performance Test Guarantee Damages**”), but in no event in excess of the Annual Solar Capacity Guarantee Damages Cap and the Aggregate Solar Capacity Guarantee Damages Cap.

(D) Example energy shortfall calculation: A performance test is conducted and results in Performance Test Ratio of 0.930. The Solar Energy Output Payment Rate during the Deficiency Period is \$29.84 /MWh and the total energy delivered by the project during the Deficiency Period is 150,000 MWh. Damages shall be paid as a result of the Performance Test Ratio being less than the guaranteed value of 0.950. The amount of liquidated damages is calculated to be [150,000 MWh] X [1 - 0.930 / 0.950] X [\$29.84 /MWh] = \$94,231.58.

(E) Only one (1) Buyer-Requested Performance Test may be requested per Commercial Operation Year.

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

(G) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

#### 10.11 Weather Stations.

(A) Seller shall, at Seller's cost and no later than six (6) months prior to the Commercial Operation Date, provide, install, own, operate and maintain a minimum of four (4) stand-alone meteorological stations ("**Weather Stations**") at the Project to monitor and report weather data, for use by both Buyer and Seller. The Weather Stations shall be equally spaced around the perimeter of the solar array to provide representative conditions for the whole of the Project and to provide information on changing weather conditions for short-term (e.g. 5 to 15 minute) generation forecasting. The Weather Stations shall include the capability for measuring, indicating, and recording PV cell temperature, wind speed and direction (instantaneous and average), barometric pressure, solar radiation, rainfall (daily and monthly plus rate), ambient temperature and humidity. Seller shall submit to PNM for review and approval, Seller's technical specifications for the Weather Stations along with a site plan showing the location of the station(s) (GPS coordinates), the location of all solar generating units, photovoltaic modules, current inverters, and other prominent features, as applicable. The system shall be interconnected via a web-based file transfer protocol, or other mutually-agreeable protocol, to provide indication of all measured parameters to PNM and the data shall be available to PNM via a PI historian interface. Seller shall provide to Buyer, and shall maintain during the Term, a data link or unrestricted real time access into the weather forecast modeling.

(B) Seller shall not select the type of Weather Station without the prior written consent of PNM, which shall not be unreasonably withheld. No later than six (6) months prior to the estimated Commercial Operation Date, the Parties shall agree on the locations of the Weather Stations and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Stations.

(C) Data collected from the Weather Stations shall be utilized for determination of the Solar Performance Ratio, minimum solar irradiance for determination of system availability, and lost output due to curtailment or outages.

10.12 Monthly Operational Report. Not later than the fifteenth (15th) day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**"). The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled



Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

10.13 Lease Liability Operational Expenses. If the pricing terms and conditions of this PPA would result in Buyer incurring a lease liability greater than zero dollars (\$0), then Seller shall provide Buyer, upon Buyer's reasonable request, an approximate percentage, or other information necessary for Buyer to determine an approximate percentage, of the cost of on-going operational expenses for the Project (e.g. operations and maintenance costs, property taxes and other such expenses) relative to the Solar Energy Output Payment Rate for a specified measuring period.

## ARTICLE 11 RECs and Environmental Attributes

### 11.1 Sale of RECs and Environmental Attributes.

(A) Other than as specified in Sections 11.1(D) and 11.1(E) below, effective from the date on which the Project first delivers Energy for sale to Buyer at the Point of Delivery, Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to RECs and Environmental Attributes associated with the generation of Energy. Seller shall make the RECs available to Buyer no later than five (5) Business Days after the RECs are created in WREGIS, subject to a day-for-day extension based on availability of the WREGIS website. Seller shall be liable for Buyer's costs to replace the RECs if Seller fails to deliver RECs within ten (10) Days after notice from Buyer. The RECs and Environmental Attributes transferred under this PPA shall be bundled with the associated Energy, and Buyer shall pay Seller for the bundled RECs and Environmental Attributes and Energy as set forth in this PPA.

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

(C) Ownership by Buyer of Environmental Attributes and RECs shall include any Environmental Attributes and RECs that are reserved or "banked" throughout the Term of this PPA, but not 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) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this PPA 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 commencement of the Test Period, take all actions and execute all documents or instruments necessary to ensure that the

Project is registered as a generating unit in WREGIS for the purpose of tracking all Renewable Energy Certificates corresponding to all Metered Output, and that all associated WREGIS Certificates are issued and tracked and transferred in a timely manner to Buyer. Seller shall comply with all Applicable Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall promptly provide written documentation to Buyer evidencing that the Project has been registered in WREGIS. 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, 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. 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 RECs.

(G) Prior to commencement of the Test Period, Seller shall provide written documentation to Buyer evidencing that the RECs generated by the Project will be reported to WREGIS using a WREGIS Qualified Reporting Entity, as that term is defined by WREGIS.

(H) Neither Seller nor Buyer will have any liability to the other for any act, omission, misrepresentation, or breach (other than an act or omission due to the failure to pay fees, charges or expenses by the responsible Party), by an entity that certifies the characteristics or delivery of a REC, or the qualification of the Project as a renewable energy facility, under Applicable Law. The certifying entity may include a Governmental Authority, WREGIS or other generation information system, an independent auditor or other third party.

## ARTICLE 12 Default and Remedies

### 12.1 Events of Default of Seller.

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

- (1) Seller's dissolution or liquidation;
- (2) Seller's assignment of this PPA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 and in any consent to collateral assignment with any Lender;
- (3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller voluntarily taking advantage of any such law by answer or otherwise;

(4) The intentional 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, except for Energy, RECs or Ancillary Services, as applicable, that Buyer fails to accept or pay for;

(5) Seller's actual fraud, material misrepresentation or willful misconduct in connection with this PPA;

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

(7) The failure of Seller Guarantor to make, when due, any payment due to Buyer under or in connection with this PPA, or the failure of any Seller Guarantor to meet the criteria as set forth in the definition of Seller Guarantor if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer;

(8) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, except as may be extended subject to Section 3.6; or

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

(B) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller:

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

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

(3) Seller's failure to 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);

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

(5) The Project fails, after the Commercial Operation Date, to maintain an Actual Solar Availability Percentage of at least eighty percent (80%) over any twenty-four (24) consecutive months during the Term excepting to the extent due to the failure

of a main generator step-up transformer (which exception may apply only once during the Term), provided that the 30-Day cure period indicated in Section 12.1(B) does not apply and Seller remediates the cause of the shortfall of Actual Availability Percentage requirements as soon as reasonably practicable, however, in no event later than one hundred eighty (180) days after falling below the eighty percent (80%) value. Notwithstanding the above, Seller shall notify Buyer within thirty (30) days after the initial occurrence of a main generator step-up transformer failure of the steps that Seller is taking to remediate the failure and thereafter keeps Buyer apprised, on a monthly basis, of Seller's progress towards resolving such main generator step-up transformer failure; or

(6) Seller fails to register the Project within WREGIS in accordance with the terms of this Agreement.

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

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

(2) Any representation or warranty made by Seller in this PPA shall prove to have been false or misleading in any material respect when made or, other than in connection with the representations and warranties provided in Sections 15.1(P) and 15.1(Q) which shall be required to remain valid through the Commercial Operation Date, ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

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

## 12.2 Events of Default of Buyer.

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

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

(2) Buyer's assignment of this PPA (or any of its rights hereunder) for the benefit of creditors; or

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

(B) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within thirty (30) Days after the date of written notice from Seller to Buyer:

(1) 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); or

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

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

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; provided, however, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

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

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

### 12.3 Damages Prior to Termination.

(A) Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, 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, that if an Event of Default has occurred and has continued uncured for a period of one hundred eighty (180) Days, the Non-Defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this PPA as provided for in Section 12.4.

If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include, to the extent applicable, 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. 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 from other fuel sources, such as natural gas. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any RECs and any Environmental Attributes pursuant to this PPA, provided that Buyer has used commercially reasonable efforts to avoid, minimize or mitigate the same. Seller acknowledges that Buyer entered into this PPA for the procurement of Solar Energy Output, which includes RECs and Environmental Attributes. If Buyer is the Defaulting Party, the Parties agree that damages recoverable by Seller hereunder on account of an Event of Default of Buyer shall include costs and losses incurred by Seller due to such Event of Default, including, to the extent applicable, an amount of cover damages equal to the quantity of 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 fifteen (15) and sixty (60) Days after the notice thereof, upon which this PPA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this PPA, except that Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this PPA. Upon the termination of this PPA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party. 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, and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment. Notwithstanding the foregoing, if the Commercial Operation Date has not occurred by the Guaranteed Start Date, Buyer may terminate this PPA in accordance with this Section 12.4, and the Buyer Termination Payment will be an amount equal to the Development Security less any Delay Damages already paid to Buyer. Neither Party shall have liability for damages or failure to

deliver or purchase Solar Energy Output after the effective date of such termination, including Replacement Energy Costs.

(A) In the event that Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment.

(B) In the event that Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment.

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

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

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

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

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

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

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default enumerated in Section 12.1 or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this PPA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## ARTICLE 13

### Contract Administration and Notices

13.1 Notices in Writing. Notices required by this PPA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt, to the representative of said other Party. If 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.

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

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

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



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

(A) **Operating and Maintenance Records.** Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Project that will include, without limitation, power production records for each hour; dispatch and scheduled Energy production; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records 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 Buyer and Seller Forced Outages ("**O&M Records**").

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

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

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

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

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the Solar Units.

(4) Upon request by Buyer, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

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

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, 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 Seller has defaulted under this PPA, in which case Seller will bear the reasonably incurred expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this PPA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this PPA.

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

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this PPA in a quick and inexpensive manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this PPA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to

be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days written notice, declare the mediation process unsuccessful and initiate legal and equitable remedies.

#### ARTICLE 14 Force Majeure

##### 14.1 Definition.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A “**Force Majeure Event**” shall mean an event or circumstance that arises after the Execution Date that is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this PPA. Such events or circumstances may include, but are not limited to: actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, explosions and fires not originating in the Project and those not caused by its failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). The Parties agree that a pandemic 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 beyond Seller's reasonable control and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor,

for any reason (the risk of which is assumed by Seller); (ii) any other acts or omissions of any third party acting on behalf of Seller, 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, unless such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions, actions of Governmental Authorities or other events or circumstances that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against 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 lightning strikes, but excluding unusually severe events, such as tornadoes, intense lightning strikes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this PPA beyond its stated Term. Notwithstanding any other provision in this PPA to the contrary, in the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller continues for an uninterrupted period of one hundred eighty (180) Days from its inception, either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this PPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. Upon such termination Buyer shall return the Development Security or Delivery Term Security, as applicable, to Seller, less any amounts due from Seller to Buyer.

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

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

Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this PPA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of either Buyer or the Transmission Provider to accept Solar Energy Output from the Project or to deliver Solar Energy Output from the Project, then any lost production (MWh) during the Force Majeure Event shall be excluded from the determination of the Monthly Solar Output Payment as set forth in Section 8.1.

## ARTICLE 15

### Representations, Warranties and Covenants

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

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

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

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

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

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

material adverse effect on the ability of Seller to perform its obligations under this PPA;  
or

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

(C) Assuming this PPA is a valid and binding obligation of Buyer, the obligations of Seller under this PPA are valid and binding obligations of Seller.

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

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

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

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

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

(I) Seller has and/or will have upon the generation of Solar Energy Output good and marketable title to the RECs and Environmental Attributes;

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

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

(L) Each REC and Environmental Attribute complies with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 *et seq.*, and Title 17.9.572 NMAC; and

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

(N) This PPA does not provide for the transfer of the Project to Buyer at any time during or after the Term;

(O) This PPA 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;

(P) As of the Commercial Operation Date, less than seventy five percent (75%) of the useful economic life of the Project will be expended upon the end of the Term;

(Q) As of the Commercial Operation Date, the present value of the sum of the compensation that Buyer shall pay Seller throughout the Delivery Term does not exceed ninety percent (90%) of the fair market value of the Project and its associated assets and there is no residual value guaranteed by Buyer that is not already reflected in the payment obligations set forth in this PPA; and

(R) The Project is not a specialized project and will have alternative uses to Seller upon the end of the Delivery Term.

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

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this 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) Assuming this PPA is a valid and binding obligation of Seller, this PPA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

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

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

## ARTICLE 16 Insurance

### 16.1 Evidence of Insurance.

(A) Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter within thirty (30) Days after 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 PPA shall not be limited to the amount of insurance coverage required herein.

### 16.2 Term and Modification of Insurance.

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



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

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

### 16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer and its Affiliates, officers, directors, agents, subcontractors and employees.

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

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer and its Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

## ARTICLE 17

### Legal and Regulatory Compliance and NMPRC Approval

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

pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

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

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Solar Energy Output at the rates specified in Article 8, shall be conditioned upon the receipt of NMPRC Approval in connection with (i) the execution and performance of this PPA; and (ii) a final order or other regulatory determination from the NMPRC that Buyer may procure renewable energy and associated RECs pursuant to this PPA and may recover the cost of such procurement without any material adverse financial order; (collectively, "**Requested Actions**"). For the avoidance of doubt, 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 in clauses (i) and (ii) of Section 17.3, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, including authorization to recover the costs of procurement of the Renewable Energy Output; or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, *provided* that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then this PPA shall automatically terminate ten (10) Days after the date of such action by the NMPRC and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, 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 or Seller will elect to amend this PPA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this PPA. 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 11:59 P.M. of June 3, 2024 (“**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 (i) a negligent or wrongful action or inaction or (ii) a violation of such reliability standard by Seller results 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, then Seller shall reimburse Buyer for the share of such monetary penalties resulting from Seller’s action, inaction, or violation.

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

## ARTICLE 18

### Assignment and Other Transfer Restrictions

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

(A) Buyer’s consent shall not be required for: (i) any assignment or transfer of this PPA by Seller to an Affiliate of Seller; or (ii) any assignment or transfer of this PPA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (i) or (ii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) delivers evidence reasonably satisfactory to Buyer

that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this PPA.

(B) Seller's consent shall not be required for any assignment of this PPA by Buyer to any Affiliate or in connection with 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 and will resell the Energy purchased hereunder.

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 shall be so qualified. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders.

(A) Cooperation. In connection with any assignment of this PPA by Seller to its Lenders, as soon as reasonably practicable after reasonable request from Seller or any Lender, Buyer will cooperate reasonably with Seller and Lender to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar

instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, (i) an option, but not an obligation, for the Lenders to cure any monetary Event of Default of Seller within thirty (30) Days of the expiration of the cure period provided therefor in Section 12.1, and cure any non-monetary Event of Default of Seller within sixty (60) Days of the expiration of the cure period provided therefor in Section 12.1, prior to Buyer terminating this PPA; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this PPA if Lenders need to foreclose on the Project prior to curing any Event of Default of Seller giving rise to such termination, but only to the extent that the period required for such foreclosure and cure does not exceed one hundred eighty (180) Days from receipt by Lenders of written notice of such Event of Default of Seller; provided that, in all cases, (a) Buyer will have no obligation to alter or modify the terms of this PPA or provide any consent or enter into any agreement that has a material adverse effect on Buyer, 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 PPA.

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

## ARTICLE 19

### Credit and Security Requirements

19.1 Security. Seller shall post, at its sole cost and expense, security equal to Eighty Thousand Dollars (\$80,000) per MW multiplied by the Guaranteed Solar Capacity, (the "**Development Security**"), the first Forty Thousand Dollars (\$40,000) per MW of which will be posted within ninety (90) Days of the Execution Date and the second Forty Thousand Dollars (\$40,000) per MW of which will be posted within the earlier of (i) thirty (30) Days after receipt of NMPRC Approval and (ii) the commencement of construction of the Project. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars (\$100,000) per MW multiplied by the Guaranteed Solar Capacity (the "**Delivery Term Security**"). Seller shall replenish the Delivery Term Security, to such required amount within fifteen (15) Days after any draw by Buyer.

Upon achievement of the Commercial Operation Date or promptly after Buyer terminates this PPA as a result of Seller's failure to achieve Commercial Operation on or before the Guaranteed Start Date, Buyer will return the Development Security to Seller, less any amounts drawn against the Development Security pursuant to Section 12.10. In the event that no amounts are due and owing by Seller to Buyer under this PPA and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the earlier of (i) termination of this PPA in accordance with its terms; and (ii) on the fifteenth (15th) Business Day after the expiration of the Term.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the reasonable discretion of Buyer: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars (\$10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor, or (d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall be renewed by Seller for successive one-year or shorter periods. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit, then Seller shall have fifteen (15) Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. Buyer shall not be required to post security.

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

to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security. In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this PPA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this PPA. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this PPA, as Buyer may select until such time as the Security is exhausted.

## ARTICLE 20

### Indemnity; Insurance Proceeds

#### 20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake,

conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

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

20.4 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

## ARTICLE 21 Governmental Charges

21.1 Allocation of Governmental Charges. Seller shall pay or cause to be paid 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 under Applicable Law to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this PPA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Solar Energy Output hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

## ARTICLE 22 Miscellaneous

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

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

### 22.3 Rate Changes.

(A) 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.

(B) Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" standard of review set forth

in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

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

22.5 Relationship of the Parties.

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

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

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

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

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

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

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

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

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

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

22.14 Confidentiality.

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

(B) Other than in connection with this PPA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, 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 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). 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 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 PNM or on PNM’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 its Receiving Party’s Representatives;
- (2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; 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 (as opposed to confidential business or operating information of either Party), 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 to make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third party costs incurred in seeking such protective order or similar procedure). Seller shall reasonably cooperate with Buyer in seeking protection from the disclosure of Seller's Confidential Information.

(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 single individual employed by Seller 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) Subject to Section 22.15(B), Seller hereby grants to Buyer the right to advertise, market, and promote to the general public the benefits of this PPA and the RECs that are generated under this PPA and delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this PPA and the creation, sale or retirement of such RECs (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller will make available to

Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Upon sufficient advance written notice, Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials. Notwithstanding the foregoing, either Party shall be permitted to disclose the following terms with respect to this PPA:

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

(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.

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, 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. Notwithstanding any other provision of this PPA, the Parties acknowledge that this PPA is a forward contract and master netting agreement within the meaning of the safe harbor provisions of the Bankruptcy Code. Accordingly, the Parties agree, notwithstanding any other provision in this PPA, that this PPA may be terminated and remedies exercised hereunder by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic

stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination or to the exercise of the remedies set forth herein.

22.18 Accounting Matters. The Parties agree that Generally Accepted Accounting Principles in the United States of America (“GAAP”) and the rules of the United States Securities and Exchange Commission (“SEC”) require Buyer to evaluate if Buyer must consolidate Seller’s financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this PPA (i) will be considered a lease under Accounting Standards Codification 842 - Leases, or (ii) require consolidation of Seller’s financial information with Buyer’s financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer’s accounting treatment for the PPA, jointly the “**Accounting Standards**”). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties’ review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the Parties agree to the following provisions for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller’s Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller’s parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer’s external auditors to complete an audit of Buyer’s consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within forty-five (45) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) (“**Seller’s Financial Statements**”) shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller’s records and personnel, so that Buyer and Buyer’s independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting

Oversight Board (United States). All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

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

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

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

22.20 Change in Market Structure. In the event of a change in the operation or organizational structure of the regional territory which includes the Project or Buyer's service area (including change in balancing area authority or implementation of an independent system operator, regional transmission organization, or realignment of the transmission system) and such change is reasonably anticipated to affect materially and adversely either Party's ability to perform its obligations hereunder, the representatives of each Party shall convene within fifteen (15) days

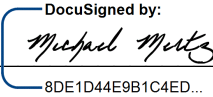


of written notification from either Party and shall provide recommendations for the Parties' appropriate action. Both Parties thereafter shall negotiate in good faith to agree upon an amendment to this PPA or to take other appropriate actions, the effect of which will be to preserve or restore the respective Parties, as closely as possible, to the same business and economic positions that existed prior to such change.

*[Signature page(s) follow]*

IN WITNESS WHEREOF, the Parties have caused this 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:  \_\_\_\_\_  
8DE1D44E9B1C4ED...

Name: Michael Mertz

Title: Vice President, New Mexico Operations, and Chief Information Officer

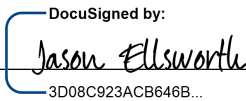
Date: 10/24/2023

**QUAIL RANCH SOLAR LLC**

By: CRE-Quail Ranch New Mexico LLC,  
its Sole Member

By: Clenera DevCo, LLC, its Sole Member

By: Clenera Holdings, LLC, its Sole Member

By:  \_\_\_\_\_  
3D08C923ACB646B...

Name: Jason Ellsworth

Title: Chief Executive Officer

Date: 10/25/2023

**EXHIBIT A**  
(to Power Purchase Agreement)

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

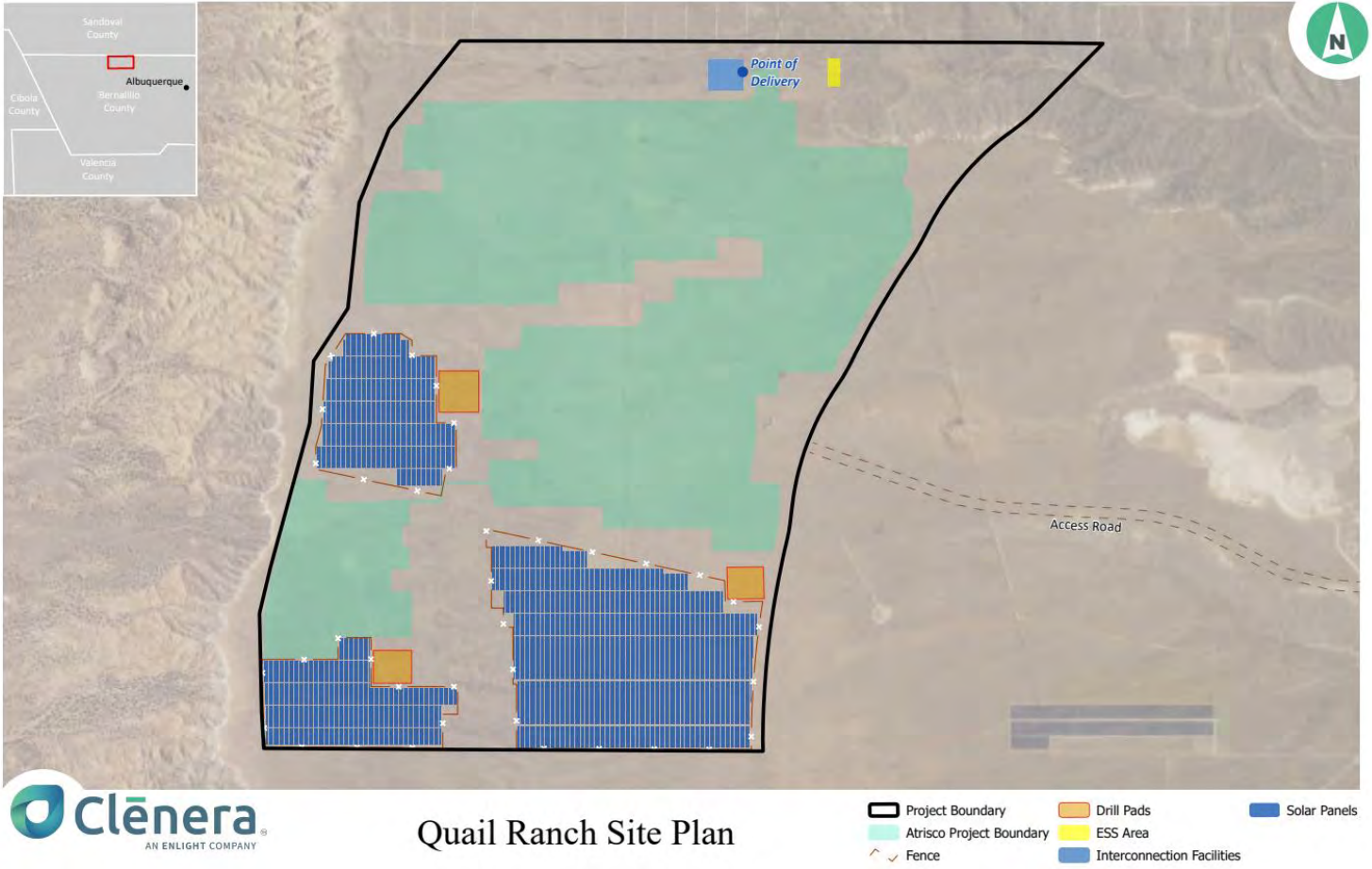
1. Name of Seller's Project: Quail Ranch Solar  
Location: Rancho Grande, Bernalillo County, New Mexico
2. Owner: Quail Ranch Solar LLC
3. Operator: Clenera LLC or its designee
4. Equipment/Fuel:
  - a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Energy Storage; Biomass (including Fuel)): Solar PV
  - b. Total approximate solar units at the Project: 344
  - c. Total nameplate capacity (MW<sub>AC</sub>): 100
  - d. Total nameplate capacity (MW<sub>DC</sub>): 120
  - e. Total capacity at point of delivery: 100
  - f. Additional technology-specific information: Single axis trackers
5. Project Schedule:

<b>Key Milestone</b>	<b>Date</b>
LGIA Execution	7/1/2023
Major Equipment Supply Agreements Executed	4/1/2024
Discretionary Permits	4/1/2024
Close Financing	6/1/2024
Start of Project Construction	7/1/2024
First Major Equipment Delivered to Site	9/1/2024
Interconnection In-Service Date	7/1/2025
Commissioning Start Date	9/1/2025

Expected Commercial Operation

11/2/2025

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



Quail Ranch Site Plan

**EXHIBIT B**  
(to Power Purchase Agreement)

**ONE-LINE DIAGRAM OF PROJECT AND INTERCONNECTION FACILITIES**

1. See attached one-line diagram of the Project, which shall be provided by Seller within thirty (30) Days of the Execution Date and which shall be subject to Buyer approval (such approval not to be withheld, conditioned, or delayed unreasonably). The one-line diagram indicates 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);
  - the House Energy power source and associated dedicated electric meter; and
  - ownership and location of meters.
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 RIO PUERCO – WEST MESA 345 KV TRANSMISSION LINE AT THE QUAIL RANCH 345 KV SWITCHING STATION



**EXHIBIT C**  
(to Power Purchase Agreement)

**DESCRIPTION OF SITE**

The Project is located on unimproved real property located in Bernalillo County, New Mexico, described as follows:

Tract 2-A of the Lands of Quail Ranch, as said tracts are shown and described on the Bulk Plat thereof recorded in the office of the County Clerk of Bernalillo County, New Mexico, on March 1, 2019, in Book 2019C, Page 18, as Document No. 2019016035.

The above described Tract of Land contains 3,376.36 acres more or less in area, of which a portion will be utilized for the Project.

**EXHIBIT D**  
(to Power Purchase Agreement)  
**NOTICE ADDRESSES**

**PUBLIC SERVICE COMPANY OF  
NEW MEXICO**

**Notices:**

**Delivery Address:**

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

**Invoices:**

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

**Scheduling:**

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

**Payments:**

Public Service Company of New Mexico  
2401 Aztec 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

**QUAIL RANCH SOLAR LLC**

**Notices:**

**Delivery Address:**

Quail Ranch Solar LLC  
c/o Clenera, LLC  
P.O. Box 2576  
Boise, ID 83701  
Telephone: (208) 639-3232  
Email: notices@clenera.com

**Invoices:**

Mailing Address (if different from above):

**Wire Transfer: To Be Provided**

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

Quail Ranch Solar LLC  
c/o Clenera, LLC  
P.O. Box 2576  
Boise, ID 83701  
Telephone: (208) 639-3232  
Email: notices@clenera.com



**Contract Manager:**

Public Service Company of New Mexico  
Attention: Jeremy Heslop  
2401 Aztec Rd. NE  
Albuquerque, NM 87107  
Telephone: (505) 598-2664

**With additional Notice of an Event of  
Default to:**

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

**With a copy to:**

Public Service Company of New Mexico  
Attention: Christopher Atencio  
414 Silver Ave. SW, MS0805  
Albuquerque, NM 87102  
lawdept@pnmresources.com  
Telephone: (505) 241-2700  
Fax: (505) 241-4318

**EXHIBIT E**  
(to Power Purchase Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS,  
APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED, AS  
REQUIRED**

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
<i>Special Use Permit Exception to parking and landscaping requirements, Amendment to Sector Development plan Grading Permit, Traffic Control Plan, Street Cut Permit, Excavation Permit, Wall Permit Road Crossing Permits Driveway Cut Permit Drainage Covenant Subdivision/Platting/Easement Construction Permit Electrical Permit EE 98 License EI 1 License Modular Building Permit Plumbing Permit Certificate of Occupancy</i>	<i>State of New Mexico or Bernalillo County</i>
<i>Clean Water Act (CWA) Section 402, National Pollution Discharge Elimination System (NPDES). Construction Stormwater General Permit NMR1000000</i>	<i>US Environmental Protection Agency (EPA)</i>
<i>CWA Sec 401 Water Quality Certification</i>	<i>NMED Surface Water Quality Bureau</i>
<i>CWA Sec 404, Nationwide Permit (NWP) #12 (utility lines), NWP #14 (access roads), NWP #51 (renewal energy facilities)</i>	<i>US Army Corps of Engineers</i>
<i>Stormwater Control Permit for Erosion and Sediment Control</i>	<i>Albuquerque/Bernalillo County</i>
<i>Fugitive Dust Permit</i>	<i>Albuquerque/Bernalillo County</i>
<i>Air Quality Permit</i>	<i>Albuquerque/Bernalillo County</i>
<i>Biological and Cultural Resources Surveys</i>	<i>Albuquerque/Bernalillo County</i>

**EXHIBIT F**  
(to Power Purchase Agreement)

**COMMISSIONING TESTS**

- String Insulation Resistance and Continuity Tests
- String  $V_{oc}$  measurements
- String Current Checks
- DC Feeder Insulation Resistance and Continuity Tests
- Inverter OEM Commissioning Procedures
- MW Control Tuning/Testing
- V/MVAR/pf Control Tuning/Testing (or equivalent)
- Automatic Generation Control (AGC) Functionality Test (or equivalent)
- SCADA Functionality Test (or equivalent)
- Weather Station Data Feed Functionality Test (as part of SCADA testing)
- Owner Control and Data Link Functionality Tests (See Section 3.4)
- Curtailment Control (or equivalent, if applicable)
- Initial Performance Ratio Test (See Section 10.8)

**EXHIBIT G**  
(to Power Purchase Agreement)

**INSURANCE COVERAGES**

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

**A. Workers' Compensation Insurance** that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars (\$1,000,000) per accident, One Million (\$1,000,000) for disease, and One Million (\$1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

**B. Commercial General Liability Insurance**, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, owner's protective, products liability and completed operations.

**C. Business Automobile Liability Insurance**, or the equivalent, with a limit of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned, hired, or non-owned.

**D. Excess or Umbrella Liability.** Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence of Twenty Million dollars (\$20,000,000) written on a per project basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

**E. Property Insurance.** During construction and operation, Seller shall provide standard form "All Risk" insurance covering full replacement cost of the Project subject to the availability and reasonable and customary cost in the insurance marketplace in accordance with accepted industry practice. For the avoidance of doubt, builders' risk insurance shall qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover full replacement cost for physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance.

**EXHIBIT H**  
(to Power Purchase Agreement)

**ANNUAL GENERATION FORECAST**

The following represents the annual forecast of Solar Energy Output 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	14,330	2,544
February	17,510	2,534
March	22,136	4,856
April	24,207	3,292
May	26,250	5,210
June	25,600	5,001
July	23,304	4,672
August	21,953	3,734
September	18,840	4,790
October	19,089	2,960
November	11,855	2,065
December	8,746	1,004
<b>Total Annual</b>	<b>233,819.55</b>	<b>42,662.64</b>
Total Combined Annual	276,482	
Annual Capacity Factor	31.60%	

**EXHIBIT I**  
(to Power Purchase Agreement)

**AVAILABILITY GUARANTEES**

**Section 1. Definitions.**

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

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

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

“**Aggregate Solar Availability Damages Cap**” has the meaning set forth in Section 2.1(C) of this Exhibit.

“**Annual Solar Availability Damages Cap**” has the meaning set forth in Section 2.1(D) of this Exhibit.

“**Annual Report**” has the meaning set forth in Section 2.3 of this Exhibit.

“**Daylight Interval**” means each hour where plane of array irradiance conditions are 50 W/m<sup>2</sup> or greater. Data will be collected as hourly averages for all installed plane of array sensors at the Site.

“**Effective Solar Guaranteed Availability Percentage**” has the meaning set forth in Section 2.1(A) of this Exhibit.

“**Solar Availability Damages**” has the meaning set forth in Section 2.1(B) 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. For the avoidance of doubt, 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, (a) the aggregate Seller Excused Hours during Daylight Intervals for such Commercial Operation Year; provided that, for purposes of the Effective Solar Guaranteed Availability Percentage, only the first fifty (50) hours of Scheduled Maintenance Outages in the aggregate for the Project per Commercial Operation Year shall be treated as Excused Hours and (b) hours during which an emergency, stop, service mode or pause state exists as a result of an Emergency Condition (other than an Emergency Condition caused by Seller’s breach of its Interconnection Agreement with the Transmission Provider). For the avoidance of doubt, any event that results in unavailability of a Solar Unit for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Solar Unit is available, but for less than the full amount of its installed capacity, the Solar Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of installed capacity for the Solar Unit.

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

“**Solar Unavailable Hours**” means those hours a Solar Unit is not available during Daylight Intervals to operate because it is (a) in an emergency, stop, service mode or pause state; (b) in “run” status and faulted; (c) included in Scheduled Maintenance Outages in excess of fifty (50) hours in aggregate for the Project in any Commercial Operation Year; (d) incapable of being controlled either locally or via its AGC system; or (e) otherwise not operational or capable of delivering Energy to the Point of Delivery. For the avoidance of doubt, 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. Availability Guarantees.

### 1. Solar Availability Guarantee.

(A) Seller guarantees that the Solar Units shall achieve an Actual Solar Availability Percentage equal to or greater than ninety percent (90%) in each two consecutive Commercial Operation Years after the Commercial Operation Date (“**Effective Solar Guaranteed Availability Percentage**”).

(B) The availability shortfall (the “**Availability Shortfall**”) shall be calculated as follows:

$$AS = \left( ESGAI - \frac{1}{2}(A_n + A_{n-1}) \right) \times \frac{1}{2} \left( \frac{E_n}{A_n} + \frac{E_{n-1}}{A_{n-1}} \right) \times ESGAI$$

Where,

AS = Availability Shortfall

ESGAP = Effective Solar Guaranteed Availability Percentage

$E_n$  = energy delivered in the current year

$E_{n-1}$  = energy delivered in the previous year

$A_n$  = availability during the current year

$A_{n-1}$  = availability during the previous year

(C) Solar Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Effective Solar Guaranteed Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to (x) the Solar Energy Output Payment Rate, multiplied by (y) the Availability Shortfall (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 I.

(D) Solar Availability Damages Cap, Termination and Cure Rights. The total Solar Availability Damages payable by Seller for failure to meet the Effective Solar Guaranteed Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to Thirty-Two Thousand Dollars (\$32,000) per MW (or Sixty Thousand Dollars (\$60,000) per MW in the case of a failure of a main generator step-up transformer) of Guaranteed Solar Capacity (“**Annual Solar Availability Damages Cap**”) and in the aggregate at a value equivalent to Ninety-Six Thousand Dollars (\$96,000) per MW of Guaranteed Solar Capacity (“**Aggregate Solar Availability Damages Cap**”) over the Term of the PPA.

2. Sole Remedy. The Parties agree that Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for any deficiency in the performance of the Project (including any failure to meet the Effective Solar Guaranteed Availability Percentage) shall be the payment of damages up to the Annual Solar Availability Damages Cap and Aggregate Solar Availability Damages Cap, as applicable, and the right to declare an Event of Default pursuant to Section 12.1(B)(5) of the PPA, and shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default giving rise to a termination payment obligation except pursuant to Section 12.1(B)(5) of the PPA, as applicable. Notwithstanding the foregoing, the limitations set forth herein shall not be applicable to any indemnification claims pursuant to Article 20 of the PPA and Seller’s material breach of its obligation to operate and maintain the Project in accordance with Prudent Utility Practice or Seller’s failure to pay Solar Availability Damages when due if not timely cured pursuant to the provisions of Article 12 of the PPA are an Event of Default of Seller for which Buyer may terminate the PPA and seek damages in accordance with Section 12.4 of the PPA.

3. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller’s computation of the Actual Solar Availability Percentage for the previous Commercial Operation Year and the Solar Availability Damages, if



any, due to Buyer (the “**Annual Report**”). Such Annual Report shall include the total amount of Solar Availability Damages paid to Buyer under the PPA and shall provide notice that the Aggregate Solar Availability Damages Cap has been reached, if applicable. If Solar Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

4. Disputes. Disputes as to any calculations under this Exhibit I shall be addressed as provided in Section 13.8 of the PPA.

## ATTACHMENT 1 TO EXHIBIT I

### EXAMPLE CALCULATION OF 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, 53 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 (“SPH”)	4,000	53	212,000
Solar Unavailable Hours (“SUH”)			5,000
Solar Excused Hours (“SEH”)			1,000

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

$$\text{Sum of Available Hours} = \text{SPH} - \text{SUH} + \text{SEH}: 208,000 = 212,000 - 5,000 + 1,000$$

#### Actual Solar 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: 208,000 hours
- (b) Sum of Solar Period Hours: 212,000 hours
- (c) Actual Solar Availability Percentage:  $(\text{Sum of Solar Available Hours} / \text{Sum of Solar Period Hours}) \times 100 = (208,000 / 212,000) \times 100 = 98.1\%$

#### II. Example of Solar Availability Damages

Example of Solar Availability Damages based on the following assumed facts:

- (a) Seller’s Effective Solar Guaranteed Availability Percentage in Commercial Operation Years 4 and 5 = 90%.
- (b) Seller’s Actual Solar Availability Percentage in Commercial Operation Year 4 = 84%.
- (c) Seller’s Actual Solar Availability Percentage in Commercial Operation Year 5 = 86%.
- (d) Solar Energy Output Payment Rate = \$29.84

- (e) Actual Solar Energy Output in Commercial Operation Year 4 = 232,245 MWh
- (e) Actual Solar Energy Output in Commercial Operation Year 5 = 237,775 MWh

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

The Solar Energy Output Payment Rate x [Effective Solar Guaranteed Availability Percentage in Commercial Operation Years 4 and 5 —  $\frac{1}{2}$  x (Actual Solar Availability Percentage for Commercial Operation Year 4 + Actual Solar Availability Percentage for Commercial Operation Year 5) (each expressed as a decimal)] x  $\frac{1}{2}$  x (Actual Solar Energy Output for Commercial Operation Year 4  $\div$  Actual Solar Availability Percentage for Commercial Operation Year 4 + Actual Solar Energy Output for Commercial Operation Year 5  $\div$  Actual Solar Availability Percentage for Commercial Operation Year 5) x Effective Solar Guaranteed Availability Percentage for Commercial Operation Years 4 and 5 = Solar Availability Damage:

$$(\$29.84) \times [.90 - \frac{1}{2} \times (.84 + .86)] \times \frac{1}{2} \times (232,245 \div .84 + 237,775 \div .86) \times .90 = \$371,260.50$$

**EXHIBIT J**  
(to Power Purchase Agreement)

**FORM OF SELLER GUARANTY**

**GUARANTY**

THIS GUARANTY (this “**Guaranty**”), dated as of \_\_\_\_\_, \_\_\_\_ (the “**Effective Date**”), is made by [●], an [●] corporation (“**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 [●] (“**Obligor**”) have entered into, or concurrently herewith are entering into, that certain Power Purchase Agreement - [●]dated 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 [●] duly formed 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 limited liability company proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and by general principles of equity.

**4. RESERVATION OF CERTAIN DEFENSES; SUBROGATION.**

- a) Without limiting Guarantor’s own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty’s breach of the Agreement or the failure of a material condition precedent to Obligor’s performance obligations.

Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

- b) The Guarantor shall be subrogated to all rights of the Counterparty against the Obligor in respect of any amounts paid by the Guarantor pursuant to this Guaranty; provided, however, that the Guarantor hereby postpones all rights of subrogation, reimbursement, indemnity and recourse (including, without limitation, any statutory rights of subrogation under Section 509 of the United States Bankruptcy Code, 11 U.S.C. § 509, or otherwise) until such time as all amounts due under the Agreement are paid in full and fully, finally and indefeasibly performed. If (i) the Guarantor shall perform and shall make payment to the Counterparty of all or any part of the Obligations and (ii) all the then outstanding obligations under the Agreement have been paid in full, Counterparty shall, at the Guarantor's request, execute and deliver to the Guarantor documents to evidence the transfer by subrogation to the Guarantor of any interest in the Obligations under the Agreement resulting from such payment by the Guarantor. Notwithstanding the foregoing, 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.

**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 defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (viii) any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

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

8. **TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement, and (ii) 11:59:59 Eastern Prevailing Time of [insert date [ ] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

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

<i>TO GUARANTOR: *</i>	<i>TO COUNTERPARTY:</i>
<p>[●] Attn: [●]</p> <p>with a copy to:</p> <p>[Obligor's name] [●]</p>	<p>[●] <i>Attn:</i></p>

<i>[Telephone: [●] -- for use in connection with courier deliveries]</i>	<i>[Tel: [●] -- for use in connection with courier deliveries]</i>

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, except that the Guarantor may make such an assignment without such consent if the assignee meets the requirements of a Seller Guarantor as defined in the Agreement and Guarantor's obligations hereunder are expressly assumed in writing by such assignee in a form reasonably acceptable to the Counterparty; provided that such assumption shall be deemed to release the Guarantor from all of its obligations under this Guaranty automatically and without further action by the Guarantor or the Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably: (i) consents and submits to the exclusive jurisdiction of the United States District Court for the



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

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

\* \* \*

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

[●]  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT K**  
(to Power Purchase Agreement)

**COMMERCIAL OPERATION  
FORM OF CERTIFICATION**

This certification (“Certification”) of Commercial Operation is delivered by \_\_\_\_\_ (“Seller”) to Public Service Company of New Mexico (“Buyer”) in accordance with the terms of that certain Power Purchase Agreement dated \_\_\_\_\_ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Solar Units with an aggregate capacity of at least \_\_\_\_ MW have been constructed, commissioned and tested and are capable of delivering Energy on a sustained basis (in accordance with the Solar Unit manufacturer’s requirements and the Commissioning Tests);
- (2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and
- (3) the Project has been completed in all material respects (except for Delayed Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Solar Energy Output and meet, at a minimum, the requirements indicated herein.

EXECUTED by SELLER this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**[●]**

Signature

: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[Licensed Professional Engineer]**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

License Number and LPE Stamp: \_\_\_\_\_

**EXHIBIT L**  
(to Solar Facility Power Purchase Agreement)

**Solar PPA Functional Mapping**

The Project's NERC verified Solar Facility Generation Owner, Generator Operator and Facility Operations and Maintenance Contractor functional mapping requirements information is as follows:

	Entity Name	Point of Contact	E-mail	Phone
Generator Owner (GO)				
Generator Operator (GOP)				
Operations and Maintenance Contractor				



Quail Ranch ESA

# PNM Exhibit JWH-3

Is contained in the following 119 pages.

ESA Agreement with Solar PPA # 1079294

**ENERGY STORAGE AGREEMENT—QUAIL RANCH ENERGY STORAGE**

**by and between**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**and**

**QUAIL RANCH ENERGY STORAGE LLC**

**Dated as of October 24, 2023**

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## **EXHIBITS**

- Exhibit A Description of Seller's Energy Storage Facilities, Site Map, and Project Schedule
- Exhibit B One-Line Diagram 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 and Annual Testing
- Exhibit G Insurance Coverages
- Exhibit H Roundtrip Efficiency Guarantee
- Exhibit I Availability Guarantees
- Exhibit J Form of Seller Guaranty
- Exhibit K Commercial Operation Form of Certification
- Exhibit L Reserved
- Exhibit M ESS Operating Restrictions
- Exhibit N ESS Functional Mapping
- Exhibit O Example ESS Payment Structure upon PPA Default

## ENERGY STORAGE AGREEMENT

This Energy Storage Agreement, as may be amended from time to time, is entered into on October 24, 2023 (“**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 Quail Ranch Energy Storage LLC a Delaware limited liability company (“**Seller**”), whose principal place of business is 800 W Main St. #900, Boise, ID 83702. Buyer and Seller may be referred to in this ESA individually as a “**Party**” and collectively as the “**Parties.**”

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

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

WHEREAS, Seller desires to sell and deliver to Buyer the Product generated by the Project, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this ESA; and

WHEREAS, Buyer and Seller intend to enter into a certain Power Purchase Agreement, pursuant to which some of the energy generated by the Solar Facility will be used exclusively in Seller’s ESS,

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

### ARTICLE 1

#### Definitions and Rules of Interpretation

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

“**Abandonment**” means (a) a cessation of work and operations at or in respect of the Project for more than ninety (90) Days by Seller or Seller’s contractors but only if such cessation is not in accordance with Prudent Utility Practices or caused by a Force Majeure Event or not in accordance with Seller’s Project Schedule, or (b) the relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this ESA.

“**AC**” means alternating electric current.

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

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

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

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

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

“**Affiliate**” of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. 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 of Energy, each to the extent that the Project is capable of providing such services.

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

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

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

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

“**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. For the avoidance of doubt, 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 calendar Day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday where banks in Albuquerque, New Mexico, are permitted or authorized to close.

“**Buyer**” has the meaning set forth in the Preamble.

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

“**Buyer 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 positive difference, if any, between (i) the net present value of the Replacement ESS Costs and (ii) the Contract Value, plus (c) Buyer Costs all 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. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. The Buyer Termination Payment does not include consequential incidental, punitive, exemplary or indirect or business interruption damages.

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

“**Charging Energy**” means the amount of Energy supplied by Buyer at Buyer’s cost and

in accordance with Prudent Utility Practices, and delivered to Seller at the Point of Delivery to be stored at the Project for the purpose of charging the ESS and discharge at a later time, as measured by the Electric Metering Devices, accounting for any estimated AC losses, based on methodology agreed to by the Parties, between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

**“Commercial Operation”** means that (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (b) Seller has completed three (3) successful start-ups of the ESS without experiencing any abnormal operating conditions and has been available to dispatch continuously for a period of twenty-four (24) hours with controls in auto and synchronized to the Buyer’s system; (c) all Seller required permits, required consents, and Governmental Approvals 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 the Interconnection Agreement for interconnection and delivery of Discharge Energy to the Point of Delivery and is not in breach of the 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 as set forth in this ESA; and (h) Seller has provided to Buyer an officer’s certificate that the Project has been completed in all material respects.

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

**“Commercial Operation Year”** means a period of twelve (12) consecutive Months; provided that 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 the twelve (12) Month period commencing at the end of the prior Commercial Operation Year.

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

**“Contract Value”** means the sum of the present values of the ESS Energy Payments for each Commercial Operation Year (or portion thereof) in the then remaining term, determined without reference to the early termination, of (a) the quantity of Metered Output expected to be produced (assuming that none of the events that amount to ESS Deemed Energy occur), during such Commercial Operation Year (or portion thereof) times (b) the ESS Energy Payment Rate for such Commercial Operation Year. All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their



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

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

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

“**DC**” means direct current.

“**Debt**” of any Person at any date means, solely with respect to Seller after the Commercial Operation Date, without duplication, (i) all obligations of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services, except trade account payable and other accrued expenses arising in the ordinary course of business, (iv) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit, line of credit or other instrument, and (v) obligations in respect of interest rate swap agreements, caps, collars, or other interest rate hedging mechanisms.

“**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 by the Electric Metering Devices, corrected for any estimated electrical losses to the Point of Delivery, based on methodology agreed to by the Parties.

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

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

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

“**Dollars**” means the lawful currency of the United States of America.

“**Downgrade Event**” shall mean that the long-term credit rating of a Person’s long-term

senior unsecured debt is not “Baa3” or higher by Moody’s or “BBB-” or higher by S&P.

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

“**Electric Interconnection Point**” means the physical point at which electrical interconnection is made between the Project and the Transmission Provider’s Transmission System.

“**Electric Metering Device(s)**” means all metering and data processing equipment used to measure, record, or transmit data relating to Charging Energy and Discharge Energy. Electric Metering Devices include the Primary Metering Devices and Back-Up Metering including the metering current transformers and the metering voltage transformers.

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

“**Energy**” means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, delivered to or received from the Project, 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 Project, the storing of Energy in the Project, and the delivery of Discharge Energy from the Project at the Point of Delivery, all in accordance with Buyer’s dispatch instructions, in compliance with the ESS Unit Capabilities, and subject to the terms and conditions of this ESA.

“**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 nature that are created or otherwise arise from the Project’s delivery or storage of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil, gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the

reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes specifically exclude (i) Tax Benefits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; and (iii) any Energy, reliability or other power attributes from the Project.

**“Environmental Contamination”** means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that a Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this ESA.

**“Equivalent Full Cycle”** means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharge Energy (in MWh) equivalent to the Guaranteed ESS Capacity over a four (4) hour duration. An Equivalent Full Cycle occurs when the total ESS Discharge Energy (in MWh) over a period of time, regardless of the depth of battery discharge or quantity of partial charges/discharges, divided by the product of the Guaranteed ESS Capacity times four (4) hours (in MWh) equals one (1).

**“ESA”** or **“Energy Storage Agreement”** 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.

**“ESA Idle Losses”** means Energy Storage System uses that are integral to the operation of the ESS, including transformers, inverters, storage thermal regulation, and energy management system.

**“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 100% state of charge, as determined periodically in accordance with applicable test protocols and procedures 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 Product made available by the Energy Storage System, as set forth in this ESA.

**“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 Deemed Energy”** means the amount of Metered Output that was not delivered to Buyer by Seller under the PPA but would have been so delivered but for (i) a Buyer Curtailment, Reliability Curtailment, or a Transmission Provider Curtailment, as such terms are defined in the PPA, or (ii) a default under the PPA until such time as the alternative pricing structure identified

in Section 12.4 is implemented (or if no alternative structure is implemented, the calculation outlined in Exhibit O). ESS Deemed Energy (MWh) shall be reasonably calculated by Seller taking into account 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 or operated at a reduced output due to one or more of the events or circumstances listed above, but excluding any Solar Unit(s) taken out of service or operating at a reduced output for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review and approve Seller's calculations (including a calibration to historic data consistent with the process outlined in Exhibit O, as applicable) of ESS Deemed Energy.

**"ESS Electric Metering Device"** means the Electric Metering Device dedicated to the measurement of Charging Energy and Discharge Energy to the ESS.

**"ESS Operating Restrictions"** means the operating restrictions of the ESS set forth in Exhibit M.

**"ESS Response Delay"** has the meaning set forth in Exhibit F.

**"ESS Response Delay Damages"** has the meaning set forth in Section 3.13(B).

**"ESS Roundtrip Efficiency"** means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the ESS Electric Metering Device 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.

**"Federal Power Act"** means the Federal Power Act, as amended, 16 U.S.C. § 791a *et seq.*

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

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

**"Frequency Response Capability"** means the ability of the ESS to react to frequency within predefined bounds as specified in Section 3.12(G), measured in MW per 0.1 Hz, by charging or discharging to counter frequency deviations and supporting frequency as required by NERC Reliability Standard BAL-003-1, IEEE Standard 2800-2022, and September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance at the Point of Delivery, as may be amended or updated, and is within the capabilities of the ESS as of the Commercial Operation Date.

**“Future Environmental Attributes”** means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy Storage Services provided therefrom are eligible to receive or generate, based on Applicable Laws, policies or programs of a Governmental Authority that take effect after the Execution Date. Future Environmental Attributes are further described in Section 7.3 and Article 11 herein.

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

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

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

**“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 ESA, either directly or indirectly.

**“Grid Charging Energy”** means Charging Energy supplied from the grid and delivered to the Point of Delivery by Buyer.

**“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 ESS Capacity”** has the meaning set forth in Section 3.12 and shall be valid for the full duration of the ESA with no allowance for degradation.

**“Guaranteed Discharge Ramp Rate”** has the meaning set forth in Section 3.12.

**“Guaranteed ESS Roundtrip Efficiency”** has the meaning set forth in Section 3.12.

**“Guaranteed PMAX”** has the meaning set forth in Section 3.12.

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

**“Guaranteed System Latency”** means the guaranteed time measured between when the control signal is sent and the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the change in the control setpoint, as specified in Section 3.12.

**“Hazardous Materials”** means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (x) defined as a “pesticide” under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

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

**“Interconnection Agreement”** means that certain Amended and Restated Large Generator Interconnection Agreement dated as of October 19, 2023 by and among Atrisco Solar LLC, Atrisco Energy Storage LLC, Quail Ranch Solar LLC, Quail Ranch Energy Storage LLC, and the Transmission Provider, as such agreement may be amended from time to time.

**“Interconnection Facilities”** means the Transmission Provider’s Interconnection Facilities and Seller’s Interconnection Facilities.

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

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

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

**“kWh”** means kilowatt hour AC.

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

Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

“**Letter of Credit**” means an irrevocable, unconditional, transferable standby letter of credit for the benefit of the receiving Party, issued by an entity meeting the Issuer Minimum Requirements.

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

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

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

“**Metered Output**” shall have the meaning as ascribed to it in the PPA.

“**Month**” means a calendar month.

“**Monthly Billing Period**” means the period during any particular Month in which Product has been made available at the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

“**Monthly Electricity Cost**” means, for a month, the sum of (i) (a) the quantity of Charging Energy sourced from the Solar Facility during such month times (b) the Solar Energy Output Payment Rate (as such term is defined in the PPA), plus (ii) (a) the quantity of Charging Energy sourced from the grid during such month times (b) the five-minute, real time price of energy as determined at the Palo Verde Trading Hub for the corresponding delivery periods.

“**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.

“**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, self-regulatory organizations and industry committees to which the Party is required to have membership and/or submit to jurisdiction in the performance of this ESA.

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

**“OATT”** means Open Access Transmission Tariff.

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

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

**“Operating Records”** means the final version of all operating logs, blueprints for construction, operating manuals, warranties on equipment, and other documents related to the manufacture and installation of the ESS and generator step-up transformer, material engineering drawings, and environmental permits, plans, and studies, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project.

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

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

**“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 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 ESA.

**“PPA”** means the Power Purchase Agreement dated as of October 24, 2023 between Quail Ranch Solar and Buyer relating to the Solar Facility, including the Exhibits and Schedules attached thereto, as the same may be amended from time to time in accordance with the provisions thereof.

**“Primary Metering Device(s)”** means the metering and data processing equipment used



as the primary basis to measure, record, or transmit data relating to the Charging Energy or Discharge Energy associated with the Project. Primary Metering Devices include the metering current transformers and the metering voltage transformers.

**“Product”** means all Energy Storage Services, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, all as made available by the Project and delivered for Buyer’s exclusive use pursuant to the terms of this ESA.

**“Project”** means Seller’s energy storage facility, located in Bernalillo County, New Mexico, with a designed maximum power discharge capability of Guaranteed P<sub>MAX</sub>, as identified and described in Article 3 and Exhibit A to this ESA, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Buyer at the Point of Delivery: Seller’s equipment, buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, facilities necessary to connect the ESS to the Electric Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this ESA.

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

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

**“Promotional Materials”** has the meaning set forth in Section 22.15(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 serving public utilities, WECC and/or NERC) 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. With respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

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

(B) sufficient operating personnel are available at all times and are adequately experienced and trained and licensed as necessary to operate the Project properly, efficiently, and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency Conditions whether caused by events on or off the 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 battery storage systems serving public utilities in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Sites and under both normal and Emergency Conditions generally experienced in the battery energy storage industry; 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.

**"Quail Ranch Solar"** means Quail Ranch Solar LLC.

**"Qualified Operator"** is (a) a Person that has at least three (3) years' experience with operating battery 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.

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

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

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

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

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

**"Replacement ESS Costs"** means the actual costs incurred by Buyer following an Event of Default by Seller that are reasonable and necessary to replace the Product which Seller, in accordance with this ESA, would have made available to Buyer, but failed to so provide pursuant to this ESA. Buyer shall not have to enter into a replacement contract to establish the Replacement ESS Costs. If Buyer does not enter into a replacement contract, then the Replacement ESS Costs will be based on the market price for comparable ESS Unit Capabilities, Future Environmental Attributes and Ancillary Services delivered to Buyer's system under a structure that complies with Buyer's financial accounting and operating lease structure requirements, as reasonably determined by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs for an Event of Default also include (i) 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 (ii) Buyer's reasonable expenses, including reasonable outside attorneys' fees, suffered as a result of Seller's failure to perform under this ESA.

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

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

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

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

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

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

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

**"Seller Excused Hours"** means those hours during which Seller is unable to make available Product as a result of: (a) a Scheduled Maintenance Outage, (b) a Force Majeure Event, (c) a ESS Curtailment, except to the extent caused by the fault or negligence of Seller, (d) failure of Buyer to provide Charging Energy, (e) any failure by Buyer to perform a material obligation under this ESA (other than due to a breach by Seller of its obligations under this ESA) or (f) insufficient state of charge.

**"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 any Person having a credit rating on such Person's long-term senior unsecured debt that is "Baa3" or higher by Moody's or "BBB-" or higher by S&P or insurance rating AM Best A- or better that has made a Seller Guaranty for the benefit of Buyer.

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

**"Seller Permitted Transfer"** means any of the following: (a) a Change of Control of Seller's Ultimate Parent or a Change of Control of Seller where Seller's Ultimate Parent is the same entity after such Change of Control; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor; (c) a transfer of: (i) all or substantially all of the assets of Seller's Ultimate Parent Company in a single transaction; or (ii) all or substantially all of Seller's Ultimate Parent's solar generation portfolio in a single transaction; or (d) in connection with a Lender's exercise of remedies under its financing agreements for the Project, the direct or indirect transfer of shares of, or equity interests in, Seller (including a Change of Control), or assignment of this ESA or any of Seller's rights or obligations hereunder; *provided*, that in the case of each of (a), (b), (c) or (d) of this definition, following such transfer (A) the entity that operates the Project is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or

otherwise agrees not to interfere with the existing Qualified Operator for the Project), (B) such transfer does not have a material adverse effect on the Seller's creditworthiness, (C) Seller continues to comply with the obligations to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA and (D) both the Seller under this ESA and the "Seller" under the PPA are owned by the same ultimate parent upon transfer.

**"Seller Termination Payment"** means the sum of (a) aggregate of all amounts then owed from Buyer to Seller, less any amounts owed from Seller to Buyer, plus (b) the positive difference, if any, between (i) the Contract Value, and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Product), plus (c) Seller's reasonable transactional costs of entering into a new supply or sales arrangement all 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. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA and similar considerations. The Seller Termination Payment does not include consequential incidental, punitive, exemplary or indirect or business interruption damages.

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

**"Seller's Interconnection Facilities"** means the equipment owned and operated by Quail Ranch Solar 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 Quail Ranch Solar's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Solar Facility and is conceptually depicted in Exhibit B to this ESA.

**"Site"** means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this ESA. For the avoidance of doubt, this ESA is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld.

**"Solar Charging Energy"** means Charging Energy generated by the Solar Facility and delivered to the Point of Delivery by the Solar Facility on behalf of Buyer.

**"Solar Energy Output Payment Rate"** shall have the meaning as ascribed to it in the PPA.

**"Solar Facility"** means the co-located 100 MW<sub>AC</sub> solar generating plant consisting of photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary to

collect sunlight and convert it into electricity which, among other things, will be used to charge the ESS per Buyer's dispatch elections. For the avoidance of doubt, the Solar Facility 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.

**"Solar Unit(s)"** shall have the meaning as ascribed to it in the PPA.

**"Supplemental Tax Incentives"** means any federal, state or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date that provides for additional or increased tax credits and is determined to be applicable to the Project, net of associated expenses, taxes, and lost Tax Benefits, if any. For the avoidance of doubt, Supplemental Tax Incentives do not and shall not include any real property tax abatements (including in connection with the issuance of industrial revenue bonds or other property tax abatement) or any benefits available under the Inflation Reduction Act of 2022 or any regulations promulgated thereunder, which, for the avoidance of doubt, are included in the Solar Energy Output Payment Rate.

**"System Control Center"** or **"SCC"** means Buyer's representative(s) responsible for dispatch of the ESS.

**"Tax Benefits"** means (a) federal and state investment and/or production tax credits, Supplemental State Tax Incentives, and any other tax credits which are or will be generated by the Project and (b) any cash payments or outright grants of money made by a Governmental Authority relating in any way to such tax credits or the Project.

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

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

**"Taxes"** means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

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

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

“**Test Period**” means the period commencing on the day the Project or any part thereof is energized, operates in parallel with the Transmission Provider’s Transmission System and is available to receive Charging Energy from and deliver Discharge Energy to the Point of Delivery, and ending on the Commercial Operation Date.

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

“**Transmission Provider’s Interconnection Facilities**” means the facilities necessary to connect the Transmission Provider’s Transmission System to the Electric Interconnection Point, including breakers, bus work, bus relays, and associated equipment installed by the Transmission Provider for the direct purpose of physically and electrically interconnecting the Project, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. Arrangements for the installation and operation of the Transmission Provider’s Interconnection Facilities shall be governed by the Interconnection Agreement.

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

“**Ultimate Parent**” means Enlight LTD.

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

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

1.2 Rules of Construction.

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

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

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

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

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

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

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

(H) All uses of the word “shall” in this ESA are to be interpreted as imperative and not permissive.

1.3 Interpretation with Interconnection Agreement. Each Party 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, as applicable.

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

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

(C) Seller expressly recognizes that, for purposes of this ESA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This ESA does not provide for the supply of retail electric power or natural gas to the Project, for any purpose (“**House Energy**”). For the avoidance of doubt, the Parties agree that House Energy does not include Charging Energy that is used for ESA Idle Losses. Seller shall contract with the local utility in whose retail service territory the Project is located (“**Local Provider**”) for the supply of House Energy consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy must be separate from metering used to meter Charging Energy and Discharge Energy.

(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 for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least thirty (30) Days prior to the earlier of the

Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this ESA are not binding upon the Local Provider. For purposes of this ESA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

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

(C) Seller shall have the right to consume energy concurrently generated by the Solar Facility for House Energy provided that any such House Energy shall not be included in the accounting of Metered Output delivered to Buyer by Seller under the PPA. Seller shall have the right to co-locate additional facilities designed to supply House Energy; provided, however, that excess energy produced from such additional facility shall not be delivered by Seller to Buyer under this ESA. House Energy shall be real time measured by a dedicated electric metering device with independent metering current transformers and metering voltage transformers and shall not be delivered by Seller to Buyer under this ESA.

(D) In the case that the ESS state of charge has reached zero percent (0%) and ESA Idle Losses cannot be served from the ESS state of charge, Seller may use backfeed power from the grid to serve ESA Idle Losses and Buyer shall be responsible for the resultant imbalance.

## ARTICLE 2

### Term and Termination

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

## ARTICLE 3

### Project Description

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

### COMMERCIAL TERMS

<b>Buyer:</b> Public Service Company of New Mexico	<b>Seller:</b> Quail Ranch Energy Storage LLC
<b>Project:</b> Quail Ranch Energy Storage	
<b>Point of Delivery:</b> The point within WECC Path 48 where Seller makes available to Buyer	



Product being provided under this ESA, as further described in Exhibit B.	
<b>Contract Term:</b> 20 Commercial Operation Years	<b>Product Type:</b> Bundled Energy Storage Services, Ancillary Services, Future Environmental Attributes, ESS Capacity, and other ESS Unit Capabilities
<b>ESS Energy Payment Rate:</b> \$49.20/MWh	
<b>Day(s) of week:</b> Monday through Sunday, including NERC holidays	<b>Hours:</b> Hour Ending 0100 – Hour Ending 2400, Monday through Sunday MST
<b>Guaranteed Start Date:</b> One hundred eight (180) Days after the Expected Commercial Operation Date, but in no event later than May 1, 2026	
<b>Expected Commercial Operation Date:</b> November 2, 2025, subject to extensions as set forth in Section 3.6	

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

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery and the location of the Interconnection Facilities is included in Exhibit A to this ESA. Exhibit A also contains a preliminary indication of the location of the ESS at the Site. Seller will provide notice to Buyer of the final proposed location of the ESS at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller’s contractors at the Site. On or before the Commercial Operation Date, Seller may provide to Buyer a revised map and description of the Site removing unused and unnecessary portions of land that were previously included within the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project according to Prudent Utility Practice(s), the requirements of this ESA and the Interconnection Agreement. The Project shall at all times:

- (A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, system telemetering equipment and communications equipment;
- (B) be equipped for and capable of automated control via the AGC;
- (C) use redundant communication and metering circuits 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 within a relative humidity range of five percent (5%) to ninety five percent (95%);

(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 in the event of an Emergency Condition; and

(I) meet voltage and reactive/active power control performance for a Category B system as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Point of Delivery;

(J) meet the normal and abnormal performance category as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Point of Delivery 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 at the Point of Delivery; and

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 Execution Date, 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-1547.1: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with PNM's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. To the extent reasonably necessary for Buyer's compliance with NERC requirements, Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with PNM's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to web servers, (iii) production change management, and (iv) CIP governance requirements.

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

3.6 Extension. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended by a number of Days, on a day-for-day basis up to (a) a maximum of one hundred eighty (180) Days, equal to the duration of any Force Majeure Event, or (b) one hundred eighty (180) Days, in the event of delay associated with the interconnection of the Project (other than work performed by Seller), in either case that delays commencement of operation of the Project. Seller will give written notice to Buyer describing any such Force Majeure Event or interconnection delay within five (5) Business Days after the occurrence of the Force Majeure Event or interconnection delay. The number of Days of such extension is calculated from the date on which the Force Majeure Event or interconnection delay begins. If a Force Majeure Event will delay the Commercial Operation Date for more than one hundred eighty (180) Days, or if an interconnection delay will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this ESA without liability of either Party, and Buyer shall return the Development Security less any amounts due from Seller to Buyer. Notwithstanding the foregoing, the interconnection delay provided in clause (b) above shall not apply in the event that the required network upgrades as specified in the Interconnection Agreement and Transmission Provider's Interconnection Facilities associated with the 300 MW Atrisco Project are in service at least sixty (60) days prior to the Expected Commercial Operation Date.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller will use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages to Buyer in an amount equal to Two Hundred Dollars (\$200) per Day per each MW of Delayed ESS Capacity for each Day of delay that occurs prior to June 1 and/or after September 30 of a calendar year and (ii) One Thousand Dollars (\$1,000) per Day per each MW of Delayed ESS Capacity for each Day of delay that occurs on or after June 1 and on or before September 30 of a calendar year, ("**Delay Damages**") for each Day after the Expected Commercial Operation Date until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed ESS Capacity**" means the Guaranteed ESS Capacity minus the ESS Capacity as of the determination date.

3.8 ESS Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve Commercial Operation. If Seller has not caused all Delayed ESS Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Six Hundred Thousand Dollars (\$600,000) per MW of Delayed ESS Capacity (as of the Guaranteed Start Date) ("**ESS Capacity Shortfall Damages**"), in which case (i) the Guaranteed P<sub>MAX</sub> 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 (ii) the ESS Energy Payment Rate shall be reduced by an amount proportional to the Delayed ESS Capacity.

3.9 Test Period. Seller shall give written notice to Buyer of its NERC registered Generator Owner, Generator Operator and operations and maintenance contractor, in accordance with Exhibit N, ninety (90) Days prior to providing written notice of intent to start testing the Energy Storage System. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Charging Energy delivered by Buyer from the Solar Facility or from the grid as reasonably required for purposes of testing and commissioning the Project. Seller shall subsequently redeliver such Charging Energy to Buyer at the Point of Delivery as Discharge Energy. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to commencement of such Test Period.

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. Buyer shall in writing either accept or reject this notice in its reasonable discretion, and if Buyer rejects the notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Grid Charging. Seller shall construct the ESS to accept Charging Energy from both the electrical grid and Solar Facility and shall make commercially reasonable efforts to obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from both the electrical grid and Solar Facility by the Commercial Operation Date.

3.12 ESS Unit Capabilities. "ESS Unit Capabilities" means all of the following for the ESS:

- (A) Guaranteed P<sub>MAX</sub> of 100 MW of charging and discharging capability as measured at the Point of Delivery, and as may be adjusted pursuant to Section 3.8;
- (B) Guaranteed ESS Capacity: discharge ESS at Guaranteed P<sub>MAX</sub> for four (4) consecutive hours;
- (C) Guaranteed ESS Roundtrip Efficiency of 85.4% at the Commercial Operation Date with an annual degradation of 0.5% per Commercial Operation Year;
- (D) Guaranteed Discharge Ramp Rate of Guaranteed P<sub>MAX</sub> in MW per second

measured between 85% state of charge and 15% state of charge representing the maximum rate that the ESS can change its output power;

(E) Guaranteed Charge Ramp Rate of Guaranteed P<sub>MAX</sub> in MW per second measured between 15% state of charge to 85% state of charge representing the maximum rate that the ESS can change its input power;

(F) Guaranteed System Latency: 1 second;

(G) Guaranteed Frequency Response Capability of 100 MW/0.1Hz; and

(H) Capability to support Ancillary Services in accordance with the system design or as otherwise agreed by the Parties in writing.

3.13 ESS Non-Performance Liquidated Damages. In addition to any other amounts due from Seller to Buyer under this ESA, Seller will pay Buyer the following liquidated damages as the sole and exclusive remedy for ESS unit non-performance (in each case other than as excused due to ESS Excused Hours):

(A) If Seller is unable to achieve the Guaranteed ESS Capacity (as may be adjusted pursuant to Section 3.8), Seller shall pay Buyer One Hundred Forty Thousand Dollars (\$140,000) for each MW (prorated for any portion thereof) of ESS Capacity shortfall annually (prorated for any portion of a year) until such deficiency is cured; provided that in no event shall Seller's payments under this Section 3.13(A) exceed the aggregate amount of ESS Energy Payments paid by Buyer to Seller during such annual (or portion thereof) period; and

(B) Ten Thousand Dollars (\$10,000) per event for inability to comply with the Guaranteed Charge Ramp Rate, Guaranteed Discharge Ramp Rate, Guaranteed System Latency or the Guaranteed Frequency Response Capability; provided, however, under no circumstances will ESS Non-Performance Liquidated Damages exceed Five Hundred Thousand Dollars (\$500,000) in any Commercial Operation Year and an aggregate of One Million Five Hundred Thousand Dollars (\$1,500,000) over the Term of this ESA. 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 during the same 72-hour period, they will be treated as a single event if arising out of a common root cause.

3.14 Availability Guarantee. Seller guarantees that the Project shall be available to deliver Discharge Energy, store Energy or accept Charging Energy, and shall pay Availability Damages, if any, in accordance with Seller's obligations under the provisions of Exhibit I.

3.15 Guaranteed ESS Roundtrip Efficiency Payment.

(A) if the ESS Roundtrip Efficiency is more than one (1) percentage point below the Guaranteed ESS Roundtrip Efficiency, Seller will pay to Buyer an amount equal to the Monthly Electricity Cost multiplied by  $[1 - (\text{ESS Roundtrip Efficiency} + 1\%) / \text{Guaranteed ESS Roundtrip Efficiency}]$ .

3.16 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that equipment, firmware, software, or any component thereof utilized in the Project is not prohibited by Applicable Law. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.16 by Seller, its contractors or subcontractors or any of their respective Affiliates.

ARTICLE 4  
AGC; ESS Curtailment

4.1 AGC.

(A) Prior to the Commercial Operation Date or, if applicable, prior to the Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall maintain such AGC throughout the Delivery Term. 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, PNM shall have the right to direct the dispatch of the ESS, via AGC control, to its fullest capability including but not limited to those items identified in the ESS Operating Restrictions in Exhibit M, provided that notwithstanding anything to the contrary in this ESA, the ESS shall be charged exclusively from the Solar Facility unless and to the extent that the Transmission Provider allows the ESS to accept Charging Energy from the electrical grid and total cycles shall not exceed 365 Equivalent Full Cycles in any Commercial Operation Year or 2 Equivalent Full Cycles in any 24 hour period.

(C) Buyer shall reduce power dispatch to and from the Project, as applicable, during and to the extent of any ESS Curtailment.

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

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this ESA to accept the Charging Energy at and from the Point of Delivery as part of providing the Energy Storage Services, including maintenance, repair or replacement of

equipment in Seller's possession or control used to deliver the Charging Energy to the Energy Storage System. Seller shall only use the Charging Energy for Buyer's benefit in accordance with the terms and conditions of this ESA or PPA. Seller shall secure transmission necessary (i) to deliver the Discharge Energy to the Point of Delivery, (ii) receive Charging Energy from the Solar Facility at the Point of Delivery to the ESS, and (iii) in the case and to the extent that Seller obtains authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, to receive Charging Energy from the grid at the Point of Delivery to the ESS. Buyer acknowledges and agrees that the Interconnection Agreement provides an aggregate interconnection capacity of one hundred (100) MW<sub>AC</sub>, such capacity to be jointly used by the Project and the Solar Facility, provided that delivery of Energy from the Solar Facility to the Transmission Provider's Transmission System shall take priority over Discharge Energy, and the Solar Facility may not be curtailed during a period in which the ESS is concurrently being discharged, except as required to maintain reliability by the Balancing Area Authority or to provide Ancillary Services in response to an Emergency Condition.

(B) As between Buyer and Seller under this ESA, Seller shall be responsible for the costs of interconnection and costs required to receive and deliver Energy at the Point of Delivery for the Project at the required voltage, including the costs of any associated network upgrades. As between Buyer and Seller under this ESA, Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable (i) to Discharge Energy up to the Point of Delivery and (ii) for Charging Energy after the Point of Delivery.

(C) Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges required to deliver Discharge Energy from and beyond the Point of Delivery. In the case and to the extent that Seller obtains authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges for delivery of Charging Energy to the Point of Delivery.

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to (i) take Discharge Energy at the Point of Delivery and deliver it to points beyond, and (ii) in the case and to the extent that Seller obtains authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, deliver Charging Energy to the Point of Delivery.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the current availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Charging Energy and Discharge Energy delivered pursuant to this ESA shall be metered and accounted for separately from any electric generation facility, including the Solar Facility, that utilizes the same Electric Interconnection Point. Seller shall install Electric Metering Devices including Primary Metering Devices including redundant

metering with independent current transformers and potential transformers (“**Back-Up Metering**”), each in an arrangement consistent with the configuration depicted in Exhibit B, or as otherwise agreed between the Parties.

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

(C) All Electric Metering Devices used to measure the Charging Energy and Discharge Energy made available to Buyer by Seller under this ESA and to monitor and coordinate operation of the Project shall be purchased and installed, in accordance with the Interconnection Agreement at no cost to Buyer under this ESA. The design of the Electric Metering Device system shall be subject to Buyer approval 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 Energy and capacity, if supplied by either the solar 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 Buyer in its reasonable discretion.

(D) Either Buyer or Seller 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) In the event that 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. In the event that Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Charging Energy to the Project at the Point of Delivery and Discharge Energy from the Project to the Point of Delivery, in each case during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

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

## ARTICLE 6 Conditions Precedent

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

- (A) Subject to Section 17.3, receipt of NMPRC Approval; and
- (B) NMPRC Approval of the PPA.

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 ESA.

## ARTICLE 7 Sale and Purchase of Product

7.1 Sale and Purchase of Product. In accordance with and subject to the terms and conditions of this ESA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Product made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that Buyer shall not be required to receive and Seller shall not be required to make available, Product when and to the extent that (a) a Seller Forced Outage is continuing, or (b) Seller's performance is excused during Seller Excused Hours. 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 ESA.

7.2 Title and Risk of Loss. 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 Seller's delivery and Buyer's receipt at the Point of Delivery. Notwithstanding anything set forth herein to the contrary, 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 ESA all right and title to such Future Environmental Attributes is included in the ESS Energy Payment Rate and (c) such Future Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this ESA. If in order for Buyer to receive the benefit of any Future Environmental Attributes Seller must incur any third-party costs not otherwise provided for in this ESA or if any change in law or regulation relating to such Future Environmental Attributes occurs after the Execution Date that causes Seller to incur any third-party costs not otherwise provided for in this ESA in order to deliver the Future Environmental Attributes, then such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer; 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 notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten

percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. For the avoidance of doubt, Buyer shall remain liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

#### 7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services, in coordination with Seller's NERC verified functional mapping requirements identified in Exhibit N, 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 (i) Discharge Energy, Charging Energy or Ancillary Services during Seller Forced Outages, Scheduled Maintenance Outages, Force Majeure Events, and ESS Curtailments, or (ii) subject to Section 5.1, Discharge Energy that would reduce the quantity of Energy that the Solar Facility would otherwise be capable of delivering to the grid.

(B) If at any point during the Delivery Term, (i) an alternative market design is implemented in which the Project will or can participate in an energy market, or (ii) if either the Project, the Electric Interconnection Point or Buyer no longer reside in the same market (each of (i) and (ii) a "Market Event") and such Market Event materially changes the interconnection and delivery requirements in this ESA, the Parties shall cooperate in good faith to facilitate the delivery of Product from the Point of Delivery to Buyer, at the least possible cost to the Parties, consistent with this ESA to the extent possible.

(C) Seller shall provide, 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 materially alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Forced Outages. Buyer and Seller shall promptly advise one another of events that may form the basis for a declaration of the existence or termination of Seller Excused Hours or a Seller Forced Outage. Buyer or Seller (as appropriate) shall at the earliest practicable date provide the other Party written notice ("**Outage Notice**") of the declaration of the existence of Seller Excused Hours or a Seller Forced Outage. Seller shall provide such notice to the System Control Center. An Outage Notice provided by either Party shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected

Product, if any, that would be available for delivery at the Point of Delivery during such event. Buyer or Seller (as appropriate) shall keep the other Party informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

## ARTICLE 8 Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and will begin on the Commercial Operation Date:

(A) **Monthly ESS Energy Payment**. Subject to Section 14.4, Buyer shall pay Seller an amount equal to the product of (i) the aggregate amount of Metered Output (MWh) delivered for Buyer to the Point of Delivery from the Solar Facility under the PPA, plus the ESS Deemed Energy (MWh), multiplied by (ii) the ESS Energy Payment Rate (the “**ESS Energy Payment**”). For the avoidance of doubt, the ESS Energy Payment also compensates Seller for the associated Environmental Attributes and Ancillary Services delivered to Buyer. The ESS Energy Payment includes all Taxes except as provided for in Section 9.7. Notwithstanding anything to the contrary in this Section 8.1(A), prior to the Commercial Operation Date, as defined in the PPA, Seller shall not invoice and Buyer shall not be liable for an ESS Energy Payment for any ESS Capacity that exceeds the Solar Facility’s Installed Solar Capacity (as defined in the PPA). Furthermore, the Metered Output used for invoicing under this ESA shall be based upon an Installed Solar Capacity (as defined in the PPA) that does not exceed the ESS Capacity that has achieved Commercial Operation.

(B) If Supplemental Tax Incentives become available in connection with the Product, Seller shall, within thirty (30) Days of guidance regarding such availability, provide an analysis to Buyer of the benefits available under this ESA. At Buyer’s option, the Parties shall work together in good faith to agree to those amendments and other modifications, excluding any price increase, to this ESA which are reasonably required to allow the Parties to receive the Supplemental Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such credits.

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

(D) Buyer shall reimburse Seller for the taxes identified in Section 9.7(A), which shall be included in the monthly invoices in compliance with Section 9.7(A).

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

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. This Section 8.3 shall only apply to Section 8.1(C) to the extent such Supplemental Tax Incentives are applicable to the time period before the repudiation, termination or expiration of this ESA.

## ARTICLE 9 Billing and Payment Procedures

### 9.1 Statements and Payment of Electricity Payments.

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

(B) Payments due shall be determined and adjusted in accordance with Article 8 and Section 3.15. From and after the Commercial Operation Date, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this ESA (in Dollars) payable to Seller for the preceding Month. Each such invoice shall show the ESS 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 banks in the State of New Mexico are permitted to close on any date on which any payment by Buyer would otherwise have been due, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

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

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

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

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this ESA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the lower of (i) the “prime” rate as published in *The Wall Street Journal* on the first business Day of each Month plus one percent (1.0%) 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 forty-five (45) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. In the event that either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. 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 ESA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Product to Buyer pursuant to this ESA.

(B) Seller shall be responsible 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 a Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

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

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

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

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

9.9 Netting.

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

(B) If Seller and Buyer net their obligations to each other under this ESA, then

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

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

## ARTICLE 10 Operations and Maintenance

### 10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement, the ESA, Applicable Law and other applicable requirements and standards. Seller will be solely responsible for, and the ESS Energy Payment Rate will not be adjusted to accommodate increased costs or any failure to obtain any Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule in Microsoft Project format within thirty (30) Days of the Execution Date, including key project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a 1 Month look-ahead of project activities, with each subsequent monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, the New Mexico Public Utility Act.

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15<sup>th</sup> Day of each month. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks. If Seller becomes aware of any critical milestone that will not be achieved by the required date, Seller must provide Buyer written notice and a recovery plan to eliminate any delay in the 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. 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; 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.

(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; or (ii) for modifications, alterations, expansions or other changes that would not be expected to materially and adversely alter the Guaranteed ESS Capacity or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as



determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date, a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller (“**Project Manager**”). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer’s consent, which consent shall not be unreasonably denied or delayed. Seller’s Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller.

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

#### 10.2 Commissioning Tests.

(A) Seller shall provide proposed Commissioning Test procedures to Buyer at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Buyer shall provide any comments to the proposed Commissioning Test procedures to Seller within forty-five (45) Days of its receipt of the proposed Commissioning Test procedures. Seller shall incorporate Buyer’s reasonable comments to such proposed Commissioning Test procedures in the final Commissioning Test procedures. 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**”) as described in Exhibit F. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide raw data and preliminary results of all Commissioning Tests to Buyer prior to the Commercial Operation Date. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

#### 10.3 Access to and Inspection of the Project.

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

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this ESA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this ESA and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express

or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment nor as a warranty or guarantee.

#### 10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices and the ESS Operating Restrictions ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this ESA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this ESA, and (ii) comply with reasonable requirements of Buyer regarding day-to-day or hour-by-hour communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Discharge Energy delivered by Seller will meet all requirements for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this ESA. Seller shall provide Buyer with all real time measurement parameters of the Project including individual inverter and system availability data made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection, 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 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. PNM 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.

(A) Not later than thirty (30) Days before the Commercial Operation Date, an operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable written Operating Procedures for integration of the Project into Buyer's system. 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, the ESA, Prudent Utility Practice, Applicable Laws and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel of Seller capable of starting, running, and stopping the Project must be continuously available, either at the Project or capable of being at the Project on ninety (90) minutes' notice, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per day, seven (7) days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project. Buyer will use commercially reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

(B) 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 ESA. The protocols and procedures will be developed by Seller in accordance with the requirements of the ESA and the appropriate power test code standards for energy storage facilities. Draft protocols and procedures must be submitted to Buyer and the System Control Center for review and approval, which approval will not be withheld unreasonably.

(C) 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 Guaranteed ESS Capacity and Guaranteed ESS Roundtrip Efficiency shall consist of two semi-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 3.15, or adjustment to the ESS Energy Payment as outlined in Section 8.1(A).

(D) Testing for all remaining ESS Unit Capabilities, including Guaranteed Charge Ramp Rate, Guaranteed Discharge Ramp Rate, Guaranteed System Latency, Guaranteed Frequency Response Capability, and Capability to support Ancillary Services 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.

(E) 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.

(F) 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 ESA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the semi-annual 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 PNM's participation in a regional market or program (including the Western Resource Adequacy Program), the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

With the 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 1<sup>st</sup> through September 30<sup>th</sup>, 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 must give Buyer no less than ninety (90) Days' advance notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change. Notwithstanding any provision herein to the contrary, 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.

(B) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Product to the Point of Delivery. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. As of the start of the Test Period, Seller shall not sell or divert Product to a third Person.

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; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

10.9 Lease Liability Operational Expenses. If the pricing terms and conditions of this ESA would result in Buyer incurring a lease liability greater than zero dollars (\$0), then Seller shall provide Buyer, upon Buyer’s reasonable request, an approximate percentage, or other information necessary for Buyer to determine an approximate percentage, of the cost of on-going operational expenses for the Project (e.g. operations and maintenance costs, property taxes and other such expenses) relative to the ESS Energy Payment Rate for a specified measuring period.

## ARTICLE 11 Future Environmental Attributes

11.1 Sale of Future Environmental Attributes. If Future Environmental Attributes become available, this Article 11 shall apply.

(A) Other than as specified in Sections 11.1(D) and 11.1(E) below, effective from the date on which the Project first makes Product available to Buyer at the Point of Delivery, Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to Future Environmental Attributes associated with the Project. Upon generation and documentation of Future Environmental Attributes, Seller shall make the Future Environmental Attributes available to Buyer no later than five (5) Business Days after creation. The value of the Future Environmental Attributes transferred under this ESA 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 ESA, but not used, sold, assigned or otherwise transferred during the Term of this ESA. Buyer may, to the extent permitted by Applicable Law and this ESA, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this ESA or any successor provision providing for a federal, state and/or local tax credit or financial benefit determined by reference to renewable electric energy produced from renewable energy resources or the storage of electrical energy shall be owned by Seller.

(E) Seller shall 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 ESA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 and in any consent to collateral assignment with any Lender;
- (3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller voluntarily taking advantage of any such law by answer or otherwise;
- (4) The intentional sale by Seller to a third party, or diversion by Seller for any use, of Product committed to Buyer by Seller, except for Energy, RECs or Ancillary Services, as applicable, that Buyer fails to accept or pay for;
- (5) Seller's actual fraud, material misrepresentation or willful misconduct in connection with this ESA or the operation of the Project;
- (6) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer or the entity providing such Security;
- (7) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, except as may be extended subject to Section 3.6; or
- (8) The failure of Seller Guarantor to make, when due, any payment due to Buyer under or in connection with this ESA, or the failure of any Seller Guarantor to meet the criteria as set forth in the definition of Seller Guarantor if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer.

(B) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller:

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

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer, Seller is not able to 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 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 ESA (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this ESA);

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

(5) The Project fails, after the Commercial Operation Date, to obtain an Actual ESS Availability Percentage of at least eighty-five percent (85%) over any twenty-four (24) consecutive Months during the Term excepting to the extent due to the failure of a main generator step-up transformer (which exception may apply only once during the Term), provided that the 30-Day cure period indicated in Section 12.1(B) does not apply and Seller remediates the cause of the shortfall of Actual ESS Availability Percentage requirements as soon as reasonably practicable, however, in no event later than one hundred eighty (180) days after falling below the eighty-five percent (85%) value. Notwithstanding the above, Seller shall notify Buyer within thirty (30) days after the initial occurrence of a main generator step-up transformer failure of the steps that Seller is taking to remediate the failure and thereafter keeps Buyer apprised, on a monthly basis, of Seller's progress towards resolving such main generator step-up transformer failure;

(6) Should RECs from Future Environmental Attributes become available and Seller fails to register the Project or ensure registration of the RECs in accordance with the terms of this Agreement; or

(7) The Project fails, after the Commercial Operation Date, to achieve ninety percent (90%) of Guaranteed ESS Capacity during semi-annual testing pursuant to Section 10.5(C), provided in no case shall tests be performed when major equipment is not operational.

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

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

(2) Any representation or warranty made by Seller in this ESA shall prove to have been false or misleading in any material respect when made or, other than in connection with the representations and warranties provided in Sections 15.1(R) and 15.1(S) which shall be required to remain valid through the Commercial Operation Date, ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

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

12.2 Events of Default of Buyer.

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

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

(2) Buyer's assignment of this ESA (or any of its rights hereunder) for the benefit of creditors; or

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

(B) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within thirty (30) Days after the date of written notice from Seller to Buyer:

(1) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this ESA); or

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

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



(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; provided, however, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

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

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

### 12.3 Damages Prior to Termination.

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

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, that if an Event of Default has occurred and has continued uncured for a period of one hundred eighty (180) Days, the Non-Defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this ESA as provided for in Section 12.4. If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include, to the extent applicable, an amount of cover damages equal to Replacement ESS Costs minus the Contract Value or portion thereof proportional to the quantity of Product so replaced. Further, Seller acknowledges and agrees that in addition to the foregoing, Seller shall be obligated to pay Buyer any such damages associated with replacement of Product notwithstanding the availability or prices of electric energy and capacity from other fuel sources, such as natural gas. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any Future Environmental Attributes that may become available pursuant to this ESA, to the extent such failure arises out of Seller's negligence or willful misconduct, provided that Buyer has used commercially reasonable efforts to avoid, minimize or mitigate such penalties. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any Future Environmental Attributes pursuant to this ESA, if such failure arises out of Seller's negligence or willful misconduct. Seller acknowledges that Buyer entered into this ESA for the procurement of Product, which 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 Metered Output generated under the PPA plus ESS Deemed Energy following such

Event of Default multiplied by the ESS Energy Payment Rate, plus, to the extent that the Solar Facility is unable to produce Metered Output due to the Event of Default of Buyer, an additional quantity equal to the amount of Metered Output that would have been produced by Seller absent such Event of Default of Buyer, 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 shall have the right to declare a date, which shall be between fifteen (15) and sixty (60) Days after the notice thereof, upon which this ESA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this ESA, except that Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this ESA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this ESA. Upon the termination of this ESA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party. 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, and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment. Notwithstanding the foregoing, if the Commercial Operation Date has not occurred by the Guaranteed Start Date, Buyer may terminate this ESA in accordance with this Section 12.4, and the Buyer Termination Payment will be an amount equal to the Development Security less any Delay Damages already paid to Buyer. Neither Party shall have liability for damages or failure to deliver or purchase Product after the effective date of such termination, including Replacement ESS Costs.

(A) In the event that Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment.

(B) In the event that Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Seller shall use

information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment.

(C) Unless otherwise mutually agreed by the Parties, the conditions in this Section 12.4(C) shall apply. In the case and to the extent that Seller fails to obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid and the Solar Facility is unable to provide Charging Energy to the ESS due to a termination of the PPA due to an Event of Default (as defined in the PPA) of Seller under the PPA and Buyer elects to terminate this ESA, such termination of the PPA shall be considered an Event of Default of Seller under this ESA and Buyer shall be entitled to pursue its remedies under this ESA. If the PPA is terminated due to an Event of Default (as defined in the PPA) of Seller under the PPA and Seller terminates this ESA, such termination shall be considered an Event of Default of Seller under this ESA and Buyer shall be entitled to pursue its remedies under this ESA. If the PPA is terminated due to an Event of Default of Buyer or due to an extended Force Majeure Event (all as defined in the PPA) and Seller terminates this ESA, such termination shall not be considered an Event of Default of Seller hereunder. If the PPA is terminated due to an Event of Default (as defined in the PPA) of Buyer under the PPA and Seller elects to terminate this ESA, such termination of the PPA shall be considered an Event of Default of Buyer under this ESA and Seller shall be entitled to pursue its remedies under this ESA.

(D) If the PPA is terminated for any reason and the ESA remains binding, the Parties shall meet and confer within fifteen (15) days of the early termination of the PPA to establish an alternative ESS Energy Payment structure; provided that if the Parties do not agree on such alternative structure within ten (10) days of meeting, the Calculation of Solar Generation used for ESA Pricing presented in Exhibit O shall replace the Metered Output provided for herein. In the event that (i) the PPA is terminated by Buyer as a result of an “Event of Default” (as defined in the PPA) of Seller under the PPA or a “Force Majeure Event” (as defined in the PPA) claimed by Seller under Section 14.1(D) of the PPA; (ii) solely as a result of the implementation of the alternative payment structure presented in Exhibit O or another structure otherwise mutually agreed to by the Parties, if applicable, and not as a result, in whole or in part, of any change in law, rule, requirement, accounting convention, or consideration similar to the foregoing, or any interpretation of the foregoing, the ESA results in Buyer having to report a lease liability for financial accounting purposes; and (iii) as a result of the foregoing, Buyer’s credit agencies reclassify the lease liability as debt, then Seller shall indemnify and hold Buyer harmless against that harm by a reduction in the ESS Energy Payment Rate; provided that the amount by which the ESS Energy Payment Rate shall be reduced shall not exceed the amounts set forth in Table 1 of Exhibit O corresponding to the year in which the PPA is terminated.

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

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this ESA shall be cumulative of and shall be in

addition to every other right or remedy provided for in this ESA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this ESA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this ESA, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this ESA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

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

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default enumerated in Section 12.1 or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this ESA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## ARTICLE 13

### Contract Administration and Notices

13.1 Notices in Writing. Notices required by this ESA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this ESA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt, 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.

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

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

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this ESA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this ESA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this ESA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this ESA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Project 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 Buyer and Seller Forced Outages ("**O&M Records**").

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

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

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

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

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the ESS.

(4) Upon request by Buyer, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

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

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

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

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, 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 ESA in a quick and inexpensive manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this ESA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("Dispute Notice"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties

shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days written notice, declare the mediation process unsuccessful and initiate legal and equitable remedies.

## ARTICLE 14 Force Majeure

### 14.1 Definition.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" shall mean an event or circumstance that arises after the Execution Date that is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this ESA. Such events or circumstances may include, but are not limited to: actions or inactions of civil or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, explosions and fires not originating in the Project and those not caused by its failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually

severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). The Parties agree that a pandemic 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 beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, for any reason (the risk of which is assumed by Seller); (ii) any other acts or omissions of any third party acting on behalf of Seller, 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, unless such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions, actions of Governmental Authorities or other events or circumstances that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against 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 lightning strikes, but excluding unusually severe events, such as tornadoes, intense lightning strikes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this ESA beyond its stated Term. Notwithstanding any other provision in this ESA to the contrary, in the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller continues for an uninterrupted period of one hundred eighty (180) Days from its inception, either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this ESA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. Upon such termination Buyer shall return the Development Security or Delivery Term Security, as applicable, to Seller, less any amounts due from Seller to Buyer.

(E) Except as otherwise provided in this ESA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event



but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this ESA (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

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

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this ESA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however,* that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation.

(A) Upon the occurrence and during the continuance of a Force Majeure Event affecting the Project (and not including a Force Majeure Event affecting Buyer or the Transmission Provider) and the effects thereof, to the extent that such Force Majeure Event impairs the ability of either Buyer or the Transmission Provider to accept Discharge Energy from the Project or to deliver Charging Energy to the Project or otherwise impairs the ability of the ESS to deliver Product, then the hours of the reduced delivery of Product shall be excluded from the determination of the ESS Energy Payment as set forth in Section 8.1. In this instance, the Monthly ESS Energy Payment shall be reduced by the sum of the amount of Metered Output (in MWh) delivered to the Point of Delivery during the applicable ESA Force Majeure Event and any Metered Output that otherwise would have been delivered to the Point of Delivery but for a Force Majeure Event impacting both the PPA and the ESA, multiplied by the percentage of the ESS Capacity impacted by the Force Majeure, multiplied by the ESS Energy Payment Rate.

(B) In the case and to the extent that Seller fails to obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, upon the occurrence and during the continuance of: (i) a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event impairs the ability of the Solar Facility to supply Charging Energy to the Project or (ii) an unscheduled outage of the Solar Facility to the extent

that such outage impairs the ability of the Solar Facility to supply Charging Energy to the Project that lasts longer than forty-eight (48) hours, then in the case of (i) the hours during which the Force Majeure Event occurs, and in the case of (ii) the hours beyond the forty-eight (48) hour duration shall be excluded from the determination of the ESS Energy Payment as set forth in Section 8.1. In the case of (i), the Monthly ESS Energy Payment shall be reduced by the sum of the amount of Metered Output (in MWh) delivered to the Point of Delivery during the Force Majeure Event and any Metered Output that otherwise would have been delivered to the Point of Delivery but for the Force Majeure Event, multiplied by the ESS Energy Payment Rate. In the case of (ii), the Monthly ESS Energy Payment shall be reduced by the sum of the amount of Metered Output (in MWh) that would have been delivered to the Point of Delivery after the initial forty-eight (48) hour duration but for the unscheduled outage of the Solar Facility, multiplied by the ESS Energy Payment Rate.

(C) In the case of (A) and (B) above, the amount of Metered Output that would have otherwise been delivered to the Point of Delivery shall be reasonably calculated by Seller taking into account 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 Force Majeure Event or unscheduled outage but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review and approve Seller's calculations.

## ARTICLE 15

### Representations, Warranties and Covenants

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

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

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

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

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

(3) result in a breach or constitute a default under Seller's formation

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

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

(C) Assuming this ESA is a valid and binding obligation of Buyer, the obligations of Seller under this ESA are valid and binding obligations of Seller.

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

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

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

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

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

(I) To the extent applicable, Seller has and/or will have good and marketable title to the Future Environmental Attributes immediately prior to delivery to Buyer;

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

(K) To the extent applicable, all right, title and interest in and to the Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other

encumbrances except for any right or interest by any entity claiming through Buyer;

(L) To the extent applicable, each Future Environmental Attribute complies with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 *et seq.*, and Title 17.9.572 NMAC;

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

(N) [Reserved];

(O) Seller has not incurred and will not incur, assume or carry any Debt at any time after the Commercial Operation Date;

(P) This ESA does not provide for the transfer of the Project to Buyer at any time during or after the Term;

(Q) 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;

(R) As of the Commercial Operation Date, less than seventy five percent (75%) of the useful economic life of the Energy Storage System will be expended upon the end of the Term;

(S) As of the Commercial Operation Date, the present value of the sum of the compensation that Buyer shall pay Seller throughout the Delivery Term does not exceed ninety percent (90%) of the fair market value of the Project and its associated assets and there is no residual value guaranteed by Buyer that is not already reflected in the payment obligations set forth in this ESA;

(T) The Project is not a specialized project and will have alternative uses to Seller upon the end of the Delivery Term; and

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

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

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

(1) require any consent or approval of Buyer's shareholders, 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 ESA;

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

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

(C) Assuming this ESA is a valid and binding obligation of Seller, this ESA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

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

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

## ARTICLE 16 Insurance

### 16.1 Evidence of Insurance.

(A) Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter 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 ESA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

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

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

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

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days’ prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer and its Affiliates, officers, directors, agents, subcontractors and employees.

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

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer and its Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

ARTICLE 17

Legal and Regulatory Compliance and NMPRC Approval

17.1 Applicable Laws. Each Party shall at all times comply with all Applicable Laws. Each Party shall promptly notify the other Party of any material investigations, notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the ESA. Seller shall give all required notices, shall timely procure and maintain all Seller required

permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request and at Buyer's cost (other than the normal, customary and reasonable costs of Seller), any personnel or records relating to the Project or this ESA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

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

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Product at the rates specified in Article 8, shall be conditioned upon the receipt of NMPRC Approval in connection with (i) the execution and performance of this ESA; and (ii) the execution and performance of the PPA, and a final order or other regulatory determination from the NMPRC that Buyer may procure renewable energy and associated RECs pursuant to the PPA and may recover the cost of such procurement without any material adverse financial order (collectively, "**Requested Actions**"). For the avoidance of doubt, 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, including authorization to recover the costs of procurement of the Renewable Energy Output, as that term is defined in the PPA; or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, *provided* that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then this ESA shall automatically terminate ten (10) Days after the date of such action by the NMPRC and 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 or Seller will elect to amend this ESA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this ESA. If the Parties are unable to

mutually agree on any amendments to this ESA to address such NMPRC Approval order, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect. 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 June 3, 2024 (“**Regulatory End Date**”), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect. 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 (i) a negligent or wrongful action or inaction or (ii) a violation of such reliability standard by Seller results 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, then Seller shall reimburse Buyer for the share of such monetary penalties resulting from Seller’s action, inaction, or violation.

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

## ARTICLE 18

### Assignment and Other Transfer Restrictions

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

(A) Buyer’s consent shall not be required for: (i) any assignment or transfer of



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

(B) Seller's consent shall not be required for any assignment of this ESA by Buyer to any Affiliate or in connection with 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 ESA as and if required by NMPRC regulations and will resell the Product purchased hereunder.

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

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

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

18.5 Subcontracting. Seller may subcontract its duties or obligations under this ESA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico shall be so qualified. 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 ESA 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 ESA; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this ESA if Lenders need to foreclose on the Project prior to curing any Event of Default of Seller giving rise to such termination, but only to the extent that the period required for such foreclosure and cure does not exceed one hundred eighty (180) Days from receipt by Lenders of written notice of such Event of Default of Seller; provided that, in all cases, (a) Buyer will have no obligation to alter or modify the terms of this ESA or provide any consent or enter into any agreement that has a material adverse effect on Buyer, and (b) Seller will be responsible for Buyer's reasonable 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 ESA.

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

## ARTICLE 19

### Credit and Security Requirements

19.1 Security. Seller shall post, at its sole cost and expense, security equal to Eighty Thousand Dollars (\$80,000) per MW multiplied by the Guaranteed ESS Capacity, (the "**Development Security**"), the first Forty Thousand Dollars (\$40,000) per MW of which will be posted within ninety (90) Days of the Execution Date and the second Forty Thousand Dollars (\$40,000) per MW of which will be posted within the earlier of (i) thirty (30) Days after receipt of

NMPRC Approval and (ii) the commencement of construction of the Project. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Thousand Dollars (\$100,000) per MW multiplied by the Guaranteed ESS Capacity (the “**Delivery Term Security**”). Seller shall replenish the Delivery Term Security to such required amount within fifteen (15) Days after any draw by Buyer. Upon achievement of the Commercial Operation Date or promptly after Buyer terminates this ESA as a result of Seller’s failure to achieve Commercial Operation on or before the Guaranteed Start Date, Buyer will return the Development Security to Seller, less any amounts drawn against the Development Security pursuant to Section 12.10. In the event that no amounts are due and owing by Seller to Buyer under this ESA and provided no claims are then outstanding, Seller’s Delivery Term Security shall be released to Seller upon the earlier of (i) termination of this ESA in accordance with its terms; and (ii) on the fifteenth (15th) Business Day after the expiration of the Term.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the reasonable discretion of Buyer: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody’s of at least A- and A3, respectively and at least Ten Billion Dollars (\$10,000,000,000) in U.S.-based assets (“**Issuer Minimum Requirements**”), (c) a Seller Guaranty from Seller Guarantor, or (d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller’s obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall be renewed by Seller for successive one-year or shorter periods. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit, then Seller shall have fifteen (15) Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. Buyer shall not be required to post security.

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

19.4 Use of Security. In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this ESA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this ESA. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of the ESA, as Buyer may select until such time as the Security is exhausted.

## ARTICLE 20

### Indemnity; Insurance Proceeds

#### 20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include

a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

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

20.4 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

ARTICLE 21  
Governmental Charges

21.1 Allocation of Governmental Charges. Seller shall pay or cause to be paid 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 under Applicable Law to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this ESA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Product hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

ARTICLE 22  
Miscellaneous

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

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

22.3 Rate Changes.

(A) The terms and conditions and the rates for service specified in this ESA shall remain in effect for the term of the transaction described herein. Absent the Parties' written

agreement, this ESA shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act.

(B) Absent the agreement of all Parties to the proposed change, the standard of review for changes to this ESA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the “public interest” standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

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

22.5 Relationship of the Parties.

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

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

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

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

22.8 Severability. In the event any of the terms, covenants, or conditions of this ESA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the ESA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good

faith to attempt to implement an equitable adjustment in the provisions of this ESA with a view toward effecting the purposes of this ESA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

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

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

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

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

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

22.14 Confidentiality.

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

(B) Other than in connection with this ESA, the Receiving Party will not use the Confidential Information (as defined 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 ESA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from



unauthorized disclosure using the same degree of care as it takes to preserve its own Confidential Information (but in any event no less than a reasonable degree of care). 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 ESA to the Receiving Party or its Receiving Party’s Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party’s Representatives have access by virtue of this ESA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic), and any information processed or stored on computers or other electronic media by PNM or on PNM’s behalf) or which concerns this ESA, 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 ESA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this ESA:

- (1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its 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 ESA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this ESA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party’s Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this ESA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this

ESA that relates solely to this ESA (as opposed to confidential business or operating information of either Party), shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this ESA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall, 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 to make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third-party costs incurred in seeking such protective order or similar procedure). Seller shall reasonably cooperate with Buyer in seeking protection from the disclosure of Seller's Confidential Information.

(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 single individual employed by Seller 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) Subject to Section 22.15(B), Seller hereby grants to Buyer the right to advertise, market, and promote to the general public the benefits of this ESA, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this ESA (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller will make available to Buyer a basic description of the Project, and any press

releases or statements that Seller produces regarding the Project. Upon sufficient advance written notice, Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials. Notwithstanding the foregoing, either Party shall be permitted to disclose the following terms with respect to this ESA:

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

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

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this ESA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this ESA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions, 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. Notwithstanding any other provision of this ESA, the Parties acknowledge that this ESA is a forward contract and master netting agreement within the meaning of the safe harbor provisions of the Bankruptcy Code. Accordingly, the Parties agree, notwithstanding any other provision in this ESA, that this ESA may be terminated and remedies exercised hereunder by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic

stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination or to the exercise of the remedies set forth herein.

22.18 Accounting Matters. The Parties agree that Generally Accepted Accounting Principles in the United States of America (“GAAP”) and the rules of the United States Securities and Exchange Commission (“SEC”) require Buyer to evaluate if Buyer must consolidate Seller’s financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this ESA (i) will be considered a lease under Accounting Standards Codification 842 - Leases, or (ii) require consolidation of Seller’s financial information with Buyer’s financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer’s accounting treatment for the ESA, jointly the “Accounting Standards”). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties’ review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the Parties agree to the following provisions for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller’s Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller’s parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by 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 forty-five (45) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) (“Seller’s Financial Statements”) shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller’s records and personnel, so that Buyer and Buyer’s independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting

Oversight Board (United States). All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

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

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

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

22.20 Change in Market Structure. In the event of a change in the operation or organizational structure of the regional territory which includes the ESS or Buyer's service area (including change in balancing area authority or implementation of an independent system operator, regional transmission organization, or realignment of the transmission system) and such change is reasonably anticipated to affect materially and adversely either Party's ability to perform its obligations hereunder, the representatives of each Party shall convene within fifteen (15) days of

written notification from either Party and shall provide recommendations for the Parties' appropriate action. Both Parties thereafter shall negotiate in good faith to agree upon an amendment to this ESA or to take other appropriate actions, the effect of which will be to preserve or restore the respective Parties, as closely as possible, to the same business and economic positions that existed prior to such change.

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

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

By DocuSigned by:  
Michael Mertz  
8DE1D44E9B1C4ED...

Name: Michael Mertz

Title: Vice President, New Mexico Operations, and Chief Information Officer

Date: 10/24/2023

**QUAIL RANCH ENERGY STORAGE LLC**

By: CRE-Quail Ranch ESS New Mexico LLC,  
its Sole Member

By: Clenera DevCo, LLC, its Sole Member

By: Clenera Holdings, LLC, its Sole Member

By: DocuSigned by:  
Jason Ellsworth  
3D08C923ACB646B...

Name: Jason Ellsworth

Title: Chief Executive Officer

Date: 10/25/2023

**EXHIBIT A**  
(to Energy Storage Agreement)

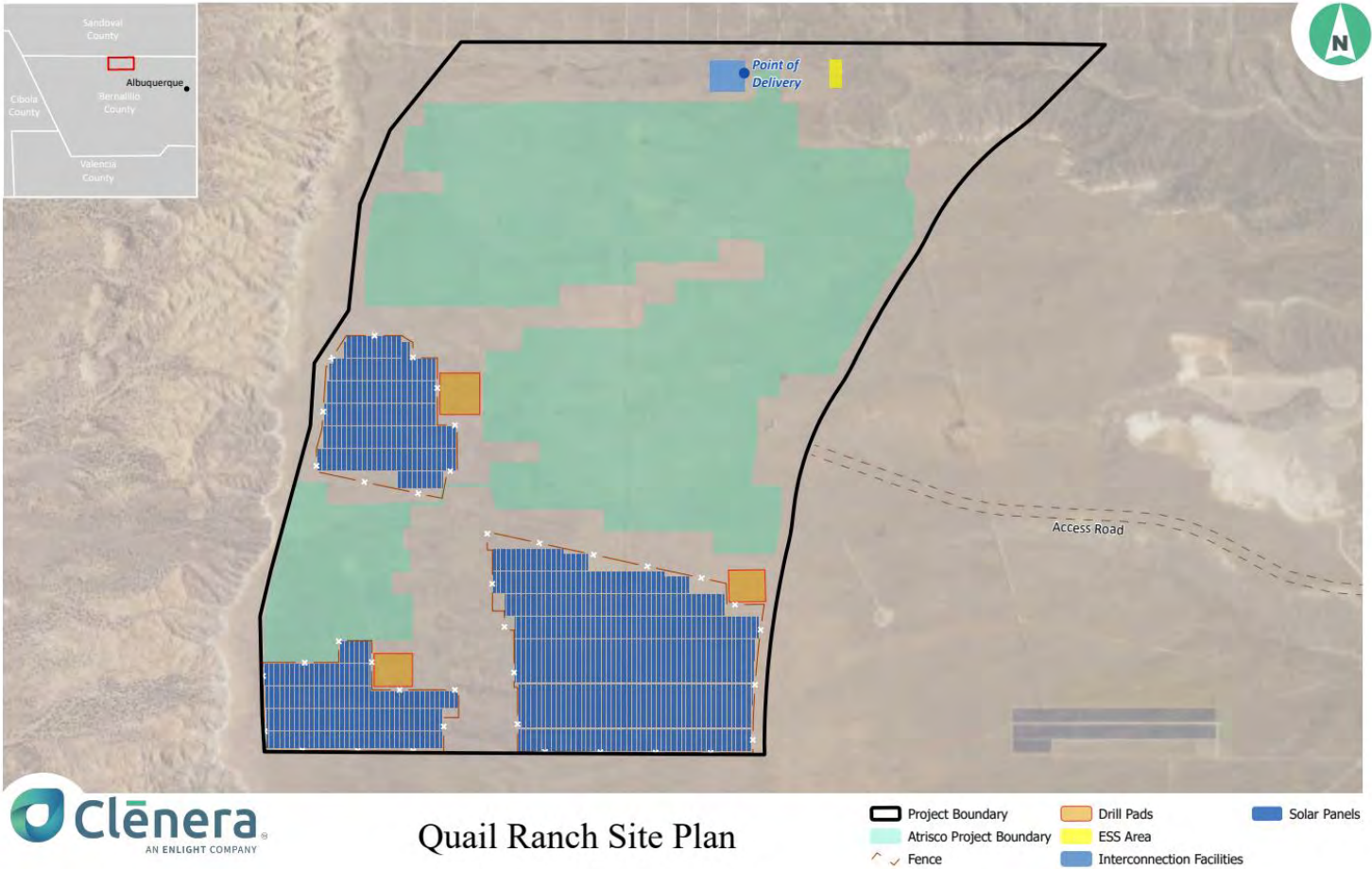
**DESCRIPTION OF SELLER’S ENERGY STORAGE FACILITIES,  
SITE MAP, AND PROJECT SCHEDULE**

1. Name of Seller’s Project: Quail Ranch Energy Storage  
  
Location: Rancho Grande, Bernalillo County, New Mexico
2. Owner (if different from Seller): Quail Ranch Energy Storage LLC
3. Operator: Clenera LLC or its designee
4. Equipment/Fuel:
  - a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Energy Storage; Biomass (including Fuel)): Energy Storage
  - c. Total nameplate capacity (AC): 100 MW / 400 MWh
  - d. Total capacity at point of delivery: 100 MW / 400 MWh
  - e. Additional technology-specific information: AC-connected battery energy storage system
  - f. Battery chemistry: Lithium iron phosphate (LFP)
5. Project Schedule:

Key Milestone	Date
LGIA Execution	7/1/2023
Major Equipment Supply Agreements Executed	4/1/2024
Discretionary Permits	4/1/2024
Close Financing	6/1/2024
Start of Project Construction	7/1/2024
First Major Equipment Delivered to Site	9/1/2024
Interconnection In-Service Date	7/1/2025
Commissioning Start Date	9/1/2025
Expected Commercial Operation	11/2/2025



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



**EXHIBIT B**  
(to Energy Storage Agreement)

**ONE-LINE DIAGRAM OF PROJECT AND INTERCONNECTION FACILITIES**

1. See attached one-line diagram of the Project, which shall be provided by Seller within thirty (30) Days of the Execution Date and which shall be subject to Buyer approval (such approval not to be withheld, conditioned, or delayed unreasonably). The one-line diagram indicates 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);
  - The House Energy power source and associated dedicated electric meter; and
  - ownership and location of meters.
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 RIO PUERCO – WEST MESA 345 KV TRANSMISSION LINE AT THE QUAIL RANCH 345 KV SWITCHING STATION



**EXHIBIT C**  
(to Energy Storage Agreement)

**DESCRIPTION OF SITE**

The Project is located on unimproved real property located in Bernalillo County, New Mexico, described as follows:

Tract 2-A of the Lands of Quail Ranch, as said tracts are shown and described on the Bulk Plat thereof recorded in the office of the County Clerk of Bernalillo County, New Mexico, on March 1, 2019, in Book 2019C, Page 18, as Document No. 2019016035.

The above described Tract of Land contains 3,376.36 acres more or less in area, of which a portion will be utilized for the Project.

**EXHIBIT D**  
(to Energy Storage Agreement)  
**NOTICE ADDRESSES**

**PUBLIC SERVICE COMPANY OF  
NEW MEXICO**

**Notices:**

**Delivery Address:**

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

**Invoices:**

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

**Scheduling:**

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

**Payments:**

Public Service Company of New Mexico  
2401 Aztec 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

**QUAIL RANCH ENERGY STORAGE LLC**

**All Notices/Invoices:**

**Delivery Address:**

Quail Ranch Energy Storage LLC  
c/o Clenera, LLC  
P.O. Box 2576  
Boise, ID 83701  
Telephone: (208) 639-3232  
Email: notices@clenera.com

**Invoices:**

Mailing Address (if different from above):

**Wire Transfer: To Be Provided**

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

Quail Ranch Energy Storage LLC  
c/o Clenera, LLC  
P.O. Box 2576  
Boise, ID 83701  
Telephone: (208) 639-3232  
Email: notices@clenera.com

**Contract Manager:**

Public Service Company of New Mexico  
Attention: Jeremy Heslop  
2401 Aztec Rd. NE  
Albuquerque, NM 87107  
Telephone: (505) 241-2664

**With additional Notice of an Event of  
Default to:**

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

**With a copy to:**

Public Service Company of New Mexico  
Attention: Christopher Atencio  
414 Silver Ave. SW, MS0805  
Albuquerque, NM 87102  
lawdept@pnmresources.com  
Telephone: (505) 241-2700  
Fax: (505) 241-4318

**EXHIBIT E**  
(to Energy Storage Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS,  
APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED, AS  
REQUIRED**

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
<i>Special Use Permit Exception to parking and landscaping requirements, Amendment to Sector Development plan Grading Permit, Traffic Control Plan, Street Cut Permit, Excavation Permit, Wall Permit Road Crossing Permits Driveway Cut Permit Drainage Covenant Subdivision/Platting/Easement Construction Permit Electrical Permit EE 98 License EI 1 License Modular Building Permit Plumbing Permit Certificate of Occupancy</i>	<i>State of New Mexico or Bernalillo County</i>
<i>Clean Water Act (CWA) Section 402, National Pollution Discharge Elimination System (NPDES). Construction Stormwater General Permit NMR1000000</i>	<i>US Environmental Protection Agency (EPA)</i>
<i>CWA Sec 401 Water Quality Certification</i>	<i>NMED Surface Water Quality Bureau</i>
<i>CWA Sec 404, Nationwide Permit (NWP) #12 (utility lines), NWP #14 (access roads), NWP #51 (renewal energy facilities)</i>	<i>US Army Corps of Engineers</i>
<i>Stormwater Control Permit for Erosion and Sediment Control</i>	<i>Albuquerque/Bernalillo County</i>
<i>Fugitive Dust Permit</i>	<i>Albuquerque/Bernalillo County</i>
<i>Air Quality Permit</i>	<i>Albuquerque/Bernalillo County</i>
<i>Biological and Cultural Resources Surveys</i>	<i>Albuquerque/Bernalillo County</i>

**EXHIBIT F**  
(to Energy Storage Agreement)

**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 3.4)
- ESS Unit Capabilities Testing
- ESS Solar Capacity Firming Test

**Annual Testing**

- ESS Unit Capabilities Testing

**Commissioning Procedures**

Energy Storage Plant testing and commissioning. 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**

1. Battery Module
  - a. Prior to installing each battery module:
    - i. Test and confirm battery module voltage
2. Battery String
  - a. Once the battery modules are installed in the battery rack with the necessary electrical and communication connections with the battery switchgear and Rack BMS:
    - i. Confirm battery modules have auxiliary power supply
    - ii. Confirm battery modules communicate with rack BMS
      1. Read the System BMS and check whether the battery banks are operable, or not.
    - iii. Repeat steps i through ii for all battery strings connected to the PCS.
    - iv. 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.



- v. Once complete, send all DC contactor “on” command to the System BMS and check the DC contactor’s status via the System BMS.
- vi. Initiate the pre-charge circuit to balance the battery strings prior per the battery vendor specifications.

### 3. Battery Bank

- a. 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.
  - i. Confirm communication between the System BMS and the PCS (via the EMS, or direct)
  - ii. Confirm voltage on the PCS terminals is within the battery manufacturer requirements to connect the strings in parallel.

### 4. PCS

- a. Connect a temporary power supply such as a generator to the PCS to charge the battery bank.
- b. Turn on the PCS.
- c. Charge the battery bank.
- d. Disconnect the temporary power supply.
- e. Connect the PCS to a load bank.
- f. Discharge the battery bank into the load bank.
  - i. Confirm the battery bank capacity (kWh) based on power for duration.

5. Repeat steps 1 through 4 for every PCS in the Energy Storage Plant.

6. End of Phase 1

## PHASE 2 – PCS to MV Bus in Substation

### 1. Medium Voltage Block

- a. Disconnect / isolate the battery bank voltage from the PCS
- b. Connect the PCS to the medium voltage transformer.
- c. Connect the Medium Voltage Blocks to the Medium Voltage Feeder
- d. Connect the Medium Voltage Feeder to the Medium Voltage bus in the substation via the MV circuit breaker.
- e. 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.)
  - i. Charge each block to 100% SOC.
  - ii. Let the battery rest as recommended by the battery vendor.
  - iii. Discharge each block to 0% SOC.
  - iv. Open the MV Feeder circuit breaker upon completion.

2. Repeat steps 1 through 2 for all Medium Voltage Feeders

3. End of Phase 2

### PHASE 3 – MV bus to POI

1. One MV Feeder at a time, close the MV Feeder Breaker, and energize all of the blocks on the feeder.
2. 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.

#### **A. Automatic Generation Control (AGC) Functionality Test**

##### **Purpose:**

This test will demonstrate the ability of the ESS to synch to AGC.

##### **System starting state:**

The ESS will be in the on-line state at between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System (“EMS”) shall be configured to follow a predefined, agreed-upon active power profile. 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 ESS 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 Metered Output 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.

#### **B. 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.

### **C. 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.

### **D. ESS Solar Capacity Firming Test**

Seller shall perform a test of the ESS control system to validate its capability to maintain a constant energy delivery from the combined PPA and ESA to the Point of Delivery (“POD”). The test shall be performed over a three (3) hour test period given a fixed MW setpoint at the Point of Delivery from the integrated Solar Facility and ESS. The test shall validate the ability of the ESS control system to autonomously charge solar generation or discharge to maintain a constant POD output within two (2) percent of the output setpoint and within the limits of the ESS Unit Capabilities and ESS Operating Restrictions. The constant POD setpoint shall be between the ESS PMAX and the POD rating minus PMAX or reasonably adjusted according to the solar generation forecast on the day of the test. The test shall be deemed successful if the ESS is able to regulate the POD to the output setpoint, within two (2) percent, at all times during the three (3) hour test when the charging or discharging of the ESS to maintain the output setpoint would not violate the ESS Unit Capabilities or ESS Operating Restrictions.

## **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 ESA) throughout the term of the ESA. 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.

### **E. ESS Unit Capabilities Testing**

#### **E.1 ESS CAPACITY TEST**

##### **E.1.1 General**

The ESS Capacity Test (“**ESS Capacity Test**” or “**ECT**”) is a test performed to determine the then-current ESS Capacity and Roundtrip Efficiency (RTE). Each ESS Capacity Test (including the initial ESS Capacity Test performed prior to Commercial Operation and each subsequent ESS Capacity Test) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit F. Buyer or its representative may be present for any ECT and may, for

informational purposes only, use its own metering equipment (at Buyer's sole cost).

#### E.1.2 Requirements Applicable to all ESS Capacity Tests

- A. Purpose of Test. Each ECT shall:
- (1) verify compliance with the Guaranteed ESS Capacity or otherwise determine any lower ESS Capacity for the purposes of this ESA;
  - (2) determine the Roundtrip Efficiency (RTE) of the ESS;
- B. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:
- (1) discharge time (minutes);
  - (2) ESS Charging Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh ("ESS Meter Energy In");
  - (3) ESS Discharge Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh ("ESS Meter Energy Out");
  - (4) ESS Discharge Energy measured at the ESS Electric Meter Device including the accounting of losses from the ESS Electric Meter Device to the Point of Delivery, in MWh ("Point of Delivery Energy Out");
  - (5) ESS Charging Energy measured at the ESS Electric Meter Device accounting for losses from the Point of Delivery to the ESS Electric Meter Device, in MWh ("Point of Delivery Energy In");
- C. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.
- D. Test Elements and Sequence. Each ECT shall include the following test elements:
- (1) the discharging of the ESS from a 100% State of Charge at a power discharge setpoint rate equal to the Guaranteed ESS Capacity (MW);
  - (2) the determination of Point of Delivery Energy Out, as measured by the ESS Electric Meter Device, that is discharged from the ESS to the Point of Delivery until either a 0% State of Charge is achieved or four (4) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by four (4) hours shall determine the ESS Capacity. The ESS Electric Metering Device shall be programmed to correct for losses between the ESS Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;

- (3) the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after four (4) hours of discharging the Guaranteed ESS Capacity;
- (4) starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate equal to the Guaranteed ESS Capacity (provided that 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, such charge rate shall not exceed the generating capacity (in MW) of the Solar Facility, subject to Section E.1.2.E(2) below);
- (5) the determination of Point of Delivery Energy In, as measured by the ESS Electric Metering Device, that is required to charge the ESS until a 100% State of Charge is achieved as of the commencement of the ESS Capacity Test.

E. Test Conditions.

- (1) General. At all times during an ECT, the ESS shall be operated in compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. The ESS shall have charged and discharged at least 80% of one (1) Equivalent Full Cycle in the twenty-four (24)-hour period prior to the ECT, charged to a 100% State of Charge using Charging Energy on the day of the ECT and maintained at a 100% State of Charge for at least two (2) hours prior to commencement of the ECT. The ECT shall commence within one (1) hour after sunset or other such time as mutually agreed by the Parties, and the Solar Facility shall be disconnected prior to commencement of such ECT. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the ESS shall otherwise be at unity (1.00) power factor.
- (2) Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT (including, to the extent that Seller fails to obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, a level of irradiance that does not permit the Solar Facility to produce sufficient Charging Energy), 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. The ECT will not be postponed or rescheduled for insufficient irradiance if and to the extent that the Transmission Provider allows the ESS to accept Charging Energy from the electrical grid or the Solar Facility produces sufficient power to demonstrate charging at the ESS Guaranteed Capacity for at least 80% of the charging period during the ECT and

sufficient energy is available for the ESS to reach a 100% State of Charge at least one hour prior to sunset.

- (3) Weather Conditions. Ambient outside dry bulb air temperature of 25°C. Seasonal weather patterns may prevent the occurrence of an ECT. In such circumstances, Seller shall supply adjusted performance metrics for the ESS at a range of ambient conditions for Buyer's review and approval (such approval not to be unreasonably conditioned, delayed or withheld) ninety (90) Business Days prior to the scheduled ECT to determine whether the scheduled ECT is feasible.
  - (4) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Section 5 of the ESA.
- F. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section 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 completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Seller is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.
- G. Final Report. Within ten (10) Business Days after the completion of any ECT, Seller shall prepare and submit to Buyer a written report of the results of the ECT, which report shall include:
- (1) A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;
  - (2) the measured data for the ESS Electric Meter Device readings as well as each parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT and plant log sheets verifying the operating conditions and output of the ESS;
  - (3) The ESS Capacity as determined by the ECT, including supporting calculations; and
  - (4) Seller's statement of either Seller's acceptance of the ECT or Seller's

rejection of the ECT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the ECT results or Buyer's rejection of the ECT and reason(s) therefor.

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section E.1.2.F of this ESS Capacity Test Procedure.

- H. 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 Facility (collectively, the "Supplementary ESS Capacity Test Protocol"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit F. Future modifications to the Supplementary ESS Capacity Test Protocol, as mutually agreed, shall be documented and maintained by the Parties.
- I. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first four (4) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this ESA, multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the day following the completion of the ESS Capacity Test for all purposes under this ESA.
- J. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh-AC) and the ESS Meter Energy In (MWh-AC) as below:

$$\text{Roundtrip Efficiency (\%)} = \frac{\text{ESS Meter Energy Out (MWh-AC)}}{\text{ESS Meter Energy In (MWh-AC)}} \times 100 \quad \%$$

## E.2 ESS RESPONSE DELAY TEST

**Purpose of Test:**

1. Determine the Charge Ramp Rate of the ESS
2. Determine the Discharge Ramp Rate of the ESS

**Test Conditions:**

The ESS Facility will be in the on-line state at between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. 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.

**Test procedure:**

**Measured Charge Ramp Rate:**

1. Send an active power charge command of P<sub>MAX</sub> to charge the batteries
2. The time measured from when the ESS receives the P<sub>MAX</sub> charge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of charge P<sub>MAX</sub> shall be the Charge Ramp Latency
3. The time measured to ramp from 1% to charge P<sub>MAX</sub> with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Charge Ramp Rate

**Measured Discharge Ramp Rate:**

1. Send an active power discharge command of P<sub>MAX</sub> to discharge the batteries
2. The time measured from when the ESS receives the P<sub>MAX</sub> discharge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of discharge P<sub>MAX</sub> shall be the Discharge Ramp Latency
3. The time measured to ramp from 1% to discharge P<sub>MAX</sub> with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Discharge Ramp Rate

**Determination of ESS Response Delay:**

The calculation below will demonstrate the determination of the ESS Response Delay used to determine ESS Response Delay Damages according to Section 3.13.

- a) An “Actual System Latency” shall be calculated, which shall be equal to:

$$ActualSystemLatency = \max(ChargeRampLatency, DischargeRampLatency)$$

- b) An “Actual System Latency Delay” shall be calculated, which shall be equal to:

$$ActualSystemLatencyDelay = \max(GuaranteedSystemLatency, ActualSystemLatency - GuaranteedSystemLatency)$$

- c) An “Actual Discharge Ramp Rate Delay” shall be calculated, which shall be equal to:



d) An “Actual Charge Ramp Rate Delay” shall be calculated, which shall be equal to:

e) The “Charging ESS Response Delay” shall be calculated, which shall be equal to:

$$\text{Charging ESS Response Delay} = \text{Actual Charge Ramp Rate Delay} + \text{Actual System Inertance Delay}$$

f) The “Discharging ESS Response Delay” shall be calculated, which shall be equal to:

$$\text{Discharging ESS Response Delay} = \text{Actual Discharge Ramp Rate Delay} + \text{Actual System Inertance Delay}$$

g) The “ESS Response Delay” shall be calculated, which shall be equal to:

$$\text{ESS Response Delay} = \text{Max}(\text{Charging ESS Response Delay}, \text{Discharging ESS Response Delay})$$

For any instance in which the ESS Response Delay, as measured by the ESS Electric Metering Device is a positive value during an ESS Unit Capabilities Test or during operation of the Project, Seller shall pay to Buyer the ESS Response Delay Damages identified in Section 3.13.

## **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 project basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

**E. Property Insurance.** During construction and operation, Seller shall provide standard form "All Risk" insurance covering full replacement cost of the Project subject to the availability and reasonable and customary cost in the insurance marketplace in accordance with accepted industry practice. For the avoidance of doubt, builders' risk insurance shall qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover full replacement cost for physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance.

## EXHIBIT H

### ROUNDRIP EFFICIENCY GUARANTEE

Year	Annual R/T Eff
1	85.4%
2	84.9%
3	84.4%
4	83.9%
5	83.4%
6	82.9%
7	82.4%
8	81.9%
9	81.4%
10	80.9%
11	80.4%
12	79.9%
13	79.4%
14	78.9%
15	78.4%
16	77.9%
17	77.4%
18	76.9%
19	76.4%
20	75.9%

**EXHIBIT I**  
(to Energy Storage Agreement)

**AVAILABILITY GUARANTEES**

**Section 1. Definitions.**

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

“**Actual ESS Availability Percentage**” means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all ESS Available Hours divided by (ii) the sum of all ESS Period Hours in the relevant Commercial Operation Year.

“**Aggregate ESS Availability Damages Cap**” has the meaning set forth in Section 2.1(C) of this Exhibit.

“**Annual ESS Availability Damages Cap**” has the meaning set forth in Section 2.1(C).

“**Annual Report**” has the meaning set forth in Section 2.3 of this Exhibit.

“**ESS Availability Damages**” has the meaning set forth in Section 2.1(B) of this Exhibit.

“**ESS Available Hours**” means for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of ESS Period Hours in such Commercial Operation Year, minus (b) the aggregate ESS Unavailable Hours in such Commercial Operation Year. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

“**ESS Excused Hours**” means, in any Commercial Operation Year, the aggregate Seller Excused Hours for such Commercial Operation Year to the extent that the ESS is affected during such hours; provided that, for purposes of the Guaranteed ESS Availability Percentage, only the first fifty (50) hours of Scheduled Maintenance Outages in the aggregate for the Project per Commercial Operation Year shall be treated as ESS Excused Hours. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

“**ESS Period Hours**” means eight thousand seven hundred sixty (8,760) hours for any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year.

“**ESS Unavailable Hours**” means, in any Commercial Operation Year, those hours, other than ESS Excused Hours, that the ESS is not available to operate because it is (a) in an emergency,

stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an ESS Excused Hour); (b) in “run” status and faulted; (c) included in Scheduled Maintenance Outages in excess of fifty (50) hours in aggregate for the Project in any Commercial Operation Year; or (d) incapable of being remotely controlled via its AGC system; or (e) otherwise not operational or capable of delivering Discharge Energy or accepting Charging Energy. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

“**Guaranteed ESS Availability Percentage**” has the meaning set forth in Section 2.1(A) of this Exhibit.

## **Section 2. Availability Guarantees.**

### 1. ESS Availability Guarantee.

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

(B) ESS Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed ESS Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to One Thousand Two Hundred Dollars (\$1,200) per MW of Guaranteed ESS Capacity per one percent (1%) shortfall in the Guaranteed ESS Availability Percentage, calculated annually and prorated for any portion of a Commercial Operation Year (“**ESS Availability Damages**”), but in no event in excess of the Annual ESS Availability Damages Cap and the Aggregate ESS Availability Damages Cap. A sample calculation of the ESS Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 2 to this Exhibit I.

(C) ESS Availability Damages Cap, Termination and Cure Rights. The total ESS Availability Damages payable by Seller for failure to meet the Guaranteed ESS Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to Ninety Six Thousand Dollars (\$96,000) per MW of Guaranteed ESS Capacity (“**Annual ESS Availability Damages Cap**”) and in the aggregate at a value equivalent to One Hundred Seventy-Four Thousand Dollars (\$174,000) per MW of Guaranteed ESS Capacity (“**Aggregate ESS Availability Damages Cap**”) over the Term of the ESA.

2. Sole Remedy. The Parties agree that Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for any deficiency in the performance of the Project (including any failure to meet the Effective Guaranteed ESS Availability Percentage) shall be the payment of damages up to the Annual ESS Availability Damages Cap and the Aggregate ESS Availability Damages Cap, as applicable, and the right to declare an Event of Default pursuant to Section 12.1(B)(5) of the ESA, and shall not be subject to the collection of any other damages

or any other remedies, including specific performance, and shall not be an Event of Default giving rise to a termination payment obligation except pursuant to Section 12.1(B)(5) of the ESA, as applicable. Notwithstanding the foregoing, the limitations set forth herein shall not be applicable to any indemnification claims pursuant to Article 20 of the ESA and Seller's material breach of its obligation to operate and maintain the Project in accordance with Prudent Utility Practice or Seller's failure to pay ESS Availability Damages when due if not timely cured pursuant to the provisions of Article 12 of the ESA are an Event of Default of Seller for which Buyer may terminate the ESA and seek damages in accordance with Section 12.4 of the ESA.

3. Annual Report. No later than the 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 Actual ESS Availability Percentage for the previous Commercial Operation Year and the ESS Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of ESS Availability Damages paid to Buyer under the ESA and shall provide notice that the Aggregate ESS Availability Damages Cap has been reached, if applicable. If ESS Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

4. Disputes. Disputes as to any calculations under this Exhibit I shall be addressed as provided in Section 13.8 of the ESA.

**ATTACHMENT 1 TO EXHIBIT I**  
**EXAMPLE CALCULATION OF ESS AVAILABILITY DAMAGES**

**I. Example of Actual ESS Availability Percentage Calculation**

The sample calculation set forth below is based on the following assumed facts:

The ESS had the following operating characteristics:

	Hours
ESS Period Hours (“EPH”)	8,760
ESS Unavailable Hours (“EUH”)	425

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

$$\text{Sum of ESS Available Hours} = \text{EPH} - \text{EUH} : 8,335 = 8,760 - 425$$

**Actual ESS Availability Percentage**

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

- (a) Sum of ESS Available Hours: 8,335 hours
- (b) Sum of ESS Period Hours: 8,760 hours
- (c) Actual ESS Availability Percentage:  $(\text{Sum of ESS Available Hours} / \text{Sum of ESS Period Hours}) \times 100 = (8,335 / 8,760) \times 100 = 95.1\%$

**II. Example of ESS Availability Damages**

Example of ESS Availability Damages based on the following assumed facts:

- (a) Seller’s Guaranteed ESS Availability Percentage in Commercial Operation Year 4 = 95%.
- (b) Seller’s Actual ESS Availability Percentage in Commercial Operation Year 4 = 93%.
- (c) Seller’s Guaranteed ESS Capacity = 100 MW.

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

(Seller's Guaranteed ESS Availability Percentage in Commercial Operation Year 4 – Seller's Actual ESS Availability Percentage in Commercial Operation Year 4) (the latter two expressed as a decimal) x (100) x Liquidated Damage Value x Seller's Guaranteed ESS Capacity = ESS Availability Damage

$$(0.95 - 0.93) \times 100 \times 1,200 \times 100 = \$240,000$$

As specified in the definition of "ESS Unavailable Hours," all ESS Excused Hours are excluded from the calculation of ESS Unavailable Hours. Thus, in the example above, the 425 hours of ESS Unavailable Hours do not include any hours that are ESS Excused Hours.



**EXHIBIT J**  
(to Energy Storage Agreement)

**FORM OF SELLER GUARANTY**

**GUARANTY**

THIS GUARANTY (this “**Guaranty**”), dated as of \_\_\_\_\_, \_\_\_\_\_ (the “**Effective Date**”), is made by [●], Inc., an [●] corporation. (“**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 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; SUBROGATION.**

- a) Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however,* that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.
- b) The Guarantor shall be subrogated to all rights of the Counterparty against the Obligor in respect of any amounts paid by the Guarantor pursuant to this Guaranty; provided, however, that the Guarantor hereby postpones all rights of subrogation, reimbursement, indemnity and recourse (including, without limitation, any statutory rights of subrogation under Section 509 of the United States Bankruptcy Code, 11 U.S.C. § 509, or otherwise) until such time as all amounts due under the Agreement are paid in full and fully, finally and indefeasibly performed. If (i) the Guarantor shall perform and shall make payment to the Counterparty of all or any part of the Obligations and (ii) all the then outstanding obligations under the Agreement have been paid in full, Counterparty shall, at the Guarantor's request, execute and deliver to the Guarantor documents to evidence the transfer by subrogation to the Guarantor of any interest in the Obligations under the Agreement resulting from such payment by the Guarantor. Notwithstanding the foregoing, 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.

**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 defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (viii) any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

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

8. **TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor's obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement, and (ii) 11:59:59 Eastern Prevailing Time of [insert date ] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to

Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

<u>TO GUARANTOR:</u> *	<u>TO COUNTERPARTY:</u>
<p>[●] Attn: [●]</p> <p>with a copy to:</p> <p>[Obligor's name] [●]</p>	<p>[●] <u>Attn:</u></p>
<p><i>[Tel: 713-554-1952 -- for use in connection with courier deliveries]</i></p>	<p><i>[Tel: [●] -- for use in connection with courier deliveries]</i></p>

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, except that the Guarantor may make such an assignment without such consent if the assignee meets the requirements of a Seller Guarantor as defined in the Agreement and Guarantor's obligations hereunder are expressly assumed in writing by such assignee in a form reasonably acceptable to the Counterparty; provided that such assumption shall be deemed to release the Guarantor from all of its obligations under this Guaranty automatically and without further action by the Guarantor or the Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety

accomplished in accordance with the terms thereof.

- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably:
  - (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and
  - (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.
- (g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

\* \* \*

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

[●]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT K**  
(to Energy Storage Agreement)

**COMMERCIAL OPERATION  
FORM OF CERTIFICATION**

This certification (“Certification”) of Commercial Operation is delivered by \_\_\_\_\_ (“Seller”) to Public Service Company of New Mexico (“Buyer”) in accordance with the terms of that certain Energy Storage Agreement dated \_\_\_\_\_ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) An Energy Storage System with a designed power output capability of [●] MW for 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) [●] has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and
- (3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Product and meet, at a minimum, the requirements indicated herein.

EXECUTED by SELLER this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[●]  
 Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**[Licensed Professional Engineer]**  
 Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 License Number and LPE Stamp: \_\_\_\_\_



**EXHIBIT L**  
(to Energy Storage Agreement)

**RESERVED**

**EXHIBIT M**  
(to Energy Storage Agreement)

**ESS Operating Restrictions**

Subject to the terms of this ESA, the ESS shall be operated in accordance with the following operating restrictions:

1. Maximum annual average state of charge: 60%;
2. Minimum allowable state of charge for non-operating periods that are greater than three (3) months in duration: 30%; and
3. Battery refresh requirement: The battery will be charged and discharged at least one (1) cycle every six (6) months during non-operating periods.

**EXHIBIT N**  
(to Energy Storage Agreement)

**ESS Functional Mapping**

The Project's NERC verified ESS Generation Owner, ESS Generator Operator and Operations and Maintenance Contractor functional mapping requirements information is as follows:

	Entity Name	Point of Contact	E-mail	Phone
Generator Owner (GO)				
Generator Operator (GOP)				
Operations and Maintenance Contractor				

**EXHIBIT O**  
(to Energy Storage Agreement)

**Example ESS Payment Structure upon PPA Default**

Calculation of Solar Generation used for ESA Pricing: If the PPA is terminated for any reason and the ESA remains binding, then the basis of solar generation used for ESA pricing (MWh) shall be reasonably calculated by Seller taking into account the historical trend of the Solar Project Performance Test Ratio as validated against the historical weather and pyranometer data from the meteorological station(s) at the Site, as applied to the actual weather, and pyranometer data experienced after the termination of the PPA and as adjusted to account for electrical losses using the Annual Performance Test PVSYST Model. Such calculations shall account for the historical trend of project availability as well as adjustments to the Solar Project Performance Test Ratio to account for ongoing annual solar degradation consistent with historic trending. Buyer shall have the right to review and approve Seller's calculations of ESS Deemed Energy.

An annual degradation rate and system availability consistent with the actual historical degradation rate and system availability of the Solar Project will be used in the Annual Performance Test PVSYST Model. However, if at the time of PPA termination, three (3) or more years of historical data is not available, a value of seven-tenths of one percent (0.7%) per year will be used for annual degradation and a value of ninety five percent (95%) will be used for annual availability.

Table 1

(to be used in accordance with Section 12.4D, if applicable)

Commercial Operation Year of PPA Termination	Maximum Reduction in ESS Energy Payment Rate (\$/MWh – fixed for remainder of term)
1	\$5.50
2	\$4.93
3	\$4.33
4	\$3.72
5	\$3.09
6	\$2.44
7	\$1.88
8	\$1.76
9	\$1.63
10	\$1.50
11	\$1.37
12	\$1.23
13	\$1.09
14	\$0.94
15	\$0.80
16	\$0.64
17	\$0.49
18	\$0.33
19	\$0.17
20	\$0

Route 66 ESA

# PNM Exhibit JWH-4

Is contained in the following 118 pages.

**ENERGY STORAGE AGREEMENT—ROUTE 66 STORAGE PROJECT**

**by and between**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**and**

**ROUTE 66 ENERGY STORAGE, LLC**

**Dated as of September 27, 2023**

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## **EXHIBITS**

- Exhibit A Description of Seller's Energy Storage System, 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 and Annual Tests
- Exhibit G Insurance Coverages
- Exhibit H Availability Guarantees
- Exhibit I Form of Seller Guaranty
- Exhibit J Commercial Operation Form of Certification
- Exhibit K Roundtrip Efficiency Guarantee
- Exhibit L [Reserved]
- Exhibit M ESS Operating Restrictions
- Exhibit N ESS Functional Mapping
- Exhibit O Solar PPA
- Exhibit P ESS Ramp Logic Response S-Curve

## ENERGY STORAGE AGREEMENT

This Energy Storage Agreement (“**ESA**” or “**Agreement**”), as may be amended from time to time, is entered into this 27th Day of September, 2023 (“**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 Route 66 Energy Storage, LLC, a Delaware limited liability company (“**Seller**”), whose principal place of business is 999 NM 124, San Fidel, NM 87049. Buyer and Seller may be referred to in this Energy Storage Agreement individually as a “**Party**” and collectively as the “**Parties**.”

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

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

WHEREAS, Seller desires to sell and deliver to Buyer the Product generated by the Project, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this ESA; and

WHEREAS, Buyer and Seller intend to enter into a certain Power Purchase Agreement, pursuant to which some of the energy generated by the Solar Facility will be used exclusively in Seller’s ESS,

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

### ARTICLE 1

#### Definitions and Rules of Interpretation

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

“**Abandonment**” means (a) a cessation of work and operations at or in respect of the Project for more than one hundred eighty (180) Days by Seller or Seller’s contractors but only if such cessation is not caused by a Force Majeure Event or not in accordance with Seller’s Project Schedule, or (b) the relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this ESA.

“**AC**” means alternating electric current.

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

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

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

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

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

“**Affiliate**” of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. 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. With respect to Seller, Affiliate shall include NEP, NEOP, NEECH, NEER, and NEE, and their respective direct or indirect subsidiaries.

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

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

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

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

“**BAA Reliability Curtailment**” has the meaning ascribed in the PPA.

“**Back-Up Metering**” has the meaning set forth in Section 5.3(D).

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

“**BESS Equipment**” means batteries, battery modules, onboard sensors, control components, inverters, or any of their components.

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

“**Buyer**” has the meaning set forth in the Preamble.

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

“**Buyer Curtailment**” has the meaning ascribed in the PPA.

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

“**Buyer Termination Payment**” means the sum of (a) the difference between (i) the net present value of the Replacement ESS Costs, calculated using a discount factor equal to the current yield for direct obligations of the United States Treasury with a maturity that is closest to, but not less than, the remaining Term of the ESA, and (ii) the Contract Value, plus (b) Buyer Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. To the extent the total value of the calculation in subpart (a) above is negative, the value used in such subpart (a) will be zero. The Buyer Termination Payment shall not include consequential incidental, punitive, exemplary, indirect or business interruption damages. For termination occurring before the Commercial Operation Date, the Buyer Termination Payment shall not exceed the Development Security, minus any Delay Damages paid.

“**Change in Law**” means (a) the adoption or taking effect of any Applicable Law, (b) any change in Applicable Law or in the administration, interpretation, or application thereof by any Governmental Authority, or (c) the implementation of any of the foregoing, in each case, to the extent the same has a binding effect on a Party (or the “Seller” (as defined in the PPA)) after the Effective Date.

“**Change of Control**” means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the

outstanding equity or voting interests in Seller; provided, in calculating ownership percentages for purposes of the foregoing:

(A) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity or voting interests in each such intermediate entity; and

(B) ownership interests in Seller owned directly or indirectly by any Lender (including any Tax Equity Investor) shall be excluded from the total outstanding equity interests in Seller.

Notwithstanding the foregoing, a Change of Control will not include any direct or indirect transfer of the interests in Seller to NEP; provided that following such transfer the entity that operates the Project is (or contracts with) a Qualified Operator.

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

**“Commercial Operation”** means that (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (c) all Seller required permits, required consents, and Governmental Approvals 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 and is not in 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 as set forth in this ESA; and (h) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

**“Commercial Operation Date”** means the date, as determined in accordance with Section 3.10, on which (a) Buyer accepts from Seller a written notification to Buyer that Commercial Operation has commenced in accordance with Section 3.10, (b) Seller provides to Buyer 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 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.

**“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 for each Commercial Operation Year (or portion thereof) in the then-remaining term (determined without reference to the early termination) of the quantity of Energy Output expected to be produced during such Commercial Operation Year (or portion thereof) times the ESS Energy 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 current yield for direct obligations of the United States Treasury with a maturity that it closest to, but not less than, the remaining Term of the ESA.

**“Contractual End Date”** means May 27, 2047.

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

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

**“DC”** means direct current.

**“Debt”** means solely with respect to Seller after the Commercial Operation Date, without duplication, (a) all obligations of Seller for borrowed money, (b) all obligations of Seller evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of Seller to pay the deferred purchase price of property or services, except trade accounts payable and other accrued expenses arising in the ordinary course of business, (d) all deferred obligations of Seller to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit, line of credit or other instrument, and (e) obligations of Seller in respect of interest rate swap agreements, caps, collars, or other interest rate hedging mechanisms.

**“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 by the Electric Metering Devices, corrected for any estimated electrical losses to the Point of Delivery and excluding losses attributable to any other facility sharing the same Point of Delivery, based on methodology agreed to by the Parties.

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

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

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

**“DOC”** means the U.S. Department of Commerce.

**“Dollars”** means the lawful currency of the United States of America.

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

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

**“Electric Interconnection Point”** means the physical point at which electrical interconnection is made between the Project and the Transmission Provider’s Transmission System.

**“Electric Metering Device(s)”** means all metering and data processing equipment used to measure, record, or transmit data relating to Charging Energy and Discharge Energy. Electric Metering Devices include the Primary Metering Devices and Back-Up Metering including the metering current transformers and the metering voltage transformers.

**“Emergency Condition”** means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider’s Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC/WECC, or (b) any system condition not consistent with Prudent Utility Practices; 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, net of auxiliary loads, station electrical uses and appropriate line losses.

**“Energy Output”** shall have the meaning as ascribed to it in the PPA.

**“Energy Storage Services”** means the acceptance of Charging Energy at the Project, the storing of Energy in the Project, and the delivery of Discharge Energy from the Project at the Point of Delivery, all in accordance with Buyer’s dispatch instructions and subject to the terms and conditions of this ESA.

**“Energy Storage System”** or **“ESS”** means the energy storage equipment, storage system controller, inverters, transformers, thermal management system, and other equipment necessary to charge, store, and subsequently deliver electricity from the Project to the Point of Delivery.

**“Environmental Attributes”** means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project’s delivery or storage of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (a) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil, gas, chemical, or other substance, and (b) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets, or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes specifically exclude (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 federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this ESA.

**“Equivalent Full Cycle”** means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharge Energy (in MWh) equivalent to the Guaranteed ESS Capacity over a four (4) hour duration. An Equivalent Full Cycle occurs when the total Discharge Energy (in MWh) over a period of time, regardless of the depth of battery discharge or quantity of partial charges/discharges, divided by the product of the Guaranteed ESS Capacity times four (4) hours (in MWh) equals one (1).

“**ESA**” means this Energy Storage Agreement between Seller and Buyer, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

“**ESS Capacity**” means the power (expressed in MW as measured at the Point of Delivery) that can be discharged from the ESS for four (4) consecutive hours when starting from the Maximum State of Charge and discharging to the Minimum State of Charge, as determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

“**ESS 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 as set forth in this ESA.

“**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 Deemed Energy**” means the amount of Energy Output that was not delivered to Buyer by Seller under the PPA but would have been so delivered but for a Buyer Curtailment, BAA Reliability Curtailment, or Transmission Provider Curtailment as such terms are defined in the PPA. ESS Deemed Energy (MWh) shall be reasonably calculated by Seller taking into account weather and pyranometer data from the meteorological station(s), via a mutually agreed upon method, at the Site for all or a portion of the Solar Units taken out of service due to the Buyer Curtailment, BAA Reliability Curtailment, or Transmission Provider Curtailment but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review Seller’s calculations of ESS Deemed Energy and approve such calculations in Buyer’s commercially reasonable discretion.

“**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 -M.

“**ESS Response Delay**” has the meaning set forth in Exhibit F.

“**ESS Response Delay Damages**” has the meaning set forth in Section 3.13(B).

“**ESS Roundtrip Efficiency**” means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

“**ESS Unit Capabilities**” has the meaning set forth in Section 3.12.

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

**“Excused Delay”** means any of the following: (a) Force Majeure, (b) any WRO Restraint; (c) any act or omission of Buyer or its Affiliates or its or their respective employees, contractors, or agents that is a material breach of Buyer’s obligations under this Agreement, (d) a Transmission Delay (unless such Transmission Delay is attributable to a failure of Seller to satisfy its obligations under the Interconnection Agreement), or (e) a delay in obtaining all zoning approvals, environmental approvals, permits and other governmental approvals necessary to construct and operate the Facility in the manner contemplated by this Agreement; provided, that the events set forth in subparts (b), (d) and (e) above shall only be “Excused Delays” to the extent that such events (i) are not caused by an act or omission of Seller, (ii) occur despite Seller’s exercise of Prudent Utility Practices, (iii) is not reasonably foreseeable, (iv) is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers and (v) does not lead to an actual delay of the critical path of the Project.

**“Execution Date”** has the meaning set forth in the Preamble.

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

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

**“Fitch”** shall mean Fitch Ratings Inc. or any successor thereto, or in absence of such successor, a nationally recognized credit rating agency.

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

**“Frequency Response Capability”** means the ability of the ESS to react to frequency within predefined bounds as specified in Section 3.12(G), measured in MW per 0.1 Hz, by charging or discharging to counter frequency deviations and supporting frequency as required by NERC Reliability Standard BAL-003-1, IEEE Standard 2800-2022, and September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance at the Point of Delivery, as may be amended or updated, and is within the capabilities of the ESS as of the Commercial Operation Date.

**“Future Environmental Attributes”** means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy 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.

**“Future Environmental Attribute Cost Cap”** has the meaning given in Section 11.1(E).

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

**“Governmental Approval”** means any authorization, consent, permission, approval (including an NMPRC Approval), license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation by any Governmental Authority relating to the construction, development, ownership, occupation, startup, testing, operation or maintenance of the Project or to the execution, delivery or performance of this ESA or the procurement pursuant to this ESA of Environmental Attributes and shall also mean, where and

as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation with regard to any Non-Governmental Compliance Obligations.

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

**“Governmental Charges”** means any Taxes, charges or costs that are assessed or levied by any Governmental Authority, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of the Product, either directly or indirectly.

**“Grid Charging Rate Adjustment”** shall mean an increase in the ESS Energy Payment Rate in the amount of One Dollar and Ninety-Six Cents (\$1.96) per MWh.

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

**“Guaranteed Charge Ramp Rate”** has the meaning set forth in Section 3.12.

**“Guaranteed Discharge Ramp Rate”** has the meaning set forth in Section 3.12.

**“Guaranteed ESS Capacity”** has the meaning set forth in Section 3.12 and shall be valid for the full duration of the ESA with no allowance for degradation.

**“Guaranteed ESS Roundtrip Efficiency”** has the meaning set forth in Section 3.12.

**“Guaranteed PMAX”** has the meaning set forth in Section 3.12.

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

**“Guaranteed System Latency”** means the guaranteed time measured between when the control signal is received and the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint as determined by the actual System Latency in accordance with Exhibit F, as specified in Section 3.12.

**“Hazardous Materials”** means any substance, material, gas, or particulate matter that is regulated by any Governmental Authority as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including but not limited to any material or substance that is (a) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of Applicable Law; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (g) defined as a

“hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (h) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (i) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (j) defined as a “pesticide” under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

“**House Energy**” means energy consumed by the ESS while the ESS is not charging or discharging as well as energy consumed by ESS ancillaries not directly involved in the control, receipt, storage, or discharge of energy during charging or discharging.

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

“**Interconnection Facilities**” means the Transmission Provider’s Interconnection Facilities and Seller’s Interconnection Facilities.

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

“**ITC(s)**” means the investment tax credits established pursuant to Section 48 of the U.S. Internal Revenue Code of 1986, as such law may be amended or superseded.

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

“**kWh**” means kilowatt hour AC.

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

“**Lender Consent**” means the consent of the entities who financed the Solar Facility, and whose consent to this Agreement and any necessary clarifications or modifications to the PPA is required with respect to shared facilities between the ESS and the Solar Facility.

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

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

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

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

**“Maximum State of Charge”** means one hundred percent (100%) usable state of charge, as reported by the ESS.

**“Minimum Qualifications”** means the following minimum financial and technical qualifications: (i) Seller together with its Affiliates has financial capacity reasonably commensurate with a Person owning solar electricity generating and/or energy storage assets that have a nameplate capacity of not less than one thousand (1,000) MW and (ii) Seller in the aggregate when combined with the solar energy generating and/or storage assets owned by Seller's Affiliates, operates such a portfolio of solar energy generating and/or storage assets, including the Project, or has engaged a Qualified Operator to operate the Project.

**“Minimum State of Charge”** means zero percent (0%) usable state of charge, as reported by the ESS.

**“Month”** means a calendar month.

**“Monthly Billing Period”** means the period during any particular Month in which Product has been made available at the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

**“Monthly Electricity Cost”** means, for a month, the product of (a) the quantity of Charging Energy during such month, times (b) the Energy Output Payment Rate (as such term is defined in the PPA).

**“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.

**“NEE”** means NextEra Energy, Inc., a Delaware corporation.

**“NEECH”** means NextEra Energy Capital Holdings, Inc., a Delaware corporation.

**“NEER”** means NextEra Energy Resources, LLC, a Delaware limited liability company.

**“NEOP”** means NextEra Energy Operating Partners, LP, a Delaware limited partnership.



“**NEP**” means NextEra Energy Partners, LP, a Delaware limited partnership.

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

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

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

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

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

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

“**OATT**” means Open Access Transmission Tariff.

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

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

“**Operating Records**” means the final versions of operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, including but not limited to supply contracts, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project. For the avoidance of doubt, Seller may redact from Operating Records information that Seller reasonably deems commercially sensitive. Notwithstanding the foregoing, Seller may not redact information and data that is reasonably necessary for Buyer to perform audits or reviews allowed under this ESA, specifically including, but not limited to, audits allowed under Section 22.18 of this ESA as well as audits or reviews required to verify Seller’s compliance with its Representations, Warranties and Covenants outlined in Section 15.1, compliance with any ESS Unit Capabilities and Guaranteed ESS Availability Percentage, and Seller’s billing and payments under this ESA.

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

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

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

“**PNM**” has the meaning set forth in the Preamble.

“**Point of Delivery**” means, unless otherwise modified in accordance with Section 3.11, the electric system point at which (a) Buyer delivers Charging Energy to Seller, (b) Seller delivers Discharge Energy to Buyer, and (c) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this ESA.

“**PPA**” means the Power Purchase Agreement dated as of January 5, 2018 between Route 66 Solar Energy Center, LLC and Buyer relating to the Solar Facility, attached as Exhibit O, including the Exhibits and Schedules attached thereto, as the same may be amended from time to time in accordance with the provisions thereof.

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

“**Product**” means all Energy Storage Services, Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, all as made available by the Project, all of which shall be delivered for Buyer’s exclusive use pursuant to the terms of this ESA.

“**Project**” means Seller’s energy storage facility, located in Cibola County, NM, with a designed maximum power discharge capability of 49.5 MW for four (4) hours (198 MWh), as identified and described in Article 3 and Exhibit A to this ESA, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Buyer at the Point of Delivery: Seller’s equipment, buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, Seller’s Interconnection Facilities necessary to connect the ESS to the Electric Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this ESA.

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

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

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

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

with respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

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

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

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

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

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating requirements of the Interconnection Agreement, voltage, current, volt-ampere reactive ("VAR") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for battery energy storage systems of the technology provided in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency Conditions; and

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

**"Qualified Operator"** is (a) a Person that has at least three (3) years' experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

**"Rating Agency"** shall mean S&P, Moody's, or Fitch.

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

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

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

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

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

**“Replacement ESS Costs”** means the actual costs incurred by Buyer following an Event of Default that are reasonable and necessary to replace the Product which Seller, in accordance with this ESA, would have made available to Buyer but failed to so provide pursuant to this ESA. Buyer shall not have to enter into a replacement contract to establish the Replacement ESS Costs. If Buyer does not enter into a replacement contract, then the Replacement ESS Costs will be based on the market price for comparable ESS Unit Capabilities, Future Environmental Attributes and Ancillary Services delivered to Buyer’s system under a structure that complies with Buyer’s financial accounting and operating lease structure requirements, as reasonably determined by a third party reasonably acceptable to both Parties. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs for an Event of Default also include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Discharge Energy to the Point of Delivery and any associated transmission or distribution costs, and (b) Buyer’s expenses, including reasonable attorneys’ fees, incurred as a result of Seller’s failure to perform under this ESA.

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

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

**“Scheduled Maintenance Outage”** means a time during which the ESS is shut down or its output reduced to undergo scheduled maintenance in accordance with this ESA, or as otherwise agreed by Seller and Buyer.

**“Scheduling Coordinator Contact”** 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 Board Approval”** means the approval of NEER’s designated internal governing body which possesses the authority to act or approve certain Seller capital expense commitments.

**“Seller Excused Hours”** means those hours during which Seller is unable to make available Product as a result of: (a) a Scheduled Maintenance Outage, (b) a Force Majeure Event, or (c) any failure by Buyer to perform a material obligation under this ESA (other than due to a breach by Seller of its obligations under this ESA).

**“Seller Forced Outage”** means an unplanned reduction, interruption, or suspension of all or a portion of Charging Energy receipts or Discharge Energy deliveries from the Project, in each case at the Point of Delivery and not associated with Seller Excused Hours.

**“Seller Guarantor”** means a Person that (a) has made a Seller Guaranty for the benefit of Buyer, and (b) is either (i) NEECH, or (ii) a Person with a long-term senior unsecured debt credit rating of “Baa3” or higher by Moody’s, “BBB-” or higher by S&P, and “BBB-” or higher by Fitch.

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

**“Seller Permitted Transfer”** means any of the following: (a) a Change of Control of Seller’s Ultimate Parent (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor; or (c) a transfer of (i) all or substantially all of the assets of NEER or Seller’s Ultimate Parent in a single transaction, (ii) all or substantially all of Seller’s Ultimate Parent’s renewable energy generation portfolio in a single transaction, (iii) all or substantially all of NEER’s or Seller’s Ultimate Parent’s solar generation portfolio in a single transaction; or (iv) the direct or indirect transfer of shares of, or equity interest in, Seller to a Person, so long as an Affiliate of NEER continues to hold an economic interest in the Project, the transferee is acquiring a portfolio of other resources in the same transaction that, when aggregated with the Project, represent more than 1,000 MW of generation capacity, and the majority beneficial owner of Seller satisfies the Minimum Qualifications; *provided* that (in the case of (c)) following such transfer (A) the entity operating the Project is (or prior to the date of such transfer, retains) a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (B) such transfer does not have a material adverse effect on the Seller’s credit characteristics; (C) the transferee shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA; and (D) both the Seller and the “Seller” (as defined in the PPA) are owned by Seller’s Ultimate Parent.

**“Seller-Requested Performance Tests”** has the meaning set forth in Section 10.5.

**“Seller Termination Payment”** means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Product) calculated using a discount factor equal to the current yield for direct obligations of the United States Treasury with a maturity that is closest to, but not less than, the remaining Term of the ESA, plus (b) Seller’s Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential incidental, punitive, exemplary, indirect or business interruption damages. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

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

**“Seller’s Financial Statements”** has the meaning set forth in Section 22.18(B).

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

**“Site”** means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this ESA. For the avoidance of doubt, this ESA is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller’s Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld.

**“Solar Facility”** means the co-located forty-nine and a half (49.5) MW<sub>AC</sub> solar generating plant consisting of photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary to collect sunlight and convert it into electricity which, among other things, will be used to charge the ESS per Buyer’s dispatch elections.

**“Solar Unit(s)”** shall have the meaning as ascribed to it in the PPA.

**“Supplemental Tax Incentive”** means any federal, state or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date that provides for additional or increased tax credits and is determined to be applicable to the Project, net of associated expenses, taxes, and lost Tax Benefits, if any. For the avoidance of doubt, Supplemental Tax Incentives do not and shall not include any benefits available under the Inflation Reduction Act of 2022 or any regulations promulgated thereunder, which, for the avoidance of doubt, are included in the ESS Energy Payment Rate.

**“System Control Center”** or **“SCC”** means Buyer’s representative(s) responsible for dispatch of the ESS.

**“Tax Benefits”** means (a) federal and state investment and/or production tax credits, Supplemental Tax Incentives, and any other tax credits that are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

**“Tax Equity Financing”** means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a **“Tax Equity Investor”**) in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to

and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the tax credits, depreciation and other Tax Benefits associated with the Project.

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

**“Taxes”** means all taxes, fees, levies, licenses, or charges, including Gross Receipts Taxes, imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

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

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

**“Test Period”** means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider’s Transmission System and is available to receive Charging Energy from and deliver Discharge Energy to the Point of Delivery, and ending on the Commercial Operation Date.

**“Transformer Failure”** means the failure of the Project’s main generator step-up transformer, provided, however that Seller is using Prudent Utility Practice to overcome the Transformer Failure, and provided further, that Seller shall only have the right to claim relief for a Seller Event of Default under Section 12.1(B)(4) hereunder in connection with a Transformer Failure once during the Term.

**“Transmission Delay”** means the failure to complete and energize the Transmission Provider’s Interconnection Facilities by November 1, 2025 or Transmission Provider’s failure to complete the Transmission Provider’s Interconnection Facilities and all affected system upgrades by or before September 1, 2025; *provided*, that such delay is not caused by Seller or its Affiliates or any party for whom it is liable.

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

**“Transmission Provider Curtailment”** has the meaning ascribed in the PPA.

**“Transmission Provider’s Interconnection Facilities”** means the facilities necessary to connect the Transmission Provider’s Transmission System to the Electric Interconnection Point, including breakers, bus work, bus relays, and associated equipment installed by the Transmission Provider for the direct purpose of physically and electrically interconnecting the Project, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. Arrangements for the installation and operation of the Transmission Provider’s Interconnection Facilities shall be governed by the Interconnection Agreement.

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

**“Ultimate Parent”** means (i) NEE, or (ii) after any transfer of the direct or indirect equity interests in Seller to NEP, NEE or NEP.

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

**“WRO Restraint”** means any withhold release order or other import restraint issued by U.S. Customs and Border Protection or other applicable Governmental Authority, including under the Uyghur Forced Labor Prevention Act, that prevents or delays the import or release of any BESS Equipment into the United States, and such order prevents or delays the delivery of such BESS Equipment to Seller for incorporation into the Project.

## 1.2 Rules of Construction.

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

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

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

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

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

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

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



(H) All uses of the word “shall” in this ESA are to be interpreted as imperative and not permissive.

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

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

(B) Notwithstanding any other provision in this ESA, nothing in the Interconnection Agreement shall alter or modify Seller’s or Buyer’s rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and the Transmission Provider. In any conflict between the terms of this ESA and the Interconnection Agreement, the Interconnection Agreement shall prevail; *provided*, that if a conflict is identified that limits ESA operational flexibility of Buyer as envisioned within the ESA, the Parties will meet and confer to establish operating protocols to resolve such conflicts within the confines of the Interconnection Agreement.

(C) Seller expressly recognizes that, for purposes of this ESA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This ESA does not provide for the supply of House Energy. 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 must be separate from metering used to meter Charging Energy and Discharge Energy.

(A) Seller’s arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller’s Interconnection Facilities. The terms of this ESA are not binding upon the Local Provider. For purposes of this ESA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

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

(C) Separate from energy provided to the battery, Seller shall have the right to consume energy concurrently generated by the Solar Facility for House Energy and to co-locate

additional facilities designed to supply House Energy; provided, however, that excess energy produced from such additional facility shall not be delivered by Seller to Buyer under this ESA. House Energy shall be real time measured by a dedicated electric metering device with metering current transformers and metering voltage transformers and shall not be delivered by Seller to Buyer under this ESA.

## ARTICLE 2 Term and Termination

2.1 Execution Date and Term. This ESA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time on Contractual End Date, subject to the early termination provisions set forth herein. Applicable provisions of this ESA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

## ARTICLE 3 Project Description

3.1 Commercial Terms. The following commercial terms, and as more fully set forth in this ESA, apply to the transaction contemplated by this ESA:

### COMMERCIAL TERMS

<b>Buyer:</b> Public Service Company of New Mexico	<b>Seller:</b> Route 66 Energy Storage, LLC
<b>Project:</b> Route 66 Storage Project	
<b>Point of Delivery:</b> The point within WECC Path 48 where Seller makes available to Buyer Product being provided under this ESA, as further specified in the definition of “Point of Delivery.”	
<b>Contract Term:</b> From the Commercial Operation Date to the Contractual End Date	<b>Product Type:</b> Discharge Energy, Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, and Energy Storage Services
<b>ESS Energy Payment Rate:</b> \$48.95 per MWh of Energy Output, as further specified in Section 8.1.	
<b>Day(s) of week:</b> Monday through Sunday, including NERC holidays	<b>Hours:</b> Hour Ending 0100 – Hour Ending 2400, Monday through Sunday MST
<b>Guaranteed Start Date:</b> ninety (90) Days after the Expected Commercial Operation Date	
<b>Expected Commercial Operation Date:</b> February 1, 2026, subject to extension as set forth in Section 3.6.	

3.2 Project. Exhibit A provides a detailed description and implementation schedule (“**Project Schedule**”) of the Project, including identification of the major equipment and

components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule.

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

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project according to Prudent Utility Practices, the Interconnection Agreement, and the terms of this ESA. The Project shall 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 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 AGC by Buyer;

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

(E) be capable of receiving Charging Energy from Buyer and delivering Discharge Energy to Buyer, each at the frequency specified by Buyer;

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

(G) meet voltage and reactive/active power control performance for a Category B system as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Point of Delivery;

(H) meet the normal and abnormal performance category as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Point of Delivery, which shall be Category II minimum;

(I) 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; *provided*, that the ESS shall not be operated in a manner that violates applicable manufacturer specifications and warranties; *provided, further*, that the ESS shall be capable at a minimum of both full load and idle operation at an ambient temperature range of at least -13°F to 110°F;

(J) meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 at the Point of Delivery; and

(K) 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 (as each of the following are defined in the MESA-ESS Specifications, 2018v1): (i) Charge-Discharge (real power dispatch), (ii) Coordinated Charge-Discharge (state of charge management), (iii) Active Power Smoothing, (iv) Automatic Generation Control, and (v) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE-1547.1: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with PNM's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with PNM's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to web servers, (iii) production change management, and (iv) CIP governance requirements.

3.5 Expected Commercial Operation Date. Subject to the extensions as set forth in this ESA, the Commercial Operation Date shall occur no later than the Expected Commercial Operation Date.

3.6 Extension Due to Excused Delay. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended by the number of Days, up to a maximum of one hundred eighty (180) Days, or such longer period agreed to by the Parties, equal to the duration of any Excused Delay. Seller shall give written notice to Buyer describing any such Excused Delay within five (5) Business Days after becoming aware of its effect on Seller's performance under this Agreement. This notice shall provide such detail concerning the Excused Delay as Seller reasonably possesses at the time. The number of Days of such extension shall be calculated from the date on which the Excused Delay begins. If an Excused Delay will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then either Party may terminate this ESA without liability of either Party other than obligations already incurred.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to (i) Three Hundred Fifty Dollars (\$350) per Day per each MW of Delayed Capacity for each Day of delay that occurs prior to June 1 and/or after September 30 of

a calendar year and (ii) One Thousand Dollars (\$1,000) per Day per each MW of Delayed Capacity for each Day of delay that occurs on or after June 1 and on or before September 30 of a calendar year, until the earlier of (a) the Commercial Operation Date, and (b) the Guaranteed Start Date. **“Delayed ESS Capacity”** means the Guaranteed ESS Capacity minus the ESS Capacity as of the determination date. In no event shall the aggregate Delay Damages exceed (i) Thirty-Two Thousand Dollars (\$32,000) per MW of Delayed Capacity for delays that occur prior to June 1 and/or after September 30 of a calendar year and (ii) Ninety Thousand Dollars (\$90,000) per MW of Delayed Capacity for delays that occur on or after June 1 and on or before September 30 of a calendar year.

3.8 ESS Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned, and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve Commercial Operation. If Seller has not caused all Delayed ESS Capacity to achieve Commercial Operation on or before the Guaranteed Start Date (as such date may be extended pursuant to Section 3.6), then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Three Hundred Thousand Dollars (\$300,000) per MW of Delayed ESS Capacity (as of the Guaranteed Start Date) (**“ESS Capacity Shortfall Damages”**), in which case the Guaranteed PMAX and Guaranteed ESS Capacity will be reduced in an amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8 and (ii) the ESS Energy Payment Rate shall be reduced by an amount proportional to the Delayed ESS Capacity.

3.9 Test Period. Seller shall give written notice to Buyer of its NERC registered Generator Owner and Generator Operator, and will designate a point of contact with Buyer as Scheduling Coordinator (the **“Scheduling Coordinator Contact”**), in accordance with Exhibit N, ninety (90) Days prior to providing written notice of intent to start testing the Energy Storage System, such notice to be provided not less than thirty (30) Days and then again seven (7) Days prior to the date upon which Seller expects to begin testing the Energy Storage System. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Charging Energy delivered by Buyer from the Solar Facility or from the grid as reasonably required for purposes of testing and commissioning the Project. Seller shall subsequently redeliver such Charging Energy to Buyer at the Point of Delivery as Discharge Energy, less ESS Roundtrip Efficiency losses. In accordance with Section 7.2, Buyer shall retain title of such Charging Energy and Discharge Energy. 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 J when Seller believes that all requirements to Commercial Operation have been satisfied. Buyer shall, within ten (10) Days, in writing either accept or reject this notice based on specifically identified deficiencies in meeting the criteria included in the definition of Commercial Operation, and if Buyer rejects the notice, Seller shall promptly correct any such deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer’s rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial

Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Grid Charging. Seller shall construct the ESS to accept Charging Energy from the electrical grid and shall obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid by the Commercial Operation Date. For the avoidance of doubt, Buyer shall indemnify and hold Seller harmless from any costs, penalties, or charges and shall make Seller whole (which the Parties acknowledge shall be accomplished through the Grid Charging Rate Adjustment) with respect to any lost Tax Benefits resulting from any negative determination related to Buyer's procurement or supply of grid-sourced Energy as Charging Energy to the ESS.

3.12 ESS Unit Capabilities. "ESS Unit Capabilities" means all of the following for the ESS:

(A) Guaranteed PMAX of 49.5 MW of charging and discharging capability as measured at the Point of Delivery, and as may be adjusted pursuant to Section 3.8;

(B) Guaranteed ESS Capacity: discharge ESS at Guaranteed PMAX for four (4) consecutive hours; starting at the Maximum State of Charge and ending at the Minimum State of Charge

(C) Guaranteed ESS Roundtrip Efficiency as shown in Exhibit K; Seller shall provide any applicable degradation forecasts applicable to this guarantee;

(D) Guaranteed Discharge Ramp Rate of 50 MW per second measured between 90% of the Maximum State of Charge and 10% of the Maximum State of Charge representing the maximum rate that the ESS can change its output power; the maximum rate is defined as the maximum slope on the s-curve of the ESS ramp logic response, consistent with that represented in Exhibit P;

(E) Guaranteed Charge Ramp Rate of 50 MW per second measured between 10% of the Maximum State of Charge to 90% of the Maximum State of Charge representing the maximum rate that the ESS can change its output power; the maximum rate is defined as the maximum slope on the s-curve of the ESS ramp logic response, consistent with that represented in Exhibit P;

(F) Guaranteed System Latency: <3 seconds

(G) Guaranteed Frequency Response Capability of Guaranteed PMAX/0.1Hz;

(H) Capability to support Ancillary Services in accordance with the system design and ESS Operating Restrictions, or as otherwise agreed by the Parties in writing; and

3.13 ESS Non-Performance Liquidated Damages. ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Additional Buyer-Requested Performance Tests may also be required in accordance with Section 10.5(D). Seller will pay Buyer the following liquidated damages (“**ESS Non-Performance Liquidated Damages**”) as Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive obligation, for ESS unit non-performance, including any failure to meet the ESS Unit Capabilities (in each case other than as excused due to (a) a Force Majeure Event, (b) failure of Buyer to deliver Charging Energy, (c) a Scheduled Maintenance Outage, or (d) a Seller Forced Outage) or to comply with the requirements of Section 7.4(a).

(A) If Seller is unable to achieve the Guaranteed ESS Capacity (as may be adjusted pursuant to Section 3.8), Seller shall pay Buyer One Hundred Forty Thousand Dollars (\$140,000) for each MW (prorated for any portion thereof) of ESS Capacity shortfall annually (prorated for any portion of a year) until such deficiency is cured.

(B) Ten Thousand Dollars (\$10,000) per event (each event shall last no longer than three (3) Days) for inability to comply with the Guaranteed Charge Ramp Rate, Guaranteed Discharge Ramp Rate, Guaranteed System Latency or the Guaranteed Frequency Response Capability; provided, however, under no circumstances will ESS Non-Performance Liquidated Damages exceed Five Hundred Thousand Dollars (\$500,000) in any Commercial Operation Year and an aggregate of Two and One-Half Million Dollars (\$2.5 million) over the Term of this ESA.

3.14 Availability Guarantee. Seller guarantees that the Project shall be available to deliver Discharge Energy, store Energy or accept Charging Energy and shall pay Availability Damages, if any, in accordance with Seller’s obligations under the provisions of Exhibit H.

3.15 Guaranteed ESS Roundtrip Efficiency Payment.

If the ESS Roundtrip Efficiency is below the Guaranteed ESS Roundtrip Efficiency, Seller will pay to Buyer an amount equal to the Monthly Electricity Cost multiplied by  $(1 - (\text{ESS Roundtrip Efficiency}/\text{Guaranteed ESS Roundtrip Efficiency}))$ .

3.16 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that equipment, firmware, software, or any component thereof utilized in the Project under this ESA is not prohibited by Applicable Law. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer’s Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.16 by Seller, its contractors or subcontractors or any of their respective Affiliates.

ARTICLE 4  
AGC

4.1 AGC.

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

(B) Beginning on the Commercial Operation Date, PNM shall have the right to direct the dispatch of the ESS, via AGC control, according to its fullest capability within the ESS Operating Restrictions in Exhibit M. Total cycles shall not exceed 365 Equivalent Full Cycles in any Commercial Operation Year. For clarity, Buyer shall have no restrictions on the quantity of Equivalent Full Cycles per Day except as required by the ESS manufacturer warranties.

ARTICLE 5  
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this ESA to accept the Charging Energy at and from the Point of Delivery as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Energy Storage System. Seller shall use and only use the Charging Energy for Buyer's benefit in accordance with the terms and conditions of this ESA. Seller shall secure interconnection necessary (i) to deliver the Discharge Energy to the Point of Delivery and (ii) receive Charging Energy from the grid and the Solar Facility at the Point of Delivery to the ESS including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on, and jointly used by, the Project and the Solar Facility, *provided* that (i) delivery of Energy from the Solar Facility to the Transmission Provider's Transmission System shall take priority over Discharge Energy and the reservation of Ancillary Services capacity at the Point of Delivery, and (ii) that when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Discharge Energy shall take priority over delivery of Energy from the Solar Facility.

(B) Seller shall be responsible for the costs of interconnection and costs required to receive and deliver Energy at the Point of Delivery for the Project at the required voltage, including the costs of any associated network upgrades. As between Buyer and Seller under this ESA, Seller shall also be responsible for all transmission charges, ancillary service charges,



electrical losses and any other transfer-related charges applicable to Discharge Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.

(C) Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges required to deliver Discharge Energy from and beyond the Point of Delivery. Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges for delivery of Charging Energy to the Point of Delivery.

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to (i) take Discharge Energy at the Point of Delivery and deliver it to points beyond, and (ii) deliver Charging Energy to the Point of Delivery from the grid.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the current availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

### 5.3 Electric Metering Devices.

(A) Seller shall ensure that the Charging Energy and Discharge Energy delivered pursuant to this ESA shall be metered and accounted for separately from any electric generation facility, including the Solar Facility, that utilizes the same Electric Interconnection Point. Seller shall install Electric Metering Devices, including Primary Metering Devices and redundant metering with independent current transformers and voltage transformers (“**Back-Up Metering**”), each in an arrangement consistent with the configuration depicted in Exhibit B, or as otherwise agreed between the Parties.

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

(C) All Electric Metering Devices used to measure the Charging Energy and Discharge Energy and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this ESA. The design of the Electric Metering Device system shall be subject to Buyer approval (not to be unreasonably withheld) prior to commencement of construction of the Project. Buyer will, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon completion of the testing. ESS Electric Metering Devices shall be bi-directional and shall be capable of measuring and reading instantaneous, five minute, fifteen minute and hourly real and reactive Energy and capacity, if supplied by either the grid, solar generation system or ESS system. ESS Electric Metering Devices shall be programmed such that meter readings will reflect losses between the Electric Metering Device and the Point of Delivery. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller’s reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either

Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model reasonably approved by the Buyer.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, backup metering devices (“**Secondary Metering**”) in addition to the redundant Back-Up Metering referenced above in Section 5.3(A), which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party shall, at its own expense, inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify such inspections and tests, *provided, however,* that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however,* that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which case the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

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

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

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall first use Back-up Metering, followed by Secondary Metering 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. In the event that Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Charging Energy to the Project at the Point of Delivery and Discharge Energy from the Project to the Point of Delivery, in each case during periods of similar operating conditions when the Primary Metering Device was registering

accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

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

## ARTICLE 6 Conditions Precedent

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

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

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or 6.3 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 a Buyer's failure to provide such notice shall not constitute a breach of this ESA.

6.3 Lender Consent. If Seller does not obtain the Lender Consent by February 1, 2024, Seller may terminate this Agreement by written notice to Buyer and, as Buyer's sole remedy for such termination, Seller shall owe Buyer damages for such failure in the amount of Seventy-Five Thousand Dollars (\$75,000) per MW, which may, for the avoidance of doubt, be drawn by Buyer from the Development Security. If Seller does not terminate this Agreement by the February 1, 2024, Seller will be deemed to have waived this condition.

## ARTICLE 7 Sale and Purchase of Product

7.1 Sale and Purchase of Product. In accordance with and subject to the terms and conditions of this ESA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Product made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that, subject to Section 8.1(A), Buyer shall not be required to receive and Seller shall not be required to make available, Product when and to the extent that (a) a Party's performance is excused by a Force Majeure Event; (b) a Seller Forced Outage is continuing; (c) a Seller Scheduled Maintenance Outage is continuing; or (d) Seller fails to perform and its failure is excused during Seller Excused Hours. At its sole discretion, 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 ESA.

7.2 Title and Risk of Loss. Buyer shall be deemed to be in control of all Charging Energy up to delivery, but not including, receipt at the Point of Delivery. Seller shall be deemed to be in control of such Charging Energy from and after such delivery until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy up to the Point of Delivery. Buyer shall be deemed to be in control of such Discharge Energy from and after Seller's delivery and upon Buyer's receipt at the Point of Delivery. Buyer shall retain title and risk of loss for Charging Energy, Energy stored in the ESS, and Discharge Energy at all times. Title and risk of loss related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery.

7.3 Future Environmental Attributes and Changes in Law. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this ESA all right and title to such Future Environmental Attributes is included in the ESS Energy Payment Rate; and (c) such Future Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this ESA. If, in order for Buyer to receive the benefit of any Future Environmental Attributes, Seller must incur any third-party costs not otherwise provided for in this ESA, or if any change in Applicable Law relating to such Future Environmental Attributes occurs after the Execution Date that causes Seller to incur any third-party costs not otherwise provided for in this ESA in order to deliver the additional Environmental Attributes, then such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. For the avoidance of doubt, Buyer shall remain liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) During the Delivery Term, Buyer shall arrange all scheduling services necessary to receive Discharge Energy from, and deliver Charging Energy to, the Point of Delivery while ensuring compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements, and any other applicable guidelines. 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, Charging Energy, or Ancillary Services during Seller Forced Outages, Scheduled Maintenance Outages, or Force Majeure Events. Seller will coordinate with Buyer as required by NERC/WECC operating policies and criteria in accordance with Exhibit N.

(B) If at any point during the Delivery Term, (i) an alternative market design is implemented in which the Project will or can participate in an energy market, or (ii) if either the Project, the Electric Interconnection Point, or Buyer no longer reside in the same market ((i) and (ii) a “Market Event”) and such Market Event materially changes the interconnection and delivery requirements in this ESA, the Parties shall cooperate in good faith to facilitate the delivery of Product from the Point of Delivery to Buyer, at the least possible cost to the Parties, consistent with this ESA to the extent possible.

(C) Seller shall provide to Buyer its good faith, non-binding estimates of the daily ESS availability for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly ESS availability for the next six (6) Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer by 1MW or more, Seller shall promptly notify Buyer of such change or predicted change.

#### 7.5 Forced Outages.

(A) Buyer and Seller shall promptly advise one another of events that may form the basis for a declaration of the existence or termination of Seller Excused Hours or a Seller Forced Outage. Buyer or Seller (as appropriate) shall at the earliest practicable date provide the other Party written notice (“**Outage Notice**”) of the declaration of the existence of Seller Excused Hours or a Seller Forced Outage not available to Buyer through the SCADA system. Seller, through its scheduling coordinator, shall provide such notice to the System Control Center. An Outage Notice provided by either Party shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Product, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Buyer or Seller (as appropriate) shall keep the other Party informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

## ARTICLE 8 Payment Calculations

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

(A) **ESS Energy Payment.** Subject to Section 14.4, Buyer shall pay Seller an amount equal to the product of (x) the ESS Energy Payment Rate, multiplied by (y) the sum of (i)

the aggregate amount of Energy Output (MWh) delivered for Buyer to the Point of Delivery from the Solar Facility under the PPA, plus (ii) the ESS Deemed Energy (MWh) (the “**ESS Energy Payment**”).

(B) If Supplemental Tax Incentives become available in connection with the Product, Seller shall, within thirty (30) Days of guidance regarding such availability, provide an analysis to Buyer of the benefits available under this ESA. At Buyer’s option, the Parties shall work together in good faith to agree to those amendments and other modifications, excluding any price increase, to this ESA which are reasonably required to allow the Parties to receive the Supplemental Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such incentives.

(C) If Seller or an Affiliate of Seller, if any, becomes eligible to receive any Supplemental Tax Incentives with respect to the Project, the value of such Supplemental Tax Incentives will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental Tax Incentives by Seller or Affiliate of Seller, Seller will remit to Buyer a payment equal to sixty percent (60%) of the value of such Supplemental Tax Incentives.

(D) Buyer shall reimburse Seller for the taxes identified in Section 9.7(A), which shall be included in the monthly invoices in compliance with Section 9.7(A).

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

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. This Section 8.3 shall only apply to Section 8.1(C) to the extent such Supplemental Tax Incentives are applicable to the time period before the repudiation, termination or expiration of this ESA.

## ARTICLE 9 Billing and Payment Procedures

### 9.1 Statements and Payment of Electricity Payments.

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

(B) Payments due shall be determined and adjusted in accordance with Article 8 and Section 3.15. From and after the Commercial Operation Date, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount

payable by Buyer pursuant to Article 8 of this ESA (in Dollars) payable to Seller for the preceding Month. Each such invoice shall show the ESS 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 banks in the State of New Mexico are permitted to close on any date on which any payment by Buyer would otherwise have been due, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

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

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

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

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this ESA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the lower of (a) 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 (b) 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 forty-five (45) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or

determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) On all invoices, Seller shall separately show all Gross Receipts Taxes charged to Buyer, provided that in no event will interest or penalties on such taxes be reimbursable by Buyer. If the sale of Product takes place on tribal land, Seller will comply with applicable 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 ESA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Product to Buyer pursuant to this ESA.

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

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this ESA and



implement the provisions in this ESA in a manner that will minimize Taxes due and payable by all Parties.

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

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

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

9.9 Netting.

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

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

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

ARTICLE 10  
Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement and this ESA. Seller will be solely responsible for, and the ESS Energy Payment Rate will not be adjusted to accommodate, increased costs or any failure to obtain any Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer quarterly development and construction updates. Seller shall provide to Buyer a functional Project Schedule in Microsoft Project format within ninety (90)

Days of the Execution Date, including key project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a quarterly look-ahead of project activities, with each subsequent quarterly update or upon Buyer request. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, the New Mexico Public Utility Act.

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15<sup>th</sup> of each month. For cases where the 15<sup>th</sup> 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. If Seller becomes aware of any critical milestone that will not be achieved by the required date, Seller must provide Buyer written notice and a recovery plan to 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. Upon reasonable notice to Seller, Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up, and testing of the Project.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to materially alter the Guaranteed ESS Capacity, ESS Unit Capabilities, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall, by a written notice delivered to Buyer on or before the Execution Date, designate a Project Manager 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. 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 notice by Buyer conveying material concern regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

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

## 10.2 Commissioning Tests.

(A) Seller shall provide proposed Commissioning Test procedures to Buyer at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Buyer shall provide any comments to the proposed Commissioning Test procedures to Seller

within twenty-five (25) Days of its receipt of the proposed Commissioning Test procedures. Seller shall incorporate Buyer's reasonable comments to such proposed Commissioning Test procedures in the final Commissioning Test procedures. 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 test date and of the proposed tests scheduled relating to the commissioning of the Project ("**Commissioning Tests**") as described in Exhibit F. Representatives of Buyer shall have the right to be present at all such testing and Seller shall provide the results of all Commissioning Tests to Buyer prior to the Commercial Operation Date. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

### 10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees, and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements, including executing customary waiver and indemnity agreements, and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

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

### 10.4 Operating Parameters.

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

available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(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, 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, NERC Protection and Control (PRC) standards and Prudent Utility Practices. 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. PNM 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.

(A) Not later than ninety (90) Days before the Commercial Operation Date, Seller shall provide Buyer a draft of all Operating Procedures. Not later than thirty (30) days before the Commercial Operation Date, an operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable written Operating Procedures for integration of the Project into Buyer's system. 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, the ESA, Prudent Utility Practices, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Seller will make qualified personnel available twenty-four (24) hours per day, seven (7) days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project.

(B) Seller will prepare detailed test protocols and procedures for any tests to be performed in connection with achieving Commercial Operation and for periodic tests as required within this ESA. The protocols and procedures will be developed by Seller in accordance with the requirements of the ESA and the appropriate power test code standards for energy storage facilities. Draft protocols and procedures must be submitted to Buyer and the System Control Center for review and approval, which approval will not be unreasonably denied or delayed.

(C) Seller will perform, at Seller's expense, an annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F and promptly provide the results to Buyer. Seller will have sixty (60) Days from the test date to cure any deficiencies in the test.

(D) In the event of a material adverse change in ESS Unit Capabilities, Seller shall perform additional tests as requested by Buyer ("**Buyer-Requested Performance Tests**"), limited to the following conditions. Buyer-Requested Performance Tests will be conducted in accordance with applicable test protocols and procedures set forth in Exhibit F.

(1) If the results of a Buyer-Requested Performance Test fail to meet the Guaranteed ESS Unit Capabilities, ESS Non-Performance Liquidated Damages would apply for the time period following the Buyer-Requested Performance Test until such time as a subsequent retest confirms that corrective actions have resolved deficiencies.

(2) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

(E) In addition to the foregoing, Seller may, at its option, perform additional tests ("**Seller-Requested Performance Tests**") in accordance with test protocols and procedures set forth in Exhibit F.

#### 10.6 Project Maintenance.

Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this ESA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the annual Scheduled Maintenance Outages by no later than October 15 for the period of June 1 through May 31 for the following year and, by no later than April 15, a confirmation or update of such forecast for the period of December 1 through May 31 of the following year. With the October 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 1<sup>st</sup> through September 30<sup>th</sup>, 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 without Buyer's prior written approval, not to be unreasonably withheld, except that any request to schedule interruption or reduction at any time during May 1<sup>st</sup> through September 30, December, or January is subject to Buyer's sole discretion. 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.

(A) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Product to the Point of Delivery. Upon the reasonable written request of Buyer, Seller shall make available to Buyer as Confidential Information subject to the restrictions of Section 22.14, copies of any environmental permits related to the Project.

10.7 Sales to Third Parties. As of the start of the Test Period, Seller shall not sell or divert Product to any Person other than Buyer.

10.8 Monthly Operational Report. Not later than the tenth (10th) day of each Month after the Commercial Operation Date, Seller shall, along with the invoices provided pursuant to Section 9.1, provide a report summarizing Project operations in the prior Month (“**Monthly Operational Report**”). The Parties will agree upon a form of Monthly Operational Report at least sixty (60) Days prior to the Commercial Operation Date, which may include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

10.9 Lease Liability Operational Expenses. If the pricing terms and conditions of this ESA would result in Buyer incurring a lease liability greater than zero dollars (\$0), then Seller shall provide Buyer, upon Buyer’s reasonable request, an approximate percentage, or other information necessary for Buyer to determine an approximate percentage, of the cost of on-going operational expenses for the Project (e.g. cellular augmentation, operations and maintenance costs, property taxes and other such expenses) relative to the ESS Energy Payment Rate for a specified measuring period.

## ARTICLE 11

### Future Environmental Attributes

11.1 Sale of Future Environmental Attributes. This Article 11 shall apply if and only if Future Environmental Attributes become available.

(A) Other than as specified in Sections 11.1(D) and 11.1(E) below, effective from the date on which the Project first makes Product available to Buyer at the Point of Delivery, Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to Future Environmental

Attributes associated with the Project. Upon generation and documentation of Future Environmental Attributes, Seller shall make the Future Environmental Attributes available to Buyer no later than forty-five (45) Days after creation. The value of the Future Environmental Attributes transferred under this ESA 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 ESA, but not used, sold, assigned or otherwise transferred during the Term of this ESA. Buyer may, to the extent permitted by Applicable Law and this ESA, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this ESA or any successor provision providing for a federal, state and/or local tax credit or financial benefit determined by reference to renewable electric energy produced from renewable energy resources or the storage of electrical energy shall be owned by Seller.

(E) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to Future Environmental Attributes and certification requirements under any applicable federal, state, or regional program or Applicable Law. Notwithstanding anything herein to the contrary, in no event shall Seller incur costs to comply with this Article 11 which exceed Twenty-Five Thousand Dollars (\$25,000) per MW in the aggregate over the Term (“**Future Environmental Attribute Cost Cap**”), except following Buyer’s written agreement to reimburse Seller for such excess costs.

## ARTICLE 12 Default and Remedies

### 12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable other than as set forth in Section 12.1(A)(6) and 12.1(A)(7) below:

- (1) Seller’s dissolution or liquidation;
- (2) Seller’s assignment of this ESA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 and in any consent to collateral assignment with a Lender;
- (3) Seller’s filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller’s voluntarily taking advantage of any such law by answer or otherwise;

(4) 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, waste, tampering with Buyer-owned facilities, or other material misrepresentation or willful misconduct in connection with this ESA or the operation of the Project;

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

(7) The failure of Seller Guarantor or Seller to make, when due, any payment due to Buyer under or in connection with this ESA, unless remedied within ten (10) Business Days of Seller's receipt of written notice of such failure from Buyer (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this ESA); or

(8) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date or other date mutually agreed to by the Parties.

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

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

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer, Seller is not able to 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 required to make Product available at the Point of Delivery;

(3) Seller's failure to comply with any other material obligation under this ESA, which would result in an adverse impact on Buyer;

(4) The Project fails, after the Commercial Operation Date, to obtain an Actual ESS Availability Percentage of at least eighty percent (80%) over any twenty-four (24) consecutive Months during the Term excepting to the extent due to (i) a Transformer Failure, or (ii) as a result of a material serial defect not generally known in the energy storage industry (which exception may apply only twice during the Term), provided that in the case of (i) or (ii), the 30-Day cure period indicated in Section 12.1(B) does not apply and Seller remediates the cause of the shortfall of Actual ESS Availability Percentage requirements as soon as reasonably practicable, however, in no event later than ninety (90) days after falling below the eighty percent (80%) value. Notwithstanding the above, Seller shall notify Buyer within thirty (30) days after the initial occurrence of a Transformer



Failure of the steps that Seller is taking to remediate the failure and thereafter keeps Buyer apprised, on a monthly basis, of Seller's progress towards resolving the Transformer Failure;

(5) Seller fails to timely register the Project or should Future Environmental Attributes become available, fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this ESA; or

(6) The Project fails, after the Commercial Operation Date, to maintain an ESS Capacity above ninety percent (90%) of the Guaranteed ESS Capacity referenced in Section 3.12.

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

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

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

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

## 12.2 Events of Default of Buyer.

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

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

(2) Buyer's assignment of this ESA (or any of its rights hereunder) for the benefit of creditors;

(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 actual fraud, waste, tampering with Seller-owned facilities or other material misrepresentation or willful misconduct in connection with this ESA or the operation of the Project.

(B) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this ESA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer.

(C) Buyer's failure to comply with any other material obligation under this ESA, which would result in a material adverse impact on Seller shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within thirty (30) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days.

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

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

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

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

### 12.3 Damages Prior to Termination.

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

(B) For all Events of Default, the Non-Defaulting Party shall be entitled, subject to limitations on damages set forth in Section 12.7, to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, that if an Event of Default has occurred and has continued uncured for a period of one hundred eighty (180) Days, the Non-Defaulting Party shall be required

to either waive its right to collect further damages on account of such Event of Default or elect to terminate this ESA as provided for in Section 12.4. If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include, to the extent applicable, an amount of cover damages equal to Replacement ESS Costs minus the Contract Value or portion thereof proportional to the product of (x) the quantity of Product so replaced, and (y) the ESS Capacity Payment Rate. Further, Seller acknowledges and agrees that in addition to the foregoing, Seller shall be obligated to pay Buyer any such damages associated with replacement of Product notwithstanding the availability or prices of electric energy and capacity from other fuel sources, such as natural gas. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any Future Environmental Attributes that may become available pursuant to this ESA, provided that Buyer has used commercially reasonable efforts to avoid, minimize, or mitigate such penalties. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any Future Environmental Attributes pursuant to this ESA, if such failure arises out of Seller's negligence or willful misconduct. Seller acknowledges that Buyer entered into this ESA for the procurement of Product, which 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 Energy Output generated under the PPA following such Event of Default multiplied by the ESS Energy Payment Rate, plus, to the extent that the Solar Facility is unable to produce Energy Output due to the Event of Default of Buyer, an additional quantity equal to the Energy Output that would have been produced by Seller absent such Event of Default of Buyer, 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.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and sixty (60) Days after the notice thereof, upon which this ESA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this ESA, except that Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this ESA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this ESA. Upon the termination of this ESA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment; and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and

if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller).

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(C) Unless otherwise mutually agreed by the Parties, the conditions in this Section 12.4(C) shall apply.

(1) If the PPA is terminated due to an Event of Default (as defined in the PPA) of Seller under the PPA and Seller terminates this ESA, such termination shall be considered an Event of Default of Seller under this ESA and Buyer shall be entitled to pursue its remedies under this ESA.

(2) If the PPA is terminated due to either (x) an Event of Default of Buyer, or (y) an extended Force Majeure Event (all as defined in the PPA) and Seller terminates this ESA, such termination shall not be considered an Event of Default of Seller under this ESA.

(3) If the PPA is terminated due to an Event of Default (as defined in the PPA) of Buyer under the PPA and Seller elects to terminate this ESA, such termination of the PPA shall be considered an Event of Default of Buyer under this ESA and Seller shall be entitled to pursue its remedies under this ESA.

(D) If the PPA is terminated for any reason and the ESA remains binding, the Parties shall meet and confer within fifteen (15) days of the early termination of the PPA to establish an alternative ESS Energy Payment structure. If the Parties cannot agree on an alternative ESS Energy Payment structure that complies with Buyer's accounting and operating lease structure requirements, and the PPA was terminated due to an Event of Default of Seller, the Buyer

Termination Payment under the PPA shall include any increased costs or financial impacts associated with the revised ESS Energy Payment structure and the required financial treatment of debt liabilities within Buyer's accounting system.

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

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

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this ESA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES BY STATUTE, IN TORT OR CONTRACT (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this ESA, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this ESA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

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

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default enumerated in Section 12.1 or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this ESA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## ARTICLE 13 Contract Administration and Notices

13.1 Notices in Writing. Notices required by this ESA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this ESA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt, 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.

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

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

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this ESA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this ESA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this ESA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the

applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this ESA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) **Operating and Maintenance Records.** Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Project 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; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practices or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) **Billing and Payment Records.** To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records, subject to such Party's ability to redact information it reasonably deems competitively sensitive; *provided*, such redactions do not prohibit a Party's ability to exercise its rights and perform its obligations under this ESA.

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

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

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

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the ESS.

(4) Upon request by Buyer, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; or (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, 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 ESA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless Seller has defaulted under this ESA, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this ESA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this ESA.

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

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this ESA in a quick and inexpensive manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this ESA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers



or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may, in its sole discretion, submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days' written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

## ARTICLE 14 Force Majeure

### 14.1 Definition.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A “**Force Majeure Event**” shall mean an event or circumstance that arises after the Execution Date that (i) is not reasonably foreseeable, (ii) is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, and (iii) adversely affects the performance by that Party of its obligations under or pursuant to this ESA. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). Given the current conditions, the Parties agree that COVID-19 shall be considered a Force Majeure Event only if the affected Party’s ability to perform its obligations under this Agreement is prevented or substantially hindered due to new circumstances with respect to COVID-19 that leads 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, in either event 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, for any reason (the risk of which is assumed by Seller); (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such

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

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this ESA beyond its stated Term. Notwithstanding any other provision in this ESA to the contrary, in the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller continues for an uninterrupted period of one hundred eighty (180) Days from its inception (with respect to a Force Majeure Event occurring prior to the Commercial Operation Date) or three hundred sixty five (365) days from its inception (with respect to a Force Majeure Event occurring after the Commercial Operation Date), either Party may, at any time following the end of such period, terminate this ESA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

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

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

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this ESA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation.

(A) Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of either Buyer or the Transmission Provider to accept Discharge Energy from the Project or to deliver Charging Energy to the Project or otherwise prevents the ability of the ESS to deliver Product, then the hours of the reduced delivery of Product shall be excluded from the determination of the ESS Energy Payment as set forth in Section 8.1. In this instance, the ESS Energy Payment shall be reduced by the sum of the amount of Energy Output (in MWh) delivered to the Point of Delivery during the ESA Force Majeure Event and any Energy Output that otherwise would have been delivered to the Point of Delivery but for a Force Majeure Event impacting both the PPA and the ESA, multiplied by the percentage of the ESS capacity impacted by the Force Majeure, multiplied by the ESS Energy Payment Rate.

(B) In the case that Seller fails to obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid and Buyer, nevertheless, has granted the Commercial Operation Date, upon the occurrence and during the continuance of (i) a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event prevents the ability of the Solar Facility to supply Charging Energy to the Project, or (ii) an unscheduled outage of the Solar Facility to the extent that such outage prevents the ability of the Solar Facility to supply Charging Energy to the Project that lasts longer than forty-eight (48) hours, then in the case of (i) the hours during which the Force Majeure Event occurs, and in the case of (ii) the hours beyond the forty-eight (48) hour duration shall be excluded from the determination of the ESS Energy Payment as set forth in Section 8.1. In the case of (i), the ESS Energy Payment shall be reduced by the sum of the amount of Energy Output (in MWh) delivered to the Point of Delivery during the Force Majeure Event and any Energy Output that otherwise would have been delivered to the Point of Delivery but for the Force Majeure Event, multiplied by the ESS Energy Payment Rate. In the case of (ii), the ESS Energy Payment shall be reduced by the sum of the amount of Energy Output (in MWh) that would have been delivered to the Point of Delivery after the initial forty-eight (48) hour duration but for the unscheduled outage of the Solar Facility, multiplied by the ESS Energy Payment Rate.

(C) In the case of (A) and (B) above, the amount of Energy Output that would have otherwise been delivered to the Point of Delivery shall be reasonably calculated by Seller taking into account 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 Force Majeure Event or unscheduled outage but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review and approve Seller's calculations.

ARTICLE 15  
Representations, Warranties and Covenants

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

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

(B) Except for the Seller Board Approval (which shall be obtained prior to the Commercial Operation Date), the execution, delivery, and performance of its obligations under this ESA by Seller have been duly authorized by all necessary corporate action, and do not and will not:

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

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

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

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

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

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

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be

obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

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

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

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

(I) Seller has and/or will have good and marketable title to the Future Environmental Attributes immediately prior to delivery to Buyer.

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

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

(L) Each Future Environmental Attribute complies with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 *et seq.*, and Title 17.9.572 NMAC.

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

(N) After the Commercial Operation Date, Seller will not incur, assume or carry any Debt in connection with the Project;

(O) Subject to ongoing maintenance by Seller, the ESS has a remaining design life (starting on the Commercial Operation Date) that is at least equal to twenty-nine (29) years in accordance with Prudent Utility Practices, as attested by a Licensed Professional Engineer;

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

(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;

(S) Less than seventy five percent (75%) of the useful economic life of the Project will be expended upon the end of the Term;

(T) The present value of the sum of the compensation that Buyer shall pay Seller throughout the Delivery Term shall be less than ninety percent (90%) of the fair market value of the Project and its associated assets and there is no residual value guaranteed by Buyer that is not already reflected in the payment obligations set forth in this ESA; and

(U) The Project is not a specialized project and will have alternative uses to Seller upon the end of the Term.

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

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

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

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

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

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

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

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

(C) Assuming this ESA is a valid and binding obligation of Seller, this ESA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

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

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

## ARTICLE 16 Insurance

### 16.1 Evidence of Insurance.

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

### 16.2 Term and Modification of Insurance.

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

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

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this ESA, to request Seller to modify the insurance minimum limits specified in Exhibit G

in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

### 16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer and its Affiliates, officers, directors, agents, subcontractors and employees.

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

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer and its Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

## ARTICLE 17

### Legal and Regulatory Compliance and Governmental Approval

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

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

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Product at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law, including NMPRC Approval in connection with (i) the execution and performance of this ESA, including authorization to recover the costs of ESS Energy Payments; (ii) the execution and performance of the PPA, and a final order



or other regulatory determination from the NMPRC that Buyer may procure renewable energy and associated renewable energy certificates pursuant to the PPA and may recover the cost of such procurement; and (iii) any waivers as set forth in Buyer's request for approval of this ESA (collectively, "**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, including authorization to recover the costs of procurement of the Renewable Energy Output, as that term is defined in the PPA; or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then this ESA shall automatically terminate ten (10) Days after the date of such action by the NMPRC and shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

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

(3) If the NMPRC, for any reason, has not entered an order upon the request for approval of all Requested Actions by October 1, 2024 ("**Regulatory End Date**"), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC,

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

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

## ARTICLE 18

### Assignment and Other Transfer Restrictions

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

(A) Buyer's consent shall not be required for: (i) a collateral assignment to a Lender, in accordance with Section 18.6, (ii) any assignment or transfer of this ESA by Seller to an Affiliate of Seller; or (iii) any assignment or transfer of this ESA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (ii) or (iii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); and (c) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA.

(B) Seller's consent shall not be required for any assignment of this ESA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this ESA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this ESA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms

and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this ESA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this ESA with the Affiliate as if such Person had been named under this ESA; *provided, however*, that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

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

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

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

18.6 Assignment to Lenders.

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

Buyer's right to receive all of the damages arising out of or relating to Seller's default, including damages accruing prior to termination as set forth in Section 12.3 of this ESA.

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

## ARTICLE 19 Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred and Twenty-Five Thousand Dollars (\$125,000) per MW multiplied by the Guaranteed Capacity ("**Development Security**") as follows: (a) Seventy-Five Thousand Dollars (\$75,000) per MW multiplied by the Guaranteed Capacity within thirty (30) days of Execution Date, and (b) Fifty Thousand Dollars (\$50,000) per MW multiplied by the Guaranteed Capacity within ten (10) Business Days of NMPRC Approval. 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 Ninety Thousand Dollars (\$90,000) per MW multiplied by the Guaranteed Capacity (the "**Delivery Term Security**"). Seller shall replenish the Delivery Term Security to such required amount within fifteen (15) Days after any draw by Buyer except that the aggregate amount of such replenishment during the Term shall not exceed two times (2x) the Delivery Term Security requirement. Development Security shall not be replenished. Buyer will return the Development Security to Seller in full within fifteen (15) Days after Seller posts Delivery Term Security. Seller's Delivery Term Security shall be released to Seller upon the earlier of (x) the fifteenth (15<sup>th</sup>) Business Day after termination of this ESA in accordance with its terms; and (y) on the fifteenth (15<sup>th</sup>) Business Day after the expiration of the Term.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Seller: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars (\$10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor, or (d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged

collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit, then Seller shall have fifteen (15) Business Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. For minor defects in the form of any Security that do not otherwise render the Security invalid or unenforceable, Seller shall have five (5) Business Days following written notice from Buyer within which to cure such defects.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this ESA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such actions 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. If Seller fails to make payment when due under this ESA within five (5) Business Days after the date of written notice from Buyer, then in addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this ESA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this ESA. If Seller fails to make payment when due under this ESA within five (5) Business Days after the date of written notice from Buyer, then Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from

all such forms, in any sequence and at any time before or after termination of the ESA, as Buyer may select until such time as the Security is exhausted.

ARTICLE 20  
Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent

of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

## ARTICLE 21 Governmental Charges

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

ARTICLE 22  
Miscellaneous

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

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

22.3 Rate Changes. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this ESA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the “public interest” standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

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

22.5 Relationship of the Parties.

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

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

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and



regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

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

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

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

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

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

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

22.13 Governing Law and Choice of Forum. The interpretation and performance of this ESA and each of its provisions shall be governed and construed in accordance with the laws of the

State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this ESA shall be brought in the United States District Court for the District of New Mexico. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS ESA.

22.14 Confidentiality.

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

(B) Other than in connection with this ESA, the Receiving Party will not use the Confidential Information (as defined below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, legal counsel and accountants (collectively, “**Receiving Party’s Representatives**”), but only if such Receiving Party’s Representatives need to know the Confidential Information in connection with this ESA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Subject to Section 22.14(E), to the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts 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 ESA to the Receiving Party or its Receiving Party’s Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party’s Representatives have access by virtue of this ESA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by PNM or on PNM’s behalf)), or which concerns this ESA, the Disclosing Party or the Disclosing Party’s affiliates or subsidiaries, or their respective officers, directors, and employees, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party’s Representatives by a director, officer, employee, Affiliate, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this ESA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this ESA:

- (1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Representatives;
- (2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

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

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

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to (i) limit the scope of any disclosure of Confidential Information and, (ii) 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 single individual employed by Seller 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) Buyer shall have the right to advertise, market, and promote to the general public the benefits of this ESA, including, but not limited to, the right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this ESA (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the “**Promotional Materials**”). Seller shall make available to Buyer a basic description of the Project and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production, and dissemination of Promotional Materials.

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

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

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

22.18 Accounting Matters. The Parties agree that Generally Accepted Accounting Principles in the United States of America (“GAAP”) and the rules of the United States Securities and Exchange Commission (“SEC”) require Buyer to evaluate if Buyer must consolidate Seller’s financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this ESA (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller’s financial information with Buyer’s financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer’s accounting treatment for the ESA, jointly the “**Accounting Standards**”). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties’ review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the Parties agree to the following provisions for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller’s Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller’s parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer’s external auditors to complete an audit of Buyer’s consolidated financial statements, Buyer agrees to provide notice to Seller no later than seventy-five (75) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) (“**Seller’s Financial Statements**”) shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

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

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

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

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

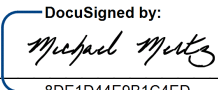
22.20 Change In Law. If a Change in Law occurs that makes it impossible or illegal for a Party to perform an obligation under this Agreement lawfully, the Parties shall negotiate in good faith to amend this Agreement within sixty (60) Days after the affected Party provides written notice to the other Party with respect to such Change in Law as may be reasonably necessary to restore the allocation of economic benefits and burdens contemplated hereunder by the Parties as of the Effective Date. If the Parties fail to enter such an amendment by the end of such sixty (60) Day period, the Parties shall refer the issue for dispute resolution under Section 13.8.

22.21 Change in Market Structure. In the event of a change in the operation or organizational structure of the regional territory which includes the ESS or Buyer's service area (including change in balancing area authority or implementation of an independent system operator, regional transmission organization, or realignment of the transmission system) and such change is reasonably anticipated to affect materially and adversely either Party's ability to perform its obligations hereunder, the representatives of each Party shall convene within fifteen (15) days of written notification from either Party and shall provide recommendations for the Parties' appropriate action. Both Parties thereafter shall negotiate in good faith an amendment to this ESA or take other appropriate actions, the effect of which will be to preserve or restore the respective Parties, as closely as possible, to the same business and economic positions that existed prior to such change.

*[Signature page(s) follow]*

IN WITNESS WHEREOF, the Parties have caused this ESA to be duly executed as of the Execution Date. This ESA shall not become effective as to either Party unless and until executed by both Parties.


PUBLIC SERVICE COMPANY OF NEW MEXICO

By  \_\_\_\_\_  
8DE1D44E9B1C4ED...

Name Michael Mertz

Title Vice President, New Mexico Operations, and Chief Information Officer

ROUTE 66 ENERGY STORAGE, LLC

By  \_\_\_\_\_  
F5C968BD9C2148B...

Name Anthony Pedroni

Title Vice President



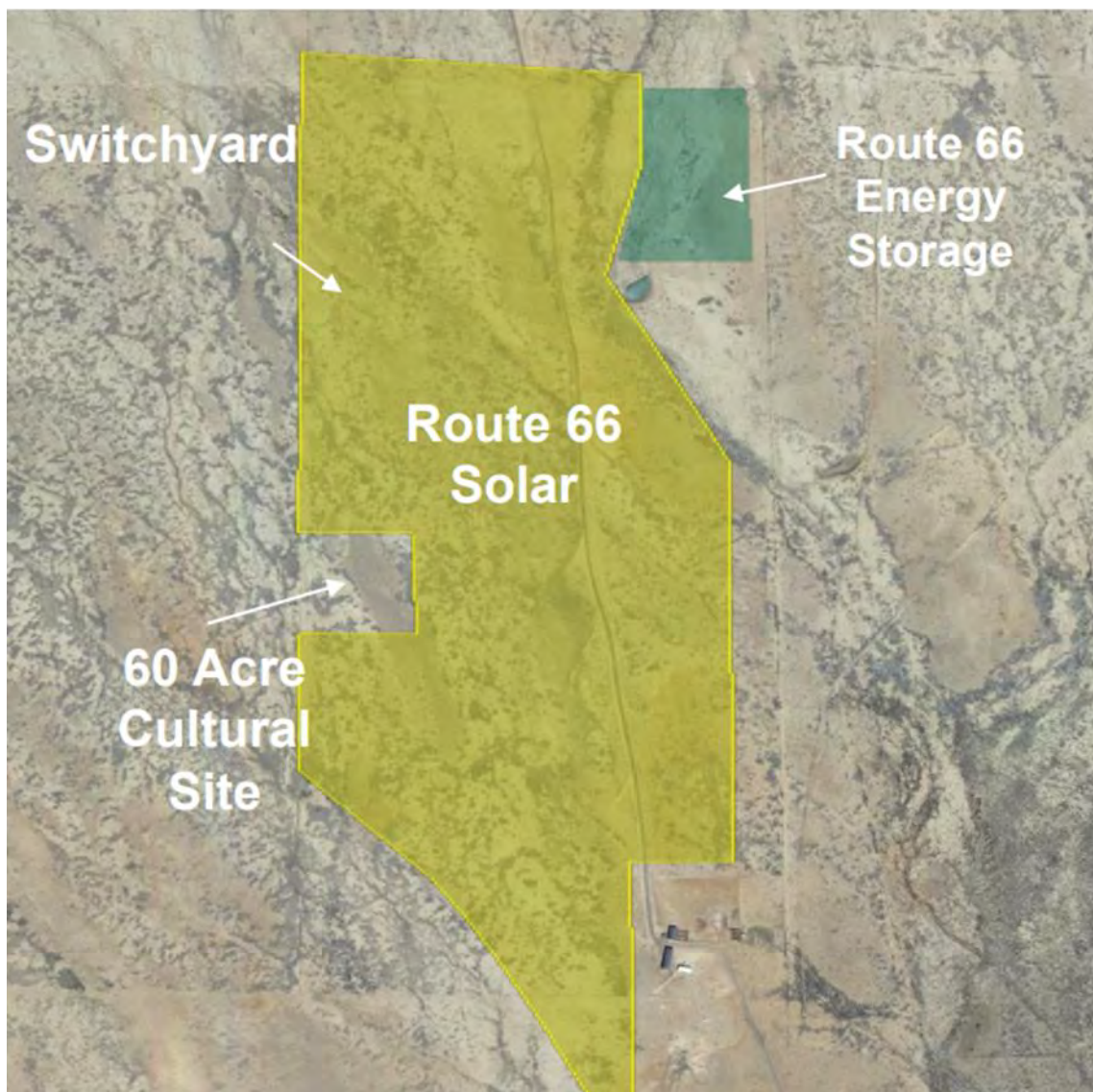
**EXHIBIT A**  
(to Energy Storage Agreement)

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

1. Name of Seller's Project: Route 66 Energy Storage, LLC  
Location: Cibola County, NM
2. Owner (if different from Seller): N/A
3. Operator: Seller or Affiliate thereof
4. Equipment/Fuel:
  - a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Energy Storage; Biomass (including Fuel)): Energy Storage
  - b. Total number of units at the Project: Estimated 30 AC coupled energy storage containers; pending final configuration
  - c. Total nameplate capacity (AC): 49.5 MW / 198 MWh
  - d. Total capacity at point of delivery: 49.5 MW / 198 MWh
  - e. Additional technology-specific information: Approximately 17, 3.35 MW inverters
5. Project Schedule:

Key Milestone	Date
LGIA Execution	February 2017 and March 2020
Discretionary Permits	6/1/2024 - 10/1/2024
Major Equipment Supply Agreements Executed	10/15/2024
Close Financing	N/A
Start of Project Construction	12/6/2024
First Major Equipment Delivered to Site	4/1/2025
Interconnection In-Service Date	9/1/2025
Commissioning Start Date	9/2/2025
Expected Commercial Operation	2/1/2026
Guaranteed Start Date	5/1/2026

6. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the Energy Storage Agreement, which shall be provided by Seller within ninety (90) Days of the Execution Date.



**EXHIBIT B**  
(to Energy Storage Agreement)

**ONE-LINE DIAGRAM OF PROJECT AND INTERCONNECTION FACILITIES**

1. See attached one-line diagram of the Project, which shall be provided by Seller within ninety (90) Days of the Execution Date. The one-line diagram indicates 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);
  - The House Energy power source and associated dedicated electric meter; and
  - ownership and location of meters.
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 Route 66 115 kV Switching Station on PNM's Bluewater to West-Mesa 115 kV Line.

**EXHIBIT C**  
(to Energy Storage Agreement)

**DESCRIPTION OF SITE**  
**PARCEL SURVEY FOR**  
**ROUTE 66 ENERGY STORAGE PROJECT,**  
which shall be provided by Seller within ninety (90) Days of the Execution Date.

SURVEYOR'S DESCRIPTION of:

**EXHIBIT D**  
(to Energy Storage Agreement)  
**NOTICE ADDRESSES**

**PUBLIC SERVICE COMPANY OF  
NEW MEXICO**

**Notices:**

**Delivery Address:**

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

**Invoices:**

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

**Scheduling:**

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

**Route 66 Energy Storage, LLC**

**All Notices/Invoices:**

**Delivery Address:**

Route 66 Energy Storage, LLC  
700 Universe Boulevard, FEJ/JB Juno Beach,  
FL 33408  
Attn: Business Management, West Region  
Email: DL-NEXTERA-WEST-  
INTERNATIONAL-REGION@FPL.COM

**With copy to:**

GENERAL COUNSEL 700 UNIVERSE  
BOULEVARD, FEJ/JB JUNO BEACH, FL  
33408 Phone: 561-691-7126 Email:  
Mitch.Ross@nee.com

**Wire Transfer: To Be Provided**

Bank of America  
ACH ABA: 111-000-12  
Global Finance, Dallas, TX  
WIRE ABA: 026-009-593 100  
West 33rd Street, New York, NY 10001

Account Name: NextEra Energy Constructors  
Account #: 4451197131 SWIFT: BOFAUS3N  
Attn: Route 66 Energy Storage, LLC

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

GENERAL COUNSEL  
700 UNIVERSE BOULEVARD, FEJ/JB  
JUNO BEACH, FL 33408  
Phone: 561-691-7126

Email: [Mitch.Ross@nee.com](mailto:Mitch.Ross@nee.com)

**Contract Manager:**

Public Service Company of New Mexico  
Attention: Jeremy Heslop  
2401 Aztec Rd. NE  
Albuquerque, NM 87107  
Telephone: (505) 241-2664

**Project Manager:**

Route 66 Energy Storage, LLC  
700 Universe Boulevard, FEJ/JB Juno Beach, FL  
33408  
Attn: Business Management, West Region  
Email: [DL-NEXTERA-WEST-INTERNATIONAL-REGION@FPL.COM](mailto:DL-NEXTERA-WEST-INTERNATIONAL-REGION@FPL.COM)

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

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

**24-HOUR OPERATIONS CONTACT:**

Renewable Operations Control Center  
(ROCC)  
Controls/Monitoring Systems  
**Phone:** 866-375-3737  
**Email:** [ROCC@nee.com](mailto:ROCC@nee.com)

**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

**EXHIBIT E**  
(to Energy Storage Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS,  
APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED**

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
Building Permit	State of New Mexico Regulation and Licensing Department
Electrical Permit	State of New Mexico Regulation and Licensing Department
Floodplain Development Permit	Cibola County
Clean Water Act (CWA) Section 402, National Pollution Discharge Elimination System (NPDES). Construction Stormwater General Permit NMR1000000	US Environmental Protection Agency (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.

## **EXHIBIT F**

(to Energy Storage Agreement)

### **COMMISSIONING AND ANNUAL TESTS**

#### **Commissioning Tests**

- A. Automatic Generation Control (AGC) Functionality Test (or equivalent)
- B. SCADA Functionality Test (or equivalent)
- C. Owner Control and Data Link Functionality Tests (See Section 3.4)
- D. ESS Solar Capacity Firming Test
- E. ESS Unit Capabilities Tests



The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

### **A. Automatic Generation Control (AGC) Functionality Test**

#### **Purpose:**

This test will demonstrate the ability of the ESS to synch to AGC.

#### **System starting state:**

The ESS will be in the on-line state at between 10% of the Maximum State of Charge and 90% of the Maximum State of Charge and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System (“EMS”) shall be configured to follow a predefined, agreed-upon active power profile.

#### **Procedure:**

1. Record the ESS active power level at the ESS Electric Metering Device.
2. Command the ESS to follow a simulated AGC discharging signal every four (4) seconds for ten (10) minutes.
3. Command the ESS to follow a simulated AGC charging signal every four (4) seconds for ten (10) minutes.
4. Record and store the ESS active power response (in seconds).

#### **System end state:**

The ESS will be in the on-line state and at a commanded active power level of 0 MW.

### **B. SCADA Functionality Test**

Seller shall prepare and submit to Buyer a SCADA Functionality Test procedure no later than 120 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.

### **C. 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 120 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.

### **D. ESS Solar Capacity Firming Test**

Seller shall perform a test of the ESS control system to validate its capability to maintain a constant energy delivery from the combined PPA and ESA to the Point of Delivery (“POD”). The test shall

be performed over a three (3) hour test period given a fixed MW setpoint at the Point of Delivery from the integrated Solar Facility and ESS, based on five (5) minute interval data. The test shall validate the ability of the ESS control system to autonomously charge solar generation or discharge to maintain a constant POD output within two percent (2%) of the output setpoint and within the limits of the ESS Unit Capabilities and ESS Operating Restrictions. The constant POD setpoint shall be between the ESS PMAX and the POD rating minus PMAX or reasonably adjusted according to the solar generation forecast on the day of the test. The test shall be deemed successful if the ESS is able to regulate the POD to the output setpoint, within two percent (2%), at all times during the three (3) hour test when the charging or discharging of the ESS to maintain the output setpoint would not violate the ESS Unit Capabilities or ESS Operating Restrictions.

## **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 ESA) throughout the term of the ESA with the exception of the ESS Reliability Testing in Section E.3 below which will only be required to be satisfied to achieve the Commercial Operation Date.

### **E. ESS Unit Capabilities Testing**

#### **E.1 ESS CAPACITY TEST**

##### **E.1.1 General**

The ESS Capacity Test (“**ESS Capacity Test**” or “**ECT**”) is a test performed to determine the then-current ESS Capacity and Roundtrip Efficiency (RTE). Each ESS Capacity Test (including the initial ESS Capacity Test performed prior to Commercial Operation and each subsequent ESS Capacity Test) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit F. Buyer or its representative may be present for any ECT and may, for informational purposes only, use its own metering equipment (at Buyer’s sole cost).

##### **E.1.2 Requirements Applicable to all ESS Capacity Tests**

- A. Purpose of Test. Each ECT shall:
- (1) verify compliance with the Guaranteed ESS Capacity or otherwise determine any lower ESS Capacity for the purposes of this ESA;
  - (2) determine the Roundtrip Efficiency (RTE) of the ESS;
- B. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:
- (1) discharge time (minutes);
  - (2) ESS Discharge Energy measured at the ESS Electric Meter Device including the accounting of losses from the ESS Electric Meter Device to

the Point of Delivery, in MWh (“ESS Meter Energy Out”);

- (3) ESS Charging Energy measured at the ESS Electric Meter Device accounting for losses from the Point of Delivery to the ESS Electric Meter Device, in MWh (“ESS Meter Energy In”);

C. Reserved.

D. Test Elements and Sequence. Each ECT shall include the following test elements:

- (1) the discharging of the ESS from the Maximum State of Charge at a power discharge setpoint rate equal to the Guaranteed ESS Capacity (MW);
- (2) the determination of Point of Delivery Energy Out, as measured by the ESS Electric Meter Device, that is discharged from the ESS to the Point of Delivery until either the Minimum State of Charge is achieved or four (4) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by four (4) hours shall determine the ESS Capacity. The ESS Electric Metering Device shall be programmed to correct for losses between the ESS Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;
- (3) the discharging of the ESS to the Minimum State of Charge or such state of charge achieved after four (4) hours of discharging the Guaranteed ESS Capacity;
- (4) starting at the Minimum State of Charge, the charging of the ESS at a constant power charge rate equal to the Guaranteed ESS Capacity;
- (5) the determination of ESS Energy Meter In, as measured by the ESS Electric Metering Device, that is required to charge the ESS until the Maximum State of Charge is achieved as of the commencement of the ESS Capacity Test.

E. Test Conditions.

- (1) General. At all times during an ECT, the ESS, including any auxillary equipment, shall be operated in compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. The ECT shall commence within one (1) hour after sunset or other such time as mutually agreed by the Parties, and the Solar Facility generation shall be zero prior to commencement of such ECT. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the

ESS shall otherwise be at unity (1.00) power factor.

- (2) Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT, Seller may postpone or reschedule all or part of such ECT in accordance with Section E.1.2.F of these ESS Capacity Test Procedures.
  - (3) Reserved.
  - (4) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Section 5 of the ESA.
- F. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section 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 completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Seller is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.
- G. Final Report. Within ten (10) Business Days after the completion of any ECT, Seller shall prepare and submit to Buyer a written report of the results of the ECT, which report shall include:
- (1) A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;
  - (2) the measured data for the ESS Electric Meter Device readings as well as each parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT and plant log sheets verifying the operating conditions and output of the ESS;
  - (3) The ESS Capacity as determined by the ECT, including supporting calculations; and
  - (4) Seller's statement of either Seller's acceptance of the ECT or Seller's rejection of the ECT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the ECT results or Buyer's rejection of the ECT and reason(s) therefor.

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section E.1.2.F of this ESS Capacity Test Procedure.

- H. Supplementary ESS Capacity Test Protocol. No later than one hundred twenty (120) days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit F with additional and supplementary details, procedures and requirements applicable to ESS Capacity Tests based on the then-current design of the Facility (collectively, the "**Supplementary ESS Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit F. Future modifications to the Supplementary ESS Capacity Test Protocol, as mutually agreed, shall be documented and maintained by the Parties.
- I. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first four (4) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this ESA, multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the day following the completion of the ESS Capacity Test for all purposes under this ESA.
- J. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh-AC) and the ESS Meter Energy In (MWh-AC) as below:

$$\text{Roundtrip Efficiency (\%)} = \frac{\text{ESS Meter Energy-Out (MWh-AC)}}{\text{ESS Meter Energy-In (MWh-AC)}} \times 100\%$$

## E.2 ESS RESPONSE DELAY TEST

### E.2.1 Purpose of Test:

1. Determine the Charge Ramp Rate of the ESS
2. Determine the Discharge Ramp Rate of the ESS

#### E.2.2 Test Conditions:

The ESS Facility will be in the on-line state at between 10% of the Maximum State of Charge and 90% of the Maximum State of Charge and at an initial active power level of 0 MW and reactive power level of 0 MVAR. This test shall not cause the ESS to charge from the grid.

#### E.2.3 Test procedure:

##### A. Measured Charge Ramp Rate:

- (1) Send an active power charge command of P<sub>MAX</sub> to charge the batteries
- (2) The time measured from when the ESS receives the P<sub>MAX</sub> charge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of charge P<sub>MAX</sub> shall be the Charge Ramp Latency
- (3) The time measured to ramp from 1% to charge P<sub>MAX</sub> with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Charge Ramp Rate

##### B. Measured Discharge Ramp Rate:

- (1) Send an active power discharge command of P<sub>MAX</sub> to discharge the ESS
- (2) The time measured from when the ESS receives the P<sub>MAX</sub> discharge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of discharge P<sub>MAX</sub> shall be the Discharge Ramp Latency
- (3) The time measured to ramp from 1% to discharge P<sub>MAX</sub> with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Discharge Ramp Rate

#### **Determination of ESS Response Delay:**

The calculation below will demonstrate the determination of the ESS Response Delay used to determine ESS Response Delay Damages according to Section 3.13.

- a) An “Actual System Latency” shall be calculated, which shall be equal to:

$$\text{Actual System Latency} = \text{Max}(\text{Charge Ramp Latency}, \text{Discharge Ramp Latency})$$

- b) An “Actual System Latency Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} \text{Actual System Latency Delay} \\ &= \text{Max}(\text{Guaranteed System Latency}, \text{Actual System Latency}) \\ &\quad - \text{Guaranteed System Latency} \end{aligned}$$

- c) An “Actual Discharge Ramp Rate Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \text{Actual Discharge Ramp Rate Delay} \\ & = \text{Max}(\text{Guaranteed Discharge Ramp Rate}, \text{Actual Discharge Ramp Rate}) \\ & \quad - \text{Guaranteed Discharge Ramp Rate} \end{aligned}$$

- d) An “Actual Charge Ramp Rate Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \text{Actual Charge Ramp Rate Delay} \\ & = \text{Max}(\text{Guaranteed Charge Ramp Rate}, \text{Actual Charge Ramp Rate}) \\ & \quad - \text{Guaranteed Charge Ramp Rate} \end{aligned}$$

- e) The “Charging ESS Response Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \text{Charging ESS Response Delay} \\ & \quad = \text{Actual Charge Ramp Rate Delay} \\ & \quad + \text{Actual System Latency Delay} \end{aligned}$$

- f) The “Discharging ESS Response Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \text{Discharging ESS Response Delay} \\ & \quad = \text{Actual Discharge Ramp Rate Delay} \\ & \quad + \text{Actual System Latency Delay} \end{aligned}$$

- g) The “ESS Response Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \text{ESS Response Delay} \\ & = \text{Max}(\text{Charging ESS Response Delay}, \text{Discharging ESS Response Delay}) \end{aligned}$$

For any instance in which the ESS Response Delay, as measured by the ESS Electric Metering Device is a positive value during an ESS Unit Capabilities Test or during operation of the Project, Seller shall pay to Buyer the ESS Response Delay Damages identified in Section 3.13.

### E.3 ESS RELIABILITY TESTING

#### E.3.1 Cycling Reliability

##### A. Purpose of Test:

To demonstrate the ability of the ESS to reliably perform full charging and discharging cycles.

##### B. Test Procedure:

The cycling reliability test shall include the following test elements:

- (1) the discharging of the ESS from 100% of the Maximum State of Charge to 0% of the Maximum State of Charge followed by;
- (2) the charging of the ESS from 0% of the Maximum State of Charge to 100% of the Maximum State of Charge.

C. Test Results:

The cycling reliability test shall be satisfied when the ESS successfully performs three (3) full charge and discharge cycles with the ESS control system in auto without any alarms that indicate an adverse condition that impacts system operations, faults, trips, or manual intervention required.

E.3.2 Operational Reliability

A. Purpose of Test:

To demonstrate the short-term reliability of the ESS.

B. Test Procedure:

The ESS shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system.

C. Test Results:

The operational reliability test shall be satisfied when the ESS remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any alarms, faults, trips, or manual intervention required.



**EXHIBIT G**  
(to Energy Storage Agreement)

**INSURANCE COVERAGES**

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

**A. Workers' Compensation Insurance**, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars (\$1,000,000) per accident, One Million (\$1,000,000) for disease, and One Million (\$1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

**B. Commercial General Liability Insurance**, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.

**C. Business Automobile Liability Insurance**, or the equivalent, with a limit of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

**D. Excess or Umbrella Liability**. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Twenty Million dollars (\$20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

**E. Property Insurance**. During construction and operation, Seller shall provide or arrange the provision of standard form "All Risk" insurance in the amount of Two Hundred Million Dollars (\$200,000,000). For the avoidance of doubt, builders' risk insurance shall qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance in an amount equal to their probable maximum loss.

**EXHIBIT H**  
(to Energy Storage Agreement)

**AVAILABILITY GUARANTEES**

**Section 1. Definitions.**

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

“**Actual ESS Availability Percentage**” means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all ESS Available Hours divided by (ii) the sum of all ESS Period Hours in the relevant Commercial Operation Year.

“**Aggregate ESS Availability Damages Cap**” has the meaning set forth in Section 2.1(C) of this Exhibit.

“**Annual ESS Availability Damages Cap**” has the meaning set forth in Section 2.1(C).

“**Annual Report**” has the meaning set forth in Section 2.3 of this Exhibit.

“**ESS Availability Damages**” has the meaning set forth in Section 2.1(B) of this Exhibit.

“**ESS Available Hours**” means for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of ESS Period Hours in such Commercial Operation Year, minus (b) the aggregate ESS Unavailable Hours in such Commercial Operation Year. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

“**ESS Excused Hours**” means, in any Commercial Operation Year, the aggregate Seller Excused Hours for such Commercial Operation Year to the extent that the ESS is affected during such hours; provided that, for purposes of the Guaranteed ESS Availability Percentage, only the first fifty (50) hours of Scheduled Maintenance Outages in the aggregate for any portion of the Project per Commercial Operation Year shall be treated as ESS Excused Hours. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

“**ESS Period Hours**” means eight thousand seven hundred sixty (8,760) hours for any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year or adjusted during the occurrence of a leap year.

“**ESS Unavailable Hours**” means those hours, other than ESS Excused Hours, that the ESS is not available to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition); (b) in “run” status and faulted; (c) included in Scheduled Maintenance Outages in excess of fifty (50) hours in aggregate for the Project in any Commercial Operation Year; (d) incapable of being remotely controlled via its AGC system; or (e) otherwise not operational or capable of delivering Discharge Energy or accepting Charging Energy. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

“**Guaranteed ESS Availability Percentage**” has the meaning set forth in Section 2.1(A) of this Exhibit.

## Section 2. Availability Guarantees.

### 1. ESS Availability Guarantee.

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

(B) ESS Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed ESS Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to One Thousand Five Hundred Dollars (\$1,500) per MW of Guaranteed ESS Capacity per one percent (1%) shortfall in the Guaranteed ESS Availability Percentage, calculated annually and prorated for any portion of a Commercial Operation Year (“**ESS Availability Damages**”), but in no event in excess of the Annual ESS Availability Damages Cap and the Aggregate ESS Availability Damages Cap. A sample calculation of the ESS Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit H.

(C) ESS Availability Damages Cap, Termination and Cure Rights. The total ESS Availability Damages payable by Seller for failure to meet the Guaranteed ESS Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to One Hundred Thousand Dollars (\$100,000) per MW of Guaranteed ESS Capacity (“**Annual ESS Availability Damages Cap**”) and in the aggregate at a value equivalent to One Hundred Ninety Two Thousand Dollars (\$192,000) per MW of Guaranteed ESS Capacity; *provided*, that in the event of (a) a Transformer Failure and (b) a material serial defect not generally known in the energy storage industry, the aggregate damages shall not exceed a value equivalent to Three Hundred and Twenty Thousand Dollars (\$320,000) per MW of Guaranteed ESS Capacity (“**Aggregate ESS Availability Damages Cap**”) over the Term of the ESA.

2. Sole Remedy. The Parties agree that Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for any deficiency in the performance of the Project (including any failure to meet the Guaranteed ESS Availability Percentage) shall be the payment of damages up to the Annual ESS Availability Damages Cap and the Aggregate ESS Availability Damages Cap, as applicable, and the right to declare an Event of Default pursuant to Section 12.1(B)(5) of the ESA, and shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default giving rise to a termination payment obligation except pursuant to Section 12.1(B)(5) of the ESA, as applicable. Notwithstanding the foregoing, the limitations set forth herein shall not be applicable to any indemnification claims pursuant to Article 20 of the ESA and Seller's material breach of its obligation to operate and maintain the Project in accordance with Prudent Utility Practices or Seller's failure to pay ESS Availability Damages when due if not timely cured pursuant to the provisions of Article 12 of the ESA are an Event of Default of Seller for which Buyer may terminate the ESA and seek damages in accordance with Section 12.4 of the ESA.

3. Annual Report. No later than the 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 Actual ESS Availability Percentage for the previous Commercial Operation Year and the ESS Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of ESS Availability Damages paid to Buyer under the ESA and shall provide notice that the Aggregate ESS Availability Damages Cap has been reached, if applicable. If ESS Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

5. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the ESA.

**ATTACHMENT 1 TO EXHIBIT H**  
**EXAMPLE CALCULATION OF ESS AVAILABILITY DAMAGES**

**I. Example of Actual ESS Availability Percentage Calculation**

The sample calculation set forth below is based on the following assumed facts:

The ESS had the following operating characteristics:

	Hours
ESS Period Hours (“EPH”)	8,760
ESS Unavailable Hours (“EUH”)	700

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

$$\text{Sum of ESS Available Hours} = \text{EPH} - \text{EUH}: 8,060 = 8,760 - 700$$

**Actual ESS Availability Percentage**

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

- (a) Sum of ESS Available Hours: 8,060 hours
- (b) Sum of ESS Period Hours: 8,760 hours
- (c) Actual ESS Availability Percentage:  $(\text{Sum of ESS Available Hours} / \text{Sum of ESS Period Hours}) \times 100 = (8,060 / 8,760) \times 100 = 92.0\%$

**II. Example of ESS Availability Damages**

Example of ESS Availability Damages based on the following assumed facts:

- (a) Seller’s Guaranteed ESS Availability Percentage in Commercial Operation Year 4 = 95%.
- (b) Seller’s Actual ESS Availability Percentage in Commercial Operation Year 4 = 92%.
- (c) Seller’s Guaranteed ESS Capacity = 20 MW.

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

(Seller's Guaranteed ESS Availability Percentage in Commercial Operation Year 4 – Seller's Actual ESS Availability Percentage in Commercial Operation Year 4) (the latter two expressed as a decimal) x (100) x Liquidated Damage Value x Seller's Guaranteed ESS Capacity = ESS Availability Damage

$$(0.95 - 0.92) \times 100 \times \$1,500 \times 20 = \$90,000$$

As specified in the definition of "ESS Unavailable Hours," all ESS Excused Hours are excluded from the calculation of ESS Unavailable Hours. Thus, in the example above, the 700 hours of ESS Unavailable Hours does not include any hours that are ESS Excused Hours.

**EXHIBIT I**  
(to Energy Storage Agreement)

**FORM OF SELLER GUARANTY**

**GUARANTY**

THIS GUARANTY (this “**Guaranty**”), dated as of \_\_\_\_\_, \_\_\_\_ (the “**Effective Date**”), is made by [●]. (“**Guarantor**”), in favor of *[INSERT COUNTERPARTY’S NAME IN ALL CAPS]* (“**Counterparty**”).

RECITALS:

**A.** WHEREAS, Counterparty and Guarantor’s indirect, wholly-owned subsidiary *[INSERT OBLIGOR’S NAME IN ALL CAPS]* (“**Obligor**”) have entered into, or concurrently herewith are entering into, that certain \_\_\_\_\_ Energy Storage Agreement dated/made/entered into/effective as of \_\_\_\_\_, 20\_\_ (the “**Agreement**”); and

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

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

\* \* \*

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

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

**(b)** The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are

deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

## 2. **DEMANDS AND PAYMENT.**

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.
- (b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New York.

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

- (a) it is a limited liability company duly organized and validly existing under the laws of the State of \_\_\_\_\_ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and
- (c) the execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of



any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**4. RESERVATION OF CERTAIN DEFENSES.** Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

**5. AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

**6. WAIVERS AND CONSENTS.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

- (a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance

on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor’s obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

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

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

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

<i><u>TO GUARANTOR:</u></i> *	<i><u>TO COUNTERPARTY:</u></i>
[●] <i><u>Attn:</u></i> Treasurer	[●] <i><u>Attn:</u></i>

<i>[Tel: [●] -- for use in connection with courier deliveries]</i>	<i>[Tel: [●] -- for use in connection with courier deliveries]</i>
--	--

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

**10. MISCELLANEOUS.**

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws thereunder.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably:
  - (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New York for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and
  - (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the

suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

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

(h) Delivery of an executed signature page of this Guaranty, and any subsequent amendment(s), by facsimile or email shall be effective as delivery of a manually executed counterpart hereof. The words “execute,” “execution,” “signed,” “signature,” and words of similar import in this Guaranty shall be deemed to include electronic signatures or digital signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000, the Electronic Signatures and Records Act of 1999, or any other similar state laws based on the Uniform Electronic Transactions Act.

\* \* \*

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

[•]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT J**  
(to Energy Storage Agreement)

**COMMERCIAL OPERATION  
FORM OF CERTIFICATION**

This certification (“Certification”) of Commercial Operation is delivered by [●] (“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 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
- (3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Product and meet, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[●]

**[Licensed Professional Engineer]**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

License Number and LPE Stamp: \_\_\_\_\_

**EXHIBIT K**  
(to Energy Storage Agreement)

**ROUNDTRIP EFFICIENCY GUARANTEE**

<b>Year</b>	<b>Annual R/T Eff – Solar Charging</b>	<b>Annual R/T Eff – Grid Charging</b>
1	85.80%	84.90%
2+	degrading by 0.3% annually	degrading by 0.3% annually

**EXHIBIT L**

[Reserved]

**EXHIBIT M**  
(to Energy Storage Agreement)

**ESS Operating Restrictions**

Subject to the terms of this ESA, the ESS shall be operated in accordance with the following operating restrictions:

1. Base Annual Average State of Charge (“BAASOC”) shall be the simple average State of Charge for a fixed interval of 30 minutes or less (never to exceed the Maximum State of Charge) for the Commercial Operation Year.
2. Annual Limit on Discharge Energy is 365 Equivalent Full Cycles (“AL”) per Commercial Operation Year.
3. Should the BAASOC exceed 40% at the end of the Commercial Operation Year, the AL shall be decreased by 5 Equivalent Full Cycles for such Commercial Operation Year.



**EXHIBIT N**  
(to Energy Storage Agreement)

**ESS Functional Mapping**

The Project's NERC verified ESS Generation Owner, ESS Generator Operator and Scheduling Coordinator Contact functional mapping requirements information is as follows:

	Entity Name	Point of Contact	E-mail	Phone
Generator Owner (GO)				
Generator Operator (GOP)				
Scheduling Coordinator Contact (SCC)				

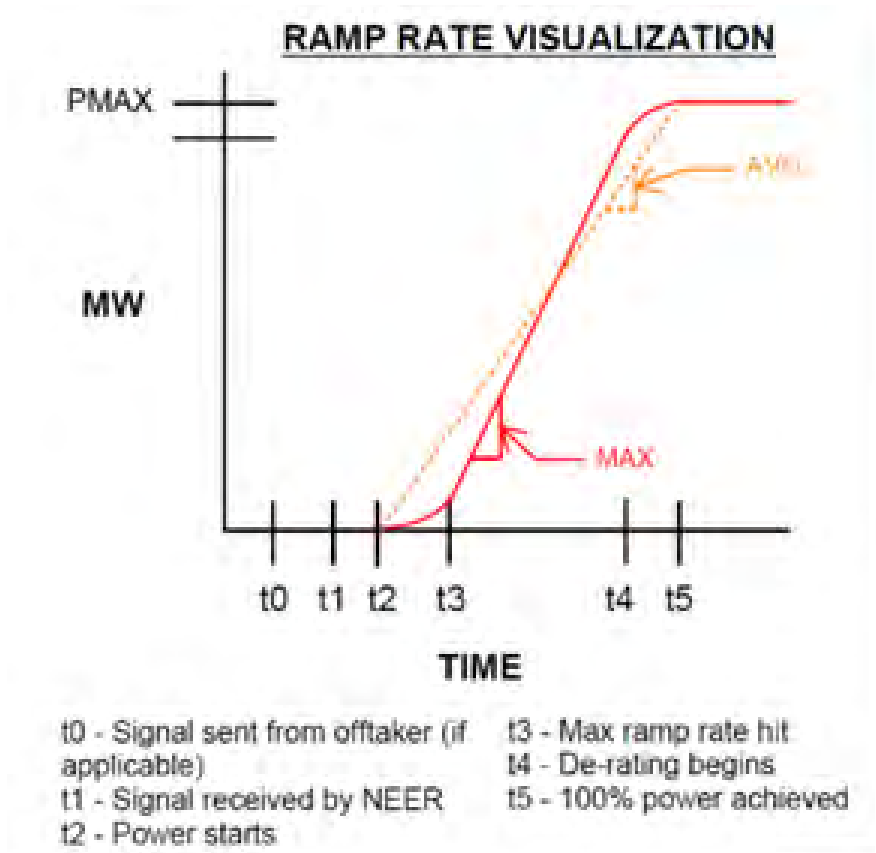
**EXHIBIT O**  
(to Energy Storage Agreement)

**Solar PPA**

[See attached at the end of this document]

**EXHIBIT P**  
(to Energy Storage Agreement)

**ESS Ramp Logic Response S-Curve**



Sky Ranch II ESA

# PNM Exhibit JWH-5

Is contained in the following 229 pages.

**ENERGY STORAGE AGREEMENT—SKY RANCH ENERGY STORAGE II PROJECT**

**by and between**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**and**

**SKY RANCH ENERGY STORAGE II, LLC**

**Dated as of September 27, 2023**

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## **EXHIBITS**

- Exhibit A Description of Seller's Energy Storage System, Site Map and Project Schedule
- Exhibit B One-Line Diagrams of Project and Interconnection Facilities
- Exhibit C Description of Site
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- Exhibit E Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
- Exhibit F Commissioning and Annual Tests
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- Exhibit H Availability Guarantees
- Exhibit I Form of Seller Guaranty
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- Exhibit L [Reserved]
- Exhibit M ESS Operating Restrictions
- Exhibit N ESS Functional Mapping
- Exhibit O Solar PPA
- Exhibit P ESS Ramp Logic Response S-Curve

## ENERGY STORAGE AGREEMENT

This Energy Storage Agreement (“**ESA**” or “**Agreement**”), as may be amended from time to time, is entered into this 27th Day of September, 2023 (“**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 Sky Ranch Energy Storage II, LLC, a Delaware limited liability company (“**Seller**”), whose principal place of business is 22000 N Sky Ranch Rd., Belen, NM 87002. Buyer and Seller may be referred to in this Energy Storage Agreement individually as a “**Party**” and collectively as the “**Parties**.”

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

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

WHEREAS, Seller desires to sell and deliver to Buyer the Product generated by the Project, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this ESA; and

WHEREAS, Buyer and Seller intend to enter into a certain Power Purchase Agreement, pursuant to which some of the energy generated by the Solar Facility will be used exclusively in Seller’s ESS,

WHEREAS, Buyer and Seller executed an Energy Storage Agreement effective as of September 27, 2023, in which, due to a scrivener’s error, Seller’s corporate name appears as Sky Ranch II Energy Storage, LLC (the “**Errata ESA**”),

WHEREAS, Seller’s corporate name is and has at all times been “Sky Ranch Energy Storage II, LLC,”

WHEREAS, Buyer and Seller, to rectify this scrivener’s error, execute this Agreement and intend that, upon this Agreement’s execution by both Parties, the Errata ESA shall, as of the Effective Date, be null and void.

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

### ARTICLE 1

#### Definitions and Rules of Interpretation

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

“**Abandonment**” means (a) a cessation of work and operations at or in respect of the Project for more than one hundred eighty (180) Days by Seller or Seller’s contractors but only if

such cessation is not caused by a Force Majeure Event or not in accordance with Seller's Project Schedule, or (b) the relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this ESA.

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

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

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

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

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

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

**"Affiliate"** of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. 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. With respect to Seller, Affiliate shall include NEP, NEOP, NEECH, NEER, and NEE, and their respective direct or indirect subsidiaries.

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

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

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

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

“**Back-Up Metering**” has the meaning set forth in Section 5.3(D).

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

“**BESS Equipment**” means batteries, battery modules, onboard sensors, control components, inverters, or any of their components.

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

“**Buyer**” has the meaning set forth in the Preamble.

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

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

“**Buyer Termination Payment**” means the sum of (a) the difference between (i) the net present value of the Replacement ESS Costs, calculated using a discount factor equal to the current yield for direct obligations of the United States Treasury with a maturity that is closest to, but not less than, the remaining Term of the ESA, and (ii) the Contract Value, plus (b) Buyer Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. To the extent the total value of the calculation in subpart (a) above is negative, the value used in such subpart (a) will be zero. The Buyer Termination Payment shall not include consequential incidental, punitive, exemplary, indirect or business interruption damages. For termination occurring before the Commercial Operation Date, the Buyer Termination Payment shall not exceed the Development Security, minus any Delay Damages paid.

**“Change in Law”** means (a) the adoption or taking effect of any Applicable Law, (b) any change in Applicable Law or in the administration, interpretation, or application thereof by any Governmental Authority, or (c) the implementation of any of the foregoing, in each case, to the extent the same has a binding effect on a Party (or the “Seller” (as defined in the PPA)) after the Effective Date.

**“Change of Control”** means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity or voting interests in Seller; provided, in calculating ownership percentages for purposes of the foregoing:

(A) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity or voting interests in each such intermediate entity; and

(B) ownership interests in Seller owned directly or indirectly by any Lender (including any Tax Equity Investor) shall be excluded from the total outstanding equity interests in Seller.

Notwithstanding the foregoing, a Change of Control will not include any direct or indirect transfer of the interests in Seller to NEP; provided that following such transfer the entity that operates the Project is (or contracts with) a Qualified Operator.

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

**“Commercial Operation”** means that (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (c) all Seller required permits, required consents, and Governmental Approvals 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 and is not in 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 as set forth in this ESA; and (h) Seller has provided to Buyer an officer’s certificate that the Project has been completed in all material respects.

**“Commercial Operation Date”** means the date, as determined in accordance with Section

3.10, on which (a) Buyer accepts from Seller a written notification to Buyer that Commercial Operation has commenced in accordance with Section 3.10, (b) Seller provides to Buyer 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 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.

**“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 for each Commercial Operation Year (or portion thereof) in the then-remaining term (determined without reference to the early termination) of the quantity of Solar Energy Output expected to be produced during such Commercial Operation Year (or portion thereof) times the ESS Energy 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 current yield for direct obligations of the United States Treasury with a maturity that it closest to, but not less than, the remaining Term of the ESA.

**“Contractual End Date”** means the date on which the “Term” (as defined in the PPA) ends, without taking into account any earlier termination under the PPA and subject to Section 12.4(D).

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

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

**“DC”** means direct current.

**“Debt”** means solely with respect to Seller after the Commercial Operation Date, without duplication, (a) all obligations of Seller for borrowed money, (b) all obligations of Seller evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of Seller to pay the deferred purchase price of property or services, except trade accounts payable and other accrued expenses arising in the ordinary course of business, (d) all deferred obligations of Seller to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit, line of credit or other instrument, and (e) obligations of Seller in respect of interest rate swap agreements, caps, collars, or other interest rate hedging mechanisms.

**“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 by the Electric Metering Devices, corrected for any estimated electrical losses to the Point of Delivery and excluding losses attributable to any other facility sharing the same Point of Delivery, based on methodology agreed to by the Parties.

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

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

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

“**DOC**” means the U.S. Department of Commerce.

“**Dollars**” means the lawful currency of the United States of America.

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

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

“**Electric Interconnection Point**” means the physical point at which electrical interconnection is made between the Project and the Transmission Provider’s Transmission System.

“**Electric Metering Device(s)**” means all metering and data processing equipment used to measure, record, or transmit data relating to Charging Energy and Discharge Energy. Electric Metering Devices include the Primary Metering Devices and Back-Up Metering including the metering current transformers and the metering voltage transformers.

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

Prudent Utility Practices; 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, net of auxiliary loads, station electrical uses and appropriate line losses.

**"Energy Storage Services"** means the acceptance of Charging Energy at the Project, the storing of Energy in the Project, and the delivery of Discharge Energy from the Project at the Point of Delivery, all in accordance with Buyer's dispatch instructions and subject to the terms and conditions of this ESA.

**"Energy Storage System"** or **"ESS"** means the energy storage equipment, storage system controller, inverters, transformers, thermal management system, and other equipment necessary to charge, store, and subsequently deliver electricity from the Project to the Point of Delivery.

**"Environmental Attributes"** means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's delivery or storage of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (a) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil, gas, chemical, or other substance, and (b) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets, or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes specifically exclude (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 federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this ESA.

**“Equivalent Full Cycle”** means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharge Energy (in MWh) equivalent to the Guaranteed ESS Capacity over a four (4) hour duration. An Equivalent Full Cycle occurs when the total Discharge Energy (in MWh) over a period of time, regardless of the depth of battery discharge or quantity of partial charges/discharges, divided by the product of the Guaranteed ESS Capacity times four (4) hours (in MWh) equals one (1).

**“Errata ESA”** has the meaning set forth in the Recitals.

**“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 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 as set forth in this ESA.

**“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 Deemed Energy”** means the amount of Solar Energy Output that was not delivered to Buyer by Seller under the PPA but would have been so delivered but for a Non-Reliability Curtailment, Reliability Curtailment, or Transmission Provider Curtailment as such terms are defined in the PPA. ESS Deemed Energy (MWh) shall be reasonably calculated by Seller taking into account weather and pyranometer data from the meteorological station(s), via a mutually agreed upon method, at the Site for all or a portion of the Solar Units taken out of service due to the Non-Reliability Curtailment, Reliability Curtailment, or Transmission Provider Curtailment but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review Seller’s calculations of ESS Deemed Energy and approve such calculations in Buyer’s commercially reasonable discretion.

**“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 -M.

**“ESS Response Delay”** has the meaning set forth in Exhibit F.

**“ESS Response Delay Damages”** has the meaning set forth in Section 3.13(B).

**“ESS Roundtrip Efficiency”** means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

**“ESS Unit Capabilities”** has the meaning set forth in Section 3.12.

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

**“Excused Delay”** means any of the following: (a) Force Majeure, (b) any WRO Restraint; (c) any act or omission of Buyer or its Affiliates or its or their respective employees, contractors, or agents that is a material breach of Buyer’s obligations under this Agreement, (d) a Transmission Delay (unless such Transmission Delay is attributable to a failure of Seller to satisfy its obligations under the Interconnection Agreement), or (e) a delay in obtaining all zoning approvals, environmental approvals, permits and other governmental approvals necessary to construct and operate the Facility in the manner contemplated by this Agreement; provided, that the events set forth in subparts (b), (d) and (e) above shall only be “Excused Delays” to the extent that such events (i) are not caused by an act or omission of Seller, (ii) occur despite Seller’s exercise of Prudent Utility Practices, (iii) is not reasonably foreseeable, (iv) is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers and (v) does not lead to an actual delay of the critical path of the Project.

**“Execution Date”** has the meaning set forth in the Preamble.

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

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

**“Fitch”** shall mean Fitch Ratings Inc. or any successor thereto, or in absence of such successor, a nationally recognized credit rating agency.

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

**“Frequency Response Capability”** means the ability of the ESS to react to frequency within predefined bounds as specified in Section 3.12(G), measured in MW per 0.1 Hz, by charging or discharging to counter frequency deviations and supporting frequency as required by NERC Reliability Standard BAL-003-1, IEEE Standard 2800-2022, and September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance at the Point of Delivery, as may be amended or updated, and is within the capabilities of the ESS as of the Commercial Operation Date.

**“Future Environmental Attributes”** means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy 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.

**“Future Environmental Attribute Cost Cap”** has the meaning given in Section 11.1(E).

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

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

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

“**Governmental Charges**” means any Taxes, charges or costs that are assessed or levied by any Governmental Authority, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of the Product, either directly or indirectly.

“**Grid Charging Rate Adjustment**” shall mean an increase in the ESS Energy Payment Rate in the amount of One Dollar and Sixty-Nine Cents (\$1.69) per MWh.

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

“**Guaranteed Charge Ramp Rate**” has the meaning set forth in Section 3.12.

“**Guaranteed Discharge Ramp Rate**” has the meaning set forth in Section 3.12.

“**Guaranteed ESS Capacity**” has the meaning set forth in Section 3.12 and shall be valid for the full duration of the ESA with no allowance for degradation.

“**Guaranteed ESS Roundtrip Efficiency**” has the meaning set forth in Section 3.12.

“**Guaranteed PMAX**” has the meaning set forth in Section 3.12.

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

“**Guaranteed System Latency**” means the guaranteed time measured between when the control signal is received and the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint as determined by the actual System Latency in accordance with Exhibit F, as specified in Section 3.12.

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

**“House Energy”** means energy consumed by the ESS while the ESS is not charging or discharging as well as energy consumed by ESS ancillaries not directly involved in the control, receipt, storage, or discharge of energy during charging or discharging.

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

**“Interconnection Facilities”** means the Transmission Provider’s Interconnection Facilities and Seller’s Interconnection Facilities.

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

**“ITC(s)”** means the investment tax credits established pursuant to Section 48 of the U.S. Internal Revenue Code of 1986, as such law may be amended or superseded.

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

**“kWh”** means kilowatt hour AC.

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

**“Lender Consent”** means the consent of the entities who financed the Solar Facility, and whose consent to this Agreement and any necessary clarifications or modifications to the PPA is required with respect to shared facilities between the ESS and the Solar Facility.

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

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

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

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

**“Maximum State of Charge”** means one hundred percent (100%) usable state of charge, as reported by the ESS.

**“Minimum Qualifications”** means the following minimum financial and technical qualifications: (i) Seller together with its Affiliates has financial capacity reasonably commensurate with a Person owning solar electricity generating and/or energy storage assets that have a nameplate capacity of not less than one thousand (1,000) MW and (ii) Seller in the aggregate when combined with the solar energy generating and/or storage assets owned by Seller's Affiliates, operates such a portfolio of solar energy generating and/or storage assets, including the Project, or has engaged a Qualified Operator to operate the Project.

**“Minimum State of Charge”** means zero percent (0%) usable state of charge, as reported by the ESS.

**“Month”** means a calendar month.

**“Monthly Billing Period”** means the period during any particular Month in which Product has been made available at the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

**“Monthly Electricity Cost”** means, for a month, the product of (a) the quantity of Charging Energy during such month, times (b) the Solar Energy Output Payment Rate (as such term is defined in the PPA).

**“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.

“**NEE**” means NextEra Energy, Inc., a Delaware corporation.

“**NEECH**” means NextEra Energy Capital Holdings, Inc., a Delaware corporation.

“**NEER**” means NextEra Energy Resources, LLC, a Delaware limited liability company.

“**NEOP**” means NextEra Energy Operating Partners, LP, a Delaware limited partnership.

“**NEP**” means NextEra Energy Partners, LP, a Delaware limited partnership.

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

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

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

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

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

“**Non-Reliability Curtailment**” has the meaning ascribed in the PPA.

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

“**OATT**” means Open Access Transmission Tariff.

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

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

“**Operating Records**” means the final versions of operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, including but not limited to supply contracts, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project. For the avoidance of doubt, Seller may redact from Operating Records information that Seller reasonably deems commercially sensitive. Notwithstanding the foregoing, Seller may not redact information and data that is reasonably necessary for Buyer to perform audits or reviews allowed under this ESA, specifically including, but not limited to, audits allowed under Section 22.18 of this ESA as well as audits or reviews required to verify Seller’s compliance with its Representations, Warranties and Covenants outlined in Section 15.1, compliance with any ESS Unit Capabilities and Guaranteed ESS Availability Percentage, and Seller’s billing and payments under this ESA.



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

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

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

**“PNM”** has the meaning set forth in the Preamble.

**“Point of Delivery”** means, unless otherwise modified in accordance with Section 3.11, the electric system point at which (a) Buyer delivers Charging Energy to Seller, (b) Seller delivers Discharge Energy to Buyer, and (c) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this ESA.

**“PPA”** means the Power Purchase Agreement dated as of February 1, 2021 between Sky Ranch Solar, LLC and Buyer relating to the Solar Facility, attached as Exhibit O, including the Exhibits and Schedules attached thereto, as the same may be amended from time to time in accordance with the provisions thereof.

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

**“Product”** means all Energy Storage Services, Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, all as made available by the Project, all of which shall be delivered for Buyer’s exclusive use pursuant to the terms of this ESA.

**“Project”** means Seller’s energy storage facility, located in Valencia County, NM, with a designed maximum power discharge capability of 100 MW for four (4) hours (400 MWh), as identified and described in Article 3 and Exhibit A to this ESA, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Buyer at the Point of Delivery: Seller’s equipment, buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, Seller’s Interconnection Facilities necessary to connect the ESS to the Electric Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this ESA.

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

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

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

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

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

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

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

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

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating requirements of the Interconnection Agreement, voltage, current, volt-ampere reactive (“**VAR**”) loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for battery energy storage systems of the technology provided in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency Conditions; and

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

**“Qualified Operator”** is (a) a Person that has at least three (3) years’ experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

“**Rating Agency**” shall mean S&P, Moody’s, or Fitch.

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

“**Receiving Party’s Representatives**” has the meaning set forth in Section 22.14(B).

“**Recording**” has the meaning set forth in Section 22.19.

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

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

“**Reliability Curtailment**” has the meaning ascribed in the PPA.

“**Replacement ESS Costs**” means the actual costs incurred by Buyer following an Event of Default that are reasonable and necessary to replace the Product which Seller, in accordance with this ESA, would have made available to Buyer but failed to so provide pursuant to this ESA. Buyer shall not have to enter into a replacement contract to establish the Replacement ESS Costs. If Buyer does not enter into a replacement contract, then the Replacement ESS Costs will be based on the market price for comparable ESS Unit Capabilities, Future Environmental Attributes and Ancillary Services delivered to Buyer’s system under a structure that complies with Buyer’s financial accounting and operating lease structure requirements, as reasonably determined by a third party reasonably acceptable to both Parties. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs for an Event of Default also include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Discharge Energy to the Point of Delivery and any associated transmission or distribution costs, and (b) Buyer’s expenses, including reasonable attorneys’ fees, incurred as a result of Seller’s failure to perform under this ESA.

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

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

“**Scheduled Maintenance Outage**” means a time during which the ESS is shut down or its output reduced to undergo scheduled maintenance in accordance with this ESA, or as otherwise agreed by Seller and Buyer.

“**Scheduling Coordinator Contact**” 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 Board Approval”** means the approval of NEER’s designated internal governing body which possesses the authority to act or approve certain Seller capital expense commitments.

**“Seller Excused Hours”** means those hours during which Seller is unable to make available Product as a result of: (a) a Scheduled Maintenance Outage, (b) a Force Majeure Event, or (c) any failure by Buyer to perform a material obligation under this ESA (other than due to a breach by Seller of its obligations under this ESA).

**“Seller Forced Outage”** means an unplanned reduction, interruption, or suspension of all or a portion of Charging Energy receipts or Discharge Energy deliveries from the Project, in each case at the Point of Delivery and not associated with Seller Excused Hours.

**“Seller Guarantor”** means a Person that (a) has made a Seller Guaranty for the benefit of Buyer, and (b) is either (i) NEECH, or (ii) a Person with a long-term senior unsecured debt credit rating of “Baa3” or higher by Moody’s, “BBB-” or higher by S&P, and “BBB-” or higher by Fitch.

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

**“Seller Permitted Transfer”** means any of the following: (a) a Change of Control of Seller’s Ultimate Parent (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor; or (c) a transfer of (i) all or substantially all of the assets of NEER or Seller’s Ultimate Parent in a single transaction, (ii) all or substantially all of Seller’s Ultimate Parent’s renewable energy generation portfolio in a single transaction, (iii) all or substantially all of NEER’s or Seller’s Ultimate Parent’s solar generation portfolio in a single transaction; or (iv) the direct or indirect transfer of shares of, or equity interest in, Seller to a Person, so long as an Affiliate of NEER continues to hold an economic interest in the Project, the transferee is acquiring a portfolio of other resources in the same transaction that, when aggregated with the Project, represent more than 1,000 MW of generation capacity, and the majority beneficial owner of Seller satisfies the Minimum Qualifications; *provided* that (in the case of (c)) following such transfer (A) the entity operating the Project is (or prior to the date of such transfer, retains) a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (B) such transfer does not have a material adverse effect on the Seller’s credit characteristics; (C) the transferee shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA; and (D) both the Seller and the “Seller” (as defined in the PPA) are owned by Seller’s Ultimate Parent.

**“Seller-Requested Performance Tests”** has the meaning set forth in Section 10.5.

**“Seller Termination Payment”** means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Product) calculated using a discount factor equal to the current yield for direct obligations of the United States Treasury with a maturity that is closest to, but not less than, the remaining Term of the ESA, plus (b) Seller’s Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing

calculations. The Seller Termination Payment shall not include consequential incidental, punitive, exemplary, indirect or business interruption damages. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

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

**“Seller’s Financial Statements”** has the meaning set forth in Section 22.18(B).

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

**“Site”** means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this ESA. For the avoidance of doubt, this ESA is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller’s Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld.

**“Solar Energy Output”** shall have the meaning as ascribed to it in the PPA.

**“Solar Facility”** means the co-located one hundred and ninety (190) MW<sub>AC</sub> solar generating plant consisting of photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary to collect sunlight and convert it into electricity which, among other things, will be used to charge the ESS per Buyer’s dispatch elections. For the avoidance of doubt, the Solar Facility 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.

**“Solar Unit(s)”** shall have the meaning as ascribed to it in the PPA.

**“Supplemental Tax Incentive”** means any federal, state or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date that provides for additional or increased tax credits and is determined to be applicable to the Project, net of associated expenses, taxes, and lost Tax Benefits, if any. For the avoidance of doubt, Supplemental Tax Incentives do not and shall not include any benefits

available under the Inflation Reduction Act of 2022 or any regulations promulgated thereunder, which, for the avoidance of doubt, are included in the ESS Energy Payment Rate.

“**System Control Center**” or “**SCC**” means Buyer’s representative(s) responsible for dispatch of the ESS.

“**Tax Benefits**” means (a) federal and state investment and/or production tax credits, Supplemental Tax Incentives, and any other tax credits that are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

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

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

“**Taxes**” means all taxes, fees, levies, licenses, or charges, including Gross Receipts Taxes, imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

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

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

“**Test Period**” means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider’s Transmission System and is available to receive Charging Energy from and deliver Discharge Energy to the Point of Delivery, and ending on the Commercial Operation Date.

“**Transformer Failure**” means the failure of the Project’s main generator step-up transformer, provided, however that Seller is using Prudent Utility Practice to overcome the Transformer Failure, and provided further, that Seller shall only have the right to claim relief for a Seller Event of Default under Section 12.1(B)(4) hereunder in connection with a Transformer Failure once during the Term.

“**Transmission Delay**” means the failure to complete and energize the Transmission Provider’s Interconnection Facilities by November 1, 2025 or Transmission Provider’s failure to complete the Transmission Provider’s Interconnection Facilities and all affected system upgrades

by or before September 1, 2025; *provided*, that such delay is not caused by Seller or its Affiliates or any party for whom it is liable.

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

**“Transmission Provider Curtailment”** has the meaning ascribed in the PPA.

**“Transmission Provider’s Interconnection Facilities”** means the facilities necessary to connect the Transmission Provider’s Transmission System to the Electric Interconnection Point, including breakers, bus work, bus relays, and associated equipment installed by the Transmission Provider for the direct purpose of physically and electrically interconnecting the Project, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. Arrangements for the installation and operation of the Transmission Provider’s Interconnection Facilities shall be governed by the Interconnection Agreement.

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

**“Ultimate Parent”** means (i) NEE, or (ii) after any transfer of the direct or indirect equity interests in Seller to NEP, NEE or NEP.

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

**“WRO Restraint”** means any withhold release order or other import restraint issued by U.S. Customs and Border Protection or other applicable Governmental Authority, including under the Uyghur Forced Labor Prevention Act, that prevents or delays the import or release of any BESS Equipment into the United States, and such order prevents or delays the delivery of such BESS Equipment to Seller for incorporation into the Project.

## 1.2 Rules of Construction.

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

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

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

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

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

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

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

(H) All uses of the word “shall” in this ESA are to be interpreted as imperative and not permissive.

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

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

(B) Notwithstanding any other provision in this ESA, nothing in the Interconnection Agreement shall alter or modify Seller’s or Buyer’s rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and the Transmission Provider. In any conflict between the terms of this ESA and the Interconnection Agreement, the Interconnection Agreement shall prevail; *provided*, that if a conflict is identified that limits ESA operational flexibility of Buyer as envisioned within the ESA, the Parties will meet and confer to establish operating protocols to resolve such conflicts within the confines of the Interconnection Agreement.

(C) Seller expressly recognizes that, for purposes of this ESA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity.



1.4 Interpretation of Arrangements for Electric Supply to the Project. This ESA does not provide for the supply of House Energy. 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 must be separate from metering used to meter Charging Energy and Discharge Energy.

(A) Seller’s arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller’s Interconnection Facilities. The terms of this ESA are not binding upon the Local Provider. For purposes of this ESA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

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

(C) Separate from energy provided to the battery, Seller shall have the right to consume energy concurrently generated by the Solar Facility for House Energy and to co-locate additional facilities designed to supply House Energy; provided, however, that excess energy produced from such additional facility shall not be delivered by Seller to Buyer under this ESA. House Energy shall be real time measured by a dedicated electric metering device with metering current transformers and metering voltage transformers and shall not be delivered by Seller to Buyer under this ESA.

## ARTICLE 2 Term and Termination

2.1 Execution Date and Term. This ESA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time on the Contractual End Date, subject to the early termination provisions set forth herein. Applicable provisions of this ESA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

## ARTICLE 3 Project Description

3.1 Commercial Terms. The following commercial terms, and as more fully set forth in this ESA, apply to the transaction contemplated by this ESA:

## COMMERCIAL TERMS

<b>Buyer:</b> Public Service Company of New Mexico	<b>Seller:</b> Sky Ranch Energy Storage II, LLC
<b>Project:</b> Sky Ranch Energy Storage II Project	
<b>Point of Delivery:</b> The point within WECC Path 48 where Seller makes available to Buyer Product being provided under this ESA, as further specified in the definition of “Point of Delivery.”	
<b>Contract Term:</b> From the Commercial Operation Date to the Contractual End Date	<b>Product Type:</b> Discharge Energy, Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, and Energy Storage Services
<b>ESS Energy Payment Rate:</b> \$28.04 per MWh of Solar Energy Output, as further specified in Section 8.1.	
<b>Day(s) of week:</b> Monday through Sunday, including NERC holidays	<b>Hours:</b> Hour Ending 0100 – Hour Ending 2400, Monday through Sunday MST
<b>Guaranteed Start Date:</b> ninety (90) Days after the Expected Commercial Operation Date	
<b>Expected Commercial Operation Date:</b> February 1, 2026, subject to extension as set forth in Section 3.6.	

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

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

3.4 **General Design of the Project.** Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project according to Prudent Utility Practices, the Interconnection Agreement, and the terms of this ESA. The Project shall 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 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 AGC by Buyer;

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

(E) be capable of receiving Charging Energy from Buyer and delivering Discharge Energy to Buyer, each at the frequency specified by Buyer;

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

(G) meet voltage and reactive/active power control performance for a Category B system as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Point of Delivery;

(H) meet the normal and abnormal performance category as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Point of Delivery, which shall be Category II minimum;

(I) 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; *provided*, that the ESS shall not be operated in a manner that violates applicable manufacturer specifications and warranties; *provided, further*, that the ESS shall be capable at a minimum of both full load and idle operation at an ambient temperature range of at least -13°F to 110°F;

(J) meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 at the Point of Delivery; and

(K) 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 (as each of the following are defined in the MESA-ESS Specifications, 2018v1): (i) Charge-Discharge (real power dispatch), (ii) Coordinated Charge-Discharge (state of charge management), (iii) Active Power Smoothing, (iv) Automatic Generation Control, and (v) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE-1547.1: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with PNM's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All

technologies interfacing directly with PNM's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements.

3.5 Expected Commercial Operation Date. Subject to the extensions as set forth in this ESA, the Commercial Operation Date shall occur no later than the Expected Commercial Operation Date.

3.6 Extension Due to Excused Delay. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended by the number of Days, up to a maximum of one hundred eighty (180) Days, or such longer period agreed to by the Parties, equal to the duration of any Excused Delay. Seller shall give written notice to Buyer describing any such Excused Delay within five (5) Business Days after becoming aware of its effect on Seller's performance under this Agreement. This notice shall provide such detail concerning the Excused Delay as Seller reasonably possesses at the time. The number of Days of such extension shall be calculated from the date on which the Excused Delay begins. If an Excused Delay will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then either Party may terminate this ESA without liability of either Party other than obligations already incurred.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to (i) Three Hundred Fifty Dollars (\$350) per Day per each MW of Delayed Capacity for each Day of delay that occurs prior to June 1 and/or after September 30 of a calendar year and (ii) One Thousand Dollars (\$1,000) per Day per each MW of Delayed Capacity for each Day of delay that occurs on or after June 1 and on or before September 30 of a calendar year, until the earlier of (a) the Commercial Operation Date, and (b) the Guaranteed Start Date. "**Delayed ESS Capacity**" means the Guaranteed ESS Capacity minus the ESS Capacity as of the determination date. In no event shall the aggregate Delay Damages exceed (i) Thirty-Two Thousand Dollars (\$32,000) per MW of Delayed Capacity for delays that occur prior to June 1 and/or after September 30 of a calendar year and (ii) Ninety Thousand Dollars (\$90,000) per MW of Delayed Capacity for delays that occur on or after June 1 and on or before September 30 of a calendar year.

3.8 ESS Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned, and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve Commercial Operation. If Seller has not caused all Delayed ESS Capacity to achieve Commercial Operation on or before the Guaranteed Start Date (as such date may be extended pursuant to Section 3.6), then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Three Hundred Thousand Dollars (\$300,000) per MW of Delayed ESS Capacity (as of the Guaranteed Start Date) ("**ESS Capacity Shortfall Damages**"), in which case the Guaranteed PMAX and Guaranteed ESS Capacity will be reduced in an amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8 and (ii) the ESS Energy Payment Rate shall be reduced by an amount proportional to the Delayed ESS Capacity.

3.9 Test Period. Seller shall give written notice to Buyer of its NERC registered Generator Owner and Generator Operator, and will designate a point of contact with Buyer as Scheduling Coordinator (the “**Scheduling Coordinator Contact**”), in accordance with Exhibit N, ninety (90) Days prior to providing written notice of intent to start testing the Energy Storage System, such notice to be provided not less than thirty (30) Days and then again seven (7) Days prior to the date upon which Seller expects to begin testing the Energy Storage System. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Charging Energy delivered by Buyer from the Solar Facility or from the grid as reasonably required for purposes of testing and commissioning the Project. Seller shall subsequently redeliver such Charging Energy to Buyer at the Point of Delivery as Discharge Energy, less ESS Roundtrip Efficiency losses. In accordance with Section 7.2, Buyer shall retain title of such Charging Energy and Discharge Energy. 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 J when Seller believes that all requirements to Commercial Operation have been satisfied. Buyer shall, within ten (10) Days, in writing either accept or reject this notice based on specifically identified deficiencies in meeting the criteria included in the definition of Commercial Operation, and if Buyer rejects the notice, Seller shall promptly correct any such deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer’s rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller’s most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Grid Charging. Seller shall construct the ESS to accept Charging Energy from the electrical grid and shall obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid by the Commercial Operation Date. For the avoidance of doubt, Buyer shall indemnify and hold Seller harmless from any costs, penalties, or charges and shall make Seller whole (which the Parties acknowledge shall be accomplished through the Grid Charging Rate Adjustment) with respect to any lost Tax Benefits resulting from any negative determination related to Buyer’s procurement or supply of grid-sourced Energy as Charging Energy to the ESS.

3.12 ESS Unit Capabilities. “ESS Unit Capabilities” means all of the following for the ESS:

(A) Guaranteed P<sub>MAX</sub> of 100 MW of charging and discharging capability as measured at the Point of Delivery, and as may be adjusted pursuant to Section 3.8;

(B) Guaranteed ESS Capacity: discharge ESS at Guaranteed P<sub>MAX</sub> for four (4) consecutive hours; starting at the Maximum State of Charge and ending at the Minimum State of Charge

(C) Guaranteed ESS Roundtrip Efficiency as shown in Exhibit K; Seller shall provide any applicable degradation forecasts applicable to this guarantee;

(D) Guaranteed Discharge Ramp Rate of 50 MW per second measured between 90% of the Maximum State of Charge and 10% of the Maximum State of Charge representing the maximum rate that the ESS can change its output power; the maximum rate is defined as the maximum slope on the s-curve of the ESS ramp logic response, consistent with that represented in Exhibit P;

(E) Guaranteed Charge Ramp Rate of 50 MW per second measured between 10% of the Maximum State of Charge to 90% of the Maximum State of Charge representing the maximum rate that the ESS can change its output power; the maximum rate is defined as the maximum slope on the s-curve of the ESS ramp logic response, consistent with that represented in Exhibit P;

(F) Guaranteed System Latency: <3 seconds

(G) Guaranteed Frequency Response Capability of Guaranteed P<sub>MAX</sub>/0.1Hz;

(H) Capability to support Ancillary Services in accordance with the system design and ESS Operating Restrictions, or as otherwise agreed by the Parties in writing; and

3.13 ESS Non-Performance Liquidated Damages. ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Additional Buyer-Requested Performance Tests may also be required in accordance with Section 10.5(D). Seller will pay Buyer the following liquidated damages (“**ESS Non-Performance Liquidated Damages**”) as Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive obligation, for ESS unit non-performance, including any failure to meet the ESS Unit Capabilities (in each case other than as excused due to (a) a Force Majeure Event, (b) failure of Buyer to deliver Charging Energy, (c) a Scheduled Maintenance Outage, or (d) a Seller Forced Outage) or to comply with the requirements of Section 7.4(a).

(A) If Seller is unable to achieve the Guaranteed ESS Capacity (as may be adjusted pursuant to Section 3.8), Seller shall pay Buyer One Hundred Forty Thousand Dollars (\$140,000) for each MW (prorated for any portion thereof) of ESS Capacity shortfall annually (prorated for any portion of a year) until such deficiency is cured.

(B) Ten Thousand Dollars (\$10,000) per event (each event shall last no longer than three (3) Days) for inability to comply with the Guaranteed Charge Ramp Rate, Guaranteed Discharge Ramp Rate, Guaranteed System Latency or the Guaranteed Frequency Response Capability; provided, however, under no circumstances will ESS Non-Performance Liquidated Damages exceed Five Hundred Thousand Dollars (\$500,000) in any Commercial Operation Year and an aggregate of Two and One-Half Million Dollars (\$2.5 million) over the Term of this ESA.

3.14 Availability Guarantee. Seller guarantees that the Project shall be available to deliver Discharge Energy, store Energy or accept Charging Energy and shall pay Availability Damages, if any, in accordance with Seller's obligations under the provisions of Exhibit H.

3.15 Guaranteed ESS Roundtrip Efficiency Payment.

If the ESS Roundtrip Efficiency is below the Guaranteed ESS Roundtrip Efficiency, Seller will pay to Buyer an amount equal to the Monthly Electricity Cost multiplied by  $(1 - (\text{ESS Roundtrip Efficiency}/\text{Guaranteed ESS Roundtrip Efficiency}))$ .

3.16 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that equipment, firmware, software, or any component thereof utilized in the Project under this ESA is not prohibited by Applicable Law. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.16 by Seller, its contractors or subcontractors or any of their respective Affiliates.

ARTICLE 4  
AGC

4.1 AGC.

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

(B) Beginning on the Commercial Operation Date, PNM shall have the right to direct the dispatch of the ESS, via AGC control, according to its fullest capability within the ESS Operating Restrictions in Exhibit M. Total cycles shall not exceed 365 Equivalent Full Cycles in any Commercial Operation Year. For clarity, Buyer shall have no restrictions on the quantity of Equivalent Full Cycles per Day except as required by the ESS manufacturer warranties.

ARTICLE 5  
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this ESA to accept the Charging Energy at and from the Point of Delivery as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Energy Storage System. Seller shall use and only use the Charging Energy for Buyer's benefit in accordance with the terms

and conditions of this ESA. Seller shall secure interconnection necessary (i) to deliver the Discharge Energy to the Point of Delivery and (ii) receive Charging Energy from the grid and the Solar Facility at the Point of Delivery to the ESS including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on, and jointly used by, the Project and the Solar Facility, *provided* that (i) delivery of Energy from the Solar Facility to the Transmission Provider's Transmission System shall take priority over Discharge Energy and the reservation of Ancillary Services capacity at the Point of Delivery, and (ii) that when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Discharge Energy shall take priority over delivery of Energy from the Solar Facility.

(B) Seller shall be responsible for the costs of interconnection and costs required to receive and deliver Energy at the Point of Delivery for the Project at the required voltage, including the costs of any associated network upgrades. As between Buyer and Seller under this ESA, Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to Discharge Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.

(C) Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges required to deliver Discharge Energy from and beyond the Point of Delivery. Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges for delivery of Charging Energy to the Point of Delivery.

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to (i) take Discharge Energy at the Point of Delivery and deliver it to points beyond, and (ii) deliver Charging Energy to the Point of Delivery from the grid.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the current availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Charging Energy and Discharge Energy delivered pursuant to this ESA shall be metered and accounted for separately from any electric generation facility, including the Solar Facility, that utilizes the same Electric Interconnection Point. Seller shall install Electric Metering Devices, including Primary Metering Devices and redundant metering with independent current transformers and voltage transformers ("**Back-Up Metering**"), each in an arrangement consistent with the configuration depicted in Exhibit B, or as otherwise agreed between the Parties.



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

(C) All Electric Metering Devices used to measure the Charging Energy and Discharge Energy and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this ESA. The design of the Electric Metering Device system shall be subject to Buyer approval (not to be unreasonably withheld) prior to commencement of construction of the Project. Buyer will, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon completion of the testing. ESS Electric Metering Devices shall be bi-directional and shall be capable of measuring and reading instantaneous, five minute, fifteen minute and hourly real and reactive Energy and capacity, if supplied by either the grid, solar generation system or ESS system. ESS Electric Metering Devices shall be programmed such that meter readings will reflect losses between the Electric Metering Device and the Point of Delivery. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model reasonably approved by the Buyer.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, backup metering devices (“**Secondary Metering**”) in addition to the redundant Back-Up Metering referenced above in Section 5.3(A), which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party shall, at its own expense, inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which case the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices, or Secondary Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance

standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and at that Party's expense.

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

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall first use Back-up Metering, followed by Secondary Metering 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. In the event that Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Charging Energy to the Project at the Point of Delivery and Discharge Energy from the Project to the Point of Delivery, in each case during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

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

## ARTICLE 6 Conditions Precedent

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

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

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or 6.3 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 a Buyer's failure to provide such notice shall not constitute a breach of this ESA.

6.3 Lender Consent. If Seller does not obtain the Lender Consent by February 1, 2024, Seller may terminate this Agreement by written notice to Buyer and, as Buyer's sole remedy for such termination, Seller shall owe Buyer damages for such failure in the amount of Seventy-Five Thousand Dollars (\$75,000) per MW, which may, for the avoidance of doubt, be drawn by Buyer from the Development Security. If Seller does not terminate this Agreement by the February 1, 2024, Seller will be deemed to have waived this condition.

## ARTICLE 7 Sale and Purchase of Product

7.1 Sale and Purchase of Product. In accordance with and subject to the terms and conditions of this ESA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Product made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that, subject to Section 8.1(A), Buyer shall not be required to receive and Seller shall not be required to make available, Product when and to the extent that (a) a Party's performance is excused by a Force Majeure Event; (b) a Seller Forced Outage is continuing; (c) a Seller Scheduled Maintenance Outage is continuing; or (d) Seller fails to perform and its failure is excused during Seller Excused Hours. At its sole discretion, 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 ESA.

7.2 Title and Risk of Loss. Buyer shall be deemed to be in control of all Charging Energy up to delivery, but not including, receipt at the Point of Delivery. Seller shall be deemed to be in control of such Charging Energy from and after such delivery until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy up to the Point of Delivery. Buyer shall be deemed to be in control of such Discharge Energy from and after Seller's delivery and upon Buyer's receipt at the Point of Delivery. Buyer shall retain title and risk of loss for Charging Energy, Energy stored in the ESS, and Discharge Energy at all times. Title and risk of loss related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery.

7.3 Future Environmental Attributes and Changes in Law. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this ESA all right and title to such Future Environmental Attributes is included in the ESS Energy Payment Rate; and (c) such Future Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this ESA. If, in order for Buyer to receive the benefit of any Future Environmental Attributes, Seller must incur any third-party costs not otherwise provided for in this ESA, or if any change in Applicable Law relating to such Future Environmental Attributes occurs after the Execution Date that causes Seller to incur any third-party costs not otherwise provided for in this ESA in order to deliver the additional Environmental Attributes, then such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer. Seller shall deliver a good faith estimate of

such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; *provided that*, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. For the avoidance of doubt, Buyer shall remain liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

#### 7.4 Scheduling.

(A) During the Delivery Term, Buyer shall arrange all scheduling services necessary to receive Discharge Energy from, and deliver Charging Energy to, the Point of Delivery while ensuring compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements, and any other applicable guidelines. 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, Charging Energy, or Ancillary Services during Seller Forced Outages, Scheduled Maintenance Outages, or Force Majeure Events. Seller will coordinate with Buyer as required by NERC/WECC operating policies and criteria in accordance with Exhibit N.

(B) If at any point during the Delivery Term, (i) an alternative market design is implemented in which the Project will or can participate in an energy market, or (ii) if either the Project, the Electric Interconnection Point, or Buyer no longer reside in the same market ((i) and (ii) a "Market Event") and such Market Event materially changes the interconnection and delivery requirements in this ESA, the Parties shall cooperate in good faith to facilitate the delivery of Product from the Point of Delivery to Buyer, at the least possible cost to the Parties, consistent with this ESA to the extent possible.

(C) Seller shall provide to Buyer its good faith, non-binding estimates of the daily ESS availability for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and SCC as applicable, Seller shall, by 6:00 a.m. MST on each Day, submit a good faith estimate of the hourly ESS availability for the next six (6) Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer by 1MW or more, Seller shall promptly notify Buyer of such change or predicted change.

## 7.5 Forced Outages.

(A) Buyer and Seller shall promptly advise one another of events that may form the basis for a declaration of the existence or termination of Seller Excused Hours or a Seller Forced Outage. Buyer or Seller (as appropriate) shall at the earliest practicable date provide the other Party written notice (“**Outage Notice**”) of the declaration of the existence of Seller Excused Hours or a Seller Forced Outage not available to Buyer through the SCADA system. Seller, through its scheduling coordinator, shall provide such notice to the System Control Center. An Outage Notice provided by either Party shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Product, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Buyer or Seller (as appropriate) shall keep the other Party informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

## ARTICLE 8 Payment Calculations

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

(A) **ESS Energy Payment.** Subject to Section 14.4, Buyer shall pay Seller an amount equal to the product of (x) the ESS Energy Payment Rate, multiplied by (y) the sum of (i) the aggregate amount of Solar Energy Output (MWh) delivered for Buyer to the Point of Delivery from the Solar Facility under the PPA, plus (ii) the ESS Deemed Energy (MWh) (the “**ESS Energy Payment**”).

(B) If Supplemental Tax Incentives become available in connection with the Product, Seller shall, within thirty (30) Days of guidance regarding such availability, provide an analysis to Buyer of the benefits available under this ESA. At Buyer’s option, the Parties shall work together in good faith to agree to those amendments and other modifications, excluding any price increase, to this ESA which are reasonably required to allow the Parties to receive the Supplemental Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such incentives.

(C) If Seller or an Affiliate of Seller, if any, becomes eligible to receive any Supplemental Tax Incentives with respect to the Project, the value of such Supplemental Tax Incentives will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental Tax Incentives by Seller or Affiliate of Seller, Seller will remit to Buyer a payment equal to sixty percent (60%) of the value of such Supplemental Tax Incentives.

(D) Buyer shall reimburse Seller for the taxes identified in Section 9.7(A), which shall be included in the monthly invoices in compliance with Section 9.7(A).

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

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. This Section 8.3 shall only apply to Section 8.1(C) to the extent such Supplemental Tax Incentives are applicable to the time period before the repudiation, termination or expiration of this ESA.

## ARTICLE 9 Billing and Payment Procedures

### 9.1 Statements and Payment of Electricity Payments.

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

(B) Payments due shall be determined and adjusted in accordance with Article 8 and Section 3.15. From and after the Commercial Operation Date, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this ESA (in Dollars) payable to Seller for the preceding Month. Each such invoice shall show the ESS 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 banks in the State of New Mexico are permitted to close on any date on which any payment by Buyer would otherwise have been due, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

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

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

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

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this ESA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the lower of (a) 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 (b) 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 forty-five (45) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) On all invoices, Seller shall separately show all Gross Receipts Taxes charged to Buyer, provided that in no event will interest or penalties on such taxes be reimbursable by Buyer. If the sale of Product takes place on tribal land, Seller will comply with applicable 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 ESA provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Product to Buyer pursuant to this ESA.

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

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

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

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

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

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this ESA, including damages and other payments that are owed by a Party to the other Party pursuant to this ESA. Undisputed and non-offset portions of amounts



invoiced under this ESA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

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

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

## ARTICLE 10 Operations and Maintenance

### 10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement and this ESA. Seller will be solely responsible for, and the ESS Energy Payment Rate will not be adjusted to accommodate, increased costs or any failure to obtain any Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer quarterly development and construction updates. Seller shall provide to Buyer a functional Project Schedule in Microsoft Project format within ninety (90) Days of the Execution Date, including key project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a quarterly look-ahead of project activities, with each subsequent quarterly update or upon Buyer request. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, the New Mexico Public Utility Act.

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15<sup>th</sup> of each month. For cases where the 15<sup>th</sup> 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. If Seller becomes aware of any critical milestone that will not be achieved by the required date, Seller must provide Buyer written notice and a recovery plan to 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. Upon reasonable notice to Seller, Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up, and testing of the Project.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer, except (i) as required by Prudent Utility Practices or

Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to materially alter the Guaranteed ESS Capacity, ESS Unit Capabilities, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall, by a written notice delivered to Buyer on or before the Execution Date, designate a Project Manager 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. 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 notice by Buyer conveying material concern regarding the existing Project Manager, Seller shall use commercially reasonable efforts to replace the Project Manager.

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

#### 10.2 Commissioning Tests.

(A) Seller shall provide proposed Commissioning Test procedures to Buyer at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Buyer shall provide any comments to the proposed Commissioning Test procedures to Seller within twenty-five (25) Days of its receipt of the proposed Commissioning Test procedures. Seller shall incorporate Buyer’s reasonable comments to such proposed Commissioning Test procedures in the final Commissioning Test procedures. 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 test date and of the proposed tests scheduled relating to the commissioning of the Project (“**Commissioning Tests**”) as described in Exhibit F. Representatives of Buyer shall have the right to be present at all such testing and Seller shall provide the results of all Commissioning Tests to Buyer prior to the Commercial Operation Date. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

#### 10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees, and inspectors reasonable access to the Project, including the control room and Seller’s Interconnection Facilities, for the purposes set forth herein. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller’s applicable safety and health rules and requirements, including executing customary waiver and indemnity agreements,

and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

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

#### 10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices and the ESS Operating Restrictions ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this ESA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this ESA; and (ii) comply with reasonable requirements of Buyer regarding day-to-day or hour-by-hour communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Discharge Energy delivered by Seller will meet all requirements for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this ESA. Seller shall provide Buyer with all real time measurement parameters of the Project including system availability data made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(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, 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, NERC Protection and Control (PRC) standards and Prudent Utility Practices. 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. PNM 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.

(A) Not later than ninety (90) Days before the Commercial Operation Date, Seller shall provide Buyer a draft of all Operating Procedures. Not later than thirty (30) days before the Commercial Operation Date, an operating committee consisting of Seller and Buyer

representatives shall develop mutually agreeable written Operating Procedures for integration of the Project into Buyer's system. 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, the ESA, Prudent Utility Practices, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Seller will make qualified personnel available twenty-four (24) hours per day, seven (7) days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project.

(B) Seller will prepare detailed test protocols and procedures for any tests to be performed in connection with achieving Commercial Operation and for periodic tests as required within this ESA. The protocols and procedures will be developed by Seller in accordance with the requirements of the ESA and the appropriate power test code standards for energy storage facilities. Draft protocols and procedures must be submitted to Buyer and the System Control Center for review and approval, which approval will not be unreasonably denied or delayed.

(C) Seller will perform, at Seller's expense, an annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F and promptly provide the results to Buyer. Seller will have sixty (60) Days from the test date to cure any deficiencies in the test.

(D) In the event of a material adverse change in ESS Unit Capabilities, Seller shall perform additional tests as requested by Buyer ("**Buyer-Requested Performance Tests**"), limited to the following conditions. Buyer-Requested Performance Tests will be conducted in accordance with applicable test protocols and procedures set forth in Exhibit F.

(1) If the results of a Buyer-Requested Performance Test fail to meet the Guaranteed ESS Unit Capabilities, ESS Non-Performance Liquidated Damages would apply for the time period following the Buyer-Requested Performance Test until such time as a subsequent retest confirms that corrective actions have resolved deficiencies.

(2) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

(E) In addition to the foregoing, Seller may, at its option, perform additional tests ("**Seller-Requested Performance Tests**") in accordance with test protocols and procedures set forth in Exhibit F.

## 10.6 Project Maintenance.

Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this ESA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the annual Scheduled Maintenance Outages by no later than October 15 for the period of June 1 through May 31 for the following year and, by no later than April 15, a confirmation or update of such forecast for the period of December 1 through May 31 of the following year. With the October 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 1<sup>st</sup> through September 30<sup>th</sup>, 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 without Buyer's prior written approval, not to be unreasonably withheld, except that any request to schedule interruption or reduction at any time during May 1<sup>st</sup> through September 30, December, or January is subject to Buyer's sole discretion. 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.

(A) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Product to the Point of Delivery. Upon the reasonable written request of Buyer, Seller shall make available to Buyer as Confidential Information subject to the restrictions of Section 22.14, copies of any environmental permits related to the Project.

10.7 Sales to Third Parties. As of the start of the Test Period, Seller shall not sell or divert Product to any Person other than Buyer.

10.8 Monthly Operational Report. Not later than the tenth (10th) day of each Month after the Commercial Operation Date, Seller shall, along with the invoices provided pursuant to Section 9.1, provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**"). The Parties will agree upon a form of Monthly Operational Report at least sixty (60) Days prior to the Commercial Operation Date, which may include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Energy Output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3)

Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

10.9 Lease Liability Operational Expenses. If the pricing terms and conditions of this ESA would result in Buyer incurring a lease liability greater than zero dollars (\$0), then Seller shall provide Buyer, upon Buyer's reasonable request, an approximate percentage, or other information necessary for Buyer to determine an approximate percentage, of the cost of on-going operational expenses for the Project (e.g. cellular augmentation, operations and maintenance costs, property taxes and other such expenses) relative to the ESS Energy Payment Rate for a specified measuring period.

## ARTICLE 11 Future Environmental Attributes

11.1 Sale of Future Environmental Attributes. This Article 11 shall apply if and only if Future Environmental Attributes become available.

(A) Other than as specified in Sections 11.1(D) and 11.1(E) below, effective from the date on which the Project first makes Product available to Buyer at the Point of Delivery, Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to Future Environmental Attributes associated with the Project. Upon generation and documentation of Future Environmental Attributes, Seller shall make the Future Environmental Attributes available to Buyer no later than forty-five (45) Days after creation. The value of the Future Environmental Attributes transferred under this ESA 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 ESA, but not used, sold, assigned or otherwise transferred during the Term of this ESA. Buyer may, to the extent permitted by Applicable Law and this ESA, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this ESA or any successor provision providing for a federal, state and/or local tax credit or financial benefit determined by reference to renewable electric energy produced from renewable energy resources or the storage of electrical energy shall be owned by Seller.

(E) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to Future Environmental Attributes and certification

requirements under any applicable federal, state, or regional program or Applicable Law. Notwithstanding anything herein to the contrary, in no event shall Seller incur costs to comply with this Article 11 which exceed Twenty-Five Thousand Dollars (\$25,000) per MW in the aggregate over the Term (“**Future Environmental Attribute Cost Cap**”), except following Buyer’s written agreement to reimburse Seller for such excess costs.

ARTICLE 12  
Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable other than as set forth in Section 12.1(A)(6) and 12.1(A)(7) below:

- (1) Seller’s dissolution or liquidation;
- (2) Seller’s assignment of this ESA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 and in any consent to collateral assignment with a Lender;
- (3) Seller’s filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller’s voluntarily taking advantage of any such law by answer or otherwise;
- (4) 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, waste, tampering with Buyer-owned facilities, or other material misrepresentation or willful misconduct in connection with this ESA or the operation of the Project;
- (6) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of Seller’s receipt of written notice of such failure from Buyer or the entity providing such Security; or
- (7) The failure of Seller Guarantor or Seller to make, when due, any payment due to Buyer under or in connection with this ESA, unless remedied within ten (10) Business Days of Seller’s receipt of written notice of such failure from Buyer (subject to Seller’s rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this ESA); or
- (8) Seller’s failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date or other date mutually agreed to by the Parties.

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

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

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer, Seller is not able to 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 required to make Product available at the Point of Delivery;

(3) Seller's failure to comply with any other material obligation under this ESA, which would result in an adverse impact on Buyer;

(4) The Project fails, after the Commercial Operation Date, to obtain an Actual ESS Availability Percentage of at least eighty percent (80%) over any twenty-four (24) consecutive Months during the Term excepting to the extent due to (i) a Transformer Failure, or (ii) as a result of a material serial defect not generally known in the energy storage industry (which exception may apply only twice during the Term), provided that in the case of (i) or (ii), the 30-Day cure period indicated in Section 12.1(B) does not apply and Seller remediates the cause of the shortfall of Actual ESS Availability Percentage requirements as soon as reasonably practicable, however, in no event later than ninety (90) days after falling below the eighty percent (80%) value. Notwithstanding the above, Seller shall notify Buyer within thirty (30) days after the initial occurrence of a Transformer Failure of the steps that Seller is taking to remediate the failure and thereafter keeps Buyer apprised, on a monthly basis, of Seller's progress towards resolving the Transformer Failure;

(5) Seller fails to timely register the Project or should Future Environmental Attributes become available, fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this ESA; or

(6) The Project fails, after the Commercial Operation Date, to maintain an ESS Capacity above ninety percent (90%) of the Guaranteed ESS Capacity referenced in Section 3.12.

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

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



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

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

## 12.2 Events of Default of Buyer.

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

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

(2) Buyer's assignment of this ESA (or any of its rights hereunder) for the benefit of creditors;

(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 actual fraud, waste, tampering with Seller-owned facilities or other material misrepresentation or willful misconduct in connection with this ESA or the operation of the Project.

(B) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this ESA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer.

(C) Buyer's failure to comply with any other material obligation under this ESA, which would result in a material adverse impact on Seller shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within thirty (30) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days.

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

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

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

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

### 12.3 Damages Prior to Termination.

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

(B) For all Events of Default, the Non-Defaulting Party shall be entitled, subject to limitations on damages set forth in Section 12.7, to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, that if an Event of Default has occurred and has continued uncured for a period of one hundred eighty (180) Days, the Non-Defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this ESA as provided for in Section 12.4. If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include, to the extent applicable, an amount of cover damages equal to Replacement ESS Costs minus the Contract Value or portion thereof proportional to the product of (x) the quantity of Product so replaced, and (y) the ESS Capacity Payment Rate. Further, Seller acknowledges and agrees that in addition to the foregoing, Seller shall be obligated to pay Buyer any such damages associated with replacement of Product notwithstanding the availability or prices of electric energy and capacity from other fuel sources, such as natural gas. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any Future Environmental Attributes that may become available pursuant to this ESA, provided that Buyer has used commercially reasonable efforts to avoid, minimize, or mitigate such penalties. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any Future Environmental Attributes pursuant to this ESA, if such failure arises out of Seller's negligence or willful misconduct. Seller acknowledges that Buyer entered into this ESA for the procurement of Product, which 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 Solar Energy Output generated under the PPA

following such Event of Default multiplied by the ESS Energy Payment Rate, plus, to the extent that the Solar Facility is unable to produce Solar Energy Output due to the Event of Default of Buyer, an additional quantity equal to the Solar Energy Output that would have been produced by Seller absent such Event of Default of Buyer, 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.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and sixty (60) Days after the notice thereof, upon which this ESA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this ESA, except that Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this ESA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this ESA. Upon the termination of this ESA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment; and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller).

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties

with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(C) Unless otherwise mutually agreed by the Parties, the conditions in this Section 12.4(C) shall apply.

(1) If the PPA is terminated due to an Event of Default (as defined in the PPA) of Seller under the PPA and Seller terminates this ESA, such termination shall be considered an Event of Default of Seller under this ESA and Buyer shall be entitled to pursue its remedies under this ESA.

(2) If the PPA is terminated due to either (x) an Event of Default of Buyer, or (y) an extended Force Majeure Event (all as defined in the PPA) and Seller terminates this ESA, such termination shall not be considered an Event of Default of Seller under this ESA.

(3) If the PPA is terminated due to an Event of Default (as defined in the PPA) of Buyer under the PPA and Seller elects to terminate this ESA, such termination of the PPA shall be considered an Event of Default of Buyer under this ESA and Seller shall be entitled to pursue its remedies under this ESA.

(D) If the PPA is terminated for any reason and the ESA remains binding, the Parties shall meet and confer within fifteen (15) days of the early termination of the PPA to establish an alternative ESS Energy Payment structure. If the Parties cannot agree on an alternative ESS Energy Payment structure that complies with Buyer's accounting and operating lease structure requirements, and the PPA was terminated due to an Event of Default of Seller, the Buyer Termination Payment under the PPA shall include any increased costs or financial impacts associated with the revised ESS Energy Payment structure and the required financial treatment of debt liabilities within Buyer's accounting system.

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

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

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this ESA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES,

LOST PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES BY STATUTE, IN TORT OR CONTRACT (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this ESA, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this ESA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

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

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default enumerated in Section 12.1 or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this ESA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

## ARTICLE 13

### Contract Administration and Notices

13.1 Notices in Writing. Notices required by this ESA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this ESA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt, 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.

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

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

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this ESA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this ESA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this ESA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this ESA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Project 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; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practices or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records, subject to such Party's ability to redact information it reasonably deems competitively sensitive; *provided*, such redactions do not prohibit a Party's ability to exercise its rights and perform its obligations under this ESA.

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

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

effect on the timely completion of the Project, when and as Seller becomes aware of any such condition or event.

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

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the ESS.

(4) Upon request by Buyer, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; or (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, 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 ESA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless Seller has defaulted under this ESA, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this ESA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this ESA.

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

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this ESA in a quick and inexpensive manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this ESA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may, in its sole discretion, submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days' written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

## ARTICLE 14 Force Majeure

### 14.1 Definition.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" shall mean an event or circumstance that arises after the Execution Date that (i) is not reasonably foreseeable, (ii) is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, and (iii) adversely affects the performance by that Party of its obligations under or pursuant to this ESA. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused



by the failure of the affected Party to comply with the terms of a collective bargaining agreement). Given the current conditions, the Parties agree that COVID-19 shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this Agreement is prevented or substantially hindered due to new circumstances with respect to COVID-19 that leads 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, in either event 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, for any reason (the risk of which is assumed by Seller); (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, unless such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions 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; or (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this ESA beyond its stated Term. Notwithstanding any other provision in this ESA to the contrary, in the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller continues for an uninterrupted period of one hundred eighty (180) Days from its inception (with respect to a Force Majeure Event occurring prior to the Commercial Operation Date) or three hundred sixty five (365) days from its inception (with respect to a Force Majeure Event occurring after the Commercial Operation Date), either Party may, at any time following the end of such period, terminate this ESA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

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

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

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this ESA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however,* that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation.

(A) Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of either Buyer or the Transmission Provider to accept Discharge Energy from the Project or to deliver Charging Energy to the Project or otherwise prevents the ability of the ESS to deliver Product, then the hours of the reduced delivery of Product shall be excluded from the determination of the ESS Energy Payment as set forth in Section 8.1. In this instance, the ESS Energy Payment shall be reduced by the sum of the amount of Solar Energy Output (in MWh) delivered to the Point of Delivery during the ESA Force Majeure Event and any Solar Energy Output that otherwise would have been delivered to the Point of Delivery but for a Force Majeure Event impacting both the PPA and the ESA, multiplied by the percentage of the ESS capacity impacted by the Force Majeure, multiplied by the ESS Energy Payment Rate.

(B) In the case that Seller fails to obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid and Buyer, nevertheless, has granted the Commercial Operation Date, upon the occurrence and during the

continuance of (i) a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event prevents the ability of the Solar Facility to supply Charging Energy to the Project, or (ii) an unscheduled outage of the Solar Facility to the extent that such outage prevents the ability of the Solar Facility to supply Charging Energy to the Project that lasts longer than forty-eight (48) hours, then in the case of (i) the hours during which the Force Majeure Event occurs, and in the case of (ii) the hours beyond the forty-eight (48) hour duration shall be excluded from the determination of the ESS Energy Payment as set forth in Section 8.1. In the case of (i), the ESS Energy Payment shall be reduced by the sum of the amount of Solar Energy Output (in MWh) delivered to the Point of Delivery during the Force Majeure Event and any Solar Energy Output that otherwise would have been delivered to the Point of Delivery but for the Force Majeure Event, multiplied by the ESS Energy Payment Rate. In the case of (ii), the ESS Energy Payment shall be reduced by the sum of the amount of Solar Energy Output (in MWh) that would have been delivered to the Point of Delivery after the initial forty-eight (48) hour duration but for the unscheduled outage of the Solar Facility, multiplied by the ESS Energy Payment Rate.

(C) In the case of (A) and (B) above, the amount of Solar Energy Output that would have otherwise been delivered to the Point of Delivery shall be reasonably calculated by Seller taking into account 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 Force Majeure Event or unscheduled outage but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review and approve Seller's calculations.

## ARTICLE 15

### Representations, Warranties and Covenants

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

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

(B) Except for the Seller Board Approval (which shall be obtained prior to the Commercial Operation Date), the execution, delivery, and performance of its obligations under this ESA by Seller have been duly authorized by all necessary corporate action, and do not and will not:

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

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

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

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

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

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

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the construction of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has and/or will have good and marketable title to the Future Environmental Attributes immediately prior to delivery to Buyer.

(J) Seller has not sold, delivered or transferred the Future Environmental Attributes to any other Person, in whole or in part.

(K) All right, title and interest in and to the Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(L) Each Future Environmental Attribute complies with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 *et seq.*, and Title 17.9.572 NMAC.

(M) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(N) After the Commercial Operation Date, Seller will not incur, assume or carry any Debt in connection with the Project;

(O) Subject to ongoing maintenance by Seller, the ESS has a remaining design life (starting on the Commercial Operation Date) that is at least equal to twenty-nine (29) years in accordance with Prudent Utility Practices, as attested by a Licensed Professional Engineer;

(P) Except as expressly set forth in this ESA, Seller makes no warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade;

(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;

(S) Less than seventy five percent (75%) of the useful economic life of the Project will be expended upon the end of the Term;

(T) The present value of the sum of the compensation that Buyer shall pay Seller throughout the Delivery Term shall be less than ninety percent (90%) of the fair market value of the Project and its associated assets and there is no residual value guaranteed by Buyer that is not already reflected in the payment obligations set forth in this ESA; and

(U) The Project is not a specialized project and will have alternative uses to Seller upon the end of the Term.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition

of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, officers or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this ESA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA.

(C) Assuming this ESA is a valid and binding obligation of Seller, this ESA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1 and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

## ARTICLE 16 Insurance

### 16.1 Evidence of Insurance.

(A) Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on or before June 1 of each Commercial Operation Year, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G and this Article 16 along with endorsements

required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this ESA shall not be limited to the amount of insurance coverage required herein.

#### 16.2 Term and Modification of Insurance.

(A) All liability insurance required under this ESA shall cover occurrences during the Term of this ESA on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this ESA, to request Seller to modify the insurance minimum limits specified in Exhibit G in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

#### 16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer and its Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this ESA is primary and non-contributory with respect to other insurance carried by Buyer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer and its Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

## ARTICLE 17

## Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Each Party shall at all times comply with all Applicable Laws and shall promptly notify the other Party of any material investigations, notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the ESA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this ESA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 as Confidential Information in accordance with Section 22.14 unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Product at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law, including NMPRC Approval in connection with (i) the execution and performance of this ESA, including authorization to recover the costs of ESS Energy Payments; (ii) the execution and performance of the PPA, and a final order or other regulatory determination from the NMPRC that Buyer may procure renewable energy and associated renewable energy certificates pursuant to the PPA and may recover the cost of such procurement; and (iii) any waivers as set forth in Buyer's request for approval of this ESA (collectively, "**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, including authorization to recover the costs of procurement of the Renewable Energy Output, as that term is defined in the PPA; or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then this ESA shall automatically terminate ten (10) Days after the date of such action by the NMPRC and shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.



(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer or Seller will elect to amend this ESA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this ESA. If the Parties are unable to mutually agree on any amendments to this ESA to address such NMPRC Approval order, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

(3) If the NMPRC, for any reason, has not entered an order upon the request for approval of all Requested Actions by October 1, 2024 (“**Regulatory End Date**”), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties.

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

## ARTICLE 18

### Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this ESA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which

consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) a collateral assignment to a Lender, in accordance with Section 18.6, (ii) any assignment or transfer of this ESA by Seller to an Affiliate of Seller; or (iii) any assignment or transfer of this ESA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (ii) or (iii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); and (c) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA.

(B) Seller's consent shall not be required for any assignment of this ESA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this ESA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this ESA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this ESA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this ESA with the Affiliate as if such Person had been named under this ESA; *provided, however*, that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned, or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this ESA made without fulfilling the requirements of this ESA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this ESA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to

do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

#### 18.6 Assignment to Lenders.

(A) Cooperation. In connection with any assignment of this ESA by Seller to its Lenders, as soon as reasonably practicable after reasonable request from Seller or any Lender, Buyer will cooperate reasonably with Seller and Lender to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, provisions containing at least the following: (i) an option, but not an obligation, for the Lenders to cure any monetary Event of Default of Seller within thirty (30) Days of the expiration of the cure period provided therefor in Section 12.1, and cure any non-monetary Event of Default of Seller within sixty (60) Days of the expiration of the cure period provided therefor in Section 12.1, prior to Buyer terminating this ESA; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this ESA if Lenders need to foreclose on the Project prior to curing any Event of Default of Seller giving rise to such termination, but only to the extent that the period required for such foreclosure and cure does not exceed one hundred eighty (180) Days from receipt by Lenders of written notice of such Event of Default of Seller; provided that, in all cases, (a) Buyer will have no obligation to alter or modify the terms of this ESA or provide any consent or enter into any agreement that has a material adverse effect on Buyer, and (b) Seller will be responsible for Buyer's reasonable costs (including, but not limited to, attorneys' fees) associated with Buyer's review, negotiation, execution and delivery of any documents in connection with such assignment. Nothing in this Section 18.6 shall impair Buyer's right to receive all of the damages arising out of or relating to Seller's default, including damages accruing prior to termination as set forth in Section 12.3 of this ESA.

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this ESA or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this ESA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this ESA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Lender, collateral agent, or trustee, as applicable, to which Seller's interest under this ESA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

ARTICLE 19  
Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred and Twenty-Five Thousand Dollars (\$125,000) per MW multiplied by the Guaranteed Capacity (“**Development Security**”) as follows: (a) Seventy-Five Thousand Dollars (\$75,000) per MW multiplied by the Guaranteed Capacity within thirty (30) days of Execution Date, and (b) Fifty Thousand Dollars (\$50,000) per MW multiplied by the Guaranteed Capacity within ten (10) Business Days of NMPRC Approval. 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 Ninety Thousand Dollars (\$90,000) per MW multiplied by the Guaranteed Capacity (the “**Delivery Term Security**”). Seller shall replenish the Delivery Term Security to such required amount within fifteen (15) Days after any draw by Buyer except that the aggregate amount of such replenishment during the Term shall not exceed two times (2x) the Delivery Term Security requirement. Development Security shall not be replenished. Buyer will return the Development Security to Seller in full within fifteen (15) Days after Seller posts Delivery Term Security. Seller’s Delivery Term Security shall be released to Seller upon the earlier of (x) the fifteenth (15<sup>th</sup>) Business Day after termination of this ESA in accordance with its terms; and (y) on the fifteenth (15<sup>th</sup>) Business Day after the expiration of the Term.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Seller: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody’s of at least A- and A3, respectively and at least Ten Billion Dollars (\$10,000,000,000) in U.S.-based assets (“**Issuer Minimum Requirements**”), (c) a Seller Guaranty from Seller Guarantor, or (d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller’s obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly

documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit, then Seller shall have fifteen (15) Business Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. For minor defects in the form of any Security that do not otherwise render the Security invalid or unenforceable, Seller shall have five (5) Business Days following written notice from Buyer within which to cure such defects.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this ESA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such actions 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. If Seller fails to make payment when due under this ESA within five (5) Business Days after the date of written notice from Buyer, then in addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this ESA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this ESA. If Seller fails to make payment when due under this ESA within five (5) Business Days after the date of written notice from Buyer, then Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of the ESA, as Buyer may select until such time as the Security is exhausted.

## ARTICLE 20

### Indemnity; Insurance Proceeds

#### 20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

## ARTICLE 21 Governmental Charges

21.1 Allocation of Governmental Charges. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer the Product that are imposed prior to the Point of Delivery or prior to the transfer of the Future Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of the Product that are imposed at and from the taking of the Product by Buyer at the Point of Delivery or at and after the transfer of the Future Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this ESA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Product hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

## ARTICLE 22 Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this ESA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Rate Changes. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this ESA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the “public interest” standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

22.4 Disclaimer of Certain Third Party Beneficiary Rights. In executing this ESA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this ESA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this ESA.

22.5 Relationship of the Parties.

(A) This ESA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons to perform services for Seller, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers’ compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this ESA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this ESA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the ESA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this ESA with a view toward effecting the purposes of this ESA by replacing the provision that is held invalid, illegal, or



unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this ESA constitute the entire agreement between Buyer and Seller with respect to the Project and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to approval by any Governmental Authority with jurisdiction over this ESA, this ESA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect. This ESA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this ESA are for ease of reference only and do not constitute a part of this ESA.

22.12 Counterparts. This ESA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law and Choice of Forum. The interpretation and performance of this ESA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this ESA shall be brought in the United States District Court for the District of New Mexico. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS ESA.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, “Disclosing Party” refers to the Party disclosing information to the other Party, and the term “Receiving Party” refers to the Party receiving information from the other Party.

(B) Other than in connection with this ESA, the Receiving Party will not use the Confidential Information (as defined below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, legal counsel and accountants (collectively, “**Receiving Party’s Representatives**”), but only if such Receiving Party’s Representatives need to know the Confidential Information in connection with this ESA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized

disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Subject to Section 22.14(E), to the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts 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 ESA to the Receiving Party or its Receiving Party’s Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party’s Representatives have access by virtue of this ESA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by PNM or on PNM’s behalf)), or which concerns this ESA, the Disclosing Party or the Disclosing Party’s affiliates or subsidiaries, or their respective officers, directors, and employees, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party’s Representatives by a director, officer, employee, Affiliate, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this ESA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this ESA:

- (1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Representatives;
- (2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and
- (3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this ESA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this ESA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party’s Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this ESA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this ESA that relates solely to this ESA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before

negotiation of this ESA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to (i) limit the scope of any disclosure of Confidential Information and, (ii) 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 single individual employed by Seller 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) Buyer shall have the right to advertise, market, and promote to the general public the benefits of this ESA, including, but not limited to, the right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this ESA (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall make available to Buyer a basic description of the Project and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production, and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute, or disseminate any information to the public, or

respond to any inquiry from the media, concerning this ESA or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed, or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this ESA or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this ESA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this ESA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17 Forward Contract and Master Netting Agreement. Notwithstanding any other provision of this ESA, the Parties acknowledge that this ESA is a forward contract and master netting agreement within the meaning of the safe harbor provisions of the Bankruptcy Code. Accordingly, the Parties agree, notwithstanding any other provision in this ESA, that this ESA may be terminated and remedies exercised hereunder by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination or to the exercise of the remedies set forth herein.

22.18 Accounting Matters. The Parties agree that Generally Accepted Accounting Principles in the United States of America (“GAAP”) and the rules of the United States Securities and Exchange Commission (“SEC”) require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this ESA (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the ESA, jointly the “**Accounting Standards**”). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the Parties agree to the following provisions for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an

unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller's Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than seventy-five (75) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided,*

such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use commercially reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel, is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

**22.19 Telephone Recording.** Each Party to this ESA acknowledges and agrees to the taping or electronic recording (“**Recording**”) of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this ESA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

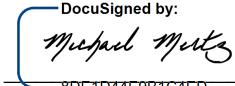
**22.20 Change In Law.** If a Change in Law occurs that makes it impossible or illegal for a Party to perform an obligation under this Agreement lawfully, the Parties shall negotiate in good faith to amend this Agreement within sixty (60) Days after the affected Party provides written notice to the other Party with respect to such Change in Law as may be reasonably necessary to restore the allocation of economic benefits and burdens contemplated hereunder by the Parties as of the Effective Date. If the Parties fail to enter such an amendment by the end of such sixty (60) Day period, the Parties shall refer the issue for dispute resolution under Section 13.8.

**22.21 Change in Market Structure.** In the event of a change in the operation or organizational structure of the regional territory which includes the ESS or Buyer's service area (including change in balancing area authority or implementation of an independent system operator, regional transmission organization, or realignment of the transmission system) and such change is reasonably anticipated to affect materially and adversely either Party's ability to perform its obligations hereunder, the representatives of each Party shall convene within fifteen (15) days of written notification from either Party and shall provide recommendations for the Parties' appropriate action. Both Parties thereafter shall negotiate in good faith an amendment to this ESA or take other appropriate actions, the effect of which will be to preserve or restore the respective Parties, as closely as possible, to the same business and economic positions that existed prior to such change.

*[Signature page(s) follow]*

IN WITNESS WHEREOF, the Parties have caused this ESA to be duly executed as of the Execution Date. This ESA shall not become effective as to either Party unless and until executed by both Parties.

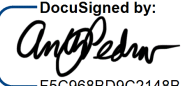
PUBLIC SERVICE COMPANY OF NEW MEXICO

By   
8DE1D44E9B1C4ED...

Name Michael Mertz

Title Vice President, New Mexico Operations, and Chief Information Officer

SKY RANCH ENERGY STORAGE II, LLC

By   
F5C968BD9C2148B...

Name Anthony Pedroni

Title Vice President

**EXHIBIT A**  
(to Energy Storage Agreement)

**DESCRIPTION OF SELLER’S GENERATION FACILITIES,  
SITE MAP AND PROJECT SCHEDULE**

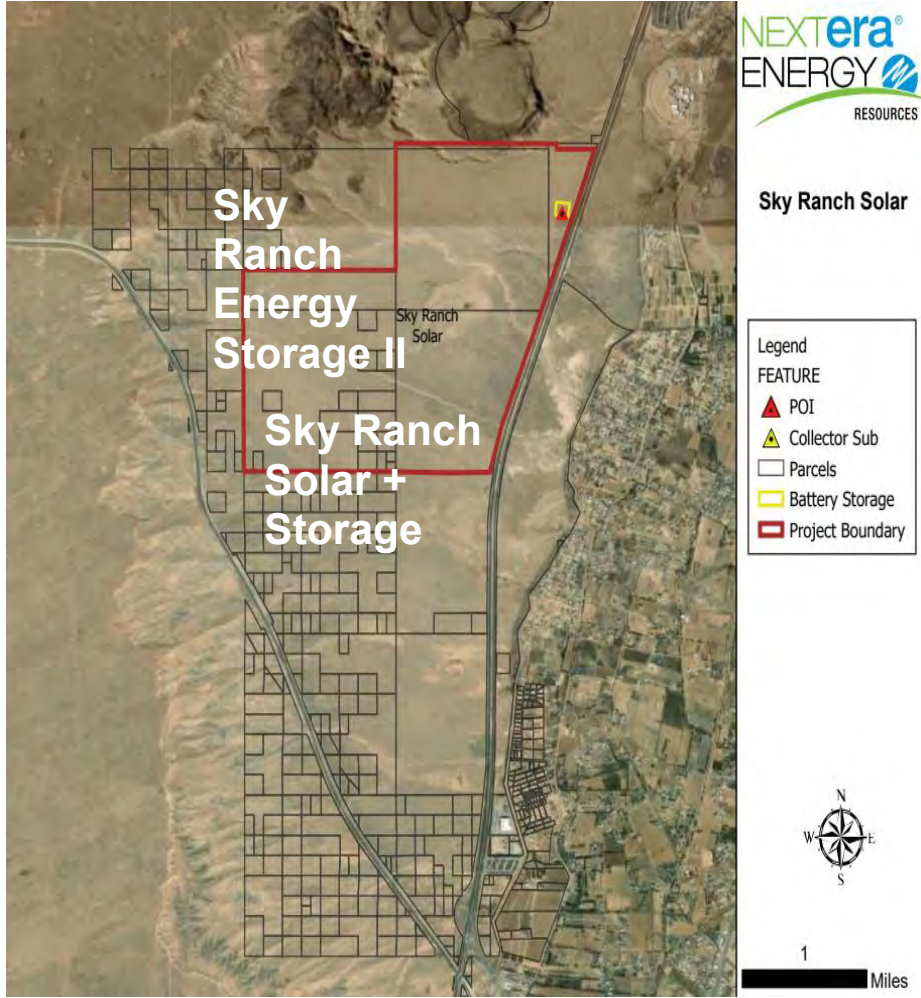
1. Name of Seller’s Project: Sky Ranch Energy Storage II, LLC  
  
Location: Valencia County, NM
2. Owner (if different from Seller): N/A
3. Operator: Seller or Affiliate thereof
4. Equipment/Fuel:
  - a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Energy Storage; Biomass (including Fuel)): Energy Storage
  - b. Total number of units at the Project: Estimated 60 AC coupled energy storage containers; pending final configuration
  - c. Total nameplate capacity (AC): 100 MW / 400 MWh
  - d. Total capacity at point of delivery: 100 MW / 400 MWh
  - e. Additional technology-specific information: Approximately 35, 3.35 MW inverters
5. Project Schedule:

<b>Key Milestone</b>	<b>Date</b>
LGIA Execution	December 2019 and January 2021
Discretionary Permits	6/1/2024 - 10/1/2024
Major Equipment Supply Agreements Executed	10/15/2024
Close Financing	N/A
Start of Project Construction	12/6/2024
First Major Equipment Delivered to Site	4/1/2025
Interconnection In-Service Date	9/1/2025
Commissioning Start Date	9/2/2025
Expected Commercial Operation	2/1/2026



Guaranteed Start Date	5/1/2026
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6. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the Energy Storage Agreement, which shall be provided by Seller within ninety (90) Days of the Execution Date.



**EXHIBIT B**  
(to Energy Storage Agreement)

**ONE-LINE DIAGRAM OF PROJECT AND INTERCONNECTION FACILITIES**

1. See attached one-line diagram of the Project, which shall be provided by Seller within ninety (90) Days of the Execution Date. The one-line diagram indicates 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);
  - The House Energy power source and associated dedicated electric meter; and
  - ownership and location of meters.
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 Sun Ranch 115kV Switching Station.

**EXHIBIT C**  
(to Energy Storage Agreement)

**DESCRIPTION OF SITE**  
**PARCEL SURVEY FOR**  
**SKY RANCH ENERGY STORAGE II PROJECT,**  
which shall be provided by Seller within ninety (90) Days of the Execution Date.

SURVEYOR'S DESCRIPTION of:

**EXHIBIT D**  
(to Energy Storage Agreement)  
**NOTICE ADDRESSES**

**PUBLIC SERVICE COMPANY OF  
NEW MEXICO**

**Notices:**

**Delivery Address:**

Public Service Company of New Mexico  
414 Silver Ave. SW  
Albuquerque, NM 87102

**Invoices:**

Attn: Energy Analysis  
Phone: (505)541-2585  
Fax: (505) 241-2434  
Email:  
[PNMEAM@pnmresources.com](mailto: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](mailto: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

**Sky Ranch Energy Storage II, LLC**

**All Notices/Invoices:**

**Delivery Address:**

Sky Ranch Energy Storage II, LLC  
700 Universe Boulevard, FEJ/JB Juno Beach,  
FL 33408  
Attn: Business Management, West Region  
Email: [DL-NEXTERA-WEST-INTERNATIONAL-REGION@FPL.COM](mailto:DL-NEXTERA-WEST-INTERNATIONAL-REGION@FPL.COM)

**With copy to:**

GENERAL COUNSEL  
700 UNIVERSE BOULEVARD, FEJ/JB  
JUNO BEACH, FL 33408 Phone: 561-691-  
7126 Email: [Mitch.Ross@nee.com](mailto:Mitch.Ross@nee.com)

**Wire Transfer: To Be Provided**

Bank of America  
ACH ABA: 111-000-12  
Global Finance, Dallas, TX  
WIRE ABA: 026-009-593 100  
West 33rd Street, New York, NY 10001

Account Name: NextEra Energy Constructors  
Account #: 4451197131 SWIFT: BOFAUS3N  
Attn: Sky Ranch Energy Storage II, LLC

**With additional Notice of an Event of  
Default, termination and other legal  
notices to:**

GENERAL COUNSEL  
700 UNIVERSE BOULEVARD, FEJ/JB  
JUNO BEACH, FL 33408  
Phone: 561-691-7126  
Email: [Mitch.Ross@nee.com](mailto:Mitch.Ross@nee.com)

**Contract Manager:**

Public Service Company of New Mexico  
Attention: Jeremy Heslop  
2401 Aztec Rd. NE  
Albuquerque, NM 87107  
Telephone: (505) 241-2664

**Project Manager:**

Sky Ranch Energy Storage II, LLC  
700 Universe Boulevard, FEJ/JB Juno Beach, FL  
33408  
Attn: Business Management, West Region  
Email: [DL-NEXTERA-WEST-INTERNATIONAL-REGION@FPL.COM](mailto:DL-NEXTERA-WEST-INTERNATIONAL-REGION@FPL.COM)

**With additional Notice of an Event of Default, termination and other legal notices to:**

Public Service Company of New Mexico  
Attention: Michael Mertz  
414 Silver Avenue SW  
Albuquerque, NM 87102  
Telephone: (505) 241-0676  
Fax: (505) 241-2375

**24-HOUR OPERATIONS CONTACT:**

Renewable Operations Control Center  
(ROCC)  
Controls/Monitoring Systems  
**Phone:** 866-375-3737  
**Email:** [ROCC@nee.com](mailto:ROCC@nee.com)

**With a copy to:**

Public Service Company of New Mexico  
Attention: Christopher Atencio  
414 Silver Ave. SW, MS0805  
Albuquerque, NM 87102  
Email: [lawdept@pnmresources.com](mailto:lawdept@pnmresources.com)  
Telephone: (505) 241-2700  
Fax: (505) 241-4318

**EXHIBIT E**  
(to Energy Storage Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS,  
APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED**

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
Structural Building Permit	State of New Mexico Regulation and Licensing Department
Site Plan Approval	City of Belen
Electrical Permit	State of New Mexico Regulation and Licensing Department
Clean Water Act (CWA) Section 402, National Pollution Discharge Elimination System (NPDES). Construction Stormwater General Permit NMR1000000	US Environmental Protection Agency (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.

## **EXHIBIT F**

(to Energy Storage Agreement)

### **COMMISSIONING AND ANNUAL TESTS**

#### **Commissioning Tests**

- A. Automatic Generation Control (AGC) Functionality Test (or equivalent)
- B. SCADA Functionality Test (or equivalent)
- C. Owner Control and Data Link Functionality Tests (See Section 3.4)
- D. ESS Solar Capacity Firming Test
- E. ESS Unit Capabilities Tests

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

### **A. Automatic Generation Control (AGC) Functionality Test**

#### **Purpose:**

This test will demonstrate the ability of the ESS to synch to AGC.

#### **System starting state:**

The ESS will be in the on-line state at between 10% of the Maximum State of Charge and 90% of the Maximum State of Charge and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System (“EMS”) shall be configured to follow a predefined, agreed-upon active power profile.

#### **Procedure:**

1. Record the ESS active power level at the ESS Electric Metering Device.
2. Command the ESS to follow a simulated AGC discharging signal every four (4) seconds for ten (10) minutes.
3. Command the ESS to follow a simulated AGC charging signal every four (4) seconds for ten (10) minutes.
4. Record and store the ESS active power response (in seconds).

#### **System end state:**

The ESS will be in the on-line state and at a commanded active power level of 0 MW.

### **B. SCADA Functionality Test**

Seller shall prepare and submit to Buyer a SCADA Functionality Test procedure no later than 120 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.

### **C. 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 120 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.

### **D. ESS Solar Capacity Firming Test**

Seller shall perform a test of the ESS control system to validate its capability to maintain a constant energy delivery from the combined PPA and ESA to the Point of Delivery (“POD”). The test shall



be performed over a three (3) hour test period given a fixed MW setpoint at the Point of Delivery from the integrated Solar Facility and ESS, based on five (5) minute interval data. The test shall validate the ability of the ESS control system to autonomously charge solar generation or discharge to maintain a constant POD output within two percent (2%) of the output setpoint and within the limits of the ESS Unit Capabilities and ESS Operating Restrictions. The constant POD setpoint shall be between the ESS PMAX and the POD rating minus PMAX or reasonably adjusted according to the solar generation forecast on the day of the test. The test shall be deemed successful if the ESS is able to regulate the POD to the output setpoint, within two percent (2%), at all times during the three (3) hour test when the charging or discharging of the ESS to maintain the output setpoint would not violate the ESS Unit Capabilities or ESS Operating Restrictions.

## **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 ESA) throughout the term of the ESA with the exception of the ESS Reliability Testing in Section E.3 below which will only be required to be satisfied to achieve the Commercial Operation Date.

### **E. ESS Unit Capabilities Testing**

#### **E.1 ESS CAPACITY TEST**

##### **E.1.1 General**

The ESS Capacity Test (“**ESS Capacity Test**” or “**ECT**”) is a test performed to determine the then-current ESS Capacity and Roundtrip Efficiency (RTE). Each ESS Capacity Test (including the initial ESS Capacity Test performed prior to Commercial Operation and each subsequent ESS Capacity Test) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit F. Buyer or its representative may be present for any ECT and may, for informational purposes only, use its own metering equipment (at Buyer’s sole cost).

##### **E.1.2 Requirements Applicable to all ESS Capacity Tests**

###### **A. Purpose of Test. Each ECT shall:**

- (1) verify compliance with the Guaranteed ESS Capacity or otherwise determine any lower ESS Capacity for the purposes of this ESA;
- (2) determine the Roundtrip Efficiency (RTE) of the ESS;

###### **B. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:**

- (1) discharge time (minutes);
- (2) ESS Discharge Energy measured at the ESS Electric Meter Device including the accounting of losses from the ESS Electric Meter Device to

the Point of Delivery, in MWh (“ESS Meter Energy Out”);

- (3) ESS Charging Energy measured at the ESS Electric Meter Device accounting for losses from the Point of Delivery to the ESS Electric Meter Device, in MWh (“ESS Meter Energy In”);

C. Reserved.

D. Test Elements and Sequence. Each ECT shall include the following test elements:

- (1) the discharging of the ESS from the Maximum State of Charge at a power discharge setpoint rate equal to the Guaranteed ESS Capacity (MW);
- (2) the determination of Point of Delivery Energy Out, as measured by the ESS Electric Meter Device, that is discharged from the ESS to the Point of Delivery until either the Minimum State of Charge is achieved or four (4) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by four (4) hours shall determine the ESS Capacity. The ESS Electric Metering Device shall be programmed to correct for losses between the ESS Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;
- (3) the discharging of the ESS to the Minimum State of Charge or such state of charge achieved after four (4) hours of discharging the Guaranteed ESS Capacity;
- (4) starting at the Minimum State of Charge, the charging of the ESS at a constant power charge rate equal to the Guaranteed ESS Capacity;
- (5) the determination of ESS Energy Meter In, as measured by the ESS Electric Metering Device, that is required to charge the ESS until the Maximum State of Charge is achieved as of the commencement of the ESS Capacity Test.

E. Test Conditions.

- (1) General. At all times during an ECT, the ESS, including any auxillary equipment, shall be operated in compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. The ECT shall commence within one (1) hour after sunset or other such time as mutually agreed by the Parties, and the Solar Facility generation shall be zero prior to commencement of such ECT. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the

ESS shall otherwise be at unity (1.00) power factor.

- (2) Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT, Seller may postpone or reschedule all or part of such ECT in accordance with Section E.1.2.F of these ESS Capacity Test Procedures.
  - (3) Reserved.
  - (4) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Section 5 of the ESA.
- F. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section 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 completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Seller is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.
- G. Final Report. Within ten (10) Business Days after the completion of any ECT, Seller shall prepare and submit to Buyer a written report of the results of the ECT, which report shall include:
- (1) A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;
  - (2) the measured data for the ESS Electric Meter Device readings as well as each parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT and plant log sheets verifying the operating conditions and output of the ESS;
  - (3) The ESS Capacity as determined by the ECT, including supporting calculations; and
  - (4) Seller's statement of either Seller's acceptance of the ECT or Seller's rejection of the ECT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the ECT results or Buyer's rejection of the ECT and reason(s) therefor.

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section E.1.2.F of this ESS Capacity Test Procedure.

- H. Supplementary ESS Capacity Test Protocol. No later than one hundred twenty (120) days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit F with additional and supplementary details, procedures and requirements applicable to ESS Capacity Tests based on the then-current design of the Facility (collectively, the "**Supplementary ESS Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit F. Future modifications to the Supplementary ESS Capacity Test Protocol, as mutually agreed, shall be documented and maintained by the Parties.
- I. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first four (4) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this ESA, multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the day following the completion of the ESS Capacity Test for all purposes under this ESA.
- J. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh-AC) and the ESS Meter Energy In (MWh-AC) as below:

$$\text{Roundtrip Efficiency (\%)} = \frac{\text{ESS Meter Energy-Out (MWh-AC)}}{\text{ESS Meter Energy-In (MWh-AC)}} \times 100\%$$

## E.2 ESS RESPONSE DELAY TEST

### E.2.1 Purpose of Test:

1. Determine the Charge Ramp Rate of the ESS
2. Determine the Discharge Ramp Rate of the ESS

#### E.2.2 Test Conditions:

The ESS Facility will be in the on-line state at between 10% of the Maximum State of Charge and 90% of the Maximum State of Charge and at an initial active power level of 0 MW and reactive power level of 0 MVAR. This test shall not cause the ESS to charge from the grid.

#### E.2.3 Test procedure:

##### A. Measured Charge Ramp Rate:

- (1) Send an active power charge command of P<sub>MAX</sub> to charge the batteries
- (2) The time measured from when the ESS receives the P<sub>MAX</sub> charge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of charge P<sub>MAX</sub> shall be the Charge Ramp Latency
- (3) The time measured to ramp from 1% to charge P<sub>MAX</sub> with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Charge Ramp Rate

##### B. Measured Discharge Ramp Rate:

- (1) Send an active power discharge command of P<sub>MAX</sub> to discharge the ESS
- (2) The time measured from when the ESS receives the P<sub>MAX</sub> discharge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of discharge P<sub>MAX</sub> shall be the Discharge Ramp Latency
- (3) The time measured to ramp from 1% to discharge P<sub>MAX</sub> with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Discharge Ramp Rate

#### **Determination of ESS Response Delay:**

The calculation below will demonstrate the determination of the ESS Response Delay used to determine ESS Response Delay Damages according to Section 3.13.

- a) An “Actual System Latency” shall be calculated, which shall be equal to:

$$\text{Actual System Latency} = \text{Max}(\text{Charge Ramp Latency}, \text{Discharge Ramp Latency})$$

- b) An “Actual System Latency Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} \text{Actual System Latency Delay} \\ &= \text{Max}(\text{Guaranteed System Latency}, \text{Actual System Latency}) \\ &\quad - \text{Guaranteed System Latency} \end{aligned}$$

- c) An “Actual Discharge Ramp Rate Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \text{Actual Discharge Ramp Rate Delay} \\ & = \text{Max}(\text{Guaranteed Discharge Ramp Rate}, \text{Actual Discharge Ramp Rate}) \\ & \quad - \text{Guaranteed Discharge Ramp Rate} \end{aligned}$$

- d) An “Actual Charge Ramp Rate Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \text{Actual Charge Ramp Rate Delay} \\ & = \text{Max}(\text{Guaranteed Charge Ramp Rate}, \text{Actual Charge Ramp Rate}) \\ & \quad - \text{Guaranteed Charge Ramp Rate} \end{aligned}$$

- e) The “Charging ESS Response Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \text{Charging ESS Response Delay} \\ & = \text{Actual Charge Ramp Rate Delay} \\ & \quad + \text{Actual System Latency Delay} \end{aligned}$$

- f) The “Discharging ESS Response Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \text{Discharging ESS Response Delay} \\ & = \text{Actual Discharge Ramp Rate Delay} \\ & \quad + \text{Actual System Latency Delay} \end{aligned}$$

- g) The “ESS Response Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \text{ESS Response Delay} \\ & = \text{Max}(\text{Charging ESS Response Delay}, \text{Discharging ESS Response Delay}) \end{aligned}$$

For any instance in which the ESS Response Delay, as measured by the ESS Electric Metering Device is a positive value during an ESS Unit Capabilities Test or during operation of the Project, Seller shall pay to Buyer the ESS Response Delay Damages identified in Section 3.13.

### E.3 ESS RELIABILITY TESTING

#### E.3.1 Cycling Reliability

##### A. Purpose of Test:

To demonstrate the ability of the ESS to reliably perform full charging and discharging cycles.

##### B. Test Procedure:

The cycling reliability test shall include the following test elements:

- (1) the discharging of the ESS from 100% of the Maximum State of Charge to 0% of the Maximum State of Charge followed by;
- (2) the charging of the ESS from 0% of the Maximum State of Charge to 100% of the Maximum State of Charge.

C. Test Results:

The cycling reliability test shall be satisfied when the ESS successfully performs three (3) full charge and discharge cycles with the ESS control system in auto without any alarms that indicate an adverse condition that impacts system operations, faults, trips, or manual intervention required.

E.3.2 Operational Reliability

A. Purpose of Test:

To demonstrate the short-term reliability of the ESS.

B. Test Procedure:

The ESS shall be available for a twenty-four (24) hour period for Buyer's dispatch with controls in auto and synchronized to the Buyer's system.

C. Test Results:

The operational reliability test shall be satisfied when the ESS remains available continuously and accurately responds to Buyer's dispatch commands for a twenty-four (24) hour period while in auto without any alarms, faults, trips, or manual intervention required.

**EXHIBIT G**  
(to Energy Storage Agreement)

**INSURANCE COVERAGES**

Seller shall obtain and maintain the following insurance coverages, at a minimum:

**A. Workers' Compensation Insurance**, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars (\$1,000,000) per accident, One Million (\$1,000,000) for disease, and One Million (\$1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

**B. Commercial General Liability Insurance**, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.

**C. Business Automobile Liability Insurance**, or the equivalent, with a limit of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

**D. Excess or Umbrella Liability**. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Twenty Million dollars (\$20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

**E. Property Insurance**. During construction and operation, Seller shall provide or arrange the provision of standard form "All Risk" insurance in the amount of Two Hundred Million Dollars (\$200,000,000). For the avoidance of doubt, builders' risk insurance shall qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance in an amount equal to their probable maximum loss.



**EXHIBIT H**  
(to Energy Storage Agreement)

**AVAILABILITY GUARANTEES**

**Section 1. Definitions.**

Capitalized terms used in this Exhibit H and not defined herein shall have the meaning assigned in Article 1 of the ESA.

“**Actual ESS Availability Percentage**” means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all ESS Available Hours divided by (ii) the sum of all ESS Period Hours in the relevant Commercial Operation Year.

“**Aggregate ESS Availability Damages Cap**” has the meaning set forth in Section 2.1(C) of this Exhibit.

“**Annual ESS Availability Damages Cap**” has the meaning set forth in Section 2.1(C).

“**Annual Report**” has the meaning set forth in Section 2.3 of this Exhibit.

“**ESS Availability Damages**” has the meaning set forth in Section 2.1(B) of this Exhibit.

“**ESS Available Hours**” means for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of ESS Period Hours in such Commercial Operation Year, minus (b) the aggregate ESS Unavailable Hours in such Commercial Operation Year. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

“**ESS Excused Hours**” means, in any Commercial Operation Year, the aggregate Seller Excused Hours for such Commercial Operation Year to the extent that the ESS is affected during such hours; provided that, for purposes of the Guaranteed ESS Availability Percentage, only the first fifty (50) hours of Scheduled Maintenance Outages in the aggregate for any portion of the Project per Commercial Operation Year shall be treated as ESS Excused Hours. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

“**ESS Period Hours**” means eight thousand seven hundred sixty (8,760) hours for any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year or adjusted during the occurrence of a leap year.

“**ESS Unavailable Hours**” means those hours, other than ESS Excused Hours, that the ESS is not available to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition); (b) in “run” status and faulted; (c) included in Scheduled Maintenance Outages in excess of fifty (50) hours in aggregate for the Project in any Commercial Operation Year; (d) incapable of being remotely controlled via its AGC system; or (e) otherwise not operational or capable of delivering Discharge Energy or accepting Charging Energy. For the avoidance of doubt, any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

“**Guaranteed ESS Availability Percentage**” has the meaning set forth in Section 2.1(A) of this Exhibit.

## Section 2. Availability Guarantees.

### 1. ESS Availability Guarantee.

(A) ESS Availability Guarantee. Seller guarantees that the ESS shall achieve an Actual ESS Availability Percentage equal to or greater than ninety-five percent (95%) in each Commercial Operation Year after the Commercial Operation Date (“**Guaranteed ESS Availability Percentage**”).

(B) ESS Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed ESS Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to One Thousand Five Hundred Dollars (\$1,500) per MW of Guaranteed ESS Capacity per one percent (1%) shortfall in the Guaranteed ESS Availability Percentage, calculated annually and prorated for any portion of a Commercial Operation Year (“**ESS Availability Damages**”), but in no event in excess of the Annual ESS Availability Damages Cap and the Aggregate ESS Availability Damages Cap. A sample calculation of the ESS Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit H.

(C) ESS Availability Damages Cap, Termination and Cure Rights. The total ESS Availability Damages payable by Seller for failure to meet the Guaranteed ESS Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to One Hundred Thousand Dollars (\$100,000) per MW of Guaranteed ESS Capacity (“**Annual ESS Availability Damages Cap**”) and in the aggregate at a value equivalent to One Hundred Ninety Two Thousand Dollars (\$192,000) per MW of Guaranteed ESS Capacity; *provided*, that in the event of (a) a Transformer Failure and (b) a material serial defect not generally known in the energy storage industry, the aggregate damages shall not exceed a value equivalent to Three Hundred and Twenty Thousand Dollars (\$320,000) per MW of Guaranteed ESS Capacity (“**Aggregate ESS Availability Damages Cap**”) over the Term of the ESA.

2. Sole Remedy. The Parties agree that Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for any deficiency in the performance of the Project (including any failure to meet the Guaranteed ESS Availability Percentage) shall be the payment of damages up to the Annual ESS Availability Damages Cap and the Aggregate ESS Availability Damages Cap, as applicable, and the right to declare an Event of Default pursuant to Section 12.1(B)(5) of the ESA, and shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default giving rise to a termination payment obligation except pursuant to Section 12.1(B)(5) of the ESA, as applicable. Notwithstanding the foregoing, the limitations set forth herein shall not be applicable to any indemnification claims pursuant to Article 20 of the ESA and Seller's material breach of its obligation to operate and maintain the Project in accordance with Prudent Utility Practices or Seller's failure to pay ESS Availability Damages when due if not timely cured pursuant to the provisions of Article 12 of the ESA are an Event of Default of Seller for which Buyer may terminate the ESA and seek damages in accordance with Section 12.4 of the ESA.

3. Annual Report. No later than the 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 Actual ESS Availability Percentage for the previous Commercial Operation Year and the ESS Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of ESS Availability Damages paid to Buyer under the ESA and shall provide notice that the Aggregate ESS Availability Damages Cap has been reached, if applicable. If ESS Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

5. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the ESA.

**ATTACHMENT 1 TO EXHIBIT H**  
**EXAMPLE CALCULATION OF ESS AVAILABILITY DAMAGES**

**I. Example of Actual ESS Availability Percentage Calculation**

The sample calculation set forth below is based on the following assumed facts:

The ESS had the following operating characteristics:

	Hours
ESS Period Hours (“EPH”)	8,760
ESS Unavailable Hours (“EUH”)	700

Given these assumed facts, the ESS Available Hours for the ESS during the Commercial Operation Year would be calculated as follows:

$$\text{Sum of ESS Available Hours} = \text{EPH} - \text{EUH}: 8,060 = 8,760 - 700$$

**Actual ESS Availability Percentage**

Given these assumed facts, the Actual ESS Availability Percentage for the Project during the Commercial Operation Year in question would be calculated as follows:

- (a) Sum of ESS Available Hours: 8,060 hours
- (b) Sum of ESS Period Hours: 8,760 hours
- (c) Actual ESS Availability Percentage:  $(\text{Sum of ESS Available Hours} / \text{Sum of ESS Period Hours}) \times 100 = (8,060 / 8,760) \times 100 = 92.0\%$

**II. Example of ESS Availability Damages**

Example of ESS Availability Damages based on the following assumed facts:

- (a) Seller’s Guaranteed ESS Availability Percentage in Commercial Operation Year 4 = 95%.
- (b) Seller’s Actual ESS Availability Percentage in Commercial Operation Year 4 = 92%.
- (c) Seller’s Guaranteed ESS Capacity = 20 MW.

Given these assumed facts, Seller calculates the ESS Availability Damages due to Buyer as follows:

(Seller's Guaranteed ESS Availability Percentage in Commercial Operation Year 4 – Seller's Actual ESS Availability Percentage in Commercial Operation Year 4) (the latter two expressed as a decimal) x (100) x Liquidated Damage Value x Seller's Guaranteed ESS Capacity = ESS Availability Damage

$$(0.95 - 0.92) \times 100 \times \$1,500 \times 20 = \$90,000$$

As specified in the definition of "ESS Unavailable Hours," all ESS Excused Hours are excluded from the calculation of ESS Unavailable Hours. Thus, in the example above, the 700 hours of ESS Unavailable Hours does not include any hours that are ESS Excused Hours.

**EXHIBIT I**  
(to Energy Storage Agreement)

**FORM OF SELLER GUARANTY**

**GUARANTY**

THIS GUARANTY (this “**Guaranty**”), dated as of \_\_\_\_\_, \_\_\_\_ (the “**Effective Date**”), is made by [●]. (“**Guarantor**”), in favor of *[INSERT COUNTERPARTY’S NAME IN ALL CAPS]* (“**Counterparty**”).

RECITALS:

**A.** WHEREAS, Counterparty and Guarantor’s indirect, wholly-owned subsidiary *[INSERT OBLIGOR’S NAME IN ALL CAPS]* (“**Obligor**”) have entered into, or concurrently herewith are entering into, that certain \_\_\_\_\_ Energy Storage Agreement dated/made/entered into/effective as of \_\_\_\_\_, 20\_\_ (the “**Agreement**”); and

**B.** WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

\* \* \*

**1. GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

**(a)** Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed \_\_\_\_\_ *[spell out the dollar amount]* U.S. Dollars (U.S. \$ \_\_\_\_\_) (the “**Maximum Recovery Amount**”), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys’ fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [\_\_\_\_\_].

**(b)** The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are

deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

## **2. DEMANDS AND PAYMENT.**

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.
- (b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New York.

## **3. REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

- (a) it is a limited liability company duly organized and validly existing under the laws of the State of \_\_\_\_\_ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and
- (c) the execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of

any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

**4. RESERVATION OF CERTAIN DEFENSES.** Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

**5. AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

**6. WAIVERS AND CONSENTS.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

**(a)** Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance



on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor’s obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

8. **TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor’s obligations hereunder will terminate automatically and immediately upon the earlier of (a) the termination or expiration of the Agreement, and (b) 11:59:59 Eastern Prevailing Time of [insert date [ ] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called “**Notice**”) by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (a) U.S. certified mail with postage prepaid and return receipt requested, or (b) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

<i><u>TO GUARANTOR:</u></i> *	<i><u>TO COUNTERPARTY:</u></i>
[●] <i><u>Attn:</u></i> Treasurer	[●] <i><u>Attn:</u></i>

<i>[Tel: [●] -- for use in connection with courier deliveries]</i>	<i>[Tel: [●] -- for use in connection with courier deliveries]</i>
--	--

Any Notice given in accordance with this Section 9 will (x) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (y) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

**10. MISCELLANEOUS.**

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws thereunder.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably:
  - (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New York for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and
  - (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the

suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR’S EXECUTION AND DELIVERY OF THIS GUARANTY.

(h) Delivery of an executed signature page of this Guaranty, and any subsequent amendment(s), by facsimile or email shall be effective as delivery of a manually executed counterpart hereof. The words “execute,” “execution,” “signed,” “signature,” and words of similar import in this Guaranty shall be deemed to include electronic signatures or digital signatures, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as manually executed signatures or a paper-based recordkeeping system, as the case may be, to the extent and as provided for under applicable law, including the Electronic Signatures in Global and National Commerce Act of 2000, the Electronic Signatures and Records Act of 1999, or any other similar state laws based on the Uniform Electronic Transactions Act.

\* \* \*

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on \_\_\_\_\_, 20\_\_, but it is effective as of the Effective Date.

[•]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT J**  
(to Energy Storage Agreement)

**COMMERCIAL OPERATION  
FORM OF CERTIFICATION**

This certification (“Certification”) of Commercial Operation is delivered by [●] (“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 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
- (3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Product and meet, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[●]

**[Licensed Professional Engineer]**

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

License Number and LPE Stamp: \_\_\_\_\_

**EXHIBIT K**  
(to Energy Storage Agreement)

**ROUNDTRIP EFFICIENCY GUARANTEE**

<b>Year</b>	<b>Annual R/T Eff – Solar Charging</b>	<b>Annual R/T Eff – Grid Charging</b>
1	85.80%	84.90%
2+	degrading by 0.3% annually	degrading by 0.3% annually

**EXHIBIT L**

[Reserved]

**EXHIBIT M**  
(to Energy Storage Agreement)

**ESS Operating Restrictions**

Subject to the terms of this ESA, the ESS shall be operated in accordance with the following operating restrictions:

1. Base Annual Average State of Charge (“BAASOC”) shall be the simple average State of Charge for a fixed interval of 30 minutes or less (never to exceed the Maximum State of Charge) for the Commercial Operation Year.
2. Annual Limit on Discharge Energy is 365 Equivalent Full Cycles (“AL”) per Commercial Operation Year.
3. Should the BAASOC exceed 40% at the end of the Commercial Operation Year, the AL shall be decreased by 5 Equivalent Full Cycles for such Commercial Operation Year.

**EXHIBIT N**  
(to Energy Storage Agreement)

**ESS Functional Mapping**

The Project's NERC verified ESS Generation Owner, ESS Generator Operator and Scheduling Coordinator Contact functional mapping requirements information is as follows:

	Entity Name	Point of Contact	E-mail	Phone
Generator Owner (GO)				
Generator Operator (GOP)				
Scheduling Coordinator Contact (SCC)				



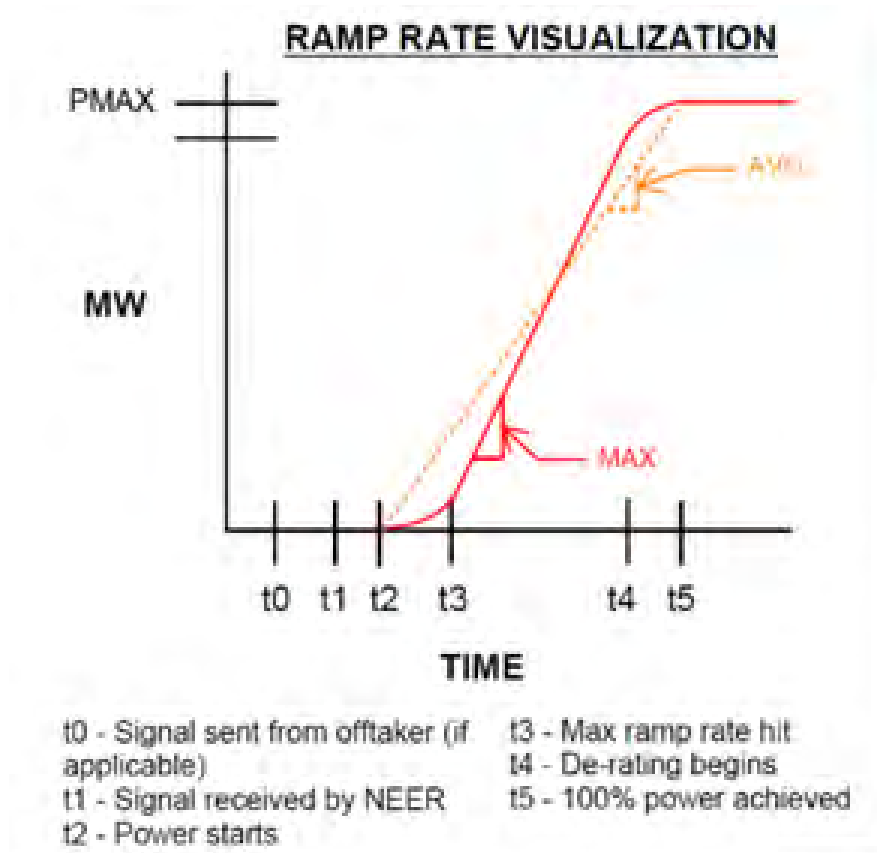
**EXHIBIT O**  
(to Energy Storage Agreement)

**Solar PPA**

[See attached at the end of this document]

**EXHIBIT P**  
(to Energy Storage Agreement)

**ESS Ramp Logic Response S-Curve**



**POWER PURCHASE AGREEMENT—SOLAR FACILITY**

**by and between**

**PUBLIC SERVICE COMPANY OF NEW MEXICO**

**and**

**SKY RANCH SOLAR, LLC**

**dated as of February 1st, 2021**

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## **EXHIBITS**

- Exhibit A Description of Seller's Generation Facilities, Site Map and Project Schedule
- Exhibit B One-Line Diagrams of Project and Interconnection Facilities
- Exhibit C Description of Site
- 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 Insurance Coverages
- Exhibit H Form of Attestation and Bill of Sale
- Exhibit I Availability Guarantee
- Exhibit J Form of Seller Guaranty
- Exhibit K Commercial Operation Form of Certification
- Exhibit L Form of Operations Report
- Exhibit M Annual Generation Forecast



## POWER PURCHASE AGREEMENT—SOLAR FACILITY

This Power Purchase Agreement Solar Facility, as may be amended from time to time, is entered into this 1st Day of February, 2021 (“**Execution Date**”), by and between Public Service Company of New Mexico, a New Mexico corporation (“**PNM**” or “**Buyer**”), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87158, and Sky Ranch Solar, LLC, a Delaware limited liability company (“**Seller**”), whose principal place of business is 700 Universe Boulevard, Juno Beach, FL 33408. Buyer and Seller may be referred to in this PPA individually as a “**Party**” and collectively as the “Parties.”

WHEREAS, Buyer is a public utility that owns and operates electric generation, transmission, and distribution facilities and is subject to the laws of the State of New Mexico and the rules and regulations of the New Mexico Public Regulation Commission; and

WHEREAS, Seller desires to develop, design, construct, own and operate a solar energy electric generating facility with an expected total maximum power output of approximately 190 MW<sub>AC</sub> (“**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 (“**Special Service Contract**”), between Buyer and Greater Kudu LLC. (“**Retail Customer**”), as amended from time to time, Buyer has agreed, by entering into this PPA, to procure the Energy from the Project to serve Retail Customer’s load; and

WHEREAS, Seller desires to generate, sell and deliver to Buyer the Energy generated by the Project and any and all associated or correlative Renewable Energy Certificates and other Environmental Attributes, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this PPA; and

WHEREAS, Buyer and Seller intend to enter into a certain Energy Storage Agreement, pursuant to which some of the Energy shall be exclusively used in Seller’s Energy Storage System, and for which Buyer shall purchase the Energy Storage Product;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

### ARTICLE 1

#### Definitions and Rules of Interpretation

1.1 Definitions. The following terms shall have the meanings set forth herein.

“**Abandonment**” means (a) a cessation of work and operations at or in respect of the Project for more than one hundred eighty (180) Days by Seller or Seller’s contractors but only if such cessation is not caused by a Force Majeure Event; or (b) the relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this PPA.

“**AC**” means alternating electric current.

“**Accounting Standards**” has the meaning set forth in Section 22.18.

“**Additional Consents**” means the approvals, consents, authorizations or other requirements not listed in the definition of Governmental Approvals in this PPA that are required from any Governmental Authority with respect to the Project.

“**Affiliate**” of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. The term “control” (including the terms “controls,” “under the control of” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any class of voting securities, by contract, or otherwise. Notwithstanding the foregoing, with respect to Seller and NEER, Affiliate shall include NextEra Energy Operating Partners, LP and NextEra Energy Partners, LP, and their respective direct or indirect subsidiaries.

“**After Tax Basis**” means, with respect to any payment received or deemed to have been received by a Party, the amount of such payment (“**Base Payment**”) supplemented by a further payment (“**Additional Payment**”) to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

“**AGC**” stands for “Automatic Generation Control” and means energy management system equipment that automatically adjusts the generation quantity of the Project, including communication circuits to communicate Project operating information to Buyer’s representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

“**Ancillary Services**” means operating reserves, regulation, black-start capability, reactive supply, voltage control, frequency response, other products associated with electric generation and Energy that the Project is capable of providing and all other beneficial outputs of the Project not required for the operation of the Project.

“**Annual Performance Test**” has the meaning set forth in Section 10.8(B).

“**Annual Performance Test PVSYST Model**” has the meaning set forth in Section 10.8(D)(8).

“**Applicable Law**” means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction over this PPA and matters related thereto, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

“**Attestation and Bill of Sale**” has the meaning set forth in Section 9.1(C).

“**Back-Up Metering**” has the meaning set forth in Section 5.3(D).

“**Balancing Area**” has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

“**Balancing Area Authority**” or “**BAA**” has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

“**Bankruptcy Code**” means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as amended from time to time.

“**Business Day**” means any calendar day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday where banks in Albuquerque, New Mexico, are permitted or authorized to close.

“**Buyer**” has the meaning set forth in the Preamble.

“**Buyer Costs**” means brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Buyer either in terminating any arrangement pursuant to which it has hedged its obligations under this PPA or entering into new arrangements which replace this PPA; and all reasonable attorneys’ fees and expenses incurred by Buyer in connection with the termination of this PPA, to the extent such costs are not already accounted for under Replacement Energy Costs.

“**Buyer-Requested Performance Tests**” has the meaning set forth in Section 10.9.

“**Buyer Settlement Amount**” means the present value of the Replacement Energy Costs and Buyer Costs, on the one hand, netted against the Contract Value, on the other. If the Replacement Energy Costs, calculated using a discount factor equal to the current yield for direct obligations of the United States Treasury with a maturity that is closest to, but not less than, the remaining Term of this PPA, and Buyer Costs exceed the Contract Value, then the Buyer Settlement Amount shall be an amount Seller owes to Buyer. If the Contract Value exceeds the Replacement Energy Costs and Buyer Costs, then the Buyer Settlement Amount shall be Zero Dollars (\$0). The Buyer Termination Payment does not include consequential incidental, punitive, exemplary or indirect or business interruption damages.

“**Buyer Termination Payment**” means the aggregate of the Buyer Settlement Amount (if any) plus any and all other amounts then owed from Seller to Buyer less any amounts owed from Buyer to Seller.

“**Capacity Shortfall Damages**” has the meaning set forth in Section 3.8.

“**Change of Control**” means any circumstance in which Ultimate Parent Company ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity or voting interests in Seller; provided, in calculating ownership percentages for all purposes of the foregoing:

(A) any ownership interest in Seller held by Ultimate Parent Company indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent Company’s ownership interest in Seller unless Ultimate Parent Company directly or indirectly owns more than fifty percent (50%) of the outstanding equity or voting interests in each such intermediate entity; and

(B) ownership interests in Seller owned directly or indirectly by any Lender (including any Tax Equity Investor) shall be excluded from the total outstanding equity interests in Seller.

Notwithstanding the foregoing, a Change of Control will not include any direct or indirect transfer of the interests in Seller to Yieldco; provided that following such transfer the entity that operates the Project is (or contracts with) a Qualified Operator

“**Commercial Operation**” means that (a) Solar Units with an aggregate capacity of at least 171 MW<sub>AC</sub> 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) without experiencing any abnormal or unsafe operating conditions on any interconnected system, (b) Seller has obtained all required consents and Governmental Approvals, (c) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement, (d) Seller has obtained required insurance coverage, and (e) Buyer has received an officer’s certificate from Seller that the Project has been completed in all material respects (except for Delayed Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

“**Commercial Operation Date**” means the date, as determined in accordance with Section 3.10, on which Seller provides (a) a written notification to Buyer that the Commercial Operation has commenced, (b) a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit K, and all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

“**Commercial Operation Year**” means a period of twelve (12) consecutive Months. The first Commercial Operation Year shall commence on the Commercial Operation Date and end on the last Day of the Month that is twelve (12) full Months after the Commercial Operation Date,

and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

“**Commissioning Performance Test**” has the meaning set forth in Section 10.8(A).

“**Confidential Information**” has the meaning set forth in Section 22.14(C).

“**Contingent and Partial Assignment and Assumption Agreement**” means that certain Contingent and Partial Assignment and Assumption Agreement by and between PNM and Seller dated as of the Execution Date hereof.

“**Continuation Notice**” has the meaning set forth in Section 2.3(A).

“**Contract Value**” means the sum of the present values of the Solar Energy Output, for each Commercial Operation Year (or portion thereof) in the then-remaining term, determined without reference to the early termination, of (A) the quantity of Energy and RECs expected to be produced during such Commercial Operation Year (or portion thereof) times (B) the 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 current yield for direct obligations of the United States Treasury with a maturity that is closest to, but not less than, the remaining Term of this PPA.

“**Customer Event of Default**” has the meaning set forth in the Special Service Contract.

“**Day**” means a calendar day and includes Saturdays, Sundays and holidays; if a payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

“**DC**” means direct current.

“**Deemed Energy**” has the meaning set forth in Section 4.1(B).

“**Default Rate**” has the meaning set forth in Section 9.4.

“**Defaulting Party**” means the Party with respect to which an Event of Default under Article 12 has occurred.

“**Delay Damages**” has the meaning set forth in Section 3.7.

“**Delayed Capacity**” has the meaning set forth in Section 3.7.

“**Delivery Term**” has the meaning set forth in Section 7.1.

“**Disclosing Party**” has the meaning set forth in Section 22.14(A).

“**Dispute Notice**” has the meaning set forth in Section 13.8.

“**Disputing Party**” has the meaning set forth in Section 9.5(A).

“**Dollars**” means the lawful currency of the United States of America.

“**Downgrade Event**” shall mean that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person’s long-term senior unsecured debt is not as follows: (a) “Baa2” or higher by Moody’s, (b) “BBB” or higher by S&P, and (c) “BBB” or higher by Fitch.

“**Early Termination Date**” has the meaning set forth in Section 12.4.

“**Electric Interconnection Point**” means the physical point at which electrical interconnection is made between the Project and the Transmission Provider’s Transmission System.

“**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 metering current transformers and the metering voltage transformers.

“**Emergency Condition**” means (A) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider’s Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or WECC, or (B) any system condition not consistent with Prudent Utility Practices; provided that an Emergency Condition shall not include any emergency caused by Seller’s breach of its Interconnection Agreement with the Transmission Provider.

“**Energy**” means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, generated by the Project and delivered to Buyer at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices, net of auxiliary loads and station electrical uses (unless otherwise specified).

“**Energy Storage Agreement**” means that certain Energy Storage Agreement between Sky Ranch Energy Storage, LLC and Buyer, of even date herewith.

“**Energy Storage Product**” has the meaning ascribed to the term “Product” in the Energy Storage Agreement.

“**Energy Storage System**” or “**ESS**” has the meaning ascribed to it in the Energy Storage Agreement. For the avoidance of doubt, 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 that are created or otherwise arise from the Project’s

generation of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (i) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water, or soil, gas, chemical, or other substance, and (ii) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes include any attributes similar to those described in the foregoing sentence 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; and (iii) any Energy, reliability or other power attributes from the Project.

**“Environmental Contamination”** means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and as to present a material risk under federal, state or local laws and regulations that a Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this PPA.

**“Event of Default”** means 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.

**“Executive Order”** has the meaning set forth in Section 3.4(H).

**“Expected Commercial Operation Date”** has the meaning set forth in Section 3.1.

**“Federal Power Act”** means the Federal Power Act, as amended, 16 U.S.C. § 791a *et seq.*

**“FERC”** means the Federal Energy Regulatory Commission or any successor agency.

**“Fitch”** shall mean Fitch Ratings Inc. or any successor thereto, or in the event that there is no such successor, a nationally recognized credit rating agency.

**“Force Majeure Event”** has the meaning set forth in Section 14.1.

“**GAAP**” has the meaning set forth in Section 22.18.

“**Governmental Approval**” means any authorization, consent, permission, approval (including an NMPRC Approval), license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation by any Governmental Authority relating to the construction, development, ownership, occupation, startup, testing, operation or maintenance of the Project or to the execution, delivery or performance of this PPA or the procurement pursuant to this PPA of renewable energy and Renewable Energy Certificates and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation with regard to any Non-Governmental Compliance Obligations.

“**Governmental Authority**” means any federal, tribal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

“**Governmental Charges**” means any Taxes, charges or costs that are assessed or levied by any Governmental Authority, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of Solar Energy Output contemplated by this PPA, either directly or indirectly.

“**Guaranteed Solar Capacity**” has the meaning set forth in Section 3.1.

“**Guaranteed Start Date**” has the meaning set forth in Section 3.1.

“**Hazardous Materials**” means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or as dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (x) defined as a “pesticide” under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

“**House Energy**” has the meaning set forth in Section 1.4.

“**Installed Solar Capacity**” means, as of a given point in time, the aggregate nameplate capacity of all Solar Units installed and commissioned at the Project.



“**Interconnection Agreement**” means the separate agreement between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider’s Transmission System, as such agreement may be amended from time to time.

“**Interconnection Facilities**” means the Transmission Provider’s Interconnection Facilities and Seller’s Interconnection Facilities.

“**Internal Revenue Code**” means the U.S. Internal Revenue Code of 1986, including applicable rules and regulations promulgated thereunder, as amended from time to time.

“**Issuer Minimum Requirements**” has the meaning set forth in Section 19.2.

“**ITC(s)**” means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code.

“**kW**” means one or more kilowatts AC of electricity, as the context requires.

“**kWh**” means kilowatt hour AC.

“**Lender(s)**” means any and all Persons, including Affiliates of Seller, (a) lending money or extending credit (including any financing lease, monetization of tax benefits, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller or to an Affiliate of Seller: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and the related rights from Seller; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

“**Letter of Credit**” means an irrevocable, unconditional, transferable standby letter of credit for the benefit of the receiving Party, issued by an entity meeting the Issuer Minimum Requirements.

“**Licensed Professional Engineer**” means an independent, professional engineer reasonably acceptable to Buyer, licensed in the State of New Mexico, and otherwise qualified to perform the work required hereunder.

“**Local Provider**” has the meaning set forth in Section 1.4.

“**Losses**” has the meaning set forth in Section 20.1(A).

“**Minimum Qualifications**” means the following minimum financial and technical qualifications: (i) Seller together with its Affiliates has financial capacity reasonably commensurate with a Person owning solar electricity generating and/or energy storage assets that have a nameplate capacity of not less than one thousand (1,000) MW and (ii) Seller in the aggregate when combined with the solar energy generating and/or storage assets owned by Seller's Affiliates,

operates such a portfolio of solar energy generating and/or storage assets, including the Project, or has engaged a Qualified Operator to operate the Project.

“**Metered Output**” means the Energy made available from the Project at the Point of Delivery, as measured by the Electric Metering Devices and adjusted to the Point of Delivery.

“**Model Rated Power**” has the meaning set forth in Section 10.8(D)(6).

“**Month**” means a calendar month.

“**Monthly Billing Period**” means the period during any particular Month in which Solar Energy Output has been generated by Seller for Buyer and delivered to the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

“**Moody’s**” means Moody’s Investor Services, Inc. and any successor thereto.

“**Mountain Prevailing Time**” or “**MPT**” means the time in effect in the Mountain Time Zone of the United States of America, whether Mountain Standard Time or Mountain Daylight Saving Time.

“**MW**” means megawatt or one thousand (1,000) kW AC.

“**MWh**” means megawatt hours AC.

“**NERC**” means the North American Electric Reliability Corporation or any successor organization.

“**NMPRC**” means the New Mexico Public Regulation Commission or any successor agency.

“**NMPRC Approval**” has the meaning set forth in Section 17.3(B).

“**Non-Defaulting Party**” means the Party other than the Defaulting Party with respect to an Event of Default that has occurred under Article 12.

“**Non-Governmental Compliance Obligations**” means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees, accounts, and/or other obligations with WREGIS, WECC, and all other applicable agencies, self-regulatory organizations and industry committees to which the Party is required to have membership and/or submit to jurisdiction in the performance of this PPA.

“**Non-Reliability Curtailment**” has the meaning set forth in Section 4.1(B).

“**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, if any, developed pursuant to Section 10.5.

“**Operating Records**” means the final version of all operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, including supply contracts, subject to redaction for any commercially sensitive information, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project.

“**Outage Notice**” has the meaning set forth in Section 7.5(A).

“**Party**” or “**Parties**” has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

“**Performance Test Ratio**” has the meaning set forth in Section 10.8(D)(4).

“**Performance Test Report**” has the meaning set forth in Section 10.8(G).

“**Performance Tests**” has the meaning set forth in Section 10.8.

“**Person**” means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

“**PNM**” has the meaning set forth in the Preamble.

“**PNM Event of Default**” has the meaning set forth in the Special Service Contract.

“**Point of Delivery**” means the electric system point at which Seller makes available to Buyer and delivers to Buyer or accounts for the Solar Energy Output being provided by Seller to Buyer under this PPA. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this PPA. For the avoidance of doubt, Energy delivered directly to the Energy Storage System shall be adjusted for losses to the Point of Delivery and deemed to have been delivered at the Point of Delivery.

“**PPA**” or “**Power Purchase Agreement**” means this Power Purchase Agreement between Seller and Buyer, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

“**Project**” means Seller’s 190 MW<sub>AC</sub> solar energy generation facility, located in Valencia County, New Mexico which will produce the Solar Energy Output made available to Buyer under this PPA, including one or more of Seller’s Solar Units and Seller’s Interconnection Facilities, as identified and described in Article 3 and Exhibit A to this PPA, including all of the following (and any additions, modifications or replacements), the purpose of which is to produce and/or store electricity and deliver such electricity to the Electric Interconnection Point: Seller’s equipment, buildings, all of the conversion and/or generation facilities, including the Solar Units, step-up transformers, output breakers, facilities necessary to connect to the Electric Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate

reasonably necessary for the construction, operation, and maintenance of the electric generating facilities that produce the Solar Energy Output subject to this PPA.

“**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 serving public utilities, 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. With respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project’s needs;

(B) sufficient operating personnel are available at all times and are adequately experienced, 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 electric generation operations serving public utilities in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency Conditions; and

(G) equipment, components, and processes are appropriately permitted with any local, state, or federal Governmental Authority and are operated and maintained in accordance with applicable permit and regulatory requirements.

**“Qualified Operator”** is (a) a Person that has at least three (3) years’ experience with operating at least three hundred (300) MW of solar generation, or (b) any other Person reasonably acceptable to Buyer.

**“Rating Agency”** shall mean S&P, Moody’s or Fitch.

**“RC”** has the meaning set forth in Section 10.8(D)(1).

**“Receiving Party”** has the meaning set forth in Section 22.14(A).

**“Receiving Party’s Representatives”** has the meaning set forth in Section 22.14(B).

**“Recording”** has the meaning set forth in Section 22.19.

**“Regulatory End Date”** has the meaning set forth in Section 17.3(B)(3).

**“Reliability Coordinator”** means the entity that fulfills the duties of the Reliability Coordinator, as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

**“Reliability Curtailment”** means any curtailment of the Project by the BAA or Transmission Provider due to any of the following reasons: (a) the Transmission Provider and/or BAA directs a general curtailment, reduction or redispatch of generation in the area for any reason other than any economic purpose; (b) the BAA curtails or otherwise reduces the Metered Output in order to meet NERC/WECC standards criteria in regard to compliance obligations to the PNM Balancing Area and/or Transmission Provider’s Transmission System to operate within system limitations or other operating areas as directed by the Reliability Coordinator; or (c) for safety or equipment failure situations. For the avoidance of doubt, a Reliability Curtailment includes curtailments associated with an oversupply of generation in the PNM Balancing Area or on the Transmission Provider’s Transmission System, provided that generating facilities connected to the Transmission Provider’s Transmission System, are reasonably interrupted or reduced in an equitable and non-discriminatory manner, but shall not include any curtailment for any economic purpose, which curtailment shall be deemed a Non-Reliability Curtailment. Buyer, upon reasonable notice, will provide reasonable documentation relating to any Reliability Curtailments.

**“Renewable Energy Certificate”** or **“REC”** means a document evidencing that the amount of renewable energy shown on the document has been generated from the Project and certified as such by WREGIS. For purposes of this PPA and registration with WREGIS, RECs are accumulated on a MWh basis with one (1) REC for each MWh of renewable energy generated. RECs include all Environmental Attributes associated with the generated energy and shall be compliant with the requirements of the New Mexico Renewable Energy Act §§ 62-16-1 et seq. NMSA 1978 and Title 17.9.572 NMAC (“Rule 572”), each as amended. “RECs” excludes (i) any local, state or federal investment tax credit, production tax credit, depreciation deductions or other tax benefit to Seller based on ownership of, or Energy production from, any portion of the Project, including the Tax Benefits, (ii) depreciation and other tax benefits arising from ownership or operation of the Project unrelated to its status as a generator of renewable or environmentally clean energy, and (iii) any Energy, reliability or other power attributes from the Project.

**“Replacement Energy Costs”** means the actual costs incurred by Buyer following an Event of Default by Seller that are reasonable and necessary to replace Solar Energy Output (which includes RECs, Environmental Attributes and Ancillary Services as defined herein) which Seller, in accordance with this PPA, would have generated at the Project and delivered to Buyer, but failed to so provide pursuant to this PPA. Buyer shall not have to enter into a replacement contract to establish the Replacement Energy Costs. If Buyer does not enter into a replacement contract, then the Replacement Energy Costs will be based on the market price for Energy, Environmental Attributes (including RECs) and Ancillary Services delivered to Buyer’s system, as reasonably determined by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement Energy Costs for an Event of Default also include (i) the reasonable amounts paid or incurred by Buyer for transmission or distribution of replacement Solar Energy Output and any associated transmission or distribution costs, (ii) the reasonable amounts paid or incurred by Buyer for the purchase of RECs associated with the replacement Solar Energy Output, and (iii) Buyer’s expenses, including reasonable attorneys’ fees, suffered as a result of Seller’s failure to perform under this PPA.

**“Requested Actions”** has the meaning set forth in Section 17.3.

**“Retail Customer”** has the meaning set forth in the Recitals.

**“Sales Taxes”** means any New Mexico state and local sales taxes, use taxes, gross receipts taxes, compensating taxes, and similar taxes and charges.

**“S&P”** means Standard & Poor’s Corporation and any successor thereto.

**“Scheduled Maintenance Outage”** means a time during which a Solar Unit is shut down or its output reduced to undergo scheduled maintenance in accordance with this PPA, or as otherwise agreed by Seller and Buyer.

**“SEC”** has the meaning set forth in Section 22.18.

**“Security”** means Development Security or Delivery Term Security, as applicable.

**“Seller”** has the meaning set forth in the Preamble.

**“Seller Excused Hours”** means those hours during which Seller is unable to schedule or deliver Energy to Buyer as a result of: (a) a Scheduled Maintenance Outage, (b) a Transmission Provider Curtailment, (c) a Reliability Curtailment, (d) a Non-Reliability Curtailment, (e) a Force Majeure Event, or (f) 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).

**“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 NextEra Energy Capital Holdings, Inc.

**“Seller Guaranty”** means a guaranty in substantially the form attached as Exhibit J.

**“Seller Permitted Transfer”** means any of the following: (a) a Change of Control of Seller’s Ultimate Parent Company; (b) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor; or (c) a transfer of: (i) all or substantially all of the assets of NextEra Energy Resources, LLC (“NEER”) or Seller’s Ultimate Parent Company in a single transaction; (ii) all or substantially all of Seller’s Ultimate Parent Company’s renewable energy generation portfolio in a single transaction; (iii) all or substantially all of NEER’s or Seller’s Ultimate Parent Company’s solar generation portfolio in a single transaction; or (iv) the direct or indirect transfer of shares of, or equity interest in, Seller to a Person, so long as an Affiliate of NEER continues to hold an economic interest in the Project, the transferee is acquiring a portfolio of other resources in the same transaction that, when aggregated with the Project, represent more than 1,000 MW of generation capacity, and the majority beneficial owner of Seller satisfies the Minimum Qualifications; *provided*, that in the case of each of (b) or (c), following such transfer (A) the entity that operates the Project is (or contracts with) a Qualified Operator, and (B) that such transfer does not have a material adverse effect on the Seller’s credit characteristics, and Seller, or such Person, maintains the applicable Seller Security requirements in accordance with Article 19.

**“Seller Termination Payment”** means the aggregate of the Special Service Contract Settlement Amount (if any) plus any and all other amounts then owed from Buyer to Seller, less any amounts owed from Seller to Buyer.

**“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, it 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. For the avoidance of doubt, this PPA is Site specific.

**“Solar Energy Output”** means Metered Output, Environmental Attributes (including RECs) and Ancillary Services generated by the Project.

**“Solar Energy Output Payment Rate”** means the price to be paid by Buyer to Seller for the Solar Energy Output, as set forth in Section 3.1.

**“Solar Unit(s)”** means the photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary for the Project to collect sunlight at the Site and convert it into electricity. One Solar Unit includes all equipment associated with a single inverter.

“**Special Service Contract**” has the meaning set forth in the Recitals.

“**Special Service Contract Default Notice**” has the meaning set forth in Section 2.2(A).

“**Special Service Contract Termination Costs**” means brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this PPA or entering into new arrangements which replace this PPA; and all reasonable attorneys’ fees and expenses incurred by Seller in connection with the termination of this PPA.

“**Special Service Contract Termination Date**” has the meaning set forth in Section 2.3(A).

“**Special Service Contract Termination Gains**” means an amount equal to the present value of the economic benefit to Seller, if any (exclusive of Special Service Contract Termination Costs), resulting from the termination of this PPA on and after the effective date of such termination and for the remainder of the Term, determined by Seller in a commercially reasonable manner. Factors used in determining economic benefit may include reference to information supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Solar Energy Output. Seller shall use commercially reasonable efforts to obtain third party information in order to determine Special Service Contract Termination Gains and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third party information.

“**Special Service Contract Termination Losses**” means an amount equal to the present value of the economic loss to Seller, if any (exclusive of Special Service Contract Termination Costs), resulting from the termination of this PPA on and after the effective date of such termination and for the remainder of the Term (including any loss of Tax Benefits to the extent that Seller, using commercially reasonable efforts, is unable to mitigate the loss of such Tax Benefits, including by remarketing Energy made available from the Project as a result of such termination), determined by Seller in a commercially reasonable manner. Factors used in determining the loss of economic benefit may include reference to information supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Solar Energy Output. Seller shall use commercially reasonable efforts to obtain third party information in order to determine Special Service Contract Termination Losses and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third party information.



**“Special Service Contract Settlement Amount”** means the sum of the Special Service Contract Termination Costs and Special Service Contract Termination Losses, on the one hand, netted against Special Service Contract Termination Gains on the other. If the sum of the Special Service Contract Termination Costs and Special Service Contract Termination Losses exceeds the Special Service Contract Gains, then the Special Service Contract Settlement Amount shall be an amount Buyer owes to Seller. If the Special Service Contract Termination Gains exceed the sum of the Special Service Contract Termination Costs and Special Service Contract Termination Losses, then the Special Service Contract Settlement Amount shall be Zero Dollars (\$0). The Special Service Contract Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

**“Special Service Contract Termination Notice”** has the meaning set forth in Section 2.3(A).

**“Special Service Contract Termination Payment”** means the aggregate of the Special Service Contract Settlement Amount (if any) plus any and all other amounts then owed from Buyer to Seller less any amounts owed from Seller to Buyer.

**“Special Service Contract Termination Payment Notice”** has the meaning set forth in Section 2.3(B).

**“Special Service Contract”** has the meaning set forth in the Recitals.

**“Special Service Contract Default Notice”** has the meaning set forth in Section 2.2(A).

**“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 and determined by reference to renewable electric energy produced from renewable energy resources in effect in the state of New Mexico, 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 generating units, including the Solar Units.

**“Tax Benefits”** means (a) federal and state investment and/or production tax credits (including ITCs but excluding Supplemental State Tax Incentives), and any other tax credits which are or will be generated by the Project and (b) any cash payments or outright grants of money made by a Governmental Authority relating in any way to such tax credits or the Project.

**“Tax Equity Financing”** means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a **“Tax Equity Investor”**) in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the construction of the Project by monetizing the Tax credits,

depreciation and other Tax Benefits associated with the Project.

“**Tax Equity Investor**” has the meaning set forth in the definition of Tax Equity Financing.

“**Taxes**” means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth.

“**Term**” means the period during which this PPA shall remain in full force and effect, and which is further defined in Article 2.

“**Termination Payment**” means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

“**Test Energy**” means any and all Solar Energy Output generated by the Project and delivered to Buyer during the Test Period.

“**Test Period**” means the period commencing not more than ninety (90) Days prior to the Commercial Operation Date and ending on the Commercial Operation Date; provided that in no event shall the Test Period be longer than ninety (90) Days.

“**Test Rated Power**” has the meaning set forth in Section 10.8(D)(5).

“**TP Forced Outage**” means an unplanned component failure or other condition that requires all or a portion of the Transmission Provider’s Interconnection Facilities or Transmission Provider’s Transmission System to be removed from service immediately.

“**TP Maintenance Outage**” means the removal of all or a substantial portion of the Transmission Provider’s Interconnection Facilities or Transmission Provider’s Transmission System from service to perform work on specific components that can be deferred, but that nevertheless requires all or a substantial portion of the Transmission Provider’s Interconnection Facilities or Transmission Provider’s Transmission System to be removed from service before the next TP Planned Outage. TP Maintenance Outages may occur anytime during the Commercial Operation Year, have flexible start dates, and may or may not have predetermined durations.

“**TP Planned Outage**” means the removal of the Transmission Provider’s Interconnection Facilities or Transmission Provider’s Transmission System from service to perform repairs that are scheduled in advance and have a predetermined duration.

“**TP Reliability Curtailment**” means any curtailment by the Transmission Provider in accordance with WECC operating policies and criteria and the OATT of Solar Energy Output deliveries for reliability reasons.

“**Transmission Provider**” means the entity, designated agent, or third party acting in its capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

**“Transmission Provider Curtailment”** means curtailments of Energy from the Project directed by the Transmission Provider resulting from (a) a TP Forced Outage that is not the result of a Force Majeure Event, (b) a TP Maintenance Outage, (c) a TP Planned Outage, (d) a TP Reliability Curtailment, or (e) an Emergency Condition.

**“Transmission Provider’s Interconnection Facilities”** means the facilities necessary to connect the Transmission Provider’s Transmission System to the Electric Interconnection Point, including breakers, bus work, bus relays, and associated equipment installed by the Transmission Provider for the direct purpose of physically and electrically interconnecting the Project, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. Arrangements for the installation and operation of the Transmission Provider’s Interconnection Facilities shall be governed by the Interconnection Agreement.

**“Transmission Provider’s Transmission System”** means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

**“Ultimate Parent Company”** means NextEra Energy, Inc. or, after any transfer of the direct or indirect equity interests in Seller to Yieldco, NextEra Energy, Inc. or Yieldco.

**“Weather Stations”** has the meaning set forth in Section 10.10(A).

**“WECC”** means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

**“WREGIS”** means the Western Renewable Energy Generation Information System or any successor system.

**“WREGIS Certificates”** has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

**“WREGIS Operating Rules”** means the rules that describe the operations of WREGIS, as may be amended, which are currently available at [www.wregis.org](http://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.

**“Yieldco”** means NextEra Energy Partners LP, and any permitted successors thereof.

## 1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to “Articles,” “Sections,” “Exhibits” or “Schedules” shall be to articles, sections, exhibits, or schedules of this PPA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this PPA; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this PPA, the terms of this PPA shall take precedence.

(D) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (i) where the PPA requires the consent, approval, or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words “include” or “including” or similar words shall be interpreted as “including but not limited to” or “including, without limitation.”

(G) Use of the words “tax” or “taxes” shall be interpreted to include taxes, fees, surcharges, and the like.

1.3 Interpretation with Interconnection Agreement. Each Party shall conduct its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this PPA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this PPA, nothing in the Interconnection Agreement shall alter or modify Seller’s or Buyer’s rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this PPA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third party entity.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This PPA does not provide for the supply of retail electric power or natural gas to the Project, for any purpose (“**House Energy**”). Seller shall contract with the local utility in whose retail service territory the Project is located (“**Local Provider**”) for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. 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 its proposed 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 to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Seller shall have the right to consume energy concurrently generated by the Project for House Energy and to co-locate additional facilities designed to supply House Energy; provided, however, that excess energy produced from such facility shall not be delivered by Seller to Buyer under this PPA. House Energy shall be real time measured by either (i) separate Electric Metering Devices for Metered Output and House Energy or (ii) a single Electric Metering Device that separately measures Metered Output and House Energy. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

## ARTICLE 2 Term and Termination

2.1 Execution Date and Term. This PPA shall become effective on the Execution Date, subject to conditions precedent set forth at ARTICLE 6 herein, and shall end at 11:59 p.m. Mountain Prevailing Time on the date that is the last Day of the twentieth (20th) Commercial Operation Year, subject to the early termination provisions set forth herein. Applicable provisions of this 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. Default Under Special Service Contract.

(A) Buyer will notify Seller within five (5) Business Days of a Customer Event of Default or PNM Event of Default. The notice will include information describing the nature of the Customer Event of Default or PNM Event of Default and whether the default is subject to cure under the Special Service Contract ("**Special Service Contract Default Notice**").

(B) Buyer will provide notice to Seller within five (5) Business Days of any notice of termination it provides to Retail Customer due to any Customer Event of Default, including a copy of the termination notice and effective date of the termination of the Special Service Contract, after which Section 2.3 will apply.

2.3 Termination of Special Service Contract. Notwithstanding anything to the contrary in this PPA, Buyer shall have the right, but not the obligation, to terminate this PPA in accordance with the requirements of this Section 2.3 upon the termination of the Special Service Contract for any reason other than a PNM Event of Default in accordance with the requirements of this Section 2.3.

(A) Within thirty (30) Days of the termination of the Special Service Contract for any reason other than a PNM Event of Default thereunder, Buyer shall deliver written notice to Seller of Buyer's election to either terminate this PPA (the "**Special Service Contract Termination Notice**") or continue this PPA for the remainder of the Term ("**Continuation Notice**"). If Buyer elects to terminate this PPA, Buyer will designate an effective date for such termination no earlier than the date of such notice and no later than twenty (20) Days after the date of the Special Service Contract Termination Payment Notice (the "**Special Service Contract Termination Date**"). Prior to the Effective Date (as defined in the Contingent and Partial Assignment and Assumption Agreement), Buyer shall pursue its remedies under the Special Service Contract and take such actions to cause Retail Customer to pay the Special Service Contract Termination Payment on or before the Special Service Contract Termination Date and Buyer will remit the Special Service Contract Termination Payment to Seller within thirty (30) Days of receipt of such payment from Retail Customer. On and after the Effective Date (as defined in the Contingent and Partial Assignment and Assumption Agreement), Seller shall be entitled to any Special Service Contract Termination Payment pursuant to this Section 2.3 that Buyer receives from Retail Customer and any such payment received by Buyer shall be held in trust for and promptly paid to Seller.

(B) No later than ten (10) Days after the delivery of the Special Service Contract Termination Notice, Seller shall deliver written notice to Buyer of the amount of the Special Service Contract Termination Payment. Seller shall calculate the Special Service Contract Termination Payment in a commercially reasonable manner as of the Special Service Contract Termination Date in accordance with this Section 2.3(B). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. Buyer will deliver notice to Retail Customer of the Special Service Contract Termination Payment amount together with the written statement provided by Seller to Buyer ("**Special Service Contract Termination Payment Notice**") within five (5) Days after Buyer receives such information from Seller. In calculating Special Service Contract Termination Gains or Special Service Contract Termination Losses, 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. If Seller uses the market price for a comparable transaction to determine the Special Service Contract Termination Gains or Special Service Contract Termination Losses, such price shall be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be (i) for a like amount, (ii) of the same Solar Energy Output, (iii) at the same Point of Delivery (if available), and (iv) for the remainder of the Term, or in any other commercially reasonable manner. Seller shall not have to enter into a replacement contract to establish a Special Service Contract Termination Payment. The Parties shall negotiate in good faith to resolve any disputes regarding the calculation of the Special Service Contract Termination Payment. Any disputes regarding the Special Service Contract Termination Payment which the Parties are unable to resolve through negotiation shall be determined in accordance with Section 13.8.

2.4 Amendment of Special Service Contract Any amendment of the Special Service Contract by Buyer and Retail Customer after the Execution Date will not materially alter Seller or Buyer's rights and obligations under this Article 2, including Seller's right to a Special Service Contract Termination Payment, unless Seller, in its reasonable discretion, agrees to an amendment of this PPA to reflect the further amended Special Service Contract, such agreement not to be unreasonably withheld, delayed or conditioned.

### ARTICLE 3 Project Description

3.1 Commercial Terms. The following commercial terms apply to the transaction contemplated by this PPA, each term as more fully set forth in this PPA:

#### COMMERCIAL TERMS

<b>Buyer:</b> Public Service Company of New Mexico	<b>Seller:</b> Sky Ranch Solar, LLC
<b>Project:</b> Sky Ranch Solar	
<b>Point of Delivery:</b> The point of interconnection with PNM's transmission system at which point Seller makes available to Buyer and delivers to Buyer the Solar Energy Output being provided under this PPA, as specified in <u>Exhibit B</u> .	
<b>Contract Term:</b> 20 Commercial Operation Years	<b>Guaranteed Solar Capacity (MW<sub>AC</sub>):</b> 190 MW <sub>AC</sub>
<b>Product Type:</b> Bundled Energy, Ancillary Services and RECs	<b>Solar Energy Output Payment Rate:</b> \$20.64/MWh
<b>Day(s) of week:</b> Monday through Sunday, including NERC holidays	<b>Hours:</b> Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Prevailing Time ("MPT")
<b>Guaranteed Start Date:</b> One hundred sixty (160) Days after the Expected Commercial Operation Date	
<b>Expected Commercial Operation Date:</b> December 31, 2023, subject to extensions as set forth in Section 3.6.	

3.2 Project. Exhibit A provides a detailed description of the Project, including identification of the major equipment and components that will make up the Project as well as an implementation schedule and key project construction and permitting milestones ("**Project Schedule**"). Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed material changes in the Project. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.3 Location. A scaled map that identifies the Site, the location of the Electric

Interconnection Point, the location of the Point of Delivery and the location of the Interconnection Facilities is included in Exhibit A to this PPA. Exhibit A also contains a preliminary indication of the location of the Solar Units and Energy Storage System at the Site. Seller will provide notice to Buyer of the final proposed location of the Solar Units, Interconnection Facilities and Energy Storage System at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practice(s) and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project according to Prudent Utility Practice(s), this PPA and the Interconnection Agreement. The Project shall at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, generator telemetering equipment and communications equipment;

(B) be equipped for and capable of AGC by Buyer;

(C) use communication circuits from the Project to the System Control Center for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for AGC by Buyer;

(D) supply Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement;

(E) deliver Energy to Buyer, at the frequency specified by Buyer;

(F) be capable of being remotely stopped by the System Control Center;

(G) be capable of immediate disconnection remotely by the the System Control Center; and

(H) comply with Presidential Executive Order 13920, "Securing the United States Bulk-Power System" issued on May 1, 2020 ("**Executive Order**"). Within ninety (90) Days of the Execution Date, Seller shall provide to Buyer a notification defining Seller's approach to complying with the Executive Order. Prior to issuance of purchase orders, Seller shall provide the expected equipment suppliers and places of origin for all bulk-power system electric equipment as defined in the Executive Order and shall address its evaluation of compliance for the full supply chain for components of such equipment and devices. Should any place of origin change through the procurement process, Seller shall provide notification upon Seller's awareness of such change.

(I) Within one-hundred eighty (180) Days following the Execution Date, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of 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) 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-1547.1: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with PNM's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with PNM's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to web servers, (iii) production change management, and (iv) CIP governance requirements.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth herein, the Commercial Operation Date shall occur no later than the Expected Commercial Operation Date

3.6 Extension Due to Force Majeure. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended by a number of Days, up to a maximum of one hundred eighty (180) Days, equal to the duration of any Force Majeure Event that delays construction or commencement of operation of the Project. Seller will give written notice to Buyer describing any such Force Majeure Event within five (5) Business Days after the occurrence of the Force Majeure Event. The number of Days of such extension is calculated from the date on which the Force Majeure Event begins. If a Force Majeure Event will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this PPA without liability of either Party.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller will use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer in an amount equal to Two Hundred Dollars (\$200) per Day per each MW of Delayed Capacity for each Day after the Expected Commercial Operation Date until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed Capacity**" is an amount equal to the difference between the Guaranteed Solar Capacity and the Installed Solar Capacity. In no event shall the aggregate Delay Damages exceed Thirty-two Thousand Dollars (\$32,000) per MW of Delayed Capacity.

3.8 Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed Solar Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed Solar Capacity to achieve Commercial Operation. If Seller has not caused all Delayed Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of One Hundred Fifty Thousand Dollars (\$150,000) per MW of Delayed Capacity ("**Capacity Shortfall Damages**"), in which case the Guaranteed Solar Capacity will be reduced in an amount equal to the Delayed Capacity for which Capacity Shortfall Damages were timely

paid pursuant to this Section 3.8.

3.9 Test Energy. Not less than thirty (30) Days prior to the date upon which Seller expects to begin delivering Test Energy, Seller shall give written notice to Buyer of such expected deliveries. During the Test Period, Buyer agrees to accept and purchase all Test Energy generated at the Project and delivered by Seller to Buyer at the Point of Delivery at a rate equal to fifty percent (50%) of the Solar Energy Output Payment Rate. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to the initial delivery of Test Energy to Buyer.

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. Buyer shall, within ten (10) Days, in writing either accept or reject this notice based on specifically identified deficiencies in meeting the criteria included in the definition of Commercial Operation, and if Buyer rejects the notice, Seller shall promptly correct any such deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

## ARTICLE 4

### AGC; Non-Reliability Curtailment

#### 4.1 AGC; Non-Reliability Curtailment.

(A) Prior to the Commercial Operation Date or, if applicable, prior to the Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall maintain such AGC throughout the Delivery Term.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to curtail the Project by use of the AGC system solely to effect a Reliability Curtailment. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations. Such rights do not provide the Buyer with any rights to direct the operation of the Project. Buyer shall pay to Seller an amount equal to the Energy Output Payment Rate multiplied by the Deemed Energy associated with the number of curtailed MWh for curtailments that do not meet the definition of Reliability Curtailment or Transmission Provider

Curtailed (any such curtailment, a “**Non-Reliability Curtailment**”). For purposes of this Section 4.1(B), “**Deemed Energy**” shall mean the amount of Energy that was not delivered to Buyer by Seller but would have been so delivered but for the Non-Reliability Curtailment. Deemed Energy (MWh) shall be reasonably calculated by Seller taking into account weather and pyranometer data from the meteorological station(s), using a mutually agreed upon method, at the Site for all or a portion of the Solar Units taken out of service due to the non-reliability curtailment but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review and approve Seller’s calculations of Deemed Energy.

(C) Seller shall reduce Solar Energy Output from the Project during and to the extent of any Reliability Curtailment, Transmission Provider Curtailment, or Non-Reliability Curtailment. Buyer shall not be required to pay Seller for any curtailed Energy during any Reliability Curtailment or Transmission Provider Curtailment.

## ARTICLE 5 Delivery and Metering

### 5.1 Delivery Arrangements.

(A) Seller shall be responsible for the costs of interconnection, transmission, electrical losses, ancillary charges and other related charges required to deliver the Solar Energy Output from the Project to Buyer at the Point of Delivery at the required voltage. Seller shall be responsible for diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on, and jointly used by, the Project and the Energy Storage System, provided that delivery of Energy from the Project to the Transmission Provider’s Transmission System shall take priority over Energy discharged from the Energy Storage System, and the Project may not be curtailed during a period in which the Energy Storage System is concurrently being discharged, except as required to maintain reliability by the Balancing Area Authority.

(B) Buyer shall be responsible for costs required to deliver the Solar Energy Output from and beyond the Point of Delivery.

(C) On a Day-ahead basis, and no later than 4:00 a.m. MPT, Seller, or Seller’s agent, shall make available to Buyer a 24-hour forecast of the Metered Output to be delivered to Buyer. In addition, Seller, or Seller’s agent, shall establish and maintain (including any future technological improvements developed by Seller, or an agent of Seller) an interface with Buyer via a web-based file transfer protocol for the purpose of transferring to Buyer real-time forecasting data related to the Project (or any alternative transfer mechanism mutually agreed to by the Parties).

(D) Buyer shall be responsible for all necessary transmission service arrangements, including scheduling arrangements, if any, to take Metered Output at the Point of Delivery and deliver it to points beyond.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and timely updates on the current availability of the Project to the SCC.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Energy sold and delivered pursuant to this PPA shall be metered and accounted for separately from any facility that utilizes the same Electric Interconnection Point. Seller shall ensure that Electric Metering Devices are installed at or near the Electric Interconnection Point that measures the output of the Project before such Energy is commingled with the energy from any other project.

(B) The following provisions of this Section shall govern Electric Metering Devices except to the extent the Interconnection Agreement modifies or otherwise conflicts with these provisions, in which case, the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Energy made available to Buyer by Seller under this PPA and to monitor and coordinate operation of the Project shall be purchased and installed in accordance with the Interconnection Agreement at no cost to Buyer under this PPA. Electric metering devices shall be installed at the Point of Delivery to the extent required under the Interconnection Agreement. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery. The design of the Electric Metering Device system shall be subject to Buyer approval not to be unreasonably withheld prior to commencement of construction of the Project. Buyer will, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon completion of the testing. 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 reasonably approved by the Buyer.

(D) Either Buyer or Seller may elect to install and maintain, at its own expense, backup metering devices ("**Back-Up Metering**") in addition to the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test Back-Up Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Back-Up Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Back-Up Metering, *provided, however*, that the requesting Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with

all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(E) If any Electric Metering Devices, or Back-Up Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Party owning such defective or inaccurate device and that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device, or Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device, or Back-Up Metering, is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering to determine the amount of such inaccuracy, provided, however, that Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. If Back-Up Metering is installed on the low side of Seller's step-up transformer, the Back-Up Metering data shall be adjusted for losses in the same manner as for the Electric Metering Devices. In the event that Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Metered Output from the Project to the Point of Delivery during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such 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.

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

## ARTICLE 7 Sale and Purchase of Solar Energy Output

7.1 Sale and Purchase of Solar Energy Output. In accordance with and subject to the terms and conditions of this PPA, commencing on the Commercial Operation Date and continuing through the end of the Term (“**Delivery Term**”), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Solar Energy Output made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that, subject to Section 8.1(A), Buyer shall not be required to receive and purchase Solar Energy Output when and to the extent that (A) a Party’s performance is excused by a Force Majeure Event, (B) a Transmission Provider Curtailment is continuing, (C) a Reliability Curtailment is continuing, (D) a Seller Forced Outage is continuing, or (E) Seller’s performance is excused during Seller Excused Hours. Furthermore, instantaneous Solar Energy Output, as adjusted for losses to the Point of Delivery, shall not exceed the Guaranteed Solar Capacity.

7.2 Title and Risk of Loss. As between Seller and Buyer, Seller shall be deemed to be in control of the Solar Energy Output from the Project up to delivery and receipt at the Point of Delivery and Buyer shall be deemed to be in control of such Solar Energy Output from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Solar Energy Output shall transfer from Seller to Buyer at the Point of Delivery.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) additional Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this PPA all right and title to such additional Environmental Attributes is included in the Solar Energy Output Payment Rate as Solar Energy Output and (c) such additional Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this PPA. If in order for Buyer to receive the benefit of any additional Environmental Attributes Seller must incur any third-party costs not otherwise provided for in this PPA, 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. For the avoidance of doubt, Buyer shall

remain liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such additional Environmental Attributes.

#### 7.4 Scheduling.

(A) Buyer shall arrange all scheduling services necessary to receive Solar Energy Output at the Point of Delivery while ensuring compliance with WECC operating policies and criteria, Transmission Provider OATT requirements, and any other applicable guidelines, as required. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Metered Output in accordance with WECC operating policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines in a manner maximizing Metered Output from the Project based on the then-most-current forecast of energy provided by Seller, except for Transmission Provider Curtailments, Reliability Curtailments, Seller Forced Outages, Scheduled Maintenance Outages, Force Majeure Events, and Non-Reliability Curtailments. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Buyer with a good faith estimate of the quantity of 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.

(B) If at any point during the Delivery Term, (i) an alternative market design is implemented in which the Project will or can participate in an energy market, or (ii) if either the Project, the Electric Interconnection Point or Buyer no longer reside in the same market (each of (i) and (ii), a "**Market Event**") and such Market Event materially changes the interconnection and delivery requirements in this PPA, the Parties shall cooperate in good faith to facilitate the delivery of Solar Energy Output from the Point of Delivery to Buyer's Retail Customer's load, at the least possible cost to the Parties and Retail Customer, consistent with this PPA to the extent possible.

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily quantity of Solar Energy Output to be delivered by Seller to the Point of Delivery for each week (Sunday through Saturday) by 4:00 p.m. MPT on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and the SCC as applicable, Seller shall, by 6:00 a.m. MPT on each Day, submit a good faith estimate of the hourly quantities of Solar Energy Output to be delivered for Buyer at the Point of Delivery for the next six (6) subsequent Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

## 7.5 Forced Outages.

(A) Buyer and Seller shall promptly advise one another of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage of 5 MW or greater, Non-Reliability Curtailment, Transmission Provider Curtailment, Reliability Curtailments or Seller Excused Hours. Buyer or Seller (as appropriate) shall at the earliest practicable date provide the other Party written notice (“**Outage Notice**”) of the declaration of the existence of a Seller Forced Outage not available to Buyer through the SCADA system, Non-Reliability Curtailment, Transmission Provider Curtailment, Reliability Curtailment or Seller Excused Hours. Seller shall provide such notice to the System Control Center. An Outage Notice provided by either Party shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Metered Output, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Buyer or Seller (as appropriate) shall keep the other Party informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

(B) Within five (5) business Days after the end of the Month, Seller shall prepare, maintain and deliver to Buyer a schedule that identifies all Scheduled Maintenance Outages, deratings and Seller Forced Outages that occurred during the Month. The data reported must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

7.6 Availability Guarantee. Seller guarantees that the Project shall be available to produce Solar Energy Output and shall pay Solar Availability Damages, if any, in accordance with Seller’s obligations under the provisions of Exhibit I.

## ARTICLE 8 Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and, other than charges for Test Energy, will begin on the Commercial Operation Date:

(A) Monthly Solar Energy Output Payment. Subject to the provisions of this PPA, Buyer shall accept and pay for Solar Energy Output generated at the Project and delivered by Seller to Buyer. Buyer shall pay Seller an amount equal to the product of (a) the aggregate amount of Solar Energy Output (MWh) delivered for Buyer to the Point of Delivery from the Project plus Deemed Energy multiplied by (b) the Solar Energy Output Payment Rate. As used herein, the Solar Energy Output Payment Rate is the rate to be paid for the Solar Energy Output delivered for Buyer to the Point of Delivery from the Project. The Solar Energy Output Payment Rate also compensates Seller for the associated Environmental Attributes, RECs and Ancillary Services, in any Monthly Billing Period. The Solar Energy Output Payment Rate includes all Taxes.



(B) If Supplemental State Tax Incentives become available in connection with the Solar Energy Output, Seller shall use commercially reasonable efforts to become eligible for and to obtain any such credits.

(C) In the event that Seller or Affiliate of Seller becomes eligible to receive 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 or Affiliate of Seller, Seller will remit to Buyer a payment equal to sixty percent (60%) of the value of such Supplemental State Tax Incentives.

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this PPA consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration.

## ARTICLE 9 Billing and Payment Procedures

### 9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MPT on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the start of the Test Period, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this PPA (in Dollars) payable to Seller for the preceding Month (and with respect to the first billing Month, any preceding Month including and following the Test Period). Each such invoice shall show information and calculations, in reasonable detail, including an Attestation and Bill of Sale verifying the associated RECs and Environmental Attributes, if applicable and if requested by Buyer prior to the Commercial Operation Date, in the form of Exhibit H (“**Attestation and Bill of Sale**”).

(D) Beginning with the first Month in the Test Period, until an invoice is required to be prepared pursuant to clause (C) above, Seller shall prepare an invoice showing the charges for Test Energy payable to Seller for the preceding Month.

(E) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller’s invoice. If Buyer should dispute a portion of the

charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(F) If banks in the State of New Mexico are permitted to close on any date on which any payment by Buyer would otherwise have been due, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(G) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this PPA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. Notwithstanding anything contained in this PPA, all payments to be made by either Seller or Buyer under this PPA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this PPA or, if no account is specified, into the account designated by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this PPA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the thirty (30) Day highest grade commercial paper rate as published in The Wall Street Journal on the first Business Day of each Month (“**Default Rate**”), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party (“**Disputing Party**”) may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within forty-five (45) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. In the event that either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall obtain and provide Seller an appropriate New Mexico Nontaxable Transaction Certificate prior to the date any sales under this PPA occur. The Parties further acknowledge their understanding that, under Applicable Law, no Sales 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.

(B) Seller shall be responsible and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. If Buyer is assessed any Taxes or associated fees as a result of the improvement of a Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits during the Term.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this PPA and implement the provisions in this PPA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this PPA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this PPA, including Section 9.9 below, all payments between the Parties under this PPA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this PPA, including damages and other payments that are owed by a party to the other Party pursuant to this PPA. Undisputed and non-offset portions of amounts invoiced under this PPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this PPA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment under this PPA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

ARTICLE 10  
Operations and Maintenance

10.1 Construction of the Project.

(A) On and after the Execution Date through the start of construction, Seller will provide Buyer quarterly development and construction updates.

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, the New Mexico Public Utility Act.

(C) Seller may not materially modify, expand, 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 materially alter the Guaranteed Solar Capacity, annual performance, or availability of the Project or to materially and adversely impact the capabilities of the Project; or (iii) in connection with maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by

Seller.

(D) Other than the rights and obligations of Buyer specified in this PPA and any documents ancillary hereto, neither this PPA nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning Tests. Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and of the proposed tests scheduled relating to the commissioning of the Project ("**Commissioning Tests**") as described in Exhibit F. Representatives of Buyer shall have the right to be present at all such testing. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control house and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with all of Seller's applicable safety and health rules and requirements, including executing customary waiver and indemnity agreements.

(B) No inspections of the Project, whether by Buyer or otherwise, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this PPA and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment nor as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this PPA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this PPA, and (ii) comply with reasonable requirements of Buyer regarding day-to-day or hour-by-hour communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Solar Energy Output delivered by Seller will meet all requirements for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this PPA. Seller shall provide Buyer with all real time measurement parameters of the Project including system availability data made available to Buyer via a SCADA

or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers and Prudent Utility Practices. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper functioning of all protective equipment at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. PNM reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with a ten (10) Day written notice of planned testing and/or calibration.

10.5 Operating Procedures. Prior to the Commercial Operation Date, Seller and Buyer shall develop mutually agreeable written Operating Procedures, which shall include methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel list for applicable operating centers; operations and maintenance scheduling and reporting; scheduling and forecasting practices; Solar Energy Output reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties, to be provided substantially in the form of Exhibit L. Seller will make qualified personnel available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project.

#### 10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this PPA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages which equal or exceed five (5) MW of the Project's Installed Capacity for the Project for the first Commercial Operation Year within the Term. Thereafter, no later than September 1 of each Commercial Operation Year, Seller shall provide Buyer with a non-binding notice of the annual Scheduled Maintenance Outages which equal or exceed five (5) MW of the Project's Installed Capacity for the following Commercial Operation Year and a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's generation, including the duration of such event. Each annual Scheduled Maintenance Outage for the Commercial Operation Year will be subject to approval by Buyer 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, 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 not to be unreasonably withheld, except that any request to schedule interruption or reduction at any time during May 1st through September 30th, December, or January is subject to Buyer's sole discretion. Seller must give Buyer no less than ninety (90) Days' advance notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(B) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary to effect delivery of the Metered Output to the Point of Delivery. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer as Confidential Information, subject to the restrictions of Section 22.14, copies of any environmental permit related to the Project.

10.7 Sales to Third Parties. As of the start of the Test Period, Seller shall not sell or divert Solar Energy Output to a third Person.

10.8 Performance Tests. "**Performance Tests**" means the Commissioning Performance Test, the Annual Performance Tests, and Buyer-Requested Performance Tests as described in this Section 10.8 and in Sections 10.9 and 10.10. Performance Tests shall be performed to verify compliance of the solar photovoltaic plant net AC capacity at the Point of Delivery with the Guaranteed 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**").

(B) Seller shall conduct a performance test in accordance with this Section 10.8 in each Commercial Operation Year after the Commercial Operation Date (each, an "**Annual Performance Test**"). Each Annual Performance Test shall be performed no earlier than nine (9) months and no later than fifteen (15) months from the completion of the previous Annual Performance Test or Commissioning Performance Test as mutually agreed by the Parties.

(C) An annual degradation rate of one-half percent (0.5%) per year will be used in the Annual Performance Test PVSYST Model for the purpose of Annual Performance Tests described in this Section 10.8. The annual degradation rate shall be applied as incremental to the actual degradation experienced and measured through the prior Commercial Operation Year's Performance Test.

(D) The Commissioning Performance Test, Annual Performance Tests, and Buyer-Requested Performance Tests shall be conducted in accordance with ASTM E2848-13, except where deviations are provided in this Section 10.8 (D).

(1) The reporting conditions ("**RC**") will be developed in accordance with ASTM E2939-13 and will utilize site measured irradiance and ambient temperature data collected during the Performance Test. The same RC will

be used for computing the Model Rated Power and Test Rated Power using their respective regression equations.

(2) The Performance Test period will include at least five (5) Days of data and at least fifty (50) filtered data points.

(3) Model Rated Power and Test Rated Power shall account for losses to the Point of Delivery.

(4) The result from an Annual Performance Test or Buyer-Requested Performance Test is the ratio of Test Rated Power to Model Rated Power (the “**Performance Test Ratio**”).

(5) “**Test Rated Power**” shall be the value produced by the regression of filtered site measured power and site measured weather data evaluated at the RC, adjusted by Seller for any unavailable equipment during the Performance Test.

(6) “**Model Rated Power**” shall be the value produced by the regression of filtered Annual Performance Test PVSYST Model power and filtered model weather data evaluated at the RC, adjusted by Seller for any unavailable equipment during the Performance Test.

(7) The Model Rated Power will be calculated using the Annual Performance Test PVSYST Model. Site measured POA irradiance will be used as the irradiance input to the Annual Performance Test PVSYST Model.

(8) The PVSYST model utilized by Seller to predict the annual generation forecasts included in Exhibit M will be used as the PVSYST model for initial comparison to the actual site performance during the Commissioning Performance Test. Such PVSYST model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer at least two (2) months prior to initiation of the Commissioning Performance Test. Should any modifications to this PVSYST model be proposed by Seller after completion of the Commissioning Performance Test, Seller shall provide to Buyer the proposed modifications to the draft PVSYST model for review and approval. Any modifications to the PVSYST model mutually accepted by the Parties will be incorporated and the resulting modified PVSYST model together with a schedule of annual degradation will be the “**Annual Performance Test PVSYST Model**”.

(9) The Annual Performance Test PVSYST Model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer within one (1) month of the completion of the Commissioning Performance Test. The Annual Performance Test PVSYST Model will annually account for actual degradation through the prior Performance Test with incremental annual degradation added as previously agreed to by the Parties. This mutually accepted Annual Performance Test PVSYST Model will be utilized without modification, unless agreed to by both Parties, in all Annual Performance Tests and Buyer-



Requested Performance Tests.

(E) Within thirty (30) Days of the completion of a Performance Test, Seller may elect to conduct a single re-test. Upon completion of the single re-test, Seller must choose for the results of either test to be used as the Annual Performance Test.

(F) For all Performance Tests and re-tests, Seller shall notify Buyer at least ten (10) Days prior to the initiation of the Performance Test or re-test, and Buyer shall have the option to inspect the Project during such Performance Test or re-test.

(G) For all Performance Tests and re-tests, Seller shall provide a “**Performance Test Report**” that includes all performance data, model simulations, calculations, and test reports to the Buyer for analysis and review. Seller shall maintain records of performance testing for a minimum of five (5) years following the date the test was performed.

(H) Proposed terms associated with the 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 Buyer-Requested Performance Tests. In the event of a material adverse change in expected Solar Energy Output based on monthly billing (adjusted for weather, including but not limited to solar irradiance, the detailed basis for any such adjustments to be documented by Seller and provided to Buyer upon request), Seller shall perform additional tests as requested by Buyer (“Buyer-Requested Performance Tests”), limited to the conditions described in this Section 10.9. Buyer-Requested Performance Tests will be conducted as described in Section 10.8, for Buyer-Requested Performance Tests performed within the second and subsequent Commercial Operation Years.

(A) Only one (1) Buyer-Requested Performance Test may be requested per Commercial Operation Year.

(B) Buyer-Requested Performance Test may not be requested within three months of a previous Performance Test.

(C) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

10.10 Weather Stations.

(A) Seller shall, at Seller’s cost and no later than thirty (30) Days prior to the estimated Commercial Operation Date, provide, install, own, operate and maintain a minimum of four (4) stand-alone meteorological stations (“**Weather Stations**”) at the Project Site to monitor and report weather data. The Weather Stations shall be appropriately spaced on the Site as determined by 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 include the capability for measuring, indicating, and recording ambient temperature, barometric pressure, solar radiation, and relative humidity. Seller shall submit to

PNM for review and approval, Seller's technical specifications for the Weather Stations along with a site plan showing the location of the station(s) (GPS coordinates), the location of all solar generating units, photovoltaic modules, current inverters, and other prominent features, as applicable. The system shall be interconnected via a web-based file transfer protocol, or other mutually-agreed protocol, to provide indication of all measured parameters to PNM and the data shall be available to PNM via a PI historian interface. Seller shall provide to Buyer, and shall maintain during the Term, a data link or unrestricted real time access into the weather forecast modeling.

(B) Seller shall not select the type of Weather Station without the prior written consent of PNM, which shall not be unreasonably withheld. No later than three (3) months prior to the estimated Commercial Operation Date, the Parties shall agree on the locations of the Weather Stations and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Stations.

(C) Data collected from the Weather Stations shall be utilized for determination of the minimum solar irradiance for determination of system availability and lost output due to curtailment or outages.

## ARTICLE 11 RECs and Environmental Attributes

### 11.1 Sale of RECs and Environmental Attributes.

(A) Other than as specified in Section 11.1(D) below, and considering the prior actions that must be completed as specified in Section 11.1(E) below, effective from the date on which the Project first delivers Energy for sale to Buyer at the Point of Delivery, Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to RECs and Environmental Attributes associated with the generation of Energy in an amount equal to the Solar Energy Output. Seller shall make the RECs available to Buyer within thirty (30) Days after the RECs are created in WREGIS. Seller shall be liable for the greater of (x) fifty percent (50%) of the Solar Energy Output Payment Rate on a per REC basis or (y) Buyer's costs to replace RECs if Seller fails to deliver RECs within the earlier of (i) thirty (30) Days after written notice from Buyer of such failure and (ii) one hundred twenty (120) Days after the end of the month in which associated Energy is generated (one hundred eighty (180) Days after the Commercial Operation Date in the case of Test Energy). The RECs and Environmental Attributes transferred under this PPA shall be bundled with the associated Energy, and Buyer shall pay Seller for the bundled RECs and Environmental Attributes and Energy as set forth in this PPA.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the RECs and Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Environmental Attributes and RECs shall include any Environmental Attributes and RECs that are reserved or "banked" throughout the Term of this PPA, but not 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) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this PPA or any successor or other provision providing for a federal, state and/or local tax credit determined by reference to renewable electric energy produced from renewable energy resources shall be owned by Seller.

(E) Seller shall, at its sole expense and before commencement of the Test Period, take all actions and execute all documents or instruments necessary to ensure that the Project is registered as a generating unit in WREGIS for the purpose of tracking all Renewable Energy Certificates corresponding to all Metered Output, and that all associated WREGIS Certificates are issued and tracked and transferred in a timely manner to Buyer. If required by WREGIS for the creation of Renewable Energy Certificates or associated WREGIS Certificates for the full Solar Energy Output, Seller at its sole cost and expense will add a meter for the Project on the low side of Seller's step-up transformer. Seller shall comply with all Applicable Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS account to Buyer's WREGIS account. Buyer shall have the exclusive right to transfer RECs and Environmental Attributes to Retail Customer's WREGIS account, or retain the RECs and Environmental Attributes in Buyer's WREGIS account and retire the RECs and Environmental Attributes on behalf of Retail Customer, pursuant to the terms of the Special Service Contract.

(F) Seller shall register the Project, as necessary, so that the Project is compliant with reporting requirements related to RECs and Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

(G) Prior to commencement of the Test Period, Seller shall provide written documentation to Buyer evidencing that the RECs generated by the Project will be reported to WREGIS using a WREGIS Qualified Reporting Entity, as that term is defined by WREGIS.

(H) Neither Seller nor Buyer will have any liability to the other for any act, omission, misrepresentation, or breach (other than an act or omission due to the failure to pay fees, charges or expenses by the responsible Party), by an entity that certifies the characteristics or delivery of a REC, or the qualification of the Project as a renewable energy facility, under Applicable Law. The certifying entity may include a Governmental Authority, WREGIS or other generation information system, an independent auditor or other third party.

## ARTICLE 12 Default and Remedies

### 12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable, other than as set forth below:

- (1) Seller's dissolution or liquidation;
  - (2) Seller's assignment of this PPA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18;
  - (3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller voluntarily taking advantage of any such law by answer or otherwise;
  - (4) The sale by Seller to a third party, or diversion by Seller for any use, of Energy or RECs committed to Buyer by Seller;
  - (5) Seller's actual fraud, waste, tampering with Buyer-owned facilities or other material misrepresentation or misconduct in connection with this PPA or the operation of the Project;
  - (6) The failure of Seller to maintain Security in accordance with Article 19;
  - (7) The failure of Seller Guarantor to make, when due, any payment required, unless remedied within 10 Business Days of receipt of notice of such failure; or
  - (8) 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.
- (B) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

- (1) Seller's Abandonment of construction or operation of the Project;
- (2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or Retail Customer, Seller is not able to deliver Energy to the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements required to deliver Energy to the Point of Delivery;
- (3) Seller's failure to make any payment due to Buyer hereunder (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).

(4) Seller's failure to register the Project or ensure registration of the RECs in accordance with the terms of this PPA;

(5) Seller's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Buyer.

(C) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, as may be extended, shall constitute an Event of Default.

(D) 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, excepting to the extent due to the failure of a main generator step-up transformer (which exception may apply only once during the Term, provided that the 30-Day cure periods indicated in Section 12.1(B) do not apply and Seller remediates the cause of the shortfall of Actual Availability Percentage requirements as soon as reasonably practicable, however, in no event later than ninety (90) days after falling below the eighty percent (80%) value.

(E) The Project fails to obtain an Actual Availability Percentage of at least fifty-five percent (55%) over any Commercial Operation Year, excepting to the extent due to the failure of a main generator step-up transformer (which exception may apply only once during the Term, provided that the 30-Day cure periods indicated in Section 12.1(B) do not apply and Seller remediates the cause of the shortfall of Actual Availability Percentage requirements as soon as reasonably practicable, however, in no event later than ninety (90) days after falling below the fifty-five percent (55%) value.

(F) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's assignment of this PPA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18;

(2) Any representation or warranty made by Seller in this PPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(3) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; *provided, however*, that Seller does not obtain a stay or dismissal of the filing within the cure period.

(G) Any representation or warranty in Section 22.20 is breached by Seller or is

or becomes false or misleading in any material respect and is not remedied within ten (10) Business Days after notice.

#### 12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment of this PPA (or any of its rights hereunder) for the benefit of creditors; or

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise.

(B) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within thirty (30) Days after the date of written notice from Seller to Buyer:

(1) 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); or

(2) Buyer's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Seller.

(C) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

(2) Buyer's assignment of this PPA, except as permitted in accordance with Article 18; or

(3) Any representation or warranty made by Buyer in this PPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

#### 12.3 Damages Prior to Termination.

(A) Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, and the duty to mitigate damages set forth in Section 12.9, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this PPA from the Defaulting Party as set forth in Section 12.3(B), (ii) exercise its rights pursuant to Section 12.5, (iii) suspend performance, (iv) with respect to 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, that if an Event of Default has occurred and has continued uncured for a period of one hundred eighty (180) Days, the Non-Defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this PPA as provided for in Section 12.4. If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include an amount of cover damages equal to Replacement Energy Costs minus the product of (x) the quantity of Solar Energy Output so replaced and (y) the Solar Energy Output Payment Rate. Further, Seller acknowledges and agrees that in addition to the foregoing, Seller shall be obligated to pay Buyer any such damages associated with replacement of Solar Energy Output notwithstanding the availability or prices of electric energy from other fuel sources, such as natural gas. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any RECs and any Environmental Attributes pursuant to this PPA. Seller acknowledges that Buyer entered into this PPA for the procurement of Solar Energy Output, which includes RECs and Environmental Attributes.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and sixty (60) Days after the notice thereof, upon which this PPA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this PPA, except that Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this PPA. Upon the termination of this PPA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment; and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment, and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment.

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the

Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. Seller shall calculate the Seller Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(B). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The amount will be determined by Seller using the methodology set forth in Section 2.3(B).

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material performance obligation of the other Party under this PPA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES BY STATUTE, IN TORT OR CONTRACT (EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this PPA, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this PPA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions,



set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this PPA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default enumerated in Section 12.1 or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this PPA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

### ARTICLE 13

#### Contract Administration and Notices

13.1 Notices in Writing. Notices required by this PPA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt, to the representative of said other Party. If delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this PPA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this PPA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including such records as may be required by any Governmental Authority or pursuant to Applicable Law. Seller and Buyer shall maintain books and records using practices and internal controls that ensure that information that is required to be maintained by this PPA is documented and retrievable in accordance with the requirements of this PPA. All records of Seller and Buyer pertaining to the operation of the Project and/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). Seller and Buyer shall maintain all records required hereunder in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this PPA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) **Operating and Maintenance Records.** Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Project that will include, without limitation, power production records for each hour; dispatch and scheduled Energy production; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practice (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 or quarterly construction progress reports, as applicable, 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 PPA, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this PPA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Solar Energy Output from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals from any Governmental Authority which address environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the Solar Units.

(4) Upon request by Buyer, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer shall not be construed as an endorsement by Buyer of the design of the Project, does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project, otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts or, except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, 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 Seller has defaulted under this PPA, in which case Seller will bear the reasonably incurred expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this PPA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this PPA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, Exhibit C, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this PPA in a quick and inexpensive manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this PPA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to

be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may, but is not required to, submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days written notice, declare the mediation process unsuccessful and initiate legal and equitable remedies.

## ARTICLE 14 Force Majeure

### 14.1 Definition.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A “**Force Majeure Event**” shall mean an event or circumstance that occurs subsequent to the Execution Date and that is not reasonably foreseeable, that 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 civil, tribal, or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not originating in the Project and those not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement).

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, for any reason (the risk of which is assumed by Seller); (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, unless such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied

to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay in Seller's interconnection; (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, in each case attributable to normal wear and tear or flaws, including any design flaws or material or serial defects; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against Seller or Seller's contractors or subcontractors; (viii) a Seller Forced Outage; or (ix) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this PPA beyond its stated Term. Notwithstanding any other provision in this PPA to the contrary, in the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller continues for an uninterrupted period of one hundred eighty (180) Days from its inception (with respect to Force Majeure Events occurring prior to COD) or three hundred sixty-five (365) Days from its inception (with respect to Force Majeure Events occurring after COD), either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this PPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this PPA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this PPA (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided that failure to provide notice within ten (10) Business Days only waives the Force Majeure Event as to periods prior to when the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall

use its commercially reasonable efforts to cure the cause(s) preventing its performance of this PPA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Delay Caused by Force Majeure Event. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of either Buyer or the Transmission Provider to accept Energy Output from the Project or to deliver Energy Output from the Project, then the hours during which the Force Majeure Event occurs shall be excluded from the payment calculations as set forth in Section 8.1.

## ARTICLE 15

### Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents and warrants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or

encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA.

(C) The obligations of Seller under this PPA are valid and binding obligations of Seller.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer and to Retail Customer the extent of, and as soon as it is known to Seller, any 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 uninterrupted operation of the Project.

(J) Seller has and/or will have upon the generation of Solar Energy Output good and marketable title to the RECs and Environmental Attributes.

(K) Seller has not sold, delivered or transferred the RECs or Environmental Attributes to any other Person, in whole or in part.

(L) All right, title and interest in and to the RECs and Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) Each REC and Environmental Attribute complies with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 *et seq.*, and Title 17.9.572 NMAC.

(N) Upon the execution thereof, Seller shall provide true and correct copies 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) To the extent applicable, Seller is in compliance with the Executive Order.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, members, managers and/or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.



(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1 and 17.3, if applicable, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

## ARTICLE 16 Insurance

16.1 Evidence of Insurance. Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on or before June 1 of each Commercial Operation Year provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be issued by an insurer with an (i) A.M. Best's rating of not less than "A-" or better, or (ii) insurance carriers having a Standard & Poor's Global rating of "A" or better, or (iii) insurance carriers having an equivalent rating by another nationally recognized insurance rating agency, or (iv) such other insurance carriers of recognized responsibility (which, solely in the case of insurance carriers described in this clause (iv), shall require the consent of Buyer, which consent shall not be unreasonably withheld or delayed), in each case, that are authorized to do business in the State where the Services are performed or to be performed. Seller's liability under this PPA shall not be limited to the amount of insurance coverage required herein.

### 16.2 Term and Modification of Insurance.

(A) All liability insurance required under this PPA shall cover occurrences during the Term of this PPA on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this PPA, to request Seller to modify the insurance minimum limits specified in Exhibit G in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

### 16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except

that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer, Retail Customer and their respective Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this PPA is primary and non-contributory with respect to other insurance carried by Buyer and/or Retail Customer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer, Retail Customer and their respective Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer or Retail Customer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

## ARTICLE 17

### Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Each Party shall at all times comply with all Applicable Laws. Each Party shall promptly notify the other Party of any material investigations, notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the PPA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this PPA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Solar Energy Output at the rates specified in Article 8, shall be conditioned upon Buyer's receipt of Governmental Approvals required by Applicable Law, including NMPRC Approval, in connection with (i) the execution and performance of this PPA, including a final order or other regulatory determination from the NMPRC that Buyer may procure renewable energy and associated RECs pursuant to this PPA and may recover the cost of such procurement; (ii) the execution and performance of the ESA, including authorization to recover the costs of ESS Capacity Payments (as defined in the ESA); (iii) any waivers as set forth in Buyer's request for

approval of this PPA; and (iv) the execution and performance of the addendum to the Special Service Contract filed concurrently with the ESA (collectively, “**Requested Actions**”). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, “**NMPRC Approval**”).

(1) If the NMPRC disapproves any of the Requested Actions, then the Parties and Retail Customer may meet and confer at the request of Buyer or Retail Customer concerning whether this PPA should remain in effect, such request to be made no later than ten (10) Days after the date of the NMPRC disapproval. This PPA shall automatically terminate: (i) ten (10) Days following the date of NMPRC disapproval if neither Buyer nor Retail Customer requests that the Parties meet and confer; or (ii) if such a request is made by Buyer or Retail Customer, ten (10) Days after the last date on which the Parties conferred if the Parties do not mutually agree on the terms by which this PPA should remain in effect. Upon automatic termination, this PPA shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer and Retail Customer will amend this PPA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this PPA. If the Parties and Retail Customer are unable to mutually agree on any amendments to this PPA to address such NMPRC Approval order, then this PPA shall automatically terminate ten (10) Days after the last date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval of all Requested Actions by September 30, 2021 (“**Regulatory End Date**”), then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties and Retail Customer are unable to mutually agree to an extension of the Regulatory End Date, then this

PPA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties.

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

## ARTICLE 18

### Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this PPA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) any assignment or transfer of this PPA by Seller to an Affiliate of Seller; or (ii) any assignment or transfer of this PPA by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (i) or (ii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); and (c) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this PPA.

(B) Seller's consent shall not be required for any assignment of this PPA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's

creditworthiness is equal to or better than that of Buyer; and *further provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this PPA as and if required by NMPRC regulations; and *further provided* that Buyer simultaneously assigns the Special Service Contract with Retail Customer to such assignee.

18.2 Conditions on Transfers. If the rights and interests of a Party in this PPA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this PPA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this PPA with the Affiliate as if such Person had been named under this PPA; *provided, however*, that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this PPA made without fulfilling the requirements of this PPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders.

(A) Cooperation. In connection with any assignment of this PPA by Seller to its Lenders, as soon as reasonably practicable after reasonable request from Seller or any Lender, Buyer will cooperate reasonably with Seller and Lender to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, (i) an option, but not an obligation, for the Lenders to cure any monetary Event of Default of Seller within thirty (30) Days of the expiration of the cure period provided therefor in Section 12.1, and cure any non-monetary Event of Default of Seller within sixty (60) Days of the expiration of the cure period provided therefor in Section 12.1, prior to Buyer terminating this PPA; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii)

Buyer not terminating this PPA if Lenders need to foreclose on the Project prior to curing any Event of Default of Seller giving rise to such termination, but only to the extent that the period required for such foreclosure and cure does not exceed one hundred eighty (180) Days from receipt by Lenders of written notice of such Event of Default of Seller; provided that, in all cases, (a) Buyer will have no obligation to alter or modify the terms of this PPA or provide any consent or enter into any agreement that has a material adverse effect on Buyer or Retail Customer during the term of the Special Services Contract, and (b) Seller will be responsible for Buyer's reasonable costs (including, but not limited to, attorneys' fees) associated with Buyer's review, negotiation, execution and delivery of any documents in connection with such assignment. Nothing in this Section 18.6 shall impair Buyer's right to receive all of the damages arising out of or relating to Seller's default, including damages accruing prior to termination as set forth in Section 12.3 of this PPA.

(B) **Financing Liens.** Seller, without approval of Buyer, may, by security, charge or otherwise encumber its interest under this PPA for the purposes of financing the development, construction and/or operation of the Project, *provided* that such a collateral assignment by Seller does not place any limitation on Buyer's rights or materially expand Buyer's liability, risks or obligations under this PPA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this PPA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this PPA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

## ARTICLE 19

### Credit and Security Requirements

19.1 **Security.** Seller shall post and maintain security equal to Seventy-Five Thousand (\$75,000) per MW multiplied by the Guaranteed Solar Capacity ("**Development Security**") within the earlier of (i) ninety (90) Days after the Execution Date and (ii) the commencement of construction of the Project. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain security equal to One Hundred Thousand (\$100,000) 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; provided, however, that prior to the Commercial Operation Date, in no event shall Seller have any obligation to replenish the Development Security to the extent that the aggregate amount of such replenishment of the Development Security during the Term exceeds two times the Development Security requirement, and further provided that on and after the Commercial Operation Date, in no event shall Seller have any obligation to replenish the Delivery Term Security to the extent that the aggregate amount of such replenishment of the Delivery Term Security during the Term exceeds two times the Delivery Term Security requirement, except, in either case with respect to any replenishment for any draw by Buyer arising from the fraud or willful misconduct of Seller. In the event that no

amounts are due and owing by Seller to Buyer under this PPA and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the earlier of (i) termination of this PPA in accordance with its terms; and (ii) on the fifteenth (15th) Business Day after the expiration of the Term.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Seller: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars (\$10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor, or (d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit, then Seller shall have fifteen (15) Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. For minor defects in the form of any Security that do not otherwise render the Security invalid or unenforceable, Seller shall have five (5) Business Days following written notice from Buyer in which to cure such defects. 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 the event Seller fails to make payment when due under this PPA within five (5) Business Days after the date of written notice from Buyer to Seller, in addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this PPA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this PPA. In the event Seller fails to make payment when due under this PPA within five (5) Business Days after the date of written notice from Buyer to Seller, Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this PPA, as Buyer may select until such time as the Security is exhausted.

## ARTICLE 20 Indemnity; Insurance Proceeds

### 20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "Losses") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses (as defined in Section 20.1(A)) to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include



a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses, and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

20.4 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

## ARTICLE 21 Governmental Charges

21.1 Allocation of Governmental Charges. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer of Solar Energy Output that are imposed on the making available of Solar Energy Output arising prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of Solar Energy Output that are imposed at and from the taking of Solar Energy Output by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this PPA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Solar Energy Output hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

## ARTICLE 22 Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

### 22.3 Rate Changes.

(A) 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.

(B) Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting *sua sponte* shall be the “public interest” standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

22.4 Disclaimer of Certain Third Party Beneficiary Rights.

(A) In executing this PPA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Except as expressly permitted in this PPA in Section 22.4(B), nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this PPA.

(B) It is the intention of the Parties that while the Special Service Contract is in effect with respect to this PPA, Retail Customer is an express third party beneficiary to this PPA. The provisions of this PPA are for the benefit of Retail Customer as well as the Parties hereto, and shall be enforceable by Retail Customer as express third party beneficiary hereof as if it were a Party hereto. For the avoidance of doubt and without limiting the foregoing, Retail Customer shall have the following rights:

(1) Seller shall provide Retail Customer notice of a change in the location of the Site;

(2) Seller shall provide notice to Retail Customer of any proposed material changes that result in a change to the expected output of the Project;

(3) Seller will provide notice to Retail Customer regarding any requested Lender accommodations under Section 18.6;

(4) The Parties shall not amend the PPA without the prior written consent of Retail Customer and such consent shall not be unreasonably withheld, conditioned, or delayed; and

(5) The Parties shall not extend the Regulatory End Date or allow the PPA to automatically terminate under Section 17.3(B)(3) without the prior written consent of Retail Customer, such consent not to be unreasonably withheld, conditioned, or delayed.

22.5 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Buyer and Seller with respect to the Project and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect to the sale of Solar Energy Output from the Project. Subject to approval by any Governmental Authority with jurisdiction over this PPA, this PPA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that such amendment, change, modification, or alteration shall be subject to the prior written consent of Retail Customer while the Special Service Contract is in effect, such consent not to be unreasonably withheld, conditioned or delayed, and *provided, further*, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect. This PPA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

22.12 Counterparts. This PPA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this PPA shall be brought in the United States District Court for the District of New Mexico.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, “**Disclosing Party**” refers to the Party disclosing information to the other Party, and the term “**Receiving Party**” refers to the Party receiving information from the other Party.

(B) Other than in connection with this PPA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, 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 PPA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Subject to Section 22.14(E), to the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority, or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts means to ensure that such Confidential Information is not made public. Confidential Information may be disclosed by Buyer or Seller to Retail Customer.

(C) As used in this Section 22.14, “**Confidential Information**” means all information that is furnished in connection with this PPA to the Receiving Party or its Receiving Party’s Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party’s Representatives have access by virtue of this PPA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by PNM or on PNM’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 its Receiving Party's Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; 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 relating to this PPA, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure in the proceeding shall take all reasonable steps to limit the scope of any disclosure of Confidential Information and shall use its best efforts to make such disclosure of Confidential Information subject to a protective order or other similar procedure; *provided, however*, Seller acknowledges and agrees that Buyer may disclose this PPA and related documents, without seeking a protective order or similar process, in any proceeding before the NMPRC or pursuant to any other regulatory process under NMPRC jurisdiction. In the event that Buyer intends to disclose additional requested

or supporting documents that include any of Seller's Confidential Information in any proceeding before the NMPRC or pursuant to any other regulatory process under NMPRC jurisdiction, Buyer shall provide notice to Seller of such intended disclosure and, if Seller responds within two (2) Business Days (or other shorter response time as may be required or directed by the NMPRC) of receiving Buyer's notice and requests that Buyer seek a protective order or similar procedure, Buyer shall seek a protective order or similar procedure to limit the disclosure. Seller shall reasonably cooperate with Buyer in seeking protection from the disclosure of Seller's Confidential Information.

#### 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 RECs that are generated under this PPA and delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this PPA and the creation, sale or retirement of such RECs (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller will make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Upon sufficient advance written notice, Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials. Notwithstanding the foregoing, either Party shall be permitted to disclose the following terms with respect to this PPA:

- (1) Party names;
- (2) Renewable resource type;
- (3) Term;
- (4) Project location;
- (5) Guaranteed Solar Capacity;
- (6) Commercial Operation Date; and
- (7) Point of Delivery.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this PPA or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to

fulfill such Party's obligations under this PPA or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

(C) Should Seller have a dedicated operations and maintenance or other building associated with the Project, signage will be included inside such building(s), the size and style of which will be reasonably and mutually agreed between Seller and Buyer after consultation with Retail Customer, displaying information about Retail Customer's affiliation with the Project and Retail Customer's logo. In addition, Seller will provide Buyer and Retail Customer with reasonable access to the Project, including building(s), for Buyer and Retail Customer, Affiliates and invitees for the sole purpose of presenting information about Retail Customer and its relationship to the Project. Subject to Section 10.3, Seller will enable Buyer and Retail Customer, Affiliates, and invitees to visit the building(s) and tour the Project during construction and operation; provided any such visits to the building(s) and Project do not interfere with Seller's operations or construction activities and visits to nonpublic areas are coordinated with Seller, visitors are escorted, and visitors follow Seller's safety protocols.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this PPA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this PPA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17 Forward Contract and Master Netting Agreement. Notwithstanding any other provision of this PPA, the Parties acknowledge that this PPA is a forward contract and master netting agreement within the meaning of the safe harbor provisions of the Bankruptcy Code. Accordingly, the Parties agree, notwithstanding any other provision in this PPA, that this PPA may be terminated and remedies exercised hereunder by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination or to the exercise of the remedies set forth herein.

22.18 Accounting Matters The Parties agree that Generally Accepted Accounting Principles in the United States of America ("GAAP") and the rules of the United States Securities and Exchange Commission ("SEC") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this PPA (i) will be considered a lease under Accounting Standards Codification 842 - Leases, or (ii) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the PPA, jointly the "**Accounting Standards**"). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing



determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the Parties agree to the following provisions for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller's Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP.

(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, Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8-K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section in confidence in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance

with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use commercially reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information, based on the advice of its counsel that it is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

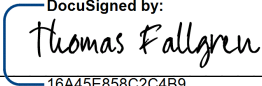
22.19 Telephone Recording. Each Party to this PPA acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this PPA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20 Anti-Corruption. In connection with the negotiation and performance of this PPA, Seller, on behalf of itself, its Affiliates, and all entities that it owns or controls, represents and warrants that it has complied and shall comply with all applicable Anti-Corruption Laws. Buyer may terminate this PPA for an Event of Default of Seller as specified in Section 12.1(D) if Seller fails to comply with this Section 22.20 and such failure is not cured within the time period provided in Section 12.1(D). "**Anti-Corruption Law**" means the U.S. Foreign Corrupt Practices Act of 1977, as amended, or any other Applicable Laws related to bribery or corruption.

*[Signature page(s) follow]*

IN WITNESS WHEREOF, the Parties have caused this PPA to be duly executed as of the date first above written. This PPA shall not become effective as to either Party unless and until executed by both Parties.

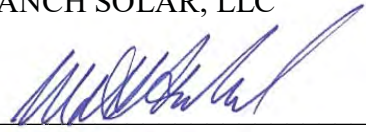
PUBLIC SERVICE COMPANY OF NEW MEXICO

By  \_\_\_\_\_  
16A45E858C2C4B9...

Name: Thomas Fallgren

Title: Vice President, Generation

SKY RANCH SOLAR, LLC

By  \_\_\_\_\_

Name: Matthew S. Handel

Title: Vice President

**EXHIBIT A**  
(to Power Purchase Agreement)

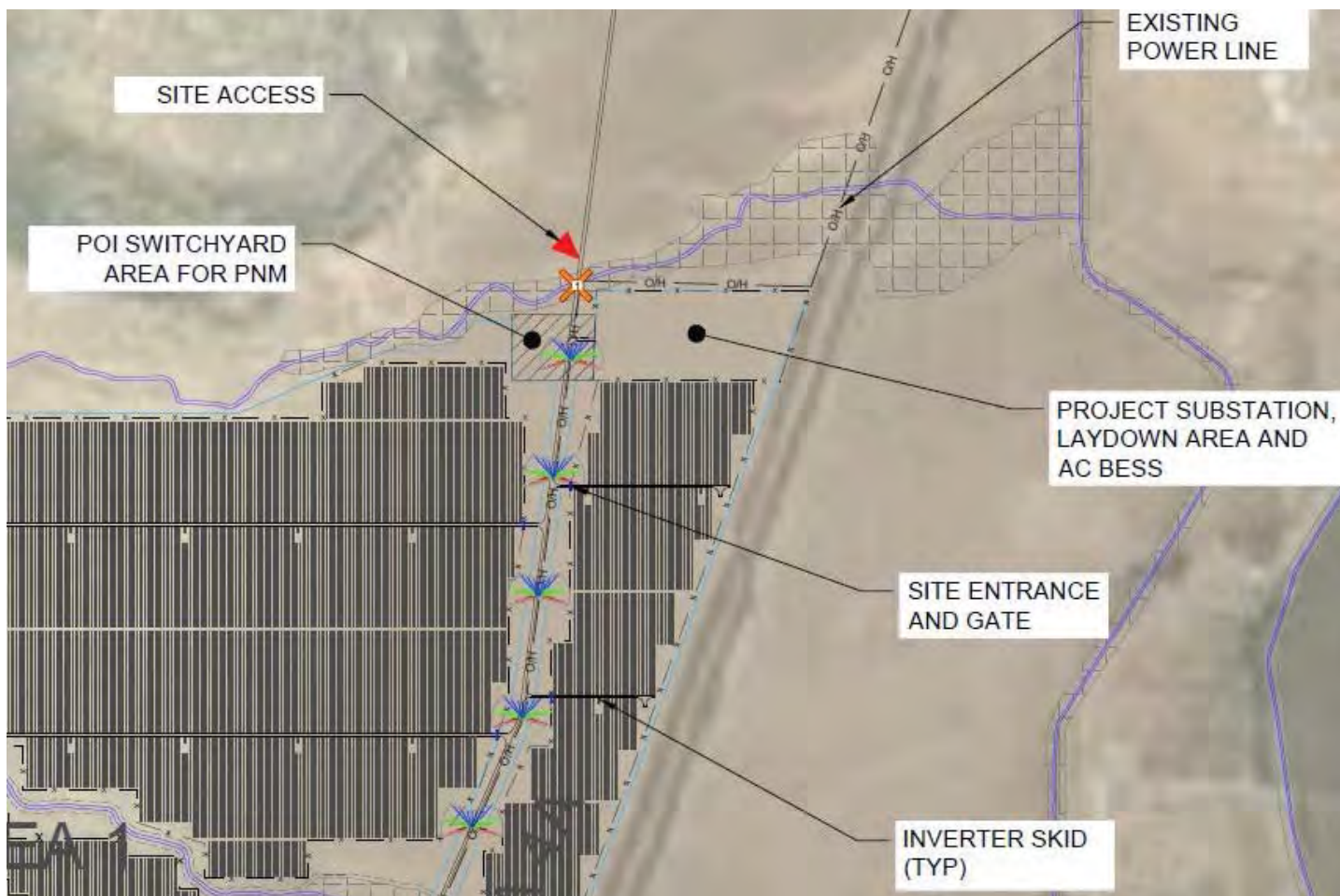
**DESCRIPTION OF SELLER’S GENERATION FACILITIES, SITE MAP AND PROJECT SCHEDULE**

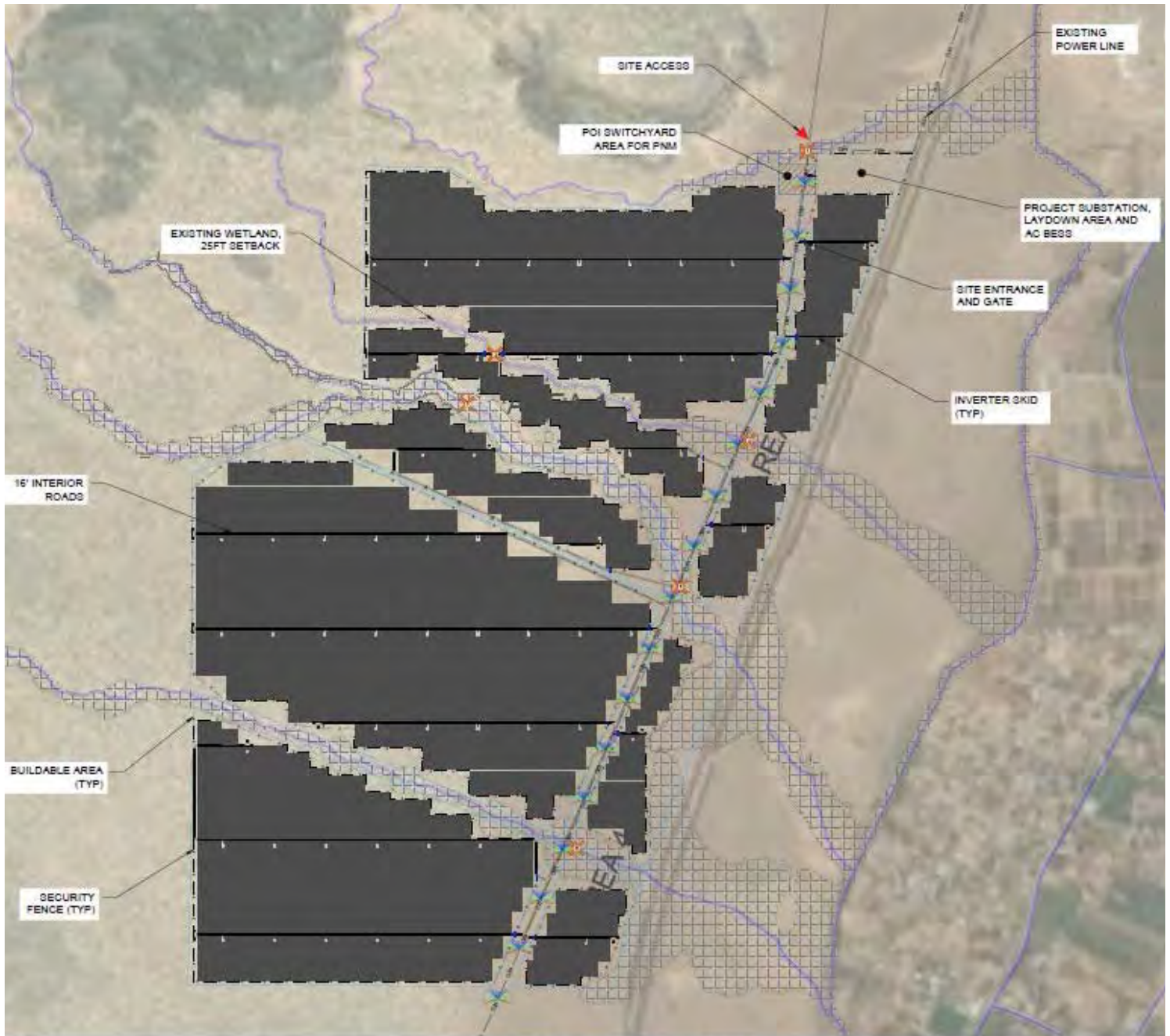
1. Name of Seller’s Project: Sky Ranch Solar, LLC
2. Location: Located near the SW intersection of Interstate 25 and W Highway 6 in Valencia County, New Mexico  
Latitude: 34.768346° , Longitude: -106.790545°
3. Owner (if different from Seller): N/A
4. Operator: Seller or Affiliate thereof
5. Equipment/Fuel:
  - a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): Solar PV
  - b. Total number of units at the Project: Approximately 60 x 3.47 MVA Inverters, or a comparable number of inverters at alternate ratings to support the total capacity at the point of delivery.
  - c. Total nameplate capacity (MWp): Approximately 247 MW<sub>DC</sub>
  - d. Total capacity at point of delivery: 190 MW<sub>AC</sub> at the Point of Delivery
  - e. Additional technology-specific information: Approximately 588,100 crystalline silicon 420 W (blended) photovoltaic modules, or a comparable number of solar modules at alternate ratings totaling the facility nameplate capacity (MWp), with single axis tracking.
6. Project Schedule:

<b>Key Milestone</b>	<b>Date</b>
LGIA Execution	9/23/2019 and 2/15/2021
Major Equipment Supply Agreements Executed	1/2022 – 6/2022
Discretionary Permits	3/1/2021 – 8/1/2022
Close Financing	9/1/2023 – 1/31/2024
Start of Project Construction	10/1/2022
First Major Equipment Delivered to Site	12/1/2022
Interconnection In-Service Date	10/1/2023

Commissioning Start Date	10/2/2023
Expected Commercial Operation	12/31/2023

7. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the PPA.



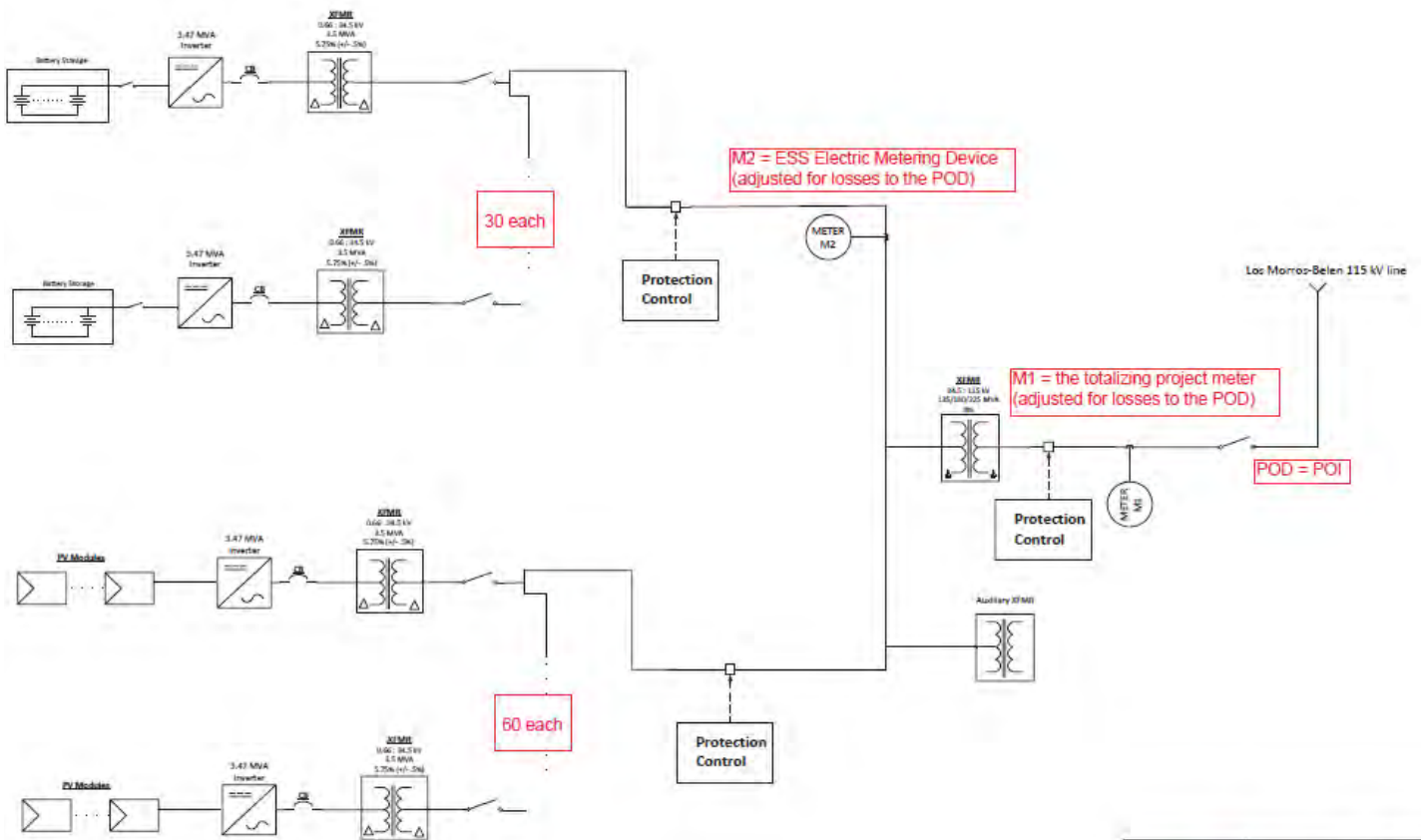


**1 OVERALL SITE LAYOUT**  
1" = 1000'  
0' 500' 1000' 2000'

## EXHIBIT B (to Power Purchase Agreement)

### ONE-LINE DIAGRAM OF PROJECT AND INTERCONNECTION FACILITIES

From Seller's Interconnection Agreement, see the following one-line diagram of the Project, which indicates the Interconnection Facilities, the Network Upgrades, the Point of Delivery into the 115kV Sky Switching Station on PNM's 115kV Belen to Los Morros Line, and ownership and location of meters. Seller shall provide any necessary updates consistent with the Interconnection Agreement.

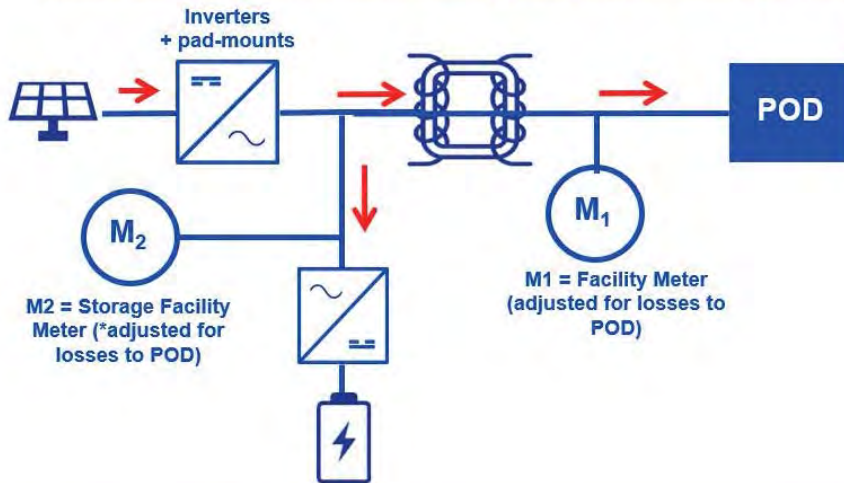


FOR INTERCONNECTION ONLY

		Sky Ranch Solar	
		Power: 190 MW SOLAR/ 100 MW BATTERY	
Interconnect Voltage: 115 kV			
DRAWN BY: MS	R	N/A	E1
1/26/2021	Rev	1 - 1	1.000

## BESS Charging from Solar

### Example 1: 190 MW Solar Energy Output + 100 MW-4hr BESS



When Solar is dispatched to deliver 190 MW and BESS simultaneously dispatched to charge at 100 MW from Solar, Solar will generate as it did without BESS

100 MW of Solar Energy Output (after compensating for losses to POD) will charge the BESS, the remaining 90 MW will go to the grid

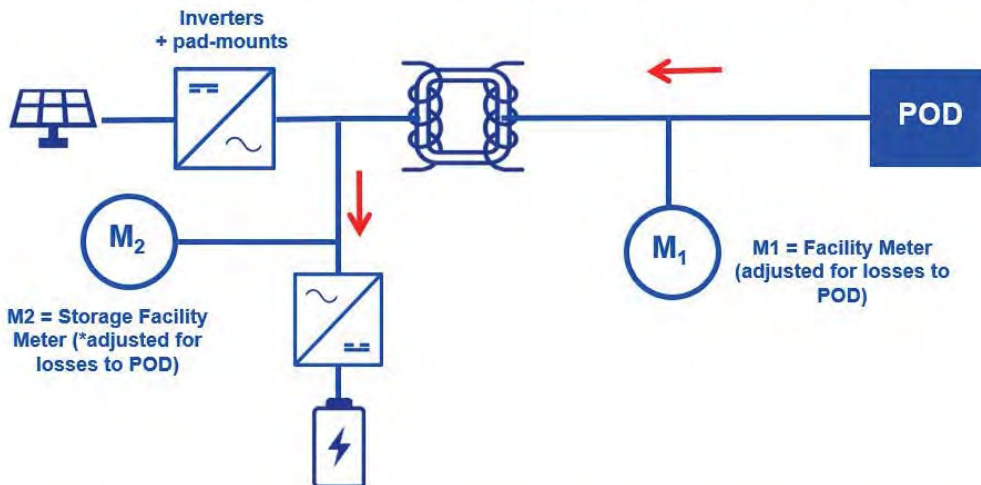
Solar Energy Output =  $M_1 + M_2 = 190$  MW

Charging Energy =  $M_2 = 100$  MW



## BESS Grid Charging 100 MW

### Example 2: 0 MW Solar + BESS Grid Charging 100 MW



When batteries are dispatched to charge at 100 MW, that is 100 MW from POD

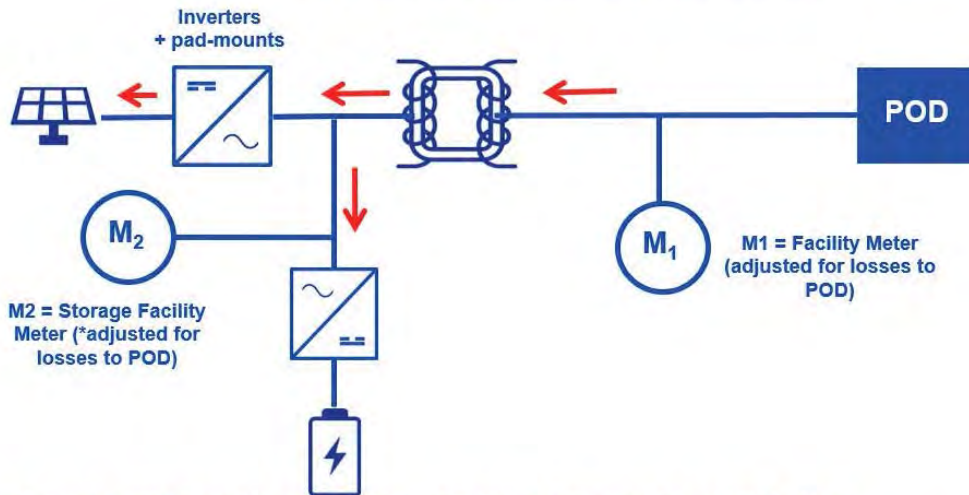
- Actual MWs at the point of metering, M2 (although actual MW at M2 are less, M2 will be adjusted for losses to POD); in this example Charging Energy = M2





## Both Solar and BESS back feeding from Grid for House Load

### Example 3: Both Solar + BESS back feeding



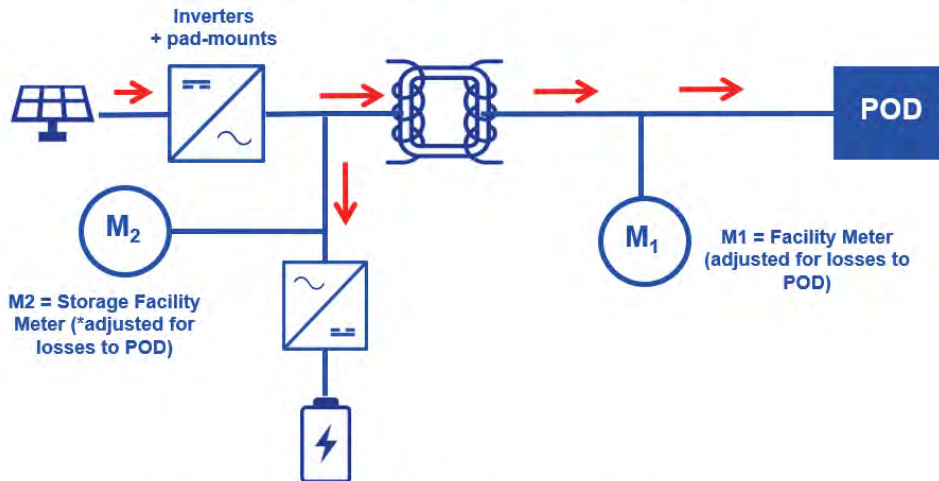
If Solar idle load is 0.5 MW and BESS idle load is 1MW, then

- BESS is back feeding for house load (at retail station power rates from local service provider) if  $1 \text{ MW} > M_2 > 0 \text{ MW}$ ; in this example BESS House Load =  $M_2$
- Solar is back feeding for house load (at retail station power rates from local service provider) if  $M_1$  is positive and  $M_1 > M_2$ ; in this example Solar Load =  $M_1 - M_2$



## Solar is generating while BESS is back feeding for House Load

### Example 4: 190 MW Solar + BESS back feeding

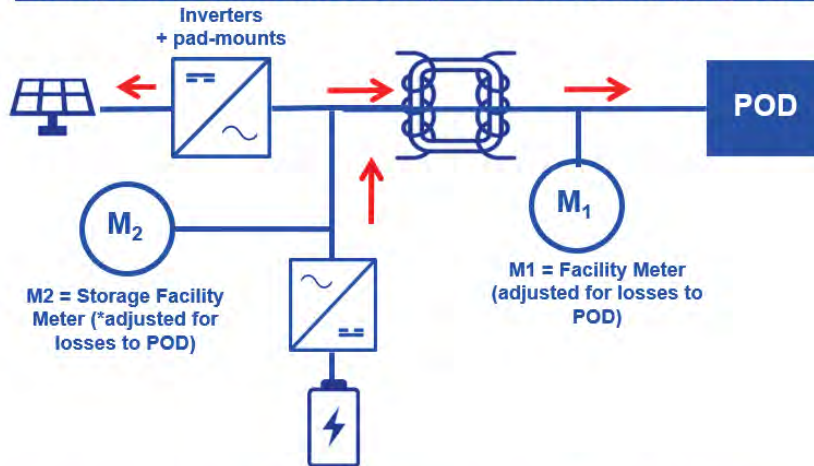


- If Solar is generating 190 MW and  $M_2 < 1 \text{ MW}$ , then
  - BESS is back feeding for house load (at retail station power rates from local service provider) if  $1 \text{ MW} > M_2 > 0 \text{ MW}$ ; in this example BESS House Load =  $M_2$
  - Solar Energy Output =  $M_1 + M_2$  (190 MW)



## Solar is back feeding House Load while BESS Discharge Energy is 100MW

### Example 5: Solar back feeding + BESS discharging 100 MW

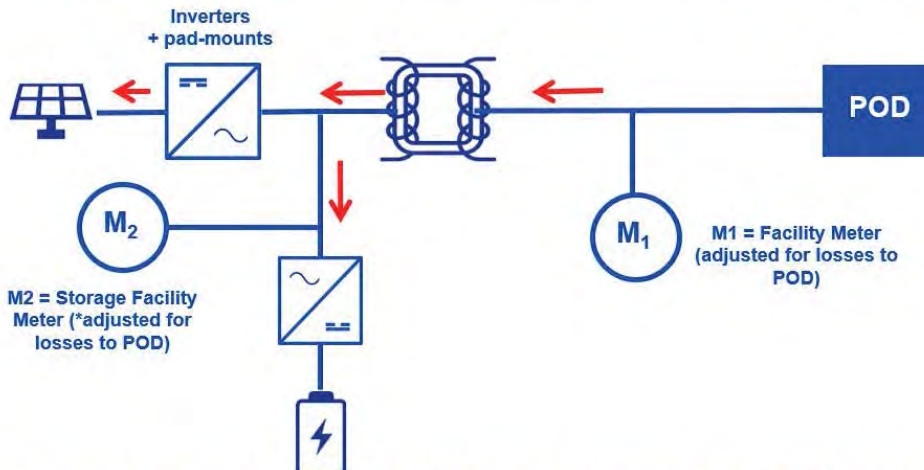


- If Solar idle load is 0.5 MW and BESS is discharging 100 MW then
  - Solar is back feeding for house load (at retail station power rates from local service provider) if M<sub>1</sub> is positive and M<sub>1</sub> > M<sub>2</sub>; in this example Solar House Load = M<sub>1</sub> - M<sub>2</sub>
  - BESS Discharge Energy = M<sub>2</sub>



## Solar is back feeding House Load while BESS Grid Charging 100MW

### Example 6: Solar back feeding + BESS Grid Charging 100 MW

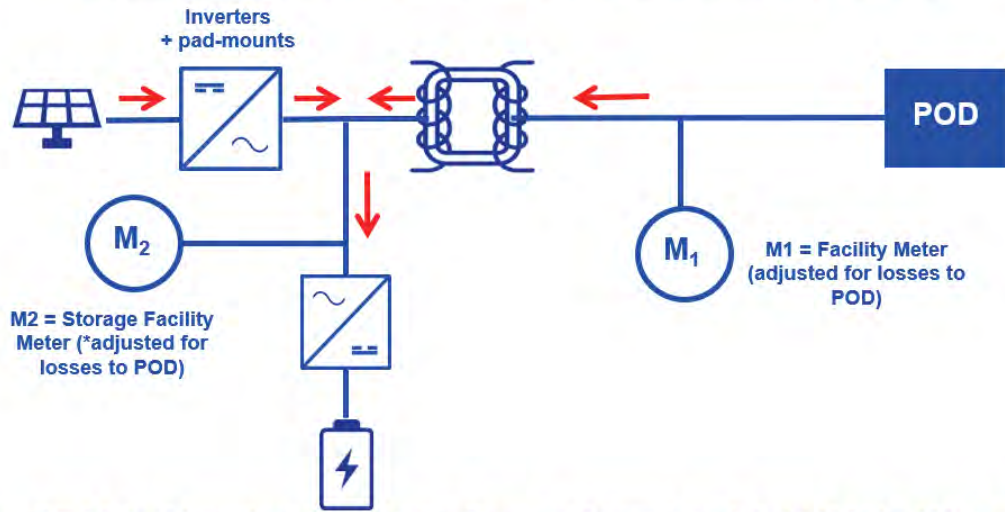


- If Solar idle load is 0.5 MW and BESS is charging at 100 MW, then
  - Solar is back feeding for house load (at retail station power rates from local service provider) if M<sub>1</sub> < is positive and M<sub>1</sub> > M<sub>2</sub> and M<sub>1</sub> - M<sub>2</sub> is 0.5 MW or less; in this example Solar House Load = M<sub>1</sub> - M<sub>2</sub>
  - Because M<sub>2</sub> > 1 MW, BESS is charging and is not back feeding; in this example BESS Charging Energy = M<sub>2</sub>



## BESS is Charging from both Solar Energy Output and the Grid

### Example 7: BESS Charging from 50 MW Solar + 50 MW Grid



- **BESS is Charging from Solar Energy Output and Grid if  $M_1 < M_2 > 1$** 
  - Solar Energy Output =  $M_2 - M_1$
  - Grid Charging =  $M_2 - \text{Solar Energy Output} = M_1$

**EXHIBIT C**  
(to Power Purchase Agreement)

**DESCRIPTION OF SITE**

Approximately, 1,614 acres located in Sections 1, 6, 12 and 13, Township 6 North, Range 1 East, Valencia County, New Mexico, as follows:

**Parcel 1:**

All of Section 1 lying West of Interstate 25, Township 6 North, Range 1 East, Valencia County, New Mexico. Containing 646 acres, more or less.

**Parcel 2:**

All of Section 6 lying West of Interstate 25, Township 6 North, Range 2 East, Valencia County, New Mexico. Containing 99 acres, more or less.

**Parcel 3:**

All of Section 12 lying West of Interstate 25, Township 6 North, Range 1 East, Valencia County, New Mexico. Containing 505 acres, more or less.

**Parcel 4:**

West Half (W 1/2), West Half of the East Half (W 1/2 E 1/2), lying West of Interstate 25, of Section 13, Township 6 North, Range 1 East as shown on Amended ALTNACSM Survey of Sun Ranch, as such plat is filed in the Office of Valencia County Clerk on November 24, 2004 in Plat Cabinet J, No. 556, LESS and EXCEPT a tract of land containing 28 acres, more or less, bounded on the West by Interstate Highway 25 and being assessed for ad valorem tax purposed by the Tax Assessors of Valencia County as an assessment under Map Code #1 006 034 190 25, said property lying within said Section 13.

**EXHIBIT D**  
(to Power Purchase Agreement)  
**NOTICE ADDRESSES**

**PUBLIC SERVICE COMPANY OF  
NEW MEXICO**

Sky Ranch Solar, LLC

**Notices:**

**Delivery Address:**

Public Service Company of New Mexico  
414 Silver Ave. SW  
Albuquerque, NM 87102

**Invoices:**

Attn: Energy Analysis  
Phone: (505)541-2585  
Fax: (505) 241-2434  
Email:  
PNMEAM@pnmresources.com

**Scheduling:**

Attn: Traders  
Phone: (505) 855-6226 day-ahead  
(505)855-6216 real time  
Fax: (505) 241-4188  
Email: zz-WPMTraders@pnm.com

**Payments:**

Public Service Company of New Mexico  
2401 Aztec Rd. NE, MS Z-160  
Albuquerque, NM 87107  
Attn: Albuquerque Division Cash

**Wire Transfer:**

Wells Fargo Bank  
ABA# 121000248  
Albuquerque, New Mexico  
ME Whsle Pwr Depository: 651-537-7916  
Attn: EA-Wholesale Power Marketing

**All Notices/Invoices:**

**Delivery Address:**

Sky Ranch Solar, LLC  
700 Universe Boulevard, FEJ/JB  
Juno Beach, FL 33408  
Attn: Business Management, West Region  
Email:  
[DL-NEXTERA-WEST-INTERNATIONAL-REGION@FPL.COM](mailto:DL-NEXTERA-WEST-INTERNATIONAL-REGION@FPL.COM)

With copy to:  
GENERAL COUNSEL  
700 UNIVERSE BOULEVARD, FEJ/JB  
JUNO BEACH, FL 33408  
Phone: 561-691-7126  
Email: [Mitch.Ross@nee.com](mailto:Mitch.Ross@nee.com)

**Wire Transfer:**

Bank of America  
ACH ABA: 111-000-12  
Global Finance, Dallas, TX  
WIRE ABA: 026-009-593  
100 West 33<sup>rd</sup> Street, New York, NY 10001

Account Name: NextEra Energy Constructors  
Account #: 4451197131  
SWIFT: BOFAUS3N  
Attn: Sky Ranch Solar, LLC

**With additional Notice of an Event of Default,  
termination and other legal notices to:**

GENERAL COUNSEL  
700 UNIVERSE BOULEVARD, FEJ/JB  
JUNO BEACH, FL 33408  
Phone: 561-691-7126  
Email: [Mitch.Ross@nee.com](mailto:Mitch.Ross@nee.com)

**Contract Manager:**

Public Service Company of New Mexico  
Attention: Eric Meadors  
2401 Aztec Rd. NE  
Albuquerque, NM 87107  
Telephone: (505) 801-7803

**Project Manager:**

Sky Ranch Solar, LLC  
700 Universe Boulevard, FEJ/JB  
Juno Beach, FL 33408  
Attn: Business Management, West Region  
Email:  
[DL-NEXTERA-WEST-INTERNATIONAL-  
REGION@FPL.COM](mailto:DL-NEXTERA-WEST-INTERNATIONAL-REGION@FPL.COM)

**With additional Notice of an Event of Default, termination and other legal notices to:**

Public Service Company of New Mexico  
Attention: Tom Fallgren  
2401 Aztec Rd. NE  
Albuquerque, NM 87107  
Telephone: (505) 241-4148  
Fax: (505) 241-2375

**24-HOUR OPERATIONS CONTACT:**

Renewable Operations Control Center (ROCC)  
Controls/Monitoring Systems  
**Phone: 866-375-3737**  
**Email: ROCC@nee.com**

**With a copy to:**

Public Service Company of New Mexico  
Attention: Madonna N. Bixby, Senior  
Corporate Counsel  
414 Silver Ave. SW, MS0805  
Albuquerque, NM 87102  
Telephone: (505) 241-4929  
Fax: (505) 241-4318

**EXHIBIT E**  
(to Power Purchase Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS,  
APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED (where  
applicable)**

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
<i>Clean Water Act (CWA) Section 402, National Pollution Discharge Elimination System (NPDES). Construction Stormwater General Permit NMR1000000</i>	<i>US Environmental Protection Agency (EPA)</i>
<i>CWA Sec 401 Water Quality Certification</i>	<i>New Mexico Environment Department (NMED) Surface Water Quality Bureau</i>
<i>CWA Sec 404, Nationwide Permit (NWP) #12 (utility lines), NWP #14 (access roads), NWP #51 (renewal energy facilities) (if required)</i>	<i>U.S. Army Corps of Engineers</i>
<i>National Historic Preservation Act Section 106 Finding of Eligibility, Consultation, and Approval</i>	<i>New Mexico State Historic Preservation Office</i>
<i>Valencia County New Commercial/Addition Structures Permit</i>	<i>Valencia County, Building Division</i>
<i>Valencia County Floodplain Permit</i>	<i>Valencia County</i>
<i>Transmission Line Location and Right-of-Way Permit</i>	<i>New Mexico Public Regulatory Commission</i>

**EXHIBIT F**  
(to Power Purchase Agreement)

**COMMISSIONING TESTS**

- String Insulation Resistance and Continuity Tests
- String  $V_{oc}$  measurements
- String Current Checks
- DC Feeder Insulation Resistance and Continuity Tests
- Inverter OEM Commissioning Procedures
- MW Control Tuning/Testing
- V/MVAR/pf Control Tuning/Testing (or equivalent)
- Automatic Generation Control (AGC) Functionality Test (or equivalent)
- SCADA Functionality Test (or equivalent)
- Weather Station Data Feed Functionality Test (as part of SCADA testing)
- Owner Control and Data Link Functionality Tests (See Section 3.4)
- Curtailment Control (or equivalent, if applicable)
- Commissioning Performance Test (See Section 10.8)



**EXHIBIT G**  
(to Power Purchase Agreement)

**INSURANCE COVERAGES**

Seller shall obtain and maintain the following insurance coverages, at a minimum:

**A. Workers' Compensation Insurance** that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars (\$1,000,000) per accident, One Million (\$1,000,000) for disease, and One Million (\$1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

**B. Commercial General Liability Insurance**, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, owner's protective, products liability and completed operations.

**C. Business Automobile Liability Insurance**, or the equivalent, with a limit of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned, hired, or non-owned.

**D. Excess or Umbrella Liability.** Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence of Twenty Million dollars (\$20,000,000) written on a per project basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

**E. Property Insurance.** During construction and operation, Seller shall provide or arrange the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. For the avoidance of doubt, builders' risk insurance shall qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Project; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and engines, in an amount equal to their probable maximum loss.

**EXHIBIT H**  
(to Power Purchase Agreement)  
**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	, 20	MWh generated

One (1) REC represents the reporting rights associated with one (1) kWh generated from the Project.

Seller further attests, warrants and represents as follows:

- i) to the best of its knowledge, the information provided herein is true and correct;
- ii) 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;
- iii) the Project identified above produced the number of MWh above during the period indicated above;
- iv) Seller has title to and ownership of the RECs and Environmental Attributes sold hereunder; and
- v) Seller owns the \_\_\_\_\_.  
Name of the Renewable Energy Facility

This serves as a bill of sale, transferring from Seller to Buyer all of Seller’s right, title and interest in and to the RECs and Environmental Attributes associated with the generation of the above referenced Energy.

Contact Person: \_\_\_\_\_  
Phone: \_\_\_\_\_; Fax: \_\_\_\_\_

[Seller]

Signed: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## EXHIBIT I

(to Power Purchase Agreement)

### AVAILABILITY GUARANTEE

#### Section 1. Definitions.

Capitalized terms used in this Exhibit I and not defined herein shall have the meaning assigned in Article 1 of the PPA.

“**Actual 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/m<sup>2</sup> or greater. Data will be collected as hourly averages for all installed plane of array sensors at the Site.

“**Guaranteed Solar Availability Percentage**” has the meaning set forth in Section 2(1) of this Exhibit.

“**Solar Availability Damages**” has the meaning set forth in Section 2(2) of this Exhibit.

“**Solar Availability Guarantee**” means the guarantee set forth in Section 2(1) 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. For the avoidance of doubt, 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 the then effective capacity of the Solar Unit, the Solar Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available capacity of the Solar Unit.

“**Solar Excused Hours**” means, in any Commercial Operation Year, (a) the aggregate Seller Excused Hours during Daylight Intervals for such Commercial Operation Year; provided that for purposes of the Solar Availability Guarantee only the first fifty (50) hours of Scheduled Maintenance Outages in the aggregate for the Project per Commercial Operation Year shall be treated as Solar Excused Hours. For the avoidance of doubt, 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 the then effective capacity of the Solar Unit, the Solar Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available capacity of the Solar Unit.

“**Solar Period Hours**” means the number of Daylight Intervals within any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year.

“**Solar Unavailable Hours**” means those hours a Solar Unit is not available during Daylight Intervals to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition, in which case the hours when an Emergency Condition occurs shall be deemed a Transmission Provider Curtailment and included in Seller Excused Hours); (b) in “run” status and faulted; (c) included in Scheduled Maintenance Outages in excess of fifty (50) hours in aggregate for the Project in any Commercial Operation Year; (d) incapable of being remotely controlled via its AGC system; or (e) otherwise not operational or capable of delivering Energy to the Point of Delivery. For the avoidance of doubt, 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 the then effective capacity of the Solar Unit, the Solar Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available capacity of the Solar Unit.

## **Section 2. Solar Availability Guarantee.**

1. Solar Availability Guarantee. Seller guarantees that the Project shall achieve an Actual Availability Percentage (i) equal to or greater than eighty-five percent (85%) averaged through the second full Commercial Operation Year of the Term and (ii) equal to or greater than ninety percent (90%) in each Commercial Operation Year after the Commercial Operation Date (“**Guaranteed Solar Availability Percentage**”).

2. Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed Solar Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to (x) the Solar Energy Output Payment Rate, multiplied by (y) the Guaranteed Solar Availability Percentage minus the Actual Solar Availability Percentage for such Commercial Operation Year (both expressed as a decimal), multiplied by (z) the Actual Solar Energy Output for such Commercial Operation Year divided by the Actual Solar

Availability Percentage (expressed as a decimal), multiplied by the Guaranteed Solar Availability Percentage (expressed as a decimal) (the “**Solar Availability Damages**”), but in no event in excess of the Annual Solar Availability Damages Cap and the Aggregate Solar Availability Damages Cap. A sample calculation of the Solar Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit I.

3. Damages Cap, Termination and Cure Rights. The total Solar Availability Damages payable by Seller for failure to meet the Guaranteed Solar Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to Thirty Thousand Dollars (\$30,000) per MW of Guaranteed Solar Capacity (“**Annual Solar Availability Damages Cap**”) and in the aggregate at a value equivalent to Two Hundred Thousand Dollars (\$200,000) per MW of Guaranteed Solar Capacity (“**Aggregate Solar Availability Damages Cap**”) over the Term of the PPA.

4. Sole Remedy. The Parties agree that Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for any deficiency in the performance of the Project (including any failure to meet the Guaranteed Solar Availability Percentage) shall be the payment of damages up to the Annual Solar Availability Damages Cap and Aggregate Solar Availability Damages Cap, and the right to declare an Event of Default pursuant to Section 12.1(D) and (E) of the PPA, if and to the extent applicable, and shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default giving rise to a termination payment obligation except pursuant to Section 12.1(D) and (E) of the PPA, as and to the extent applicable. Notwithstanding the foregoing, the limitations set forth herein shall not be applicable to any indemnification claims pursuant to Article 20 of the PPA and Seller’s material breach of its obligation to operate and maintain the Project in accordance with Prudent Utility Practice or Seller’s failure to pay Solar Availability Damages when due if not timely cured pursuant to the provisions of Article 12 of the PPA are an Event of Default of Seller for which Buyer may terminate the PPA and seek damages in accordance with Section 12.4 of the PPA.

5. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller’s computation of the Actual Solar Availability Percentage for the previous Commercial Operation Year and the Solar Availability Damages, if any, due to Buyer (the “**Annual Report**”). Such Annual Report shall include the total amount of Solar Availability Damages paid to Buyer under the PPA and shall provide notice that the Aggregate Solar Availability Damages Cap has been reached, if applicable. If Solar Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

6. Disputes. Disputes as to any calculations under this Exhibit I shall be addressed as provided in Section 13.8 of the PPA.

**ATTACHMENT 1 TO EXHIBIT I**  
**EXAMPLE CALCULATION OF SOLAR AVAILABILITY DAMAGES**

**I. Example of Actual Solar Availability Percentage Calculation**

The sample calculation set forth below is based on the following assumed facts:

During the Commercial Operation Year in question, 50 Solar Units were part of the Project.

The Solar Units had the following operating characteristics:

	Hours	Solar Units Affected	Solar Unit Hours
Solar Period Hours (“PH”)	4,000	50	200,000
Solar Unavailable Hours (“UH”)			5,000
Solar Excused Hours (“EH”)			1,000

Given these assumed facts, the Solar Available Hours for the Solar Units during the Commercial Operation Year would be calculated as follows:

$$\text{Sum of Solar Available Hours} = \text{PH} - \text{UH} + \text{EH}: 196,000 = 200,000 - 5,000 + 1,000$$

**Actual Solar Energy Availability Percentage**

Given these assumed facts, the Actual Solar Availability Percentage for the Project during the Commercial Operation Year in question would be calculated as follows:

- (a) Sum of Solar Available Hours: 196,000 hours
- (b) Sum of Solar Period Hours: 200,000 hours
- (c) Actual Solar Availability Percentage:  $(\text{Sum of Solar Available Hours} / \text{Sum of Solar Period Hours}) \times 100 = (196,000 / 200,000) \times 100 = 98.0\%$

**II. Example of Availability Damages**

Example of Solar Availability Damages based on the following assumed facts:

- (a) Seller’s Guaranteed Solar Availability in Commercial Operation Year 4 = 90%.
- (b) Seller’s Actual Solar Availability in Commercial Operation Year 4 = 85%.
- (c) Solar Energy Output Payment Rate = \$20.64/MWh
- (d) Actual Solar Energy Output = 464,367 MWh

Given these assumed facts, Seller calculates the Solar Availability Damages due to Buyer as

follows:

Solar Energy Output Payment Rate x (Guaranteed Solar Availability Percentage in Commercial Operation Year 4 — Actual Solar Availability Percentage for Commercial Operation Year 4 (each expressed as a decimal)) x (Actual Solar Energy Output for Commercial Operation Year 4 ÷ Actual Solar Availability Percentage for Commercial Operation Year 4 x Guaranteed Solar Availability Percentage for Commercial Operation Year 4 (the latter two expressed as a decimal)) = Solar Availability Damage:

$$\$20.64 \times (.90 - .85) \times (464,367 \div .85 * .90) = \$507,417$$



**EXHIBIT J**  
(to Power Purchase Agreement)

**FORM OF SELLER GUARANTY**

**GUARANTY**

THIS GUARANTY (this “**Guaranty**”), dated as of \_\_\_\_\_, \_\_\_\_\_ (the “**Effective Date**”), is made by [●] (“**Guarantor**”), in favor of *[INSERT COUNTERPARTY’S NAME IN ALL CAPS]* (“**Counterparty**”).

RECITALS:

**A.** WHEREAS, Counterparty and Guarantor’s indirect, wholly-owned subsidiary *[INSERT OBLIGOR’S NAME IN ALL CAPS]* (“**Obligor**”) have entered into, or concurrently herewith are entering into, that certain \_\_\_\_\_ Agreement dated/made/entered into/effective as of \_\_\_\_\_, 20\_\_ (the “**Agreement**”); and

**B.** WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

\* \* \*

**1. GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

- (a)** Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed \_\_\_\_\_ *[spell out the dollar amount]* U.S. Dollars (U.S. \$ \_\_\_\_\_) (the “**Maximum Recovery Amount**”), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys’ fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [\_\_\_\_\_].
- (b)** The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys’ fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as

specified in Section 1(a) above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

**2. DEMANDS AND PAYMENT.**

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an “**Overdue Obligation**”), Counterparty may present a written demand to Guarantor calling for Guarantor’s payment of such Overdue Obligation pursuant to this Guaranty (a “**Payment Demand**”). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor’s obligations under this Guaranty.
- (b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term “**Business Day**” shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of Florida or the State of New York.

**3. REPRESENTATIONS AND WARRANTIES.** Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of Florida and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and
- (c) the execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors’ rights generally and by general principles of equity.

**4. RESERVATION OF CERTAIN DEFENSES.** Without limiting Guarantor’s own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this

Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

**5. AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

**6. WAIVERS AND CONSENTS.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

- (a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.
- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or

defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor’s obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

8. **TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor’s obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement, and (ii) 11:59:59 Eastern Prevailing Time of [insert date ] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called “**Notice**”) by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

<u>TO GUARANTOR:</u> *	<u>TO COUNTERPARTY:</u>
NextEra Energy Capital Holdings, Inc. 700 Universe Blvd Juno Beach, Florida 33408  <i>Attn:</i> Treasurer	<i>Attn:</i>
<i>[Tel: -- for use in connection with courier deliveries]</i>	<i>[Tel: -- for use in connection with courier deliveries]</i>

- \* *(NOTE: Copies of any Notices to Guarantor under this Guaranty shall also be sent via facsimile to ATTN: Contracts Group, Legal, Fax No. [●] and ATTN: Credit Department, Fax No. [●]. However, such facsimile transmissions shall not be deemed effective for delivery purposes under this Guaranty.)*

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

**10. MISCELLANEOUS.**

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws thereunder (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (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 Southern District of New York, or if that court does not have subject matter jurisdiction, to the exclusive jurisdiction of the Supreme Court of the State of New York, New York County (without prejudice to the right of any party to remove to the United States District Court for the Southern District of New York) for the purposes of any suit, action or other

proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR’S EXECUTION AND DELIVERY OF THIS GUARANTY.

11. **THIRD PARTY BENEFICIARY RIGHTS.** This Guaranty shall be construed to create a duty to, and standard of care with reference to, and liability to Retail Customer (as defined in the Agreement) as an express third party beneficiary to this Guaranty. The provisions of this Guaranty are for the benefit of Retail Customer as well as Counterparty, and shall be enforceable by Retail Customer as an express third party beneficiary hereof. No amendment to this Guaranty shall be permitted without written prior consent of Retail Customer.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on \_\_\_\_\_, 20\_\_, but it is effective as of the Effective Date.

[•]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT K**  
(to Power Purchase Agreement)

**COMMERCIAL OPERATION  
FORM OF CERTIFICATION**

This certification (“Certification”) of Commercial Operation is delivered by \_\_\_\_\_ (“Seller”) to Public Service Company of New Mexico (“Buyer”) in accordance with the terms of that certain Power Purchase Agreement dated \_\_\_\_\_ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Solar Units with an aggregate capacity of at least [●] MW have been constructed, commissioned and tested and are capable of delivering Energy on a sustained basis (in accordance with the Solar Unit manufacturer’s requirements and the Commissioning Tests);
- (2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and
- (3) the Project has been completed in all material respects (except for Delayed Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Solar Energy Output and meet, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[SELLER]  
 Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

**[Licensed Professional Engineer]**  
 Signature: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

License Number and LPE Stamp: \_\_\_\_\_

**EXHIBIT L**  
(to Power Purchase Agreement)

**FORM OF OPERATIONS REPORT**

Summary of operational activities during the month, including a designation of the operating status of the units by hour; description of each outage; and any actions taken to resolve or prevent recurrence of the event. If an outage is categorized as a Seller Excused Hour, the description should list the applicable term(s) of the Agreement and sufficient information to demonstrate the qualification of the outage as a Seller Excused Hour.

Unavailability Categories

1. Seller Curtailment
2. Scheduled Maintenance Outage
3. Transmission Provider Curtailment
4. Reliability Curtailment
5. Non-Reliability Curtailment
6. Force Majeure Event
7. Scheduled Maintenance Outage
8. Seller Forced Outage (< 5MW)
9. Seller Forced Outage (>= 5MW)
10. Other – please specify

Month	Day	MPT Hour Ending	# of units Available	# of units Unavailable	Unavailability Category	MW available	Description, if applicable	Actual Generation (MWh)
5	1	1						
5	1	2						
5	1	3						
5	1	4						
5	1	5						
5	1	6						
5	1	7						
5	1	8						
5	1	9						
5	1	10						
5	1	11						
5	1	12						
5	1	13						

**Note: Sample Partial Operating Report. Extend for all hours related in relevant reporting period. Please provide table as a separate Excel sheet.**

- Describe any significant maintenance events:
- Describe any unusual conditions found during routine inspections:
- Describe any other significant events related to the operation of the facility:



**EXHIBIT M**  
(to Power Purchase Agreement)

**ANNUAL GENERATION FORECAST**

The following represents the annual forecast of net, AC generation delivered to the Point of Delivery.

On-Peak Hours are considered to be hour ending 0700 through and including 2200 Pacific prevailing time which is 16 hours, Monday through Saturday excluding any NERC holidays which are the major holidays. All other hours and all day Sundays are off-peak.

<b>Month</b>	<b>On-Peak Energy Delivered (MWh)</b>	<b>Off-Peak Energy Delivered (MWh)</b>
January	27,822	5,260
February	31,480	5,250
March	41,216	8,126
April	45,525	7,234
May	48,320	10,042
June	48,060	10,382
July	46,438	9,283
August	46,371	7,123
September	38,693	9,558
October	38,150	5,716
November	28,693	5,833
December	24,320	5,696
<b>Total Annual</b>	<b>465,088</b>	<b>89,503</b>
<b>Total Combined Annual</b>	<b>554,591</b>	<b>-</b>
<b>Annual Capacity Factor</b>	<b>33.32%</b>	<b>-</b>

Estimated annual degradation: 0.5%/year

Sandia Storage Project EPC

# PNM Exhibit JWH-6

Is contained in the following 519 pages.

**ENGINEERING, PROCUREMENT, AND CONSTRUCTION CONTRACT**

**by and between**

**PUBLIC SERVICE COMPANY OF NEW MEXICO,  
a New Mexico corporation**

**and**

**DEPCOM Power, Inc.  
A Delaware corporation**

---

**for the**

**Sandia Substation Storage Project**

**Dated as of October 24, 2023**

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## **EXHIBITS**

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- B MILESTONE PAYMENT SCHEDULE
- C-1 OWNER ACQUIRED PERMITS
- C-2 CONTRACTOR ACQUIRED PERMITS
- D CONTRACTOR RATE SCHEDULE
- E CHANGE IN WORK FORM
- F FORM OF CONTRACTOR'S INVOICE
- F-1 CONDITIONAL WAIVER AND RELEASE UPON MILESTONE PAYMENT
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- F-5 DOCUMENTARY EVIDENCE OF COMPLETED WORK
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- G APPROVED SUBCONTRACTORS
- H DETERMINATION OF BUY-DOWN AMOUNT
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- K FORM OF ASSIGNMENT CLAUSE FOR SUBCONTRACTS
- L FORM OF MONTHLY PROGRESS REPORT
- M FORM OF PERFORMANCE AND PAYMENT BOND
- N MAJOR EQUIPMENT WARRANTIES
- O INITIAL PROJECT SCHEDULE
- P ESSENTIAL CONTRACTOR DELIVERABLES
- Q LIMITED NOTICE TO PROCEED 1
- R OWNER-SUPPLIED INFORMATION
- S-1 LABOR ASSUMPTIONS
- S-2 FORM OF QUARTERLY PAYROLL REPORT
- S-3 FORM OF QUARTERLY QUALIFIED APPRENTICE HOUR REPORT
- T DATA SECURITY
- U PROJECT SAFETY AND SECURITY PROGRAM
- V LITHIUM ION CONTRACT PRICE ADJUSTMENT

W CRITICAL SPARE PARTS LIST

## ENGINEERING, PROCUREMENT, AND CONSTRUCTION CONTRACT

THIS ENGINEERING, PROCUREMENT, AND CONSTRUCTION CONTRACT (this “Contract”) is made and entered into as of this 24<sup>th</sup> day of October, (the “Effective Date”), by and between PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (hereinafter “Owner” or “PNM”), and DEPCOM Power, Inc., a Delaware corporation (hereinafter, “Contractor”). Each entity is sometimes individually referred to herein as a “Party” and are sometimes collectively referred to herein as the “Parties”.

### RECITALS

- A. Owner desires to develop a sixty (60) MW, two-hundred forty (240) MWh stand-alone battery energy storage project known as the Sandia Substation Storage Project (the “Project”).
- B. Owner desires to engage Contractor to permit, design, engineer, procure, construct, test and start up the Project and to train the persons who will operate and maintain the Project, all on a fixed price, date certain to complete, basis, and Contractor desires to provide such services, all in accordance with the terms and conditions set forth in this Contract.
- C. Contractor has:
  - (1) provided preliminary conceptual drawings for the Project,
  - (2) performed a preliminary inspection of the real property on which the Project shall be constructed, and
  - (3) reviewed such other investigations, studies, and analyses which Owner has provided in connection with entering into this Contract.
- D. Contractor is willing to guarantee (a) the timely completion of the Project, and (b) operating performance of the Project in accordance with the terms and conditions of this Contract.

### AGREEMENT

NOW, THEREFORE, in consideration of the sums to be paid to Contractor by Owner and of the covenants, premises and agreements set forth herein (including those set forth above that are hereby incorporated by reference), the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## 1. DEFINITIONS AND RULES OF INTERPRETATION

1.1 For the purposes of this Contract, except as otherwise expressly provided or unless the context otherwise requires, the following terms shall have the following meanings.

“**Abnormal Adverse Weather**” means with respect to (i) rainfall, greater than one point six five (1.65) inches of rain in a two (2) hour period or greater than two point two (2.2) inches of rain in a twenty-four (24) hour period, measured at a weather station located at the Site; (ii) temperature, greater than one hundred and four (104) degrees Fahrenheit as measured at the Albuquerque Sunport Airport; (iii) wind, wind gusts above thirty (30) miles per hour, measured at a weather station located at the Site and (iv) dust, dust storms where the particulate matter is at a level that creates a safety concern at the Site that requires specific actions to be taken in accordance with Exhibit U.

“**Acceptance Tests**” means the Performance Tests and each other test and activity to be performed prior to, and as a condition to, Substantial Completion, as such tests and activities are set forth in Exhibit I.

“**Acceptance Tests Procedures**” means the written test procedures, standards, protective settings, and the testing program produced by Contractor and agreed to by Owner for the Acceptance Tests as set forth in Exhibit I.

“**Actual Delay**” means the actual period of time Contractor’s ability to perform is delayed based on actual and demonstrable impacts to a Critical Path Item, the direct effect of which is to prevent Contractor from completing such Critical Path Item by the scheduled completion date set forth in Exhibit O based on the most recent Monthly Progress Report; provided, that any float in the Project Schedule shall not be interchangeable between Critical Path Items.

“**Affiliate**” means, with respect to any Person, another Person that is controlled by, that controls, or is under common control with, such Person; and, for this purpose, “control” with respect to any Person shall mean the ability to effectively control, directly or indirectly, the operations and business decisions of such Person whether by voting of securities or partnership interests or any other method.

“**Applicable Laws**” means and includes all of the following:

(a) any applicable statute, license, law, rule, treaty, regulation, code, ordinance, certificate, order, executive order, judgment, decree, writ, legal requirement or the like, of any Governmental Authority, and the written interpretations thereof by any Governmental Authority having jurisdiction over this Contract and the matters related to this Contract, the Parties or the Project, including, without limitation, any applicable statute, license, law, rule, treaty, regulation, code, ordinance, certificate, order, judgment, decree, writ, or legal requirement (including those relating to human health, safety or the natural environment) concerning:

(i) Contractor, the Site or the performance of any portion of the Work or the Work taken as a whole, the Project, or the operation of the Project; or

(ii) safety and the prevention of injury to persons and the damage to property on, about or adjacent to the Site or any other location where any other portion of the Work shall be performed; or

(iii) protection of human health or the environment, or emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes into the environment including, without limitation, ambient air, surface water, ground water, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, Hazardous Materials or other industrial, toxic materials or wastes, as now or may at any time hereafter be in effect; and

(b) any Permit Requirement.

**“Applicable Permits”** means each and every national, state, local or other license, consent, appraisal, authorization, ruling, exemption, variance, order, judgment, decree, declaration, regulation, certification, filing, recording, permit or other formal approval with, from or of any Governmental Authority, including, without limitation, each and every environmental, construction, operating or occupancy permit and any agreement, consent or approval from or with any Governmental Authority, that is required by any Applicable Law for the performance of the Work or operation of the Project to the extent applicable to the Contract, Project or Work, including without limitation, the Owner Acquired Permits and Contractor Acquired Permits.

**“Apprenticeship Requirements”** means the apprenticeship requirements described under Section 48(a)(11) of the Code.

**“Business Day”** means a Day, other than a Saturday or Sunday or the Friday following Thanksgiving, on which banks are generally open for business in the State of New Mexico. A Business Day shall begin at 8:00 a.m. and end at 5:00 p.m. local time for the Party sending the Notice or payment or performing a specified action hereunder.

**“Buy-Down Amount”** means the amount to be paid by Contractor to Owner in accordance with the provisions of Section 16.2 and calculated in accordance with Exhibit H for the failure of the Project to achieve the Performance Guarantees.

**“CCN”** means Owner’s application for a Certificate of Public Convenience and Necessity filed with the NMPRC relating to the Project.

**“Change in Law”** means the enactment, adoption, promulgation, material modification (including a change in written interpretation of an existing Applicable Law by a Governmental Authority or otherwise having binding effect), or repeal after the Effective Date of any Applicable Law of any Governmental Authority including, but not limited to, a change in any requirement or condition on or with respect to the application for, or issuance, maintenance, renewal or transfer of, any Applicable Permit; provided, however, that the following shall not be a Change in Law: the enactment, adoption, promulgation, modification or repeal of any national, federal, provincial, state, tribal or local or any other income tax law; provided, further, that “Change in Law” shall include any such enactment, adoption, promulgation, modification, amendment, repeal, change in interpretation by Governmental Authority, administrative decision, regulation or judicial decision that affects an increase in the rate, or broadens the applicability of any sales, use, gross receipts or

compensating tax imposed by any Governmental Authority on the purchase, sale, use or lease of any Equipment and Materials, labor or services.

**“Change in Work”** means an authorized modification to the Work for the reasons set forth in Section 17.1.

**“Change in Work Form”** means the form documenting a Change in Work attached hereto as Exhibit E.

**“Chronic Failure”** has the meaning set forth in Section 18.8.

**“Civil Work Assumptions”** means the assumptions associated with the level of civil work required as set forth in Exhibit A, Section 11.

**“Claim Notice”** has the meaning set forth in Section 25.5.

**“Code”** means the U.S. Internal Revenue Code of 1986, as amended.

**“Conditional Waiver and Release Upon Final Payment”** means the waiver and release of lien rights in the form attached hereto as Exhibit F-3, conditioned only upon final payment.

**“Conditional Waiver and Release Upon Milestone Payment”** means the waiver and release of lien rights in the form of which is attached hereto as Exhibit F-1, conditioned only upon payment of the amount set forth therein.

**“Confidential Information”** means any information, analysis, documents, materials or data of a Party or its Representatives provided to the other Party or its Representatives, or to which a Party or its Representatives are given access during the term of this Contract at any time, whether such information is in written, verbal, electronic or any other form, and any and all analysis, compilations, studies, documents or other material prepared by the receiving Party or its Representatives to the extent containing or based on such information, analysis, documents, materials or data. Confidential Information is proprietary to disclosing Party and shall be treated as confidential and not disclosed by receiving Party to any third party except as set forth in Section 26 of this Contract. Confidential Information shall not include any information that: (w) is already in the public knowledge or which becomes public knowledge absent any violation of the terms of this Contract, (x) was already in the possession of a Party prior to disclosure by the other Party, (y) a Party obtains from another Person that such Party reasonably believes was not under an obligation of confidentiality, or (z) is or becomes generally available to, or is independently known to or has been or is developed by, any Party or any of its Affiliates or Representatives other than materially as a result of any disclosure of proprietary information by the disclosing Party to the receiving Party.

**“Construction Tests”** means the construction tests, pre-start-up checkout tests, and system walkdowns to be performed prior to, and as a condition to, Mechanical Completion, as such tests and activities are set forth in Exhibit A.

**“Contract”** means this Engineering, Procurement, and Construction Contract, including all Exhibits hereto, as the same may be modified, amended, or supplemented from time to time in accordance with the terms hereof.

**“Contract Price”** means the fixed amount for performing the Work that is payable to Contractor as set forth in Section 6.1, as the same may be modified from time to time in accordance with the terms hereof.

**“Contractor”** means DEPCOM Power, Inc., and its permitted successors and assigns under this Contract.

**“Contractor Acquired Permits”** means the Applicable Permits set forth on Exhibit C-2 and Applicable Permits which would traditionally be obtained by an engineering, procurement and construction contractor for a similar type of project in the same location as the Project as required for the Work other than Owner Acquired Permits.

**“Contractor Deliverables”** means each of the design criteria, system descriptions, Required Manuals, Drawings and Specifications, design calculations, quality assurance reports and all other material documents relating to the Project to be delivered to Owner in accordance with the requirements of this Contract.

**“Contractor Event of Default”** has the meaning set forth in Section 20.1.

**“Contractor Inchoate Default”** means any occurrence, circumstance or event, or any combination thereof, which with the lapse of time or the giving of Notice, or both, would constitute a Contractor Event of Default.

**“Contractor Indemnitee”** has the meaning set forth in Section 25.2.

**“Contractor’s Invoice(s)”** means an invoice from Contractor to Owner in the form of Exhibit F hereto.

7.7**“Contractor Lien”** has the meaning set forth in Article 30.

**“Corrective Action”** means all the materials, tasks and Work necessary to make the Project meet each Performance Guarantee.

**“Critical Path Item(s)”** means the items identified as critical path items on the Project Schedule in Exhibit O (including, without limitation, Mechanical Completion, Substantial Completion and Final Completion).

**“Critical Spare Parts”** has the meaning set forth in Section 4.18.

**“Day”** or **“day”** means a calendar day, unless otherwise specified.

**“Defect”** means any design, engineering or installation of the Equipment and Materials or other Work which in any of the foregoing cases:

- (a) does not conform to the Contract or the Drawings and Specifications either as contained in this Contract or issued by Contractor for the Project;
- (b) is of improper or inferior workmanship or material;
- (c) is inconsistent with Industry Standards; or



(d) could materially and adversely affect the mechanical, electrical, or structural integrity, or safe operation or reliability of the Project.

**“Direct Costs”** means, as it relates to any Work or Change in Work, the reasonable, actual and substantiated cost of labor, support labor, material, equipment, services, tools, supplies, Subcontracts, jobsite facilities, utilities, and jobsite staffing necessary to perform such Work or Change in Work, which such costs shall be previewed with Owner through the delivery of applicable rate sheets prior to engaging any particular Subcontractor.

**“Dollars”** or **“\$”** means the lawful currency of the United States of America.

**“Drawings and Specifications”** means the drawings, specifications, drawing logs, conformed technical specifications, manufacturers’ drawings and data, plans and designs that are part of the Statement of Work or that have been prepared by Contractor or any Subcontractor or Vendor with respect to the Work (including those drawings and specifications identified in Exhibit A).

**“Drawings and Specification Table”** means the table of Drawings and Specifications to be delivered by Contractor in accordance with Section 12.3 of this Contract.

**“Effective Date”** has the meaning set forth in the preamble.

**“Electrical Interconnection Facilities”** means the facilities and equipment necessary to connect the Project to the Point of Interconnection from the Energy Delivery Point.

**“Eligible Issuer”** means a surety licensed to do business in the State of New Mexico, listed in the latest issue of the U.S. Treasury Circular 570, with an AM Best rating of A- or better, and on the New York State Insurance Department’s website listing insurers and their authorized coverages, or any other issuer reasonably acceptable to Owner.

**“Energy Delivery Point”** means the connections at the dead-end structure within the Project Switchyard located on the high side of the Project step-up transformer. This represents the high voltage electric termination point for this Contract as further defined in Exhibit A.

**“Engineer”** means any engineering firm or firms or other engineer or engineers (which may be employees of Owner) selected and designated by Owner.

**“Equipment and Materials”** means all materials, supplies, apparatuses, devices, machinery, equipment, parts, tools, special tools, components, construction aids, construction utilities to the extent provided in Exhibit A, instruments, appliances, spare parts and appurtenances thereto that are:

(a) required for the design, installation, construction and for Owner to commence operation of the Project upon Substantial Completion in accordance with Industry Standards and this Contract; or

(b) described in, required by, reasonably inferable from or incidental to the Statement of Work or the Drawings and Specifications;

provided, that Equipment and Materials shall not include Electrical Interconnection Facilities or Production Inputs.

**“Essential Contractor Deliverables”** means those Contractor Deliverables, as provided in Exhibit P as defined by the scope of Work, the absence or incomplete nature of which after the Substantial Completion Date could adversely and materially affect the continuous efficient, effective or safe operation or reliability of the Project, or any portion thereof, for the delivery of power through the Point of Interconnection to Owner’s customers.

**“Excluded Labor”** means any labor employed or utilized by Owner, any of Owner’s Separate Contractors, or any other contractors, subcontractors (of any tier), vendors, suppliers, or consultants who or which may be providing services in respect of the Project on behalf of Owner or any of Owner’s Separate Contractors or who or which are not under the control of Contractor or its Subcontractors.

**“Excusable Condition”** means any of the following, in each case subject to Article 9:

- (a) Owner Caused Delay;
- (b) a Change in Law;
- (c) an Unforeseen Site Condition;
- (d) an event of Force Majeure;
- (e) failure of Owner to issue NTP by June 1, 2024;
- (f) any civil work beyond the Civil Work Assumptions; or
- (g) any change or additional measures required to comply with the Noise Emissions Guarantees identified in Exhibit I associated with the Security Wall specifications contemplated in Section 11 of Exhibit A.

**“Excusable Condition Notice”** has the meaning as set forth in Section 9.2.

**“Exhibits”** means each Exhibit listed in the table of contents and attached hereto as incorporated herein in its entirety by this reference.

**“Final Completion”** means satisfaction by Contractor or waiver by Owner of all of the conditions for Final Completion set forth in Section 15.3.

**“Final Completion Date”** means the date on which Final Completion of the Project occurs.

**“Final Completion Expected Date”** means the date that is one hundred eighty (180) days after the Substantial Completion Date, as such date may be modified in accordance with the terms hereof.

**“Final Completion Payment”** means the Milestone Payment made by Owner to Contractor in connection with Final Completion pursuant to Section 7.2.

“**Force Majeure** ” means, except as qualified in the proviso below, any act, event or circumstance occurring after the Effective Date that is demonstrably beyond the reasonable control of Owner (in the case of an event of Force Majeure claimed by Owner) or Contractor or any Subcontractor (in the case of an event of Force Majeure claimed by Contractor) and which would not have been avoided had Owner (in the case of an event of Force Majeure claimed by Owner) or Contractor or any Subcontractor (in the case of an event of Force Majeure claimed by Contractor) used commercially reasonable care and acted in accordance with Industry Standards, including, without limitation, the following (to the extent the following satisfy the foregoing requirements of this sentence): (a) acts of God such as droughts, floods, unusually severe weather, Abnormal Adverse Weather, landslides, blizzards, hurricanes, and earthquakes; (b) fires, explosions, microbursts, lightning (to the extent an applicable lightning protection system would not reasonably protect against such risk) and accidents; (c) war (declared or undeclared), riots, hostilities, belligerence, revolution, public disorder, insurrection, rebellion, acts of the public enemy, acts of terrorism and sabotage, blockades and embargoes; (d) loss of or damage to Equipment and Materials during transportation, but only if Contractor has otherwise complied with the provisions of Section 4.9; (e) strikes or labor disturbances; (f) expropriation, requisition, confiscation, or nationalization; (g) export or import restrictions by any Governmental Authority; (h) shutdown required by any utility or Governmental Authorities or any delays (including any hold, non-release, withhold release order, exams or similar actions) by the U.S. Customs and Border Protection Agency of more than thirty (30) days (in all cases where not caused by the acts or omissions of the claiming Party or any entity for which it is responsible); (i) closing or accidents to harbors, docks, canals, or other assistances to or adjuncts of the shipping or transportation industry; (j) rationing or allocation imposed by law, decree, or regulation of any Governmental Authority; (k) volcano, tide, tidal wave, or perils of the sea; (l) epidemic, pandemic or quarantine; (m) denial of any Applicable Permit by a Governmental Authority after timely application therefor or any action or inaction of Governmental Authorities to provide the necessary approvals or Applicable Permits, despite the exercise of due diligence and reasonable best efforts by the affected Party to obtain the same, (n) any grid or plant disturbance, curtailments or outages; provided, however that the following events, matters or things shall not constitute an event of Force Majeure:

- (a) the absence of sufficient financial means to perform obligations;
- (b) any labor disturbance, strike or dispute specific to Contractor’s workers or personnel or with respect only to Owner, specific to the Project;
- (c) any labor disturbance, strike or dispute specific to any Subcontractor’s workers or personnel performing Work at the Site or with respect only to Owner, otherwise specific to the Project;
- (d) mechanical or equipment failures unless caused by an event of Force Majeure;
- (e) failure to timely apply and diligently pursue the application for any Applicable Permit; and
- (f) the unavailability or shortages of labor or Equipment and Materials unless otherwise caused by an event of Force Majeure.

(g) any claim based on the Civil Work Assumptions; provided that any claim for Work beyond the Civil Work Assumptions may qualify as an Excusable Condition.

The Parties recognize and agree that any discussion currently regarding increased scrutiny of the Uyghur Forced Labor Prevention Act (UFLPA) which may further impact the supply chain (including but not limited to the supply of batteries) shall not prevent Contractor from raising a Force Majeure claim after the Effective Date to the extent it otherwise meets the foregoing definition of Force Majeure.

**“Good Faith Efforts Exception”** means that the provisions of Section 45(b)(8)(D)(ii) of the Code (as incorporated by reference in Section 48(a)(11) of the Code) apply with respect to the Project.

**“Governmental Authority” or “Governmental Authorities”** means applicable national, federal, state, provincial, tribal and local governments of the United States and all agencies, authorities, departments, instrumentalities, courts, corporations, securities exchange, other authorities lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or other subdivisions of any of the foregoing having or claiming a regulatory interest in or jurisdiction over all or any portion of the Site, the Project, the Work or the Parties to this Contract, but for the avoidance of doubt, does not include the Owner.

**“Guaranteed Dates”** shall mean the Substantial Completion Guaranteed Date, Final Completion Expected Date and Substantial Completion Deadline Date.

**“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 any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. § 1251 et seq.; (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; (ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; or (x) defined as a “pesticide” under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.

**“Industry Standards or Industry Grade”** means those standards of design, engineering, construction, operation, maintenance, workmanship, Equipment and Materials, and components specified in Exhibit A; provided, however, if the relevant standard is not so specified or is ambiguous therein, then “Industry Standard” or “Industry Grade” shall mean the relevant practices, procedures and methods generally applied in or approved by a significant portion of the public utility energy storage industry of the United States that, at any particular time, in the exercise of reasonable judgment in light of the facts which are known or which reasonably could have been

known at the time a decision is made, would be expected to accomplish the desired result in a manner consistent with good engineering design practices, Applicable Laws, Applicable Permits, safety, reliability, environmental protection, geographical considerations, economy, expedition, and other standards established for such work. “Industry Standards” or “Industry Grade” are not intended to be limited to the optimum standards, practices, procedures, methods or acts to the exclusion of all others, but rather to be any of the good and proper standards, practices, procedures, methods and acts as described above.

**“Initial Operation”** means the first time the system, or equipment is placed into operation to initiate tuning and commissioning.

**“Intellectual Property Claim”** means a claim or legal action for unauthorized disclosure or use of any trade secret, patent, copyright, or trademark protected by Applicable Law arising from Contractor’s performance (or that of its Affiliates or Subcontractors) under this Contract that:

(a) concerns any Equipment and Materials or other items or services, in all cases, that are provided by Contractor, any of its Affiliates, or any Subcontractor under this Contract;

(b) is based upon or arises out of the performance of the Work by Contractor, any of its Affiliates, or any Subcontractor, including the use of any tools or other implements of construction by Contractor, any of its Affiliates, or any Subcontractor; or

(c) is based upon or arises out of the design or construction of any item by Contractor under this Contract or the operation of any item according to directions embodied in Contractor’s final process design, or any revision thereof, prepared or approved by Contractor.

**“Intellectual Property Rights”** means all licenses, trade secrets, copyrights, patents, trademarks, proprietary information and other ownership rights protected by Applicable Law related to the Work or otherwise necessary for the ownership and maintenance of the Project, including, but not limited to, all Project-related documents, models, computer drawings and other electronic expressions, photographs and other expressions.

**“Key Personnel”** means the natural persons named and assigned to the identified positions set forth on Exhibit J.

**“Labor Compliance Final Report”** shall have the meaning set forth in Section 11.9.4.

**“Labor Compliance Payments”** shall have the meaning set forth in Section 11.9.5.

**“Labor Compliance Quarterly Report”** means, collectively (i) payroll reports containing substantially the same information as the form attached hereto as Exhibit S-2, for all laborers and mechanics employed by Contractor or its Subcontractors with respect to the construction of the Project during the applicable calendar quarter, and (ii) Qualified Apprentice hour reports containing substantially the same information as the form attached hereto as Exhibit S-3, for all laborers, mechanics, and Qualified Apprentices employed by Contractor or its Subcontractors with respect to the construction of the Project during the applicable calendar quarter.

**“Labor Hours”** means the total number of hours devoted to the performance of construction work by any individual employed by Contractor or any of its Subcontractors with respect to the Project under this Contract. The term “Labor Hours” excludes any hours worked by foremen, superintendents, owners, or persons employed in a bona fide executive, administrative, or professional capacity (within the meaning of those terms in Part 541 of Title 29 of the Code of Federal Regulations), or by any Excluded Labor. The term “Labor Hour” means each individual hour otherwise satisfying the definition of “Labor Hours”.

**“Labor Requirements”** means, collectively, the Prevailing Wage Requirements and, if the Good Faith Efforts Exception does not apply with respect to the Project, Apprenticeship Requirements.

**“Liability Cap”** means an amount equal to one hundred percent (100%) of the Contract Price (as the same may increase or decrease from time to time in accordance with the terms of this Contract).

**“Lien Indemnitees”** has the meaning set forth in Article 30.

**“Limited Notice to Proceed”** means a notice signed by an authorized Representative of Owner and sent to Contractor pursuant to Section 8.1.2 which authorizes Contractor to perform Preliminary Work which shall include Limited Notice to Proceed 1.

**“Limited Notice to Proceed 1”** means that Limited Notice to Proceed 1, in the form of Exhibit Q, to be entered into by the Parties in accordance with Section 8.1.2.

**“Loss(es)”** means any and all liabilities (including but not limited to liabilities arising out of the application of the doctrine of strict liability), obligations, losses, damages, penalties, claims, actions, suits, judgments, costs, expenses and disbursements (including reasonable legal fees and expenses), and whether arising in equity, at common law, or by statute, or under the law of contracts, torts or property, of whatsoever kind and nature, including without limitation claims for property damage, and personal injury (including emotional distress), and whether or not involving damages to the Project or the Site.

**“Major Equipment”** means inverters, medium voltage step-up transformers, generation step-up transformer, control system(s), HVAC and battery enclosures.

**“Major Subcontractor”** means a Vendor or Subcontractor who signs a contract with Contractor in an amount greater than two hundred and fifty thousand Dollars (\$250,000).

**“Margin”** means the five percent (5%) adder set forth in Section 9.4.2(b) and, if applicable, the five percent (5%) adder in Section 22.3.

**“Materials Warranty”** means the warranty of Contractor under Section 18.2.

**“Maximum Contractor Aggregate Liquidated Damages”** means fifteen percent (15%) of the Contract Price.

**“Maximum Performance Liquidated Damages”** means ten percent (10%) of the Contract Price.

**“Maximum Substantial Completion Delay Liquidated Damages”** means ten percent (10%) of the Contract Price.

**“Mechanical Completion”** means satisfaction of the following requirements for the Project:

(a) the Project is mechanically, electrically, and structurally constructed in accordance with the requirements of this Contract, the Statement of Work and Industry Standards, except for Non-Critical Deficiencies;

(b) the Project and each sub-system thereof is mechanically, electrically and functionally complete and ready for Initial Operations, adjustment and testing, except for Non-Critical Deficiencies;

(c) each of the Construction Tests was successfully completed in the most recently run test; and

(d) all initial fills are complete;

(e) all relays have been set and ground checks made;

(f) all piping has been hydro tested and flushed/cleaned as appropriate;

(g) all motor rotational checks are complete;

(h) all instrumentation calibrations are complete;

(i) all electrical circuits have been point-to-point checked to verify correct installation and response to simulated test signals;

(j) individual and/or integrated balance of plant systems and associated equipment have been tested successfully and verified to comply with support service needs of the Project; and

(k) the Project is ready to support Initial Operation in accordance with the scope of Work and ready for start-up and commissioning activities.

**“Mechanical Completion Date”** means the date on which Mechanical Completion actually occurs.

**“Milestone Payment”** means a “Milestone Payment” amount set forth in the Milestone Payment Schedule in respect of a corresponding Project Milestone, as the same may be modified from time to time in connection with a modification in the Contract Price hereunder; provided, that the Milestone Payment for Substantial Completion shall be ten percent (10%) of the Contract Price.

**“Milestone Payment Schedule”** means the list and schedule of the Milestone Payments and corresponding Project Milestones set forth in Exhibit B.

**“Minimum Performance Criteria”** means satisfaction of each of the following:

- (a) the most recently run Performance Test was successfully completed;
- (b) during the most recently run Performance Test, the Project shall have achieved the Must Meet Performance Guarantees; and
- (c) during the most recently run Performance Test, the Project shall have achieved the Minimum Performance Requirements, as that term is defined in Exhibit I.

**“Monthly Progress Report”** means a written monthly progress report prepared by Contractor in form and content generally in accordance with Exhibit L.

**“Must Meet Performance Guarantees”** means, as applicable, Noise Emissions Guarantees and Guaranteed Availability Factor identified in Exhibit I.

**“New Mexico Apprenticeship Requirements”** means the apprenticeship requirements as required under the NMSA 1978, § 62-13-16.

**“New Mexico Gross Receipts Taxes”** or **“NMGRT”** means the excise tax imposed on the gross receipts of persons engaged in business in New Mexico pursuant to the New Mexico Gross Receipts and Compensating Tax Act as it now exists or as it may be amended, or any other similar tax including sales taxes.

**“NMPRC”** means the New Mexico Public Regulation Commission or any successor agency having jurisdiction over Owner and the Project.

**“NMPRC Approval”** has the meaning set forth in Section 34.2(b).

**“Non-Critical Deficiencies”** means each item of Work requiring completion under this Contract or containing Defects; provided that such completion or Defects:

- (a) are not material to the safe operation of the Project for the delivery of power through Owner’s Electrical Interconnection Facilities or through the Transmission Provider’s Transmission System to Owner’s customers;
- (b) do not impair the operability, safety or mechanical or electrical integrity of the Project; and
- (c) would not reasonably be expected to cost more than one million Dollars (\$1,000,000) in the aggregate to complete or remedy.

**“Non-Essential Contractor Deliverables”** means all Contractor Deliverables other than the Essential Contractor Deliverables.

**“Notice”** or **“notice”** means a written communication between the Parties required or permitted by this Contract and conforming to the requirements of Article 31.

**“Notice of Final Completion”** means a Notice from Contractor to Owner in accordance with Section 15.3 certifying that Contractor believes the Project has satisfied the requirements for Final Completion.



**“Notice of Mechanical Completion”** means a Notice from Contractor to Owner in accordance with Section 14.3(a) certifying that Contractor believes that the Project has satisfied the requirements for Mechanical Completion.

**“Notice of Substantial Completion”** means a Notice from Contractor to Owner in accordance with Section 15.2 certifying that Contractor believes the Project has satisfied the requirements for Substantial Completion.

**“Notice to Proceed”** or **“NTP”** means the notice given from Owner to Contractor directing Contractor to commence performance of the entire Work.

**“Notice to Proceed Date”** has the meaning set forth in Section 8.1.1.

**“Operating Consumables”** means consumable items, such as lubricants, calibration gases, chemicals, filters, lamps, light bulbs, and other consumable Equipment and Materials, necessary for the operation and maintenance of the Project (excluding Production Inputs).

**“Operating Personnel”** means individuals employed by or acting at the request of Owner in connection with the operation of the Project from time to time.

**“Outstanding Balance”** means the aggregate unpaid amount of the Contract Price, calculated at any given time.

**“Owner”** means Public Service Company of New Mexico (**“PNM”**), a New Mexico corporation, and its successors and permitted assigns.

**“Owner Acquired Permits”** means all Applicable Permits necessary for the ownership, operation and maintenance of the Project, including those permits listed as Owner Acquired Permits in Exhibit C-1 and any other permit which would traditionally be obtained by a public utility owner of a similar project, in each case, other than Contractor Acquired Permits.

**“Owner Caused Delay”** means, in each case subject to Article 9, any of the following:

(a) material breach of this Contract by Owner, including failure to timely perform any of its obligations under this Contract, including any failure to timely respond to submittals or Notices of Contractor under this Contract in which there is a specified period to respond or take action;

(b) any unreasonable active interference by Owner, Owner’s Separate Contractors or any other party under Owner’s control with Contractor’s performance of the Work;

(c) Owner’s failure to cause the Electrical Interconnection Facilities to be substantially complete and ready for interconnection by the date set forth in the Project Schedule or failure to timely provide any Production Inputs as required under the Contract;

(d) Owner’s failure to timely remove or remediate Hazardous Materials at the Site for which Owner is responsible hereunder or under Applicable Law;

(e) Owner's failure to obtain any Owner Acquired Permit (1) in final form by the applicable milestone or milestone date specified in Exhibit C-1 or (2) in full force and effect on or prior to the date on which it is required, under this Contract and Applicable Law, to be in full force and effect, so as to permit Contractor to perform its obligations under this Contract;

(f) Any Owner Acquired Permit imposes a Permit Requirement not required as of the Effective Date;

(g) Any conflict, inaccuracy, or omission between Owner-Supplied Information and the actual requirements, limitations, conditions, or circumstances encountered in performance of the Work (subject to taking into account the Civil Works Assumptions set forth in Section A-11 of Exhibit A) or related to Section 3.10.

(h) an act or omission of Operating Personnel that is negligent or reckless or constitutes willful misconduct of the Operating Personnel; or

(i) Owner's removal of an approved Subcontractor or Vendor from the Work after such approved Subcontractor or Vendor has started performing its obligations pursuant to an executed contract with Contractor (excluding removal by Owner for a Subcontractor or Vendor's negligence or for a material violation by such approved Subcontractor or Vendor of Owner's safety or environmental rules or procedures).

For the avoidance of doubt, any grid or plant disturbance, curtailments or outages to the extent outside of Contractor's control shall not be an Owner Caused Delay but rather treated as an event of Force Majeure to the extent otherwise qualifying as an event of Force Majeure.

**"Owner Directive"** has the meaning set forth in Section 17.4.

**"Owner Event of Default"** has the meaning set forth in Section 20.4.

**"Owner Inchoate Default"** means any occurrence, circumstance or event, or any combination thereof, which with the lapse of time or the giving of Notice, or both, would constitute an Owner Event of Default.

**"Owner Indemnitee"** has the meaning set forth in Section 25.1.

**"Owner's Separate Contractors"** means each contractor or other Person that is in direct or indirect contractual privity with Owner and that performs any work in respect of the Project excluding Contractor and each person in direct or indirect contractual privity with Contractor, including in such exclusion each Subcontractor.

**"Owner-Supplied Information"** has meaning set forth in Section 3.10.

**"Performance Bond"** has the meaning set forth in Section 4.24.

**"Performance Guarantees"** has the meaning set forth in Exhibit I.

**“Performance Tests”** means the tests for measuring the Performance Guarantees, the Minimum Performance Criteria, and other parameters as described in Exhibit I.

**“Permit Requirement”** means any requirements or conditions on or with respect to the issuance, maintenance, renewal or transfer of any Applicable Permit or any application therefor.

**“Person”** means any individual, corporation, company, voluntary association, partnership, incorporated organization, trust, limited liability company, or any other entity or organization, including any Governmental Authority.

**“Point of Interconnection”** means the physical point at which electrical interconnection is made between the Project and the Transmission Provider’s Transmission System.

**“Post Test Modifications”** has the meaning set forth in Section 14.7.

**“Preliminary Work”** has the meaning set forth in Section 8.1.2.

**“Prevailing Wage Requirements”** means the prevailing wage requirements described under Section 48(a)(10) of the Code.

**“Production Inputs”** means potable water for operation (but not hydros or flushing), charging energy for energy storage projects, and back feed power for the start-up, testing and operation of the Project, as referenced in Exhibit A to the extent Exhibit A specifies that Owner is responsible for providing such item.

**“Project”** means the sixty (60) MW energy storage facility project and high-voltage interconnection facilities to be designed, procured, constructed, tested and commissioned under this Contract, together with all ancillary equipment and subsystems, all equipment, supplies and materials necessary to produce, store, and/or deliver electric energy (including the Equipment and Materials), together with all supporting improvements and interconnections (whether inside or outside the Project limits) to be furnished by Contractor, as generally described in, and including all items described in or inferable from, this Contract and Exhibit A.

**“Project Manager”** means the Project Manager designated by Contractor and approved by Owner pursuant to Section 11.6.

**“Project Milestone”** means one of the discrete divisions of the Work identified as a “Milestone” in the Milestone Payment Schedule.

**“Project Representative”** means the Project Representative designated by Owner pursuant to Section 3.1.

**“Project Schedule”** means a project schedule prepared by Contractor and approved by Owner pursuant to Section 8.4 describing the time of completion by Contractor of the Critical Path Items and completion of the Work by Contractor, as such schedule may be modified in accordance with Section 8.4.

**“Project Switchyard”** means the area on the Project Site including the generation step-up transformer and all Contractor furnished equipment operating at or above 34.5 kV located within the project substation fence as indicated in Appendix 9 of Exhibit A.

**“Prompt Payment Act”** means NMSA 1978 § 57-28-1 through 57-28-11.

**“Proposed Punchlist”** has the meaning set forth in Section 15.1.2.

**“Punchlist”** means a schedule of Non-Critical Deficiencies developed pursuant to Section 15.1.2.

**“Punchlist Amount”** has the meaning set forth in Section 15.1.2.

**“Qualified Apprentice”** means an individual who is employed by Contractor or any of its Subcontractors in the performance of construction work with respect to the Project under this Contract, and who is participating in a registered apprenticeship program (as defined in 26 U.S.C. § 3131(e)(3)(B)).

**“Regulatory End Date”** has the meaning set forth in Section 34.2(e).

**“Remedial Plan”** means a plan of Corrective Action, submitted by Contractor pursuant to Section 8.5 or Section 14.4.2 that:

(a) if delivered prior to initial Acceptance Testing, specifies in reasonable detail the actions (including acceleration of the Work, for example, by using additional shifts, overtime, additional crews or resequencing of the Work, as applicable) the Contractor will take so that Substantial Completion may be achieved no later than the Substantial Completion Guaranteed Date (or, to the extent the Substantial Completion Guaranteed Date is not possible, the Substantial Completion Deadline Date). For the avoidance of doubt, Contractor shall cause the Remedial Plan to be prepared so that, if the Remedial Plan is followed, it will be reasonably likely that Substantial Completion will occur by the Substantial Completion Guaranteed Date (or, to the extent the Substantial Completion Guaranteed Date is not possible, the Substantial Completion Deadline Date).

(b) if delivered after initial Acceptance Testing:

(i) specifies in reasonable detail the actions Contractor proposes to undertake to cause the Project to satisfy the Performance Guarantees; and

(ii) specifies in reasonable detail the period of time during which Contractor proposes to undertake such actions, including any time required to re-run any applicable Acceptance Test, which period of time shall not end after the Substantial Completion Guaranteed Date (or, to the extent the Substantial Completion Guaranteed Date is not possible, the Substantial Completion Deadline Date), which period, shall be extended by the period of time, if any, that Contractor is actually and demonstrably delayed in the performance of such Remedial Plan only to the extent of an Excusable Condition or Force Majeure; and

(iii) demonstrates that completing such Corrective Action is reasonably likely to cause the Project to satisfy the Performance Guarantees by root cause analysis of deficiencies identified by previous testing.

**“Representatives”** means the officers, directors, members, employees, legal counsel, accountants, lenders, potential lenders or equity participants, advisors, or ratings agencies and other agents or representatives of a Party or of its Affiliates and in the case of Owner, includes Owner’s Separate Contractors, and in the case of Contractor, includes its Subcontractors.

**“Requested Actions”** has the meaning set forth in Section 34.2.

**“Required Manuals”** means all operating data and manuals, spare parts manuals, integrated and coordinated operation and maintenance manuals and instructions, and training aids, whether created by Contractor or any Subcontractor or Vendor which are reasonably necessary to safely and efficiently commission, test, start up, operate, maintain and shut down the Project as further detailed in Exhibit A.

**“Schedule Recovery Plan”** means a plan of Corrective Action submitted by Contractor pursuant to Section 8.4.2 that sets forth, in reasonable detail, the actions (including but not limited to acceleration of the Work, for example, by using additional shifts, overtime, additional crews or resequencing of the Work, as applicable) Contractor will take so that the Critical Path Item identified by Owner may be achieved no later than the scheduled completion date set forth in Exhibit O. For the avoidance of doubt, Contractor shall cause the Schedule Recovery Plan to be prepared so that, if the Schedule Recovery Plan is followed, it will be reasonably likely that the Critical Path Item will be achieved by the scheduled completion date set forth in Exhibit O.

**“Scheduling Coordinator”** means an entity identified by PNM as a “Scheduling Coordinator.”

**“Security Management System”** means that certain security management system as more specifically described in Section 19 of Exhibit A.

**“Security Management System Allowance”** means eight hundred and eighty thousand Dollars (\$880,000) which is the estimate as of the Effective Date for the cost of supply, delivery, and installation of the Security Management System, not including NMGRT.

**“Site”** means the location of the Work described in Exhibit A.

**“Site Conditions”** means the general physical and other conditions at the Site and the surrounding area as a whole, including conditions relating to the environment, transportation, access, waste disposal, handling and storage of materials, the availability and quality of electric power, the availability and quality of water, the availability and quality of roads, the availability and quality of labor personnel, and local work and labor rules in effect as of the Effective Date, climatic conditions and seasons, topography, air, and water quality conditions, potable water conditions, ground surface conditions, surface soil conditions, sound attenuation, general nature and quantity of surface materials to be encountered, all other local and other conditions which may be material to Contractor’s performance of its obligations under this Contract, equipment and facilities needed before and during performance of Contractor’s obligations under this Contract. Site Conditions shall include (i) subsurface geology, (ii) geological and general subsurface

conditions of the Site, and (iii) the location of underground utilities; in each case to the extent consistent with the assumptions set forth in the Civil Work Assumptions.

“**Security Wall**” means that certain twelve-foot security wall as more specifically described in Section 11 of Exhibit A.

“**Security Wall Allowance**” means one million eight hundred seventy-two thousand three hundred and sixty-four Dollars (\$1,872,364) which is the estimate as of the Effective Date for the cost of supply, delivery, and construction of the Security Wall, not including NMGRT.

“**Spare GSU**” means a spare generation step-up transformer up to 100 MW/ 64 base MVA purchased by Owner and retained in Owner’s inventory.

“**Statement of Work**” means the requirements regarding the Work set forth in this Contract or in Exhibit A.

“**Subcontractor**” means any Person, including any Vendor, other than Contractor or Owner, that performs any portion of the Work (including any subcontractor of any tier) in furtherance of Contractor’s obligations under this Contract, and “Subcontract” has a like meaning.

“**Substantial Completion**” means satisfaction or waiver of all of the conditions set forth in Section 15.2.

“**Substantial Completion Date**” means the date on which Substantial Completion actually occurs.

“**Substantial Completion Deadline Date**” means the date that is thirty (30) days after the Substantial Completion Guaranteed Date, as such date may be modified in accordance with the terms hereof.

“**Substantial Completion Delay Liquidated Damages**” has the meaning set forth in Section 16.1.

“**Substantial Completion Guaranteed Date**” means April 1, 2026, as such date may be modified in accordance with the terms hereof.

“**Supplier**” means any Person who will supply Production Inputs to the Project.

“**Suspension for Cause**” means any suspension under Article 22 by Owner as a result of:

- (a) A Contractor Event of Default;
- (b) A Contractor Inchoate Default which creates imminent danger to persons or property; provided, however that such suspension shall not prevent Contractor from curing such Contractor Inchoate Default during the applicable cure period associated with the Contractor Event of Default that would result if such Contractor Inchoate Default were not cured; or
- (c) Contractor’s gross negligence or willful misconduct.

**“Temporary Work”** means supplies or services required for the performance of the Work but which do not form a permanent part of the completed Work, including without limitation, all temporary structures and other facilities required for the proper and safe performance and completion of the Work or that Contractor must provide for the use of Contractor or other parties, and that do not form part of the Work, including but not limited to office trailers, hoarding, fences, covered ways, temporary footways and stairs, protection for workers such as guardrails, fences, notices, temporary lights, power, water, steam, and other consumables, utilities and services, erection structures and equipment including any shoring, falsework, forming materials, scaffolding, temporary stairs, staging, and all sanitary, safety, and first aid and fire prevention facilities of a temporary nature.

**“Termination Value”** means the actual, documented, reasonably incurred aggregate value of all Work completed prior to the date of termination of this Contract which, for clarity, shall be the value of the Milestone Payment amount for the most recently completed Project Milestone *plus* the partial value of any partially completed Milestones (as identified in Exhibit B and subject to Section 21.1.1), *less* any amounts already paid excluding any gross receipt taxes.

**“Transmission Provider”** means the Person, designated agent, or third party acting in its capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

**“Transmission Provider’s 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 Point of Interconnection, including all additions, extensions, expansions, and improvements thereto.

**“Unconditional Waiver and Release Upon Final Payment”** means a lien waiver in the form of Exhibit F-4.

**“Unconditional Waiver and Release Upon Milestone Payment”** means a lien waiver in the form of Exhibit F-2.

**“Unforeseen Site Condition”** has the meaning set forth in Section 13.2.

**“U.S. Customary System”** means the primary system of weights and measures (other than the metric system) used in the United States today, which system was inherited from, but is now different from, the British Imperial System of weights and measures.

**“Vendor(s)”** means persons, other than the Owner, that supply Equipment and Materials to Contractor or any Subcontractor in connection with the performance of the Work.

**“Warranty Bond”** has the meaning as set forth in Section 7.7.

**“Warranty Period”** means the twenty-four (24) month period commencing on the Substantial Completion Date with respect to the Work and, in each case, as deemed extended with respect to any given item of Equipment and Materials, as specified in Section 18.3.

“**Water**” means potable water that meets the quality, flow rate and related specifications necessary to complete the Work.

“**Work**” means all obligations, duties, and responsibilities assigned to or undertaken by Contractor under this Contract with respect to the Project, including all engineering, design and construction of the Project (including the Preliminary Work), all procurement and provision of Equipment and Materials, all erection and installation of Equipment and Materials, and all training, start-up (including calibration, inspection, and start-up operation), and testing included in or required for the Project (including coordinated testing of the Project with the Vendors), all as generally described in, and including all items and services described in or reasonably inferable from, Exhibit A. Where this Contract describes a portion of the Work in general, but not in complete detail, the Parties acknowledge and agree that the Work includes any work required: (a) for the design or construction of the Project in accordance with Industry Standards; or (b) for the Project to be capable of being operated in accordance with Industry Standards to the extent applicable to the Contract, Project or Work. Notwithstanding the foregoing, Work shall not include Electrical Interconnection Facilities or Production Inputs.

“**Work Warranties**” means the warranties of Contractor under Section 18.1.

## 1.2 Rules of Interpretation

- (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 Contract unless otherwise stated.
- (c) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this Contract; provided, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this Contract, the terms of this Contract shall take precedence.
- (d) This Contract was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Contract and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Contract 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 Contract. Unless expressly provided otherwise in this Contract, (i) where this Contract requires the consent, approval, or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever this Contract 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 under the circumstances.
- (f) Use of the words “include” or “including” or similar words shall be interpreted as “including but not limited to” or “including, without limitation.”
- (g) Use of the words “tax” or “taxes” shall be interpreted to include taxes, fees, surcharges, and the like.



## 2. AGREEMENT, EXHIBITS AND CONFLICTS

### 2.1. Exhibits

This Contract includes the Exhibits and any schedules annexed hereto, as the same may be amended from time to time. Any reference in this Contract to an “Exhibit” by letter designation or title shall mean one of the Exhibits identified in the table of contents and such reference shall indicate such Exhibit herein.

### 2.2. Terms; References

Terms defined in a given number, tense, or form shall have the corresponding meaning when used in this Contract with initial capitals in another number, tense, or form. Except as otherwise expressly noted, reference to specific Articles, Sections, Subsections, and Exhibits are references to such provisions of or attachments to this Contract. References containing terms such as “hereof,” “herein,” “hereto,” “hereinafter,” and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Contract taken as a whole. “Includes” or “including” shall not be deemed limited by the specific enumeration of items, but shall be deemed without limitation. The term “or” is not exclusive. Reference to a Governmental Authority shall include an entity succeeding to its functions.

### 2.3. Conflicts in Documentation

In the event of any conflict in interpretation or inconsistencies in the Contract documents, the following precedence of interpretation shall prevail: (a) any mutually agreed Change in Work or other Contract amendment duly authorized and executed by both Parties in accordance herewith, solely with regard to the subject matter of any such Change in Work or Contract amendment; (b) Articles 1 through 35 of this Contract, as the same may be amended from time to time; (c) Exhibit A; (d) Exhibits B and N; (e) the remaining Exhibits, which Exhibits shall be read to be consistent and complementary to the greatest extent possible.

### 2.4. Documentation Format

This Contract and all documentation to be supplied hereunder shall be in the English language and all units of measurement in the design process, specifications, drawings and other documents shall be specified in U.S. Customary System dimensions.

## 3. RESPONSIBILITIES OF OWNER

Owner shall, at Owner’s cost and expense:

### 3.1. Project Representative

Designate (by a Notice delivered to Contractor) a Project Representative, who shall act as a single point of contact for Contractor with respect to the prosecution of the Work (but who shall not be authorized to execute or make any amendments to, or provide waivers under, this Contract, except that such Project Representative shall be authorized to execute Change in Work Forms under Article 17). Until delivery of Notice to Contractor of a new Project Representative, the Project Representative for Owner shall be Jeremy Heslop.

### 3.2. Operating Personnel

No later than thirty (30) days prior to the anticipated Mechanical Completion Date (as determined by Owner in consultation with Contractor based on the circumstances existing at the time of determination), Owner shall provide Operating Personnel:

- (a) for training by Contractor as provided pursuant to Section 4.17; and
- (b) to provide ordinary operating and maintenance support to Contractor for testing, start-up and commissioning of the Project.

Until Substantial Completion, the Operating Personnel made available pursuant to this Section 3.2 shall (x) provide normal operating and maintenance support (including during the Construction Tests) under the management, supervision, and direction of Contractor, but shall not be required to provide any services that would not be required for normal operation of the Project; and (y) during the Acceptance Tests, shall operate the Project, in each case (x) and (y) under the supervision and control of Contractor. The number of Operating Personnel to be provided by Owner during such periods shall be the amount reasonably determined by Owner as necessary to support the above tasks. Notwithstanding the foregoing:

- (i) such Operating Personnel shall not be deemed employees or Subcontractors of Contractor;
- (ii) Contractor shall not direct or otherwise permit the Operating Personnel to undertake any unusual or extraordinary operating or maintenance activities for the purposes of successfully completing any Acceptance Test; and
- (iii) Contractor shall remain solely responsible for performing the Work in accordance with this Contract, including Contractor's obligation to achieve Substantial Completion by the Substantial Completion Guaranteed Date in accordance with the terms of this Contract.

### 3.3. Ministerial Assistance

Execute applications required to be signed by Owner and provide assistance (to be provided at no cost to Contractor) as Contractor may reasonably request in connection with obtaining any Contractor Acquired Permit.

### 3.4. Owner Acquired Permits

Obtain, with Contractor's assistance (to be provided at no additional cost to Owner to the extent it does not require Contractor to incur any material third-party costs and to the extent it does, Owner shall be liable for such costs to the extent reasonably incurred), and pay for all Owner Acquired Permits. Owner will obtain all Owner Acquired Permits in final form by the applicable milestones or milestone dates specified in Exhibit C-1.

### 3.5. Access to Site

Subject to Sections 4.9 and 4.15, make the Site available to Contractor and assure reasonable right of ingress and egress to and from the Site for Contractor to perform Site testing work as may reasonably be necessary in connection with preparation for or performance of the Work. Following Owner's issuance of the Notice to Proceed, and subject to Sections 4.9 and 4.15 and consistent with the terms of the Applicable Permits, make the Site available to Contractor and assure reasonable rights of ingress and egress to and from the Site for Contractor for performance of the Work, including, without limitation, sufficient rights of ingress and egress to and from the Site for heavy equipment. Owner shall be responsible for all contact and coordination with the persons who own property on or near, or have granted license or easement rights in and to, the Site.

### 3.6. Production Inputs

Provide the Production Inputs as more fully set forth in Exhibit A by the date set forth in the Project Schedule. Notwithstanding anything in this Contract to the contrary, Contractor's sole remedy for the failure of Owner to provide or cause to be provided any of the Production Inputs in accordance with the terms of this Contract is the relief granted in Section 9.4.2. Without limiting the terms of this Contract, any such failure shall not be considered a breach of any covenant, condition, representation or warranty of Owner, and shall not be construed as an Owner Event of Default.

### 3.7. Electrical Interconnection Facilities

Cause to be provided the Electrical Interconnection Facilities as specified in Exhibit A by the date set forth in the Project Schedule. Owner shall be responsible for coordinating and contracting for all metering and interconnection requirements necessary to connect the Project to the Point of Interconnection.

### 3.8. Cooperation with Owner's Separate Contractors

Cause Owner's Separate Contractors to cooperate with Contractor and the Subcontractors who may be working at or near the Site in order to assure that neither Owner nor any of Owner's Separate Contractors unreasonably hinders the Work being performed by Contractor and the Subcontractors.

### 3.9. Scheduling Coordinator

Owner, as owner of the Project, shall take all necessary actions and enter into all arrangements and agreements required to deliver power produced by the Project (as a generating facility) to the Point of Interconnection in the balancing area or, if applicable, to deliver power to the Project (for an energy storage facility) from the Point of Interconnection in the balancing area. Owner shall also become the Scheduling Coordinator for the Project in order to schedule energy deliveries for testing, start-up and commissioning of the Project; provided, however, that Contractor shall provide thirty (30) Days' advance written notice to Owner as to when Owner's obligations as Scheduling Coordinator are expected to commence.

### 3.10. Owner-Supplied Information

Owner shall provide Contractor the information and documentation set forth in Exhibit R (collectively, “Owner-Supplied Information”). Contractor shall be entitled to rely on the Owner-Supplied Information in performing all aspects of the Work. Except to the extent expressly identified as Owner-Supplied Information in Exhibit R, any information, documentation or other opinions expressed by Owner shall be deemed provided as an accommodation to Contractor and Contractor is responsible for verifying and validating such information. Contractor shall not be permitted to claim an inaccuracy, omission, or other deviation in such information as grounds for a Change in Work hereunder other than with respect to Owner-Supplied Information.

### 3.11. Submittal Review

To the extent a time period is not otherwise specified in the Contract and the approval is not deemed to be critical in accordance with Exhibit A, Owner shall complete any approvals or reviews within the non-critical time period set forth in Exhibit A.

### 3.12. Owner Cooperation with Labor Requirements

Owner shall cooperate, and shall cause its Affiliates, Owner’s Separate Contractors, and any financing parties to cooperate, with Contractor and its Subcontractors in connection with Contractor’s efforts to comply with Section 11.9, including, without limitation, promptly providing, executing, and delivering such assistance and documentation, and making and filing such elections and requests, as may be required to be completed by Owner or its Affiliates, Owner’s Separate Contractors, or financing Parties, in order for Contractor to comply with the Labor Requirements. Within thirty (30) Days prior to Notice to Proceed, Owner shall determine (in conjunction with its tax advisors) whether the Good Faith Efforts Exception applies with respect to the Project and shall provide Contractor with documentation satisfactory to Contractor (in Contractor’s reasonable discretion) in order to evidence such determination. If Owner provides the foregoing determination to Contractor with respect to the Good Faith Efforts Exception, then the Apprenticeship Requirements shall not apply to the Project, Contractor shall be under no obligation to comply with the Apprenticeship Requirements, and Owner shall be deemed to have waived any claim against Contractor with respect to the Apprenticeship Requirements.

## 4. **RESPONSIBILITIES OF CONTRACTOR.**

In order for Contractor to complete the Work, Contractor shall:

### 4.1. General Obligations

Perform, furnish, be responsible for, and pay the cost of, all of the Work, including all services, labor, Equipment and Materials (excluding the Production Inputs, and the Electrical Interconnection Facilities) and supervision necessary to fulfill the requirements of Final Completion in accordance with the provisions of this Contract.

### 4.2. Performance of Work

Perform and complete all of the Work, and cause each Subcontractor to perform and complete each such Subcontractor’s respective work in accordance with the terms of this Contract,

the Project Schedule, and in compliance with Industry Standards, Applicable Laws and Applicable Permits.

4.3. Design and Construction of Project

Engineer, design and construct the Project so that it is capable of operation in accordance with the requirements of this Contract, and in compliance with Industry Standards, Applicable Laws and Applicable Permits. Contractor shall provide all necessary engineering and design services necessary to set forth in detail the specifications, drawings and requirements for the procurement of Equipment and Materials and for the construction and installation of the entire Project in a manner which satisfies the requirements of this Contract. Contractor shall preserve all permanent survey construction monuments and benchmarks during its performance of the Work.

4.4. Temporary Facilities and Utilities

Provide all temporary communication facilities, Water, electricity and sanitary utilities to be used by Contractor and Subcontractors and their respective employees through Substantial Completion as specified in the Statement of Work. Electricity, telephone, data lines and sanitary services for the trailers shall be provided by the Contractor. All office furniture and office equipment for the trailers shall be provided by Contractor. Contractor is responsible for providing all necessary parking to support construction vehicles, Owner and Vendor vehicles and Project worker vehicles.

4.5. Organization

Maintain a qualified and competent organization at the Site with adequate capacity and numbers of construction and start-up personnel, equipment, and facilities to execute the Work in a safe, efficient, environmentally sound, and professional manner.

4.6. Permits Acquired by Contractor

Obtain all Contractor Acquired Permits and comply with Industry Standards and Applicable Laws.

4.7. Maintenance of Site

Maintain the Site reasonably clear of debris, waste material, and rubbish. Contractor shall dispose of such debris, waste material, and rubbish in accordance with Applicable Law.

4.8. Price Allocation Schedule

No later than sixty (60) Days prior to the anticipated achievement of Substantial Completion, provide a price allocation schedule for the Work and other information reasonably necessary for Owner to maintain segregated accounts for its tax records and fixed asset records (including any FERC accounting requirements). Contractor shall provide an updated price allocation schedule for the Project prior to Final Completion.

#### 4.9. Safeguards

Comply with the requirements of Exhibit A and provide, and cause its Subcontractors (as applicable) and Vendors (as applicable) to provide, all necessary and commercially reasonable safeguards at the Site for the protection of the Work, the Project, the Vendors and their personnel, other work installed by Owner and all other persons and other property (including existing structures) located on the Site including that owned by Contractor, Owner, and others connected to the Work, including an unmanned security fence pursuant to a safety and security assurance program reasonably acceptable to Owner, or otherwise reasonably required to prevent physical loss and damage including vandalism, theft, malicious mischief, and danger to the Project or personnel. Within thirty (30) days after the Notice to Proceed Date, Contractor shall provide a Notice to Owner describing the safety and security assurance program specific to the Project to be used by Contractor in the performance of the Work, which shall be no less stringent than the safety and security assurance program as included in Exhibit U. Owner shall have the right to promptly review and comment on such program; provided, however, that Contractor shall remain solely responsible for performing such Work in accordance with this Contract. If Owner provides any comments with respect to such safety and security assurance program to Contractor, then Contractor shall incorporate changes into the safety and security assurance program addressing such comments as mutually agreed between the Parties, and resubmit the safety and security assurance program to Owner. Such resubmission of the safety and security assurance program may result in a Change in Work. Contractor shall perform the Work in accordance with the definitive approved safety and security assurance program in Exhibit U. To the extent addressed in Exhibit U, Contractor shall promptly provide Owner with:

(a) written accident reports for lost time accidents that occur at the Site prepared in accordance with the safety and security assurance program approved by Owner pursuant to this Section 4.9; and

(b) copies of all written communications with Governmental Authorities and insurance companies (including any notices) with respect to accidents that occur at the Site, and thereafter provide such written reports relating thereto as Owner may reasonably request.

Contractor shall comply with the safety and security assurance program in Exhibit U which shall include Site-specific training set forth therein. In accordance with Exhibit U, Contractor and its Subcontractors shall abide by the Site-specific security procedures, rules and regulations and properly display identification badges at all times while on Owner's premises. In addition, and in accordance with Exhibit U, Contractor and its Subcontractors shall comply with reasonable health and safety requirements established from time to time by Owner at the Site.

#### 4.10. Expediting

Arrange for complete handling of all Equipment and Materials to the extent required under Exhibit A, and construction equipment, including inspection, expediting, shipping, loading, unloading, customs clearance, receiving, storage, and claims. All Equipment and Materials shall be stored and maintained in storage in accordance with the applicable manufacturer's recommendations. Contractor shall be responsible for loading and customs clearance of Equipment and Materials at any of the Vendor facilities, to the extent necessary, and shipping it to the Site.

#### 4.11. Temporary Work

Provide all Temporary Work, supplies, construction utilities and facilities, special tools, consumable materials, fuels (except for the Production Inputs) and commissioning supplies reasonably necessary or appropriate for the construction, start-up, testing, and commissioning of the Project until achievement of Substantial Completion. By delivery of a Notice to Owner prior to the disposition of any surplus construction materials, or supplies remaining on the Site on the Substantial Completion Date (other than materials and supplies necessary to achieve Final Completion), Contractor shall give Owner the option to purchase each such item at a price not exceeding Contractor's cost therefor, less the reduction in the reasonable value of such item as a result of Contractor's use of such item. Owner shall exercise such right, if it so elects, within thirty (30) days after receipt of such Notice.

#### 4.12. Operating Consumables

(a) Provide all Operating Consumables necessary or appropriate for the construction, start-up, testing, commissioning, operation or maintenance of the Project until Contractor achieves Substantial Completion; (b) at Substantial Completion, replace any inventory of Operating Consumables used by Contractor; and (c) provide to Owner, at least ninety (90) days prior to the Substantial Completion Date, a detailed list of potential suppliers of all Operating Consumables.

#### 4.13. Applicable Laws/Permits

Upon request from time to time by Owner, promptly provide all technical support and information, and other reasonably requested information, to enable Owner to apply for and obtain Owner Acquired Permits, provided, however, if such support requires Contractor to incur material third party costs, Owner shall be responsible for such additional costs to the extent reasonably incurred. Comply in all respects with all Applicable Laws and Applicable Permits relating to the Project, the Site, and the performance of the Work, and perform the Work so that, upon Substantial Completion, the Project shall be capable of being operated in compliance with, all requirements of Applicable Laws and Applicable Permits and using methods and Equipment and Materials that satisfy Industry Standards.

#### 4.14. Quality Assurance Meetings

To supplement Monthly Progress Reports, allow Owner and the Engineer to participate in construction status meetings. Contractor shall have such meetings no less than one per week with its Subcontractors.

#### 4.15. Access

Use only the entrance(s) to the Site established by Contractor for ingress and egress of all personnel, Equipment and Materials and vehicles. Contractor shall perform the Work consistent and in accordance with Owner's ownership, license and easement rights in and to the Site as set forth in Exhibit R. Under no circumstances shall Contractor's or its Subcontractors' personnel cause their respective vehicles or equipment to enter, be moved, handled, maintained or stored upon any area other than the Site while working at the Site.

#### 4.16. Data; Drawings

Provide all operating data and preliminary, construction and final as-built drawings necessary to safely and efficiently start up, test, operate, shut down, and maintain the Project (including those set forth in Exhibit A). Contractor shall furnish or cause its Subcontractors to furnish, the services of all personnel, including supervisors, engineers, designers and draftsmen necessary for the preparation of all Contractor Deliverables. The design services shall include all architectural, civil, structural, mechanical, electrical, instrumentation and control work. All Contractor Deliverables shall be prepared in a form and level of completion necessary to operate the Project in accordance with Applicable Laws, Industry Standards and in accordance with the provisions of this Contract. Contractor shall accurately prepare “as-built” drawings of the Project and deliver to Owner such as-built drawings no later than ninety (90) days after Substantial Completion, which as-built drawings shall be in form and substance usual and customary for such documents. Such “as-built” drawings shall show the location of the Project and shall show all related easements, improvements, utilities and rights-of-way above and below ground, on the Site, as of the date of delivery of such documents. Such “as-built” drawings shall also show the dimensions and the distances to the nearest benchmarks. All drawings provided to Owner pursuant to this Contract shall be provided in .pdf format and base CAD file format with associated X References that will show the line work and geo-referenced locations of property improvements and underground facilities, but excluding any intellectual property as it relates to drawing automation or equipment detail furnished by Vendors. Contractor shall assign to Owner, all Intellectual Property Rights that are prepared specifically for Owner or in connection with the Work and required to be delivered to Owner pursuant to and to the extent required by the terms of this Contract, including Drawings and Specifications. Owner and Contractor shall cooperate in good faith to identify the specific Intellectual Property Rights to be assigned. In order to facilitate observations and inspections, Contractor shall maintain at the Site in a safe place one working copy of all Project Schedules, drawings, specifications, addenda, executed Changes in Work, graphic or written instructions, interpretations and clarifications, and all other documents related to the Work, in good order and marked currently to record all changes made during construction, together with blueprints, general arrangements, manufacturing and shop drawings, product data and samples, and copies of all electrical plumbing and public safety codes applicable to the Work. Such documents shall be available to Owner (and the Engineer) for such parties’ reference, copying and use.

#### 4.17. Training of Operating Personnel

4.17.1. Design and Review of Training Program. Contractor shall design, and prepare a written narrative description of, the training program (in accordance with the provisions of Exhibit A) and the proposed written materials to be used in the training program, including coordination of training to be provided by Vendors. Contractor shall submit such description to Owner by no later than the date that is ninety (90) days before the anticipated Mechanical Completion Date (as determined by Owner based on the circumstances existing at the time of determination). Owner will review, comment on, and approve or disapprove such program in writing within thirty (30) days after such submission by Contractor. If Owner conditions its approval on reasonable changes in the program submitted by Contractor, then Contractor will effect such changes at no additional cost to Owner and resubmit the program to Owner within ten (10) days after Contractor receives Owner’s conditional approval. If Owner fails to respond



within the period specified above, Owner shall be deemed to have approved the program submitted by Contractor.

4.17.2. Commencement of Training. Not later than the date that is one hundred twenty (120) days following the Notice to Proceed Date, Contractor shall advise Owner of the estimated date that Contractor will commence the Acceptance Tests. Contractor shall keep Owner continuously apprised of any change to such estimated commencement date. Commencing at the time specified in Section 3.2, Contractor shall train the designated Operating Personnel in the requirements for the start-up, shut-down, operation and maintenance of, and safety, general process understanding and emergency procedures for, the Project and all of its sub-systems all in accordance with the training program approved by Owner pursuant to Section 4.17.1. Contractor shall coordinate with the applicable Vendors so that an integrated training curriculum is presented to such Operating Personnel. Contractor shall also train or cause the applicable Subcontractor to train the Operating Personnel on all of the major items of the equipment installed under this Contract at the Project. In particular, without limiting the generality of the foregoing, the Contractor or Subcontractor, as the case may be, which provides the plant control system shall train the Operating Personnel on the operation and maintenance of such equipment.

4.17.3. Operating and Maintenance Manuals. Contractor shall provide operating and maintenance procedures and manuals for all equipment, components, systems and subsystems in the form set forth in Exhibit A.

#### 4.18. Spare Parts

4.18.1. Construction and Commissioning Spare Parts. Contractor shall provide all start-up and commissioning spare parts and special tools necessary for the performance of the Work, the costs of which are included in the Contract Price. Owner may make available to Contractor for Contractor's use any spare parts owned by Owner, but in no event shall Owner be liable or shall Contractor be entitled to a Change in Work in the event that the absence of any particular spare part(s) impacts the Project Schedule. Notwithstanding the foregoing, at Substantial Completion, Contractor shall pay for or replace any spare parts used by Contractor that were originally owned by Owner with new parts identical to those parts used by Contractor pursuant to this Section.

4.18.2. Operating Spare Parts. Contractor shall be responsible for identifying an initial stock of spare parts reasonably necessary for the operation and maintenance of the Project after Substantial Completion including (i) the spare parts recommended by Vendors ("Vendor Recommended Spare Parts") which list shall be delivered by Contractor no later than three hundred sixty five (365) days before the date Contractor anticipates it will achieve Substantial Completion and (ii) spare parts critical to the continued operation of the Project set forth on Exhibit W ("Critical Spare Parts"). Contractor shall provide Owner with the option to cause Contractor to procure all or a portion of the Vendor Recommended Spare Parts and Critical Spare Parts for delivery prior to Substantial Completion. Owner shall provide written notice to Contractor (a) within thirty (30) days of Contractor's delivery of the list of Vendor Recommended Spare Parts and Critical Spare Parts of its election to cause Contractor to procure such spare parts prior to a deadline date reasonably determined by Contractor that would assure delivery at or prior to Substantial Completion, and with respect to Vendor Recommended Spare Parts that are not Critical Spare Parts, if feasible and (b) with respect to Critical Spare Parts, within thirty (30) days after

Notice to Proceed (provided, however, to the extent there is a longer expected lead time, Owner may need to procure such Critical Spare Parts pursuant to a Limited Notice to Proceed). The costs of such spare parts are not included in the Contract Price and shall be addressed as a Change in Work. The pricing with respect to Vendor Recommended Spare Parts shall be valid for the thirty (30) day selection period. With respect to the Critical Spare Parts, Contractor shall provide a pricing list upon Notice to Proceed which shall be valid for thirty (30) days.

#### 4.19. Start-up Personnel

Contractor shall provide or cause to be provided appropriate installation and start-up representatives from Vendors or Subcontractors of Major Equipment and control systems, all necessary supervising personnel, all equipment, tools, construction and temporary material and all other labor necessary for all Construction Tests and startup tests.

#### 4.20. Transmission Provider's Transmission System

Design and construct the Project to operate in parallel with Owner's Electrical Interconnection Facilities and the Transmission Provider's Transmission System such that the maximum net electrical energy from the Project can be delivered to the Point of Interconnection and, if applicable, the maximum net electrical charging energy to the Project can be delivered from the Point of Interconnection by means of the Electrical Interconnection Facilities. Contractor shall coordinate with Owner and the Transmission Provider in respect of the interconnection of the Project with the Electrical Interconnection Facilities to provide for proper operation of the Project and to allow delivery of electricity to the Point of Interconnection and, if applicable, to allow delivery of electricity from the Point of Interconnection to the Project in the capacities required under this Contract. Contractor shall also provide all assistance related to the Work or the Project as is reasonably requested by Owner and the Transmission Provider in coordinating with the construction of the Electrical Interconnection Facilities.

#### 4.21. Non-Interference With Adjacent Properties

Contractor shall be responsible for property damage caused by the negligence of Contractor or any Person for whom Contractor is responsible and shall mitigate or correct any damage away from the Site caused by performing the Work under this Contract. Contractor shall also be responsible for off-Site lay-down areas and improvements necessary to mitigate construction impacts to owners and users of property adjacent to the Site. Contractor will utilize its own clearance/lock-out-tag-out system to establish redundant clearance points.

#### 4.22. Production Outputs

Provide week-ahead and day-ahead expected charging energy and generation output during the commissioning, testing, and start-up phases of the Project.

#### 4.23. Information and Support

Contractor shall provide to Owner at no additional cost to Owner, Confidential Information (with any required supporting statements, affidavits, and other documents) required to be disclosed, and shall also provide and agree to the release of unredacted versions of Confidential Information including this Contract when (i) required under any order or subpoena of a

Governmental Authority; (ii) pursuant to a confidentiality agreement entered into under a protective order of a Governmental Authority; (iii) as reasonably necessary in connection with any Governmental Authority approval sought or filing required to be made by Owner; or (iv) required by any of Owner's lenders acting in a commercially reasonable manner. Contractor shall also provide to Owner, such lenders, and insurers of the Work, at no additional cost to Owner, all commercially reasonable information and support that may be reasonably necessary to/for Owner to: obtain approvals or Applicable Permits from any Governmental Authority; demonstrate compliance of the Work with applicable requirements of this Contract; respond to any information request or demand from any Governmental Authority; or make any required disclosure or respond to any discovery request in any administrative or legal proceeding of any Governmental Authority, provided, however, to the extent such assistance requires Contractor to incur third party costs, Owner shall be liable for such material additional costs to the extent reasonably incurred.

#### 4.24. Performance Security

Within the earlier of (i) ninety (90) Days after the Effective Date and (ii) the date on which Owner issues the Notice to Proceed Date, Contractor shall furnish to Owner a Performance Bond in an amount equal to the Contract Price ("Performance Bond"). Contractor shall obtain and maintain the Performance Bond at its sole cost and expense. The Performance Bond shall be in the form attached herein as Exhibit M. Upon Substantial Completion, the value of the Performance Bond shall be reduced to fifteen percent (15%) of the Contract Price. PNM must release the Performance Bond, returning it to Contractor upon the later of (i) Final Completion or (ii) the payment by Contractor of all Buy-Down Amounts and Substantial Completion Delay Liquidated Damages (or, if applicable, the resolution of disputes regarding Buy-Down Amounts or Substantial Completion Delay Liquidated Damages and the payment by Contractor of any amounts due to PNM pursuant to such resolution); provided, however, that notwithstanding such a release of Performance Bond, Contractor shall be required to maintain a Performance Bond equal to two hundred percent (200%) of the Punchlist value until Final Completion.

#### 4.25. Drug and Alcohol Policy

4.25.1. Contractor, in the performance of any Work requiring the physical presence of its employees on Owner's property or on the property of others for which Owner has acquired access rights, shall take steps necessary to ensure that a work environment is maintained that is free from the use, consumption, possession, sale, or distribution of illegal drugs or alcohol, and from the misuse of legal drugs on Owner's premises and Work sites, including Contractor vehicles used on Owner property or Work sites.

4.25.2. Contractor shall comply with all Applicable Laws concerning drug and alcohol use, including, if applicable, requirements of the United States Department of Transportation. Contractor shall require that each Subcontractor complies with the requirements set forth in Section 4.25.1 above and Applicable Laws as set forth herein.

4.25.3. After discussion with Contractor, Owner may remove a Contractor's employee from any Work or Work site if Owner reasonably suspects the employee is under the influence of controlled substances or alcohol until such time as Contractor confirms by testing that the employee is fit for duty.

#### 4.26. Use of Spare GSU

If the initial generation step-up transformer for the Project fails and cannot be repaired in time for the Project to be completed by the Substantial Completion Guaranteed Date, Contractor shall purchase the Spare GSU from Owner at a commercially reasonable price in order for Owner to procure a new Spare GSU of identical specifications as compared to the original Spare GSU. The initial generation step-up transformer will be returned to Owner after being repaired by the original equipment supplier with full warranty, all at no additional cost to Owner.

## 5. WARRANTIES AND REPRESENTATIONS

### 5.1. Of Contractor

Contractor represents and warrants to Owner as of the Effective Date, during the term of this Contract, that:

5.1.1. Organization, Standing and Qualification. Contractor is a corporation, duly organized, validly existing, and in good standing under the laws of Delaware, and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business it presently conducts and is and will be duly licensed or qualified to do business and in good standing under the laws of the State of New Mexico and in each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

5.1.2. Professional Skills. Contractor has all the required authority, ability, skills, experience and capacity necessary to perform the Work in a timely and professional manner, utilizing sound engineering principles, project management procedures, construction procedures and supervisory procedures, all in accordance with Industry Standards. Contractor has the experience and skills necessary to determine, and Contractor has reasonably determined, that Contractor can perform the Work for the Contract Price.

5.1.3. Enforceable Contract. This Contract has been duly authorized, executed, and delivered by or on behalf of Contractor and is, upon execution and delivery, the legal, valid, and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

5.1.4. No Conflict. The execution, delivery and performance by Contractor of this Contract will not conflict with or cause any default under: (a) its organizational documents; (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, loan or credit arrangement or other agreement or instrument to which Contractor is a party or by which it or its properties may be bound or affected; or (c) any Applicable Laws; and will not subject the Project or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Contract.

5.1.5. Government Approvals. The Contractor Acquired Permits either have been obtained by Contractor and are in full force and effect on the Effective Date or Contractor will use commercially reasonable efforts to obtain such Contractor Acquired Permits so that they will be in full force and effect on or prior to the date on which they are required, under this Contract and

Applicable Law, to be in full force and effect, so as to permit Contractor to commence and prosecute the Work to completion in accordance with the Project Schedule. Other than with respect to the Contractor Acquired Permits, neither the execution nor delivery by Contractor of this Contract requires the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Governmental Authority.

5.1.6. No Suits, Proceedings. There are no actions, suits, proceedings, patent or license infringements, or investigations pending or, to Contractor's knowledge, threatened against it at law or in equity before any court (United States or otherwise) or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Contractor or in any impairment of its ability to perform its obligations under this Contract. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

5.1.7. Patents. Contractor owns or has, or will have on or prior to the date on which it is required, the right to use all patents, trademarks, service marks, trade names, copyrights, licenses, franchises, and permits necessary to perform the Work without conflict with the rights of others.

5.1.8. Business Practices. Contractor and its employees, agents, and Subcontractors have not made any payment or given anything of value, and Contractor will not, and Contractor will direct its employees, agents, and Subcontractors directly contracting with Contractor, and their employees or agents to not, make any payment or give anything of value, in either case to any government official (including any officer or employee of any Governmental Authority) to influence his, her, or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. None of Contractor, its Subcontractors, nor any of their employees or agents shall take any action that in any way violates the United States Foreign Corrupt Practices Act or any similar Applicable Law. Contractor shall immediately notify Owner of any violation of this provision. Contractor will not, and Contractor will direct its employees, agents and Subcontractors to not, make any payment or give anything of value, in either case to any government official (including any officer or employee of any Governmental Authority) to influence his, her, or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. Contractor is committed to complying with Applicable Law.

5.1.9. [RESERVED].

5.1.10. [RESERVED].

5.1.11. Financial Condition. Contractor is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Contract.

5.1.12. Licenses. All Persons who have been authorized by Contractor to perform, and who do perform, any portion of the Work have and will have all business and professional certifications required by Applicable Law to perform the services under this Contract.

5.1.13. Licensing Requirement. Contractor (a) is, and through completion of the Project will be, licensed by the Contractor's State License Board in Arizona, and (b) is licensed by the Construction and Industries Division of the New Mexico Regulation and Licensing Department, or any successor entity.

5.2. Of Owner

Owner represents, and warrants to Contractor, during the term of this Contract, that:

5.2.1. Organization, Standing and Qualification. Owner is a corporation, duly formed, validly existing, and in good standing under the laws of the State of New Mexico, and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business Owner presently conducts and is and will be duly licensed or qualified to do business and in good standing in each jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

5.2.2. Enforceable Contract. This Contract has been duly authorized, executed, and delivered by or on behalf of Owner and is, upon execution and delivery, the legal, valid, and binding obligation of Owner, enforceable against Owner in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

5.2.3. No Conflict. The execution, delivery and performance by Owner of this Contract will not conflict with or cause any default under: (a) its organizational documents; (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, loan or credit arrangement or other agreement or instrument to which Owner is a party or by which it or its properties may be bound or affected; or (c) any Applicable Laws.

5.2.4. Governmental Approvals. The Owner Acquired Permits, other than NMPRC Approval, either have been obtained by Owner and are in full force and effect on the Effective Date or Owner will use its good faith efforts to obtain such Owner Acquired Permits so that they will be in full force and effect on or prior to the date on which they are required, under this Contract and Applicable Law, to be in full force and effect, so as to permit Owner to perform its obligations under this Contract. Other than with respect to the Owner Acquired Permits, neither the execution nor delivery by Owner of this Contract requires the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Governmental Authority.

5.2.5. No Suits, Proceedings. There are no material actions, suits, proceedings, or investigations pending or, to Owner's knowledge, threatened against it at law or in equity before any court (United States or otherwise) or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Owner or in any impairment of its ability to perform its obligations under this Contract. Owner has no knowledge of any violation or default with respect to any order, writ, injunction, or any decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

5.2.6. Business Practices. Owner will not, and Owner will direct its employees, agents, and subcontractors, and their employees and agents not to, make any payment or give anything of value to any government official (including any officer or employee of any Governmental Authority) to influence his, her, or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. Neither Owner nor any of its employees or agents shall take any action that violates the United States Foreign Corrupt Practices Act or any similar Applicable Law. Owner shall immediately notify Contractor of any violation of this covenant.

5.2.7. Financial Condition. Owner is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete its obligations under this Contract.

## 6. COST OF WORK

### 6.1. Contract Price

(a) As full compensation for the Work and all of Contractor's obligations, hereunder Owner shall pay to Contractor a fixed price amount of one hundred ten million seven hundred eighty thousand four hundred and sixty Dollars (\$110,780,460) (the "Contract Price") plus estimated applicable gross receipts taxes of seven million three hundred forty two thousand Dollars (\$7,342,000) based upon a NMGR of seven and three quarter percent (7.75%) for a total of one hundred eighteen million one hundred twenty two thousand four hundred and sixty Dollars (\$118,122,460). The Contract Price shall be changed only by the express terms set forth in this Contract including Changes in Work approved in accordance with Article 17, Excusable Conditions in accordance with Article 9, as set forth in this Article 6 and the terms of Article 22, Suspension. The Contract Price shall be paid in accordance with Article 7.

(b) The Contract Price may be adjusted at placement of the battery order with CATL pursuant to Exhibit V.

(c) To the extent the cost of completing the Security Wall is greater or less than the Security Wall Allowance, the Contract Price shall be adjusted to reflect the actual and documented cost to be reasonably incurred by Contractor of completion of the Security Wall; provided, that when Contractor determines that the cost of completing the Security Wall will be greater or less than the Security Wall Allowance, Contractor and Owner will work together to provide for a Change in Work to identify the change of such cost pursuant to Section 17.3 that will set forth the adjustment in the Contract Price subject to the next sentence. To the extent that any additional cost for the Security Wall is the result of modifications required to achieve the Noise Emissions Guarantees identified in Exhibit I, the Parties shall review such additional cost and Owner, at its sole discretion, may determine at Notice to Proceed to either (i) include such associated modifications and agreed costs plus overhead as set forth in Section 17.3 or (ii) exclude such costs and associated modifications including if the Parties cannot agree on such cost and associated modifications, in which case Owner will relieve Contractor of the requirement to achieve the Far-Field Noise Emissions Guarantees as set forth in Exhibit I, or an applicable portion thereof. Failure of Owner to timely notify Contractor as set forth above shall entitle Contractor to relief for Owner Caused Delay pursuant to Article 9.

(d) To the extent the cost of completing the Security Management System is greater or less than the Security Management System Allowance, the Contract Price shall be adjusted to reflect the actual and documented cost to be reasonably incurred by Contractor of completion of the Security Management System; provided, that when Contractor determines that the cost of completing the Security Management System will be greater or less than the Security Management System Allowance, Contractor and Owner will work together to provide for a Change in Work to identify the change of such cost pursuant to Section 17.3 that will set forth the adjustment in the Contract Price.

## 6.2. All Items of Work Included

The Contract Price includes payment for: (a) all costs of Equipment and Materials (excluding the costs of Production Inputs, and the Electrical Interconnection Facilities, which costs are the exclusive responsibility of Owner), temporary equipment, labor, transportation, engineering, design and other services relating to Contractor's performance of its obligations under this Contract and the Work (including any Intellectual Property Rights licensed under this Contract, expressly or by implication) provided by Contractor or such Subcontractors; (b) except as provided below, all United States federal, state, regional, and local taxes, goods and services taxes, and other sales taxes effective or enacted as of the Effective Date or thereafter, each as imposed on Contractor or its Subcontractors or the Work; (c) except as provided below, all other taxes, duties, levies, imposts, fees, or charges of any kind (whether in the United States or elsewhere and including, without limitation, any of the foregoing related to the importation of any items into the United States) arising out of Contractor's or any such Subcontractor's performance of the Work, including any increases thereof that may occur during the term of this Contract; and (d) any duties, levies, imposts, fees, charges, and royalties (and including, without limitation, any of the foregoing related to the importation of any items into the United States) imposed on Contractor or its Subcontractors with respect to any Equipment and Materials, labor, or services provided under this Contract. The taxes covered hereby include occupational, excise, unemployment, FICA, sales, use, ownership, value-added, compensating and income taxes, state and federal gasoline and fuel taxes, property taxes on Contractor's equipment, tools and supplies and any and all other taxes and duties on any item, Equipment and Materials, lease or service that is part of the Work, whether such tax is normally included in the price of such item or service or is normally stated separately, all of which shall be for the account of Contractor unless a Change in Law occurs. The Contract Price shall not be increased with respect to any of the foregoing or with respect to any withholdings that Owner may be required to make in respect of any of the foregoing items unless a Change in Law occurs, in which event, the Contract Price shall be adjusted in accordance with Section 9.4.2. Notwithstanding anything to the contrary in this Section 6.2, (i) each Party shall be responsible for payment of its own income taxes, and (ii) Contractor shall be responsible for property taxes on all materials and equipment used and owned by Contractor.

## 7. **TERMS OF PAYMENT**

### 7.1. Method of Compensation

Owner shall compensate Contractor for performance of the Work in accordance with the Milestone Payment Schedule and the terms of this Article 7.



7.1.1. Taxes. Contractor is responsible for all New Mexico Gross Receipts Taxes incurred in the performance of this Contract, which will be reimbursed by Owner, provided all such NMGRT taxes are listed separately on each invoice submitted. Contractor shall not thereafter seek reimbursement from Owner for any such taxes, or penalties or interest thereon. Contractor shall utilize appropriate New Mexico Nontaxable Transaction Certificates, or similar certificates from other states, where applicable, to minimize such gross receipts, compensating, sales, and other similar taxes. If the sale of goods or performance of services by Contractor takes place on tribal land, Contractor will comply with applicable state and tribal laws governing the reporting and payment of gross receipts taxes on those transactions.

7.1.2. Invoice. Other than with respect to payment for completion of the Final Completion Project Milestone (which shall be governed by Section 7.2), Contractor may submit a Contractor's Invoice based on the Project Milestone completed in the amount equal to the applicable Milestone Payment and any other amounts then payable by Owner to Contractor under Article 17 or any other provision hereof (without limiting Owner's right to dispute in good faith any amounts requested for payment). Contractor's Invoice:

(a) shall include information reasonably required for Owner to assess the completion of the applicable Project Milestone for which Contractor is seeking a Milestone Payment, including, if applicable, the delivery of the Notice of Mechanical Completion in accordance with Section 14.3(a) or Notice of Substantial Completion in accordance with Section 15.2(p);

(b) shall include an Unconditional Waiver and Release Upon Milestone Payment of Contractor for payments previously made by Owner, if any, pursuant to this Contract and a Conditional Waiver and Release Upon Milestone Payment of Contractor for the current payment made by Owner pursuant to this Contract; and

(c) shall include, with respect to each Major Subcontractor contracting directly with Contractor and performing services at the Site, in Owner's sole discretion either:

(i) a Conditional Waiver and Release Upon Milestone Payment of Subcontractor or, if such Subcontractor has completed all Work that such Subcontractor is to perform, an Unconditional Waiver and Release Upon Final Payment; provided that, with respect to the Project Milestone for Substantial Completion, Contractor shall include an Unconditional Waiver and Release Upon Final Payment for each Major Subcontractor, which shall be held in escrow and released simultaneously with payment in full for such Project Milestone; or

(ii) a bond in form and substance reasonably acceptable to Owner, which bond shall name Owner as "obligee" thereof, and which bond shall be in an amount equal to the amount of such outstanding payment to Subcontractor.

Contractor understands and agrees that, if any Contractor's Invoice is inaccurate or incomplete or lacks reasonable detail, specificity, or supporting documentation required by this Article 7, then, to the extent of such deficiency, such Contractor's Invoice shall not constitute a valid request for payment and Owner shall so notify Contractor of the same no later than ten (10) Business Days after receipt of said invoice.

7.1.3. Payments. Within twenty-one (21) days after Owner receives a Contractor's Invoice under Section 7.1.2, Owner shall pay all amounts invoiced therein that are

then payable and not subject to a good faith dispute, subject, however, to any right of Owner to offset against such payment any amount then due from Contractor to Owner pursuant to any provision of this Contract. Contractor agrees to pay each of its Subcontractors in accordance with the payment terms set forth in each of its Subcontracts and in full compliance with Applicable Laws, including the New Mexico Prompt Payment Act.

7.1.4. Payment for Partial Project Milestones. Other than payments due under, or made in accordance with, Articles 20 or 21, there shall be no payment for partial completion of a Project Milestone.

## 7.2. Final Completion Payment

Upon the delivery of the Notice of Final Completion in accordance with Section 15.3(m), Contractor shall submit a Contractor's Invoice which shall set forth all amounts due to Contractor that remain unpaid (including the Final Completion Payment), and upon approval thereof by Owner, Owner shall pay to Contractor the Final Completion Payment and any such unpaid amounts. Owner shall make the Final Completion Payment and payment of any such unpaid amounts within twenty-one (21) days after receipt of such Contractor's Invoice if and only if Contractor has delivered the following items to Owner:

(a) with respect to each Major Subcontractor contracting directly with Contractor and performing services at the Site, in Owner's sole discretion, either:

(i) an Unconditional Waiver and Release Upon Final Payment of Subcontractor; provided that, with respect to the Project Milestone for Final Completion, Contractor shall include an Unconditional Waiver and Release Upon Final Payment for each Subcontractor, which shall be held in escrow and released simultaneously with payment in full for such Project Milestone; or

(ii) a bond in form and substance reasonably acceptable to Owner, which bond shall name Owner as "obligee" thereof, and which bond shall indemnify and fully protect Owner against any claim by such Subcontractor with respect to its right to be paid in connection with the Project or the performance of the Work in the amount outstanding under such Major Subcontractor; and

(b) with respect to Contractor, an Unconditional Waiver and Release Upon Milestone Payment of Contractor for payments previously made by Owner pursuant to this Contract and a Conditional Waiver and Release Upon Milestone Payment of Contractor for the current payment made by Owner pursuant to this Contract.

## 7.3. Outstanding Warranty Claims

Subject to the provisions of Sections 7.7 and 18.7, upon the expiration of the Warranty Period, Contractor shall submit a Notice to Owner which shall set forth the value of the outstanding warranty claims under Article 18 which Contractor has not corrected in accordance with this Contract and are still due to Owner, and upon approval thereof by Owner (such approval not to be unreasonably withheld, conditioned or delayed), Contractor may reduce the stated value of the Warranty Bond in accordance with Section 7.7 to an amount equal to the value of the outstanding

warranty claims set forth in the Contractor's Notice under this Section 7.3 if and only if Contractor has delivered the following items to Owner:

(a) with respect to each Major Subcontractor that contracted directly with Contractor and performed any Work at the Site during the Warranty Period, in Owner's sole discretion, either:

(i) an Unconditional Waiver and Release Upon Final Payment of Subcontractor in accordance with Section 7.1 or 7.2, as applicable; or

(ii) a bond in form and substance reasonably acceptable to Owner, which bond shall name Owner as "obligee" thereof, and which bond shall indemnify and fully protect Owner against any claim by such Subcontractor with respect to its right to be paid in connection with the Project or the performance of the Work; and

(b) with respect to Contractor:

(i) an Unconditional Waiver and Release Upon Milestone Payment of Contractor for payments previously made by Owner pursuant to this Contract and a Conditional Waiver and Release Upon Final Payment of Contractor for the current payment made by Owner pursuant to this Contract.

#### 7.4. Method of Payment

All payments to be made to Contractor under this Contract shall be paid in Dollars and may, at Owner's option, be made in immediately available funds on the due date by Automated Clearing House or wire transfer to such bank account as is designated by Contractor to Owner or, if such date is not a Business Day, on the immediately succeeding Business Day to such account as may be designated by Contractor from time to time by Notice to Owner in accordance with Article 31. All letters of credit to be returned by Owner under this Contract shall be returned on the date required to be returned or, if such date is not a Business Day, on the immediately succeeding Business Day, to Contractor or the Eligible Issuer for cancellation as Contractor may direct.

#### 7.5. Disputes

Failure by Owner to pay any amount subject to a good faith dispute until resolution of such dispute in accordance with this Contract shall neither in any respect alleviate, diminish, modify nor excuse the performance of Contractor's obligations to perform hereunder. Contractor's acceptance of any payment shall not be deemed to constitute a waiver of amounts that are then in dispute. Contractor and Owner shall use their reasonable efforts to resolve all disputed amounts reasonably expeditiously and in accordance with the provisions of Section 33. No payment made hereunder shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Contractor of any of its obligations hereunder.

#### 7.6. Contract Interest Rate

Overdue payment obligations of the Owner and the Contractor hereunder shall bear interest from the date due until the date paid at a rate that is set forth in the Prompt Payment Act. For the

avoidance of doubt, the obligation to pay interest shall apply to both Parties equally, including payments due to Owner from Contractor.

#### 7.7. Warranty Bond

Upon Final Completion of the Project, and in order to secure, in part, Contractor's performance and warranty obligations pursuant to Article 18, Contractor must deliver to Owner a Warranty Bond for the benefit of Owner in an initial amount equal to ten percent (10%) of the Contract Price ("Warranty Bond"). Contractor shall obtain and maintain the Warranty Bond at its sole cost and expense. The Warranty Bond shall be in the form set forth in Exhibit M.

7.7.1. Term of Warranty Bond. The Warranty Bond must be maintained in full force and effect at all times until one hundred eighty (180) days after the expiration of the defect warranty period, subject to the adjustments provided for herein. At the conclusion of the initial Warranty Period, the Warranty Bond will be reduced to an amount equal to actual and projected costs of unremedied defects and warranty work, and an amount equal to the value of any re-performance, repair, correction, or replacement of any Work.

7.7.2. Draw on Warranty Bond. Owner may draw upon the Warranty Bond pursuant to this Section 7.7 in the following situations:

(a) If the Contractor fails to perform any obligations pursuant to Section 18.7 or 18.8, then Owner shall be entitled to draw upon the Warranty Bond for the amount due by Contractor.

(b) If Contractor fails to deliver to Owner an extended, or replacement Warranty Bond if required by this Contract not less than thirty (30) Days prior to the expiration of any then current Warranty Bond, then Owner shall be entitled to draw upon the Warranty Bond for the full amount.

In addition to any other remedy available to it, Owner may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this Contract, including any damages due to Owner and any amount for which Owner is entitled to indemnification under this Contract. Owner 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 Owner and from all such forms, in any sequence, as Owner may select.

7.7.3. Release of Warranty Bond. Owner shall have no obligation to release the Warranty Bond until the end of the Warranty Period. Upon the end of the Warranty Period, Owner may draw upon the Warranty Bond for the value of any unperformed obligations of Contractor under Section 18.7 or 18.8, and shall return the Warranty Bond to Contractor if it has not been fully drawn down no later than fifteen (15) Business Days following the end of the Warranty Period.

## 8. COMMENCEMENT AND SCHEDULING OF THE WORK

### 8.1. Notice to Proceed

8.1.1. Commencement and Notice to Proceed. Owner shall cooperate with Contractor to provide as much advance notice as reasonably possible to Contractor, and shall endeavor to provide no less than thirty (30) days' notice of the date it intends to issue the Notice to Proceed. The Business Day after Owner provides Contractor with a Notice to Proceed shall be the "Notice to Proceed Date". On the Notice to Proceed Date, Contractor shall commence or if applicable, continue, with the performance of the Work (including any remaining Preliminary Work) in accordance with the Project Schedule and shall thereafter diligently pursue the Work.

8.1.2. Preliminary Work to Proceed. Owner and Contractor shall execute Limited Notice to Proceed 1 in the form of Exhibit Q simultaneously with the execution of this Contract. Thereafter, Owner may issue one or more additional Limited Notices to Proceed. Other than as expressly set forth in any such Limited Notice to Proceed, Contractor shall not be obligated to commence any Work prior to the issuance of a Notice to Proceed by Owner. Any Work performed by or on behalf of Contractor under a Limited Notice to Proceed ("Preliminary Work") shall comply with the terms of this Contract to the extent not modified by the express terms of such Limited Notice to Proceed. Contractor and Owner agree that a Limited Notice to Proceed, when issued, is hereby assumed by and incorporated into this Contract and (a) the Preliminary Work performed thereunder shall be deemed to be in part satisfaction of Contractor's obligations hereunder, (b) all amounts paid to Contractor in accordance with a Limited Notice to Proceed shall be credited towards the Contract Price hereunder, and (c) the terms of this Contract shall apply to the Preliminary Work performed under a Limited Notice to Proceed. Other than as expressly set forth in this Contract or otherwise agreed to between the Parties in writing, Contractor shall not commence any Work prior to the issuance of a Notice to Proceed by Owner.

8.1.3. Right to Terminate. If the Notice to Proceed has not been issued by August 1, 2024 (or such other date as may be agreed in writing by the Parties), Contractor and Owner shall each have the right to terminate this Contract upon Notice to the other Party (which termination right shall terminate upon the issuance of the Notice to Proceed). If this Contract is terminated pursuant to this Section 8.1.3 or Section 21.1, then neither Party shall have any further rights or obligations hereunder (other than such rights and obligations set forth in the aforesaid sections of this Contract or that by the express terms of this Contract survive the expiration or earlier termination of this Contract, including the obligation of Owner to pay Contractor for the Preliminary Work, if any, performed prior to termination of this Contract and any cancellation or other termination costs agreed in a Limited Notice to Proceed, if any), and Contractor shall not be entitled to any compensation for Work performed by, or costs incurred by, Contractor.

### 8.2. Reserved

### 8.3. Prosecution of Work

Contractor shall prosecute the Work in accordance with the Project Schedule.

#### 8.4. Project Schedule

8.4.1. Project Schedule Updates. The Project Schedule is as set forth in Exhibit O. Until Final Completion, Contractor shall update its Project Schedule to reflect the current status of the Work; provided that, in no event shall Contractor's update of the Project Schedule reflect a modification of the dates for completion of any Critical Path Item without Owner's prior written consent. At a minimum, the updates shall be performed and provided to Owner (in digital and hard-copy form) on a monthly basis as part of the Monthly Progress Report. Contractor shall advise Owner of any proposed Project Schedule changes of more than fifteen (15) days and the reasons therefor. Contractor shall employ a project management system satisfactory to Owner that is capable of providing schedule monitoring and analysis which shall include a comparison of the Project Schedule with the actual progress for each time period with all variances noted and shall provide such analysis and Project Schedule to Owner in a native file format, capable of manipulation by Owner, on a monthly basis. Schedule analysis shall include a determination of the impact of such variance, if material, on the Project Schedule and any action necessary to correct the variance. Utilizing the critical path method, Contractor shall continually be aware of factors that are delaying or that could delay completion of Critical Path Items by the applicable date on the Project Schedule, and Contractor shall take reasonable remedial actions within its control to eliminate or minimize schedule delays including, without limitation, overtime for the employees of Contractor and Subcontractors and the assignment of additional personnel and/or other resources.

8.4.2. Schedule Recovery Plan. If Owner reasonably believes Contractor cannot complete a Critical Path Item by the scheduled completion date set forth in Exhibit O as evidenced in the Project Schedule, for any reason that is not an Excusable Condition, Owner may notify Contractor in writing, and Contractor shall, within five (5) Business Days of receipt of Owner's notice, provide to Owner a written Schedule Recovery Plan as necessary to minimize delay of the Project Schedule. Within five (5) Business Days after Owner's receipt of such Schedule Recovery Plan, Owner shall deliver written comments to the Schedule Recovery Plan to Contractor. Contractor shall then resubmit a revised Schedule Recovery Plan after taking into consideration such comments as shall have been provided by Owner, as the case may be, within three (3) additional Business Days. Upon acceptance of the Schedule Recovery Plan by Owner, Contractor shall promptly proceed with implementing the Schedule Recovery Plan and continue to diligently pursue implementation of the Schedule Recovery Plan thereafter. Approval by Owner of such Schedule Recovery Plan shall not (a) be deemed in any way to have relieved Contractor of its obligations under this Contract relating to the failure to perform the Work in accordance with the Project Schedule, (b) be a basis for an increase in the Contract Price or (c) limit the rights of Owner under Section 16. Further, Contractor acknowledges that the implementation of any such Schedule Recovery Plan may result in material additional costs and expenditures for Contractor (including by way of overtime, additional crews and/or additional shifts). Contractor agrees that it shall not be entitled to a Change in Work or any other compensation or increase in the Contract Price or any adjustment to the Project Schedule in connection with the implementation of any such Schedule Recovery Plan.

#### 8.5. Remedial Plan

Contractor shall, within five (5) Business Days after Contractor becomes aware of actual or potential delays in the performance, progress, or completion of the Work (other than by reason

of Force Majeure or Excusable Condition) that would jeopardize the achievement of a Critical Path Item in accordance with the Project Schedule, submit for approval by Owner, a Remedial Plan. Within five (5) Business Days after receipt of the Remedial Plan, Owner shall deliver written approval or disapproval of the Remedial Plan to Contractor, the approval thereof not to be unreasonably withheld. If Owner disapproves all or any portion of the Remedial Plan, Owner shall approve those portions of the Remedial Plan that are acceptable and provide comments to those portions of the Remedial Plan that have been disapproved. Contractor shall then revise the Remedial Plan to address such comments as shall have been provided by Owner and resubmit the revised Remedial Plan for Owner's and the Engineer's further comments within five (5) additional days. Upon approval by Owner, Contractor shall promptly proceed with completing the Work in the manner specified by the Remedial Plan and with any additional Work as may be required under the Remedial Plan. Contractor shall be responsible for all costs and expenses of implementing the Remedial Plan without any increase to the Contract Price. Approval by Owner of a Remedial Plan shall not be deemed in any way to relieve Contractor of its obligations under this Contract relating to the failure to achieve Substantial Completion by the Substantial Completion Guaranteed Date, shall not be a basis for an increase in the Contract Price, and shall not limit the rights of Owner under Section 16.1 or 16.2.

#### 8.6. Progress Reporting

Following the Notice to Proceed, Contractor shall prepare true and correct Monthly Progress Reports satisfying the requirements of Exhibit L and submit them to Owner within ten (10) days after the end of each calendar month through and until completion of the calendar month immediately following the Final Completion Date. In addition, Contractor shall keep, and furnish to Owner at Owner's request, such information as Owner or the Engineer may reasonably require. Contractor also shall keep daily logs at the Site and shall provide to Owner weekly reports of actual construction progress as compared with scheduled progress.

#### 8.7. Meetings

Contractor shall schedule and conduct monthly meetings with Owner and (at Owner's option) the Engineer in accordance with the requirements of Exhibit A, before mobilization, at Owner's office or such other location as the Parties may agree, and after mobilization, at the Site, or such other location as the Parties may agree, for the purpose of reviewing the progress of the Work and adherence to the Project Schedule. The frequency of such meetings shall be established and modified, from time to time, by mutual agreement of the Parties; provided, however, such meetings shall occur no less frequently than monthly; provided, further, if Owner reasonably believes that Contractor will complete fewer than all of the Critical Path Items within ten (10) days after the date scheduled in the Project Schedule for such Critical Path Items to be achieved, then Owner shall be entitled to require that meetings occur as frequently as weekly. If Owner so requests, Contractor shall direct a Representative of any Subcontractor to attend such meeting. After commencement of the on-Site Work, Owner, Contractor, and any Subcontractor then performing Work on the Site shall each designate a Representative to attend weekly meetings to review and discuss the progress of the Work. Contractor's Representative at such weekly meeting shall provide a rolling two (2)-week look ahead schedule outlining the Work to be performed at the Site during the three calendar weeks following such meeting.

## 8.8. Acceleration of Work

8.8.1. Owner Directive. In accordance with the Change in Work procedure set forth in Section 17.3.1, Owner shall have the right to direct that the Work be accelerated by means of overtime, additional crews or additional shifts or resequencing of the Work notwithstanding that the Work may be progressing with or without delay in accordance with the established Project Schedule. In such an event, Contractor shall use commercially reasonable efforts to accelerate the Work as directed, and the Contract Price shall be increased by the sum of (a) the actual, demonstrable and reasonable Direct Costs (without profit, overhead or contingency) expected to be incurred by Contractor because of such acceleration, plus (b) a ten percent (10%) allowance for profit, overhead and contingency, minus any net savings expected to be incurred because of such acceleration which shall be documented and presented to Owner prior to any increase in the Contract Price. Contractor expressly waives any other compensation therefor unless otherwise agreed by Owner in writing in advance of performing the accelerated Work.

8.8.2. General Provisions. Owner shall have the right reasonably to audit Contractor's calculated net savings incurred due to Owner's acceleration Which shall be documented and presented to Owner prior to any increase in the Contract Price. In the event of any acceleration requested pursuant to this Section, Contractor shall promptly provide a plan for such acceleration, including Contractor's recommendations for the most effective and economical acceleration. Any acceleration of the Work not specifically requested by Owner in writing shall be at Contractor's sole cost and expense.

## 9. **FORCE MAJEURE AND EXCUSABLE CONDITION**

### 9.1. Force Majeure

No delay, failure or omission to carry out or observe any of the terms, provisions, or conditions of this Contract shall give rise to any claim by either Party against any other Party hereto, or be deemed to be a breach or default of this Contract if such delay, failure or omission shall be caused by or arise out of an event of Force Majeure. No obligations of either Party that arose before the occurrence of an event of Force Majeure causing the suspension of performance shall be excused as a result of such occurrence. If Owner or Contractor is prevented, wholly or partially, from performing its obligations under this Contract by an event of Force Majeure or, a Change in Law, said Party will be excused to the extent such performance is prevented by the event of Force Majeure or Change in Law (for which Contractor may be entitled to claim an Excusable Condition as set forth in this Contract). The obligation to pay money in a timely manner for obligations, however, shall not be subject to the Force Majeure provisions.

### 9.2. Notice

If either Party's ability to perform its obligations under this Contract is affected by an event of Force Majeure, or if Owner's ability to perform its obligations under this Contract is affected by a Change in Law, or if Contractor's ability to perform its obligations under this Contract is affected by an Excusable Condition, such Party (in the case of Force Majeure) or the Contractor (in the case of an Excusable Condition), or the Owner ( in the case of Change in Law) shall, promptly, but in all cases within ten (10) Business Days after such Party becomes aware of such delay give Notice (an "Excusable Condition Notice") to the other Party of the occurrence of such event. For the avoidance of doubt, only Contractor may issue an Excusable Condition Notice in



respect of or arising out of an Excusable Condition (and Owner, with respect to a Force Majeure or Change in Law for which Contractor may be entitled to claim an Excusable Condition as set forth in this Contract). Within ten (10) days after delivery of such Notice, the Party claiming an event of Force Majeure, Change in Law or Excusable Condition shall provide reasonable evidence to the extent practicable to the other Party of the nature of the event, its anticipated duration and effect upon the performance of such Party's obligations, and any action being taken to avoid or minimize its effect. The Party claiming an event of Force Majeure, Change in Law or Excusable Condition shall have a continuing obligation to deliver to the other Party additional documentation and/or analysis supporting its claim regarding an event of Force Majeure, Change in Law or Excusable Condition promptly after such information is available to the party claiming such event of Force Majeure, Change in Law or Excusable Condition. The burden of proof shall be on the Party claiming to be affected pursuant to this Section 9.2. Any delay in providing a Excusable Condition Notice or in providing supporting documentation as and when required pursuant to this Section 9.2 (other than any such delay which itself arises out of Force Majeure or an Excusable Condition) shall be deemed a waiver and release of the delayed Party's right to claim the occurrence as an event of Force Majeure or Excusable Condition, but only to the extent that such failure or delay actually prejudices the non-claiming Party. Each of the Parties acknowledges that a delay in issuing its claim may prejudice the non-claiming Party's ability to reasonably determine whether the cost or schedule extension claimed were actually and demonstrably incurred as a result of such Force Majeure, Change in Law and/or Excusable Condition. Within ten (10) days after an event of Force Majeure, Change in Law or Excusable Condition has ended, the Party that was affected by such event of Force Majeure, Change in Law or Contractor (if the Contractor was affected by an Excusable Condition), shall give Notice to the other Party of: (i) the length of time such event of Force Majeure, Change in Law or Excusable Condition was in effect; (ii) in the case of Contractor, the effect Contractor claims the Excusable Condition had on the Contract Price; and (iii) the effect such Party claims such event of Force Majeure, Change in Law or Excusable Condition had on the Guaranteed Dates.

### 9.3. Force Majeure: Scope of Suspension; Duty to Mitigate

The suspension of performance due to an event of Force Majeure shall be of no greater scope and no longer duration than is required by such event. The excused Party shall use its reasonable efforts:

- (a) to mitigate the duration of, and costs arising from, any suspension or delay in the performance of its obligations under this Contract;
- (b) to continue to perform its obligations under this Contract; and
- (c) to remedy its inability to perform.

When the affected Party is able to resume performance of its obligation under this Contract, such affected Party shall give the other Party Notice to that effect.

### 9.4. Contractor's Remedies

#### 9.4.1. Force Majeure

(a) If an event of Force Majeure occurs that is claimed by Contractor and affects Contractor's ability to perform under this Contract and causes an Actual Delay, then the Guaranteed Dates and other relevant dates hereunder (including the Project Schedule for performance of Critical Path Items) shall be extended by the period of the Actual Delay, and the Project Schedule shall be correspondingly adjusted by the period of the Actual Delay, provided Contractor is working diligently to mitigate the impact of the event of Force Majeure and is making reasonable efforts to continue to perform its obligations under this Contract.

(b) If an event of Force Majeure occurs that increases the Direct Costs of Contractor to perform this Contract by more than one hundred thousand Dollars (\$100,000), Contractor shall be entitled to Contract Price relief above such amount equal to the Direct Costs actually, demonstrably and reasonably incurred by Contractor because of such Force Majeure event; provided, that Contractor shall only be liable for up to a maximum of four hundred thousand Dollars (\$400,000) in the aggregate for all Force Majeure events validly claimed pursuant to this Section 9.4.1 (notwithstanding the \$100,000 threshold above), above which Contractor shall be entitled to Contract Price relief above such amount equal to the Direct Costs actually, demonstrably and reasonably incurred by Contractor because of such aggregate of Force Majeure events.

9.4.2. Excusable Condition. If an Excusable Condition, other than an event of Force Majeure, occurs that affects Contractor's ability to perform under this Contract and causes an Actual Delay to which Contractor is entitled to relief pursuant to this Article 9 and/or impacts the Contract Price, then:

(a) the Guaranteed Dates and the Project Schedule (including dates on the Project Schedule for performance of Critical Path Items) shall be extended by the period of Actual Delay; and

(b) for an Owner Caused Delay and failure of Owner to issue NTP by the date set forth in the definition of Excusable Condition, the Contract Price shall be increased by an amount equal to the sum of: (i) the Direct Costs actually, demonstrably and reasonably incurred by Contractor because of such Excusable Condition plus (ii) a ten percent (10%) allowance for profit, overhead and contingency, minus any net savings incurred because of such Excusable Condition which shall be documented and presented to Owner prior to any increase in the Contract Price; and (b) for all other Excusable Conditions other than an event of Force Majeure, the Contract Price shall be increased by an amount equal to the sum of: (A) the Direct Costs actually, demonstrably and reasonably incurred by Contractor because of such Excusable Condition plus (B) a five percent (5%) allowance for profit, overhead and contingency, minus any net savings incurred because of such Excusable Condition; provided, that if the aggregate amount of Margin paid by Owner pursuant to this subsection (B) equals five hundred thousand Dollars (\$500,000), the Margin shall not apply to any further Contract Price increases with respect to subsection (b) or Section 22.3 and Owner shall only be liable for the Direct Costs actually, demonstrably and reasonably incurred by Contractor because of such Excusable Condition.

(c) Contractor expressly waives any other compensation as a result of such Excusable Condition.

## 10. SUBCONTRACTORS AND VENDORS

### 10.1. Use of Certain Subcontractors

Attached hereto as Exhibit G is a list of Owner approved Major Subcontractors. Contractor shall be required to source the noted services and equipment for the Project from this list. Should Contractor propose to add a Major Subcontractor to Exhibit G during the term of this Contract, Contractor shall provide Notice to Owner of such proposed Major Subcontractor and the specific Work that such Major Subcontractor will provide. Within five (5) Business Days of receipt of such Notice, Owner shall notify Contractor whether it approves (such approval not to be unreasonably withheld) or rejects such proposed Major Subcontractor. If Owner approves such proposed Major Subcontractor, the proposed Major Subcontractor shall be added to Exhibit G pursuant to a Change in Work. Contractor shall execute appropriate New Mexico Nontaxable Transaction Certificates, or similar certificates from other states, to Subcontractors, where applicable, to minimize such gross receipts, compensating, sales, and other similar taxes.

### 10.2. No Approvals; Contractor Responsible for Work

The review by Owner of any Subcontractor under this Article 10 shall not: (a) constitute any approval of the Work undertaken by any such Person; (b) cause Owner to have any responsibility for the actions, the Work, or payment of such Person or create an employer-employee relationship with any such Subcontractor; or (c) in any way relieve Contractor of its responsibilities and obligations under this Contract.

### 10.3. Information; Access

Contractor shall furnish such information relative to its Subcontractors as Owner may reasonably request in connection with its approval right in Section 10.1.

### 10.4. Terms in Subcontracts

Contractor shall cause all Work performed under any Subcontract to be performed in accordance with the applicable requirements of this Contract. No Subcontract or purchase order shall bind or purport to bind Owner.

### 10.5. Cooperation With Other Contractors

Contractor shall cooperate and cause its Subcontractors to cooperate with Owner and any Owner's Separate Contractors who may be working at or near the Site in order to assure that neither Contractor nor any of its Subcontractors unreasonably hinders or increases, or makes more difficult than necessary, the work being performed by Owner or Owner's Separate Contractors, provided, however, the foregoing shall not limit Contractor's rights to claim relief pursuant to Article 9. Owner shall cooperate and cause Owner's Separate Contractors to cooperate with Contractor and the Subcontractors who may be working at or near the Site in order to assure that neither Owner nor any of Owner's Separate Contractors unreasonably hinders or increases, or makes more difficult than necessary, the Work being performed by Contractor and the Subcontractors. Without limiting the foregoing, Contractor acknowledges that Owner's Separate Contractors will be

constructing, installing and completing the Electrical Interconnection Facilities at the Site while Contractor is performing the Work, and both Parties covenant to cooperate in connection therewith and to provide reasonable access to the Site, to such Subcontractors and Owner's Separate Contractors.

10.6. Prompt Payment by Contractor of Subcontractors and Suppliers

Contractor and all Subcontractors shall make prompt payment, within seven (7) days after receipt of payment from PNM or Contractor, to their respective Subcontractors and suppliers for amounts owed for material or services performed for the Work, in accordance with the Prompt Payment Act. If Contractor or any Subcontractor fails to make such prompt payment, then Contractor and such Subcontractor shall pay interest on such amounts owed at the rate and for the time period specified from time-to-time in the Prompt Payment Act.

**11. LABOR RELATIONS**

11.1. General Management of Employees

Subject to Section 11.5, and notwithstanding the provisions of Section 11.2, Contractor shall preserve its rights to exercise, and shall exercise, its management rights in performing the Work.

11.2. Labor Disputes

Contractor shall use reasonable efforts to adopt policies and practices designed to avoid work stoppages, slowdowns, disputes and strikes, and to minimize the risk of labor-related delays or disruption of the progress of the Work. Contractor shall advise Owner promptly, in writing, of any actual or threatened labor dispute of which Contractor has knowledge that might materially affect the performance of the Work by Contractor or by any of its Subcontractors. Notwithstanding the foregoing, the settlement of strikes, walkouts, lockouts or other labor disputes shall be at the discretion of the Party having the difficulty.

11.3. Personnel Documents

Contractor shall ensure that all its personnel and personnel of any Subcontractors performing the Work are, and at all times shall be, in possession of all such documents (including, without limitation, visas, driver's licenses and work permits) as may be required by any and all Applicable Laws.

11.4. Key Personnel

Contractor shall provide staff to supervise and coordinate the Work of Contractor and Subcontractors on the Site. To the extent such Key Personnel are employed by Contractor, Contractor shall not modify such roles of the Key Personnel described in Exhibit J. Any replacement of the Key Personnel of Contractor shall be subject to the prior written consent of Owner, which consent shall not be unreasonably withheld. If Owner fails to respond to a request for consent within five (5) Business Days after Contractor's request, Owner shall be deemed to have consented to the proposed individual.

11.5. Replacement at Owner's Request; Site Access

Promptly (and no later than one (1) Business Day) after request by Owner, the Parties shall discuss Owner's request to deny access to or remove from the Site and performance of the Work any natural person. Contractor shall deny access to or remove from the Site and performance of the Work as soon as reasonably practicable, any such natural person (including any of the Key Personnel) following such discussion if Owner still desires such removal. To the extent Contractor has actual knowledge thereof, Contractor may not bring former employees of Owner (or any of its Affiliates) onto the Site in any capacity without prior written approval from Owner (such approval not to be unreasonably withheld, conditioned or delayed).

11.6. Project Manager

Contractor's Project Manager designated on Exhibit J has full responsibility for the prosecution of the Work and shall act as a single point of contact in all matters on behalf of Contractor (but who shall not be authorized to execute or make any amendments to, or provide waivers under, this Contract, except that such Project Manager shall be authorized to execute Change in Work Forms under Article 17).

11.7. Labor Relations

Contractor shall be responsible for all labor relations matters relating to the Work. Owner shall use all commercially reasonable efforts to support Contractor in the negotiation, execution, and enforcement of any project labor agreement to be entered into by Contractor in relation to the Project, if applicable, and shall not interfere or impede Contractor's ability to manage its relationship with the union labor under the project labor agreement for this Project.

11.8. NMPUA Apprentices

Contractor shall comply with the New Mexico Apprenticeship Requirements. During the construction phase of the Project (commencing with Notice to Proceed and ending upon Substantial Completion), Contractor and its Subcontractors shall employ, in the aggregate, a number of apprentices such that (a) the total number of apprentices employed by Contractor and its Subcontractors in the construction of the facility during such construction phase is no less than (b) seventeen and one-half percent (17.5%) of the total number of laborers and mechanics employed by Contractor and its Subcontractors in the construction of the facility during such construction phase, subject to the New Mexico Apprenticeship Requirements.

## 11.9. IRA Labor Requirements

11.9.1 Labor Requirements Compliance. Contractor shall comply with, and shall cause its Subcontractors to comply with, the Labor Requirements with respect to all applicable labor employed or utilized by Contractor or its Subcontractors (as applicable) in the performance of all construction Work under this Contract. In no event shall Contractor have responsibility or risk for any noncompliance with the Labor Requirements by any Excluded Labor and, for the purpose of determining Contractor's compliance with the Labor Requirements, any threshold, ratio, percentage, rate, or other calculation shall be determined solely on the basis of labor employed or utilized by Contractor and its Subcontractors and shall specifically exclude Excluded Labor.

11.9.2 Assumptions and Change in Law. The Parties acknowledge that the Contract Price is based on (i) the written interpretation of and guidance with respect to the Labor Requirements in effect as of the Effective Date, and (ii) the assumptions set forth in Exhibit S-1 with respect to the locality, construction type, applicable labor classifications and work to be performed by such classifications, prevailing wage and fringe benefits rates, apprentice wage rates, and state apprentice-to-journey worker ratio applicable to the Project. Contractor shall be entitled to a Change in Work for an adjustment to the Contract Price, Project Schedule, and/or other applicable provisions to the extent that any of the foregoing interpretation, guidance, or assumptions deviate from those circumstances actually required in order to comply with the Labor Requirements. Within ninety (90) days after the Effective Date, Owner and Contractor shall collaborate to prepare a conformance request to submit to the U.S. Department of Labor for the purpose of obtaining an updated determination of the applicable labor classifications, Work to be performed by such classifications, and prevailing wage and fringe benefits rates for the Project. Owner shall be responsible for submitting such conformance request to U.S. Department of Labor and Contractor shall provide reasonable support in respect of such request. Contractor shall be entitled to a Change in Work to the extent any conformance request results in a determination which deviates from the assumptions set forth in Exhibit S-1.

11.9.3 Quarterly Reporting. For each calendar quarter during the period commencing with the first calendar quarter in which construction Work occurs at the Site and continuing until the calendar quarter in which the earlier of (i) the Final Completion Date occurs, or (ii) termination of this Contract as permitted herein occurs, Contractor shall provide Owner with the Labor Compliance Quarterly Report within thirty (30) days after the end of each applicable calendar quarter. Notwithstanding anything to the contrary herein, to the extent that the reporting obligations under this Section 11.9 require the disclosure of personal identifiable information of any laborers, mechanics, or other personnel (*i.e.*, name, address, social security number or other identifying number or code, telephone number, email address, etc.), then Contractor and/or the applicable Subcontractors may take appropriate protective measures with respect to such information, including, without limitation, redacting any such information or utilizing alternative identification codes or numbers in lieu of such information.

11.9.4 Labor Compliance Final Report. Within thirty (30) days after Owner's execution of the Notice of Substantial Completion, Contractor shall prepare and deliver to Owner a report (the "Labor Compliance Final Report") containing the following information:

(a) As of the Substantial Completion Date, a breakdown of (i) the wage rates paid by Contractor and its applicable Subcontractors to any laborers and mechanics employed by

them in performing construction work at the Site, and (ii) the applicable prevailing wage rate required by the Prevailing Wage Requirements;

(b) If the Good Faith Efforts Exception does not apply to the Project, as of the Substantial Completion Date, a breakdown of (i) the total Labor Hours worked with respect to the Project, (ii) the total Labor Hours worked by Qualified Apprentices with respect to the Project, and (iii) the total number of laborers, mechanics, and Qualified Apprentices employed by Contractor and its Subcontractors in performing construction work with respect to the Project; and

(c) In the event of any noncompliance on the part of Contractor or its Subcontractors with respect to the Labor Requirements, a reasonably detailed statement of the particulars of such noncompliance event.

Within thirty (30) days following the receipt of the Labor Compliance Final Report, Owner shall, in good faith, review the Labor Compliance Final Report and submit to Contractor in writing either (x) Owner's agreement to the Labor Requirements compliance matters as set forth in the Labor Compliance Final Report, or (y) Owner's objections or proposed changes to the Labor Compliance Final Report. Unless Owner objects or proposes changes to the Labor Compliance Final Report in writing to Contractor prior to the expiration of such thirty (30)-day period, the Labor Compliance Final Report prepared and delivered by Contractor to Owner shall be deemed agreed upon and Owner shall be deemed to have waived any claim to dispute the Labor Compliance Final Report or Contractor's compliance with the Labor Requirements. If Owner timely objects or proposes changes to the Labor Compliance Final Report in writing to Contractor, then the Parties shall negotiate in good faith and attempt to resolve any dispute with respect to the objections or proposed changes from Owner within thirty (30) days after Contractor's receipt of Owner's objections or proposed changes to the Labor Compliance Final Report. In the event that the Parties are unable to resolve any such dispute during the additional thirty (30)-day period, each Party shall be entitled to the dispute resolution provisions of Article 33 with respect to such dispute.

11.9.5 Noncompliance Remedy. The Labor Compliance Final Report, as agreed by the Parties or finally determined by the dispute resolution procedure under Article 33, shall be final and conclusive for purposes of determining Contractor's compliance with the Labor Requirements under this Section 11.9. To the extent that the Labor Compliance Final Report identifies any noncompliance on the part of Contractor or its Subcontractors with respect to the Labor Requirements, Contractor shall make the following payments (collectively, the "Labor Compliance Payments"):

(a) For each laborer or mechanic who was paid wages at a rate below the rate required by the Prevailing Wage Requirements, Contractor shall pay (or cause the applicable Subcontractor to pay) to such laborer or mechanic an amount equal to the total amount set forth in Section 45(b)(7)(B)(i)(I) of the Code;

(b) For each laborer or mechanic who was paid wages at a rate below the rate required by the Prevailing Wage Requirements, Contractor shall pay to Owner an amount equal to the total amount set forth in Section 45(b)(7)(B)(i)(II) of the Code; and

(c) For each Labor Hour for which the Apprenticeship Requirements were not satisfied, Contractor shall pay to Owner an amount equal to the total amount set forth in Section 45(b)(8)(D)(i)(II) of the Code.

Contractor shall pay the Labor Compliance Payments within thirty (30) days after final agreement or resolution with respect to the Labor Compliance Final Report under this Section 11.9. The payment of the Labor Compliance Payments by Contractor shall be Owner's sole and exclusive remedy for any noncompliance with the Labor Requirements under this Section 11.9.

## **12. INSPECTION; EFFECT OF REVIEW AND COMMENT**

### **12.1. Right to Reject Work**

Regardless of whether payment has been made therefor, Owner shall have the right to reject, at any time prior to Substantial Completion, any portion of the Work completed before Substantial Completion that contains any Defect. Upon such rejection, Contractor shall promptly remedy, at its sole cost and expense, any Defect that is identified by Owner as giving rise to such rejection; provided, however, that if such Defect is a Non-Critical Deficiency, it may be included on the Punchlist and remedied by Contractor in accordance with Section 15.1. If such Defect is something for which Contractor or any of its Subcontractors or Vendors is not responsible, then the work involved in the remedy of such Defect will be considered a Change in Work resulting from an Owner Directive and will be subject to the terms of Section 17.4.

### **12.2. Inspection**

Contractor understands that Owner and any other person authorized in writing by Owner and their respective Representatives and consultants (including the Engineer) have the right to observe and inspect the Work. Upon reasonable Notice to Contractor by Owner, Contractor shall allow Owner and its Representatives (including the Engineer) reasonable access to the Work (including Equipment and Materials under fabrication) and the Project. Contractor shall use commercially reasonable efforts to arrange reasonable access at Owner's expense, for Owner and its Representatives (including the Engineer) to inspect Equipment and Materials at the location of fabrication and any factory or other off-Site tests conducted with respect to such Equipment and Materials. Owner also shall be entitled to inspect, review, and (as applicable) approve the Contractor Deliverables. Contractor shall comply with all inspection and testing requirements. In addition to the foregoing, upon prior written notice, Contractor agrees to permit any Governmental Authority reasonable access to the Site to inspect the Project if such inspection is reasonably required under the applicable tariff or Applicable Law. Any party arriving on Site to observe and inspect the Work shall abide by all of Contractor's safety programs and procedures, and in any case, such inspections shall not delay or interfere with the performance of the Work. In no case, however, shall Owner be responsible for any delay or interference in Contractor performing the Work due to (i) an inspection conducted by Governmental Authorities or (ii) an inspection conducted by or on behalf of Owner where Owner has a reasonable basis to believe a safety violation has or may occur with respect to the Work or the Project.



### 12.3. Drawings and Specification Table

Within thirty (30) days after the date Limited Notice to Proceed is issued by Owner to Contractor, Contractor shall provide a Notice to Owner attaching the Drawings and Specification Table identifying all Contractor Deliverables to be delivered to Owner for review, comment, and if applicable, approval, in accordance with Table 5-1 in Section 5.10 – Submittals of Exhibit A, the deadline for delivery thereof, and Owner's time period for review and comment with respect thereto. Owner shall have the right to promptly review and comment on such Drawings and Specification Table. If Owner provides any comments with respect to the Drawings and Specification Table to Contractor, then Contractor shall incorporate changes into such Drawings and Specification Table addressing such comments, and resubmit the same to Owner. Such incorporation of changes to address Owner's comments shall not be considered a Change in Work. If Owner fails to comment within fifteen (15) days after receipt of such Notice, then Owner shall be deemed to have accepted such Drawings and Specification Table.

### 12.4. Owner Review of Documents

Contractor shall submit to Owner for review soft copies (in normal construction formats) of all Contractor Deliverables, and if requested by Owner, a hard (printed) copy of any Contractor Deliverables, in accordance with the requirements of Exhibit A and the Drawings and Specification Table. Owner shall have the right to make all such materials available to the Engineer. Contractor shall ensure that all such items undergo a comprehensive review and approval process before submission of such items to Owner. After receipt of any Contractor Deliverable, Owner shall have the right, during the time period for Owner's review specified in the Drawings and Specification Table, to describe errors or omissions in the design identified in such Contractor Deliverable. Notwithstanding anything in Article 7 to the contrary, until Owner has completed its review, which in any case shall not exceed the time specified in Exhibit A, Section 5 for such Contractor Deliverable, Contractor shall neither: (a) issue any purchase order based on any Contractor Deliverable; nor (b) release any Contractor Deliverable for use in connection with the Work; nor (c) submit any Contractor's Invoice with respect to any Contractor Deliverable.

### 12.5. Remedy of Flaws

If Owner identifies any errors or omissions in the design with respect to any Contractor Deliverables submitted for review, then Contractor shall incorporate changes into such Contractor Deliverables addressing and remedying the errors and omissions and resubmit the same to Owner, and such incorporation of changes to address Owner's comments shall not be considered a Change in Work, subject in all respect to Contractor's rights pursuant to Article 33.

### 12.6. Limitation on Owner's Obligations

Inspection, review, approval or comment by Owner with respect to any Subcontract or any Drawings and Specifications, samples, and other documents, or any other work or services performed by Contractor or any Subcontractor or Vendor, is solely at the discretion of Owner and shall not in any way affect or reduce Contractor's obligations to complete the Work in accordance with the provisions of this Contract nor be deemed to be a warranty, approval or acceptance by Owner with respect thereto.

### 12.7. Inspection by Contractor

Contractor shall perform all inspection, expediting, quality surveillance, and other like services required for performance of the Work, including inspecting all Equipment and Materials that comprise the Project or that are to be used in the performance of the Work.

## 13. SITE CONDITIONS

### 13.1. Site Conditions

Contractor has inspected and is familiar with the Site Conditions. Solely for the purposes of Contractor's performance of the Work, and, based on Contractor's investigations, Contractor has correlated its findings and observations regarding the Site Conditions with the requirements of this Contract and, except as set forth in Section 13.2, the Site constitutes an acceptable and suitable site for the construction and operation of the Project in accordance with the requirements of this Contract. Contractor will provide immediate notice to Owner of the existence of any conditions at the Site that might create a safety hazard or pose a risk of harm to Owner or any of Owner's Separate Contractors' operations. Contractor subsequently will cause the Work to be performed in a manner that accounts for such conditions and as necessary to assure the safety of all persons at or near the Site and to prevent damage to property and bodily injury.

### 13.2. Unforeseen Site Conditions

Contractor specifically acknowledges and accepts the Site Conditions other than the Unforeseen Site Conditions or Site Conditions materially adversely impacted as a result of another Excusable Condition. The Substantial Completion Guaranteed Date shall not be extended, the Contract Price shall not be modified, and Contractor shall not be entitled to request or be granted any Change in Work, as a result of any Site Conditions other than with respect to unforeseen conditions or Site Conditions materially adversely impacted as a result of another Excusable Condition. "Unforeseen Site Conditions" means the presence or the discovery of subsurface or latent physical conditions on the Site (i) differing materially from those indicated in the Owner-Supplied Information and the Civil Works Assumptions as of the Effective Date or (ii) that reasonably could not have been known by Contractor (recognizing the Civil Works Assumptions set forth in Section A—11 of Exhibit A), which may include geotechnical and soil conditions, as well as the presence of archaeological, religious, or historical remains or artifacts (including any stone implements, dwelling sites, animal bones, human bones, fossils, or any other items of cultural significance), munitions, unmapped underground piping and conduit or underground water or springs, the presence of Hazardous Material not brought onto the Site by Contractor or any Subcontractor, and any flora or fauna that is endangered, threatened, or protected under any Applicable Law, and that in each case materially impact the Work.

### 13.3. Signs

Contractor shall not place or maintain, or permit to be placed or maintained, any sign, bill, or poster on or about the Site without the prior consent of Owner; provided, however, such approval is not required to place any signs, bills or posters related to Contractor's safety and quality program or required by Applicable Law or related to Contractor's standard work protocols.

#### 13.4. Archeological or Historical Finds

In the event that any relics or items with archeological or historical value or other valuable materials are discovered on the Site by Contractor or any Subcontractor or Vendor, Contractor shall immediately notify Owner and await the decision of Owner before proceeding with any further Work that might adversely impact such relics, items, or materials. Neither Contractor, nor any Subcontractor or Vendor, shall have any property rights to such relics, items, or materials.

#### 13.5. Security

Contractor shall provide security for the Site commencing upon mobilization, as well as any off-Site security reasonably necessary to protect the Work in accordance with Applicable Laws and any other reasonable requirements imposed by Owner set forth in the Statement of Work or any Governmental Authority. The admission of Persons to the Site shall be controlled by Contractor at all times from mobilization through Substantial Completion, and Contractor shall ensure that no Person who is not required for the performance or supervision of the Work shall be admitted. Contractor shall perform the Work in accordance with the approved safety and security assurance program as further described in Section 4.9.

### 14. **PERFORMANCE GUARANTEES AND TESTS.**

#### 14.1. Performance Guarantees and Other Requirements

Contractor shall perform the Work so the Project satisfies the Performance Guarantees and other testing requirements and guarantees set forth in Exhibit I. Subject to Section 16.2, Contractor shall demonstrate that the Project satisfies the Performance Guarantees and other testing requirements and guarantees set forth in Exhibit I prior to Substantial Completion by satisfactorily running and completing the Acceptance Tests as set forth in Exhibit I. Pursuant to the provisions of Section 14.3(b), Contractor shall monitor, observe and collect the data produced during the Acceptance Tests. Except for the costs that Contractor can reasonably demonstrate were the responsibility of Owner under the terms of this Contract, Contractor shall be responsible for all costs and expenses (except the Production Inputs) for any Acceptance Tests conducted.

#### 14.2. Acceptance Test Schedules

Contractor shall agree on Acceptance Test schedules with Owner and the Engineer at least one hundred twenty (120) days in advance of the initiation of any Acceptance Test. When Contractor establishes the final scheduled date(s) for the Acceptance Tests required pursuant to this Contract, it shall give Owner at least ten (10) Business Days' prior Notice thereof. Contractor shall keep the Project Representative continuously apprised of the specified schedule, and changes therein, for the commencement and performance of Acceptance Tests, and shall give the Project Representative at least two (2) Business Days' prior Notice of the re-performance of any Acceptance Test.

#### 14.3. Mechanical Completion; Acceptance Tests

After satisfaction by Contractor or waiver by Owner of the requirements to Mechanical Completion for Project Mechanical Completion.

(a) Contractor shall issue to Owner a Notice of Mechanical Completion stating that Contractor believes it has satisfied the requirements to Mechanical Completion, and a report of the Work completed with sufficient detail to enable Owner and the Engineer to determine whether Mechanical Completion has been achieved. Owner shall execute and acknowledge Contractor's Notice of Mechanical Completion confirming that Mechanical Completion has occurred as soon as possible, and in no event more than ten (10) Business Days after satisfaction in full by Contractor of all of the requirements to Mechanical Completion; provided, however, that the Mechanical Completion Date shall be the date of actual satisfaction or waiver of the requirements for Mechanical Completion, not the date Owner executes and acknowledges Contractor's Notice of Mechanical Completion.

(b) Contractor shall achieve Mechanical Completion for the Project, and start up of the Project, and shall satisfy all of its other obligations under this Contract to ensure that the Project has been completed and that all components have been properly adjusted and tested prior to conducting the Acceptance Tests. Contractor shall conduct the Acceptance Tests for the Project in accordance with the Acceptance Test Procedures and Exhibit I. Contractor shall have overall control over the Project during the performance of the Acceptance Tests and shall direct the operation of the Project during the Acceptance Tests in accordance with the Acceptance Test Procedures and Exhibit I. The Representatives of Owner and the Engineer shall have the right to be present during any Acceptance Tests performed by Contractor under this Article 14.

#### 14.4. Non-Conforming Work/Remedial Plan

14.4.1. At any time during and promptly after completion (whether or not successful) of the Acceptance Tests (or any re-performance of any Acceptance Test or pursuant to any Remedial Plan), Owner shall advise Contractor, and Contractor shall advise Owner, in writing of any Defect that was discovered during an Acceptance Test. Except as provided in Section 14.4.2, if Contractor is notified of or discovers any such Defect, Contractor shall, at Contractor's sole cost and expense, correct such Defect and promptly provide Notice to Owner in writing that such corrective measures have been completed. Any dispute regarding the existence or correction of any such Defect shall be resolved pursuant to Article 33.

14.4.2. If, at any time following the Substantial Completion Guaranteed Date, Contractor's results from the most recent Acceptance Tests shall have failed to satisfy the Minimum Performance Criteria, then Contractor shall (i) submit to Owner a Remedial Plan that is reasonably acceptable to Owner within ten (10) days after the date when Contractor shall have completed its initial Acceptance Tests or the expiration of the applicable grace period under any previously implemented Remedial Plan, and (ii) continuously and diligently pursue completion of the Remedial Plan at Contractor's sole cost. Contractor's delivery of a Remedial Plan shall not relieve Contractor of its obligations to pay Substantial Completion Delay Liquidated Damages under Section 16.1.

#### 14.5. Certificate of Completion of Acceptance Test

Upon successful completion of any Acceptance Test as demonstrated by a test report delivered to Owner by Contractor, Contractor and Owner shall jointly issue a certificate that such test has been successfully completed.

14.6. Revenues and Costs

Any revenues generated by the Project during start-up and commissioning or the initial performance of any Construction Test or Acceptance Test shall be paid to and for the benefit of Owner. If a re-test is required and to the extent the Contractor or any Subcontractor was the cause of such re-test, the actual cost of the retest will be borne by Contractor. The actual cost of the re-test shall include (i) the cost of special instrumentation and equipment (including rental cost) including required calibration of the instrumentation, and (ii) personnel cost of Contractor, Subcontractor and the applicable Vendors, but shall not include the cost of any Production Inputs.

14.7. Post Test Modifications

If:

- (a) an Acceptance Test has been completed;
- (b) a certificate of completion of such Acceptance Test has been issued pursuant to Section 14.5;
- (c) Contractor or any Subcontractor makes any modification to the Project following such Acceptance Test (any such modification, a “Post Test Modification”); and
- (d) Contractor cannot reasonably demonstrate that such modification would not have compromised the outcome of such Acceptance Test if it had been made before the completion of such Acceptance Test;

then the Acceptance Test shall be re-run, as a condition to achieving Substantial Completion, all previous runs of such Acceptance Tests shall be void, and, if Contractor achieved Substantial Completion as a result of said prior Acceptance Tests, then Substantial Completion shall be deemed not to have occurred unless Contractor reasonably demonstrates by analysis or by performing a component test or tests that the Post Test Modification would not have had a material effect on the outcome of the prior Acceptance Test.

## 15. SUBSTANTIAL COMPLETION AND FINAL COMPLETION OF THE PROJECT

### 15.1. Punchlist

15.1.1. At all times during performance of the Work, Contractor shall maintain a list setting forth parts of the Work which remain to be performed in order to confirm that the Work fully complies with the terms of this Contract. Contractor shall promptly provide a copy of such list to Owner upon request. Contractor shall make such revisions to such list as and when requested by Owner from time to time.

15.1.2. No later than twenty (20) days before the Substantial Completion of the Project and once Contractor believes that a finalized punchlist containing only Non-Critical Deficiencies for the Project is ready for Owner review and approval, Contractor and Owner shall jointly walk-down the Project and confer together as to the items which should be included on the finalized punchlist for the Project. Contractor then shall create a new list to reflect the result of such joint walk-down and deliver the same to Owner for its review and approval, which submitted list shall be explicitly designated as the "Proposed Punchlist" and shall set forth all Work remaining to be completed after the Project Substantial Completion Date. The Proposed Punchlist may contain only Non-Critical Deficiencies in the Work and shall include a "Punchlist Amount" for the completion or repair of each such Non-Critical Deficiency and Contractor's estimated schedule for completion therefor. Owner shall indicate within three (3) Business Days whether it approves or has any changes to the Proposed Punchlist to Contractor, provided that any failure of Owner to respond within such three (3) Business Day period or any changes after the joint walk through shall entitle Contractor to schedule relief for an Owner Caused Delay to the extent of an Actual Delay. The Proposed Punchlist that is ultimately approved by Owner for the Project shall be referred to as the "Punchlist."

15.1.3. Completion of Punchlist. Contractor shall proceed promptly to complete and correct all items on the Punchlist. Failure to include an item on the Punchlist does not alter Contractor's responsibility to complete all Work in accordance with this Contract. On a biweekly basis after Substantial Completion, Contractor shall revise and update the Punchlist to include the date(s) that Non-Critical Deficiencies listed on such Punchlist are completed by Contractor and accepted by Owner. Notwithstanding any of the foregoing, the Non-Critical Deficiencies listed on such Punchlist shall not be considered complete until Owner shall have inspected such Non-Critical Deficiencies and acknowledged, by notation on the updated Punchlist, that such item of Work is complete.

15.1.4. The Parties agree that with respect to Punchlist items that remain uncompleted and which are preventing Final Completion, it may be more expedient for Owner to complete such Punchlist items, at its election and option. If Owner elects, at its sole discretion, Owner may, in lieu of requiring Contractor to complete the Punchlist items, require Contractor to pay to Owner an amount equal to two hundred percent (200%) of the commercial value of the remaining Punchlist items as reasonably determined by Owner. Owner shall have the right to offset such amount owed by Contractor against any amounts owed by Owner to Contractor at Final Completion.

## 15.2. Substantial Completion

Substantial Completion shall occur upon satisfaction by Contractor or waiver by Owner of the following conditions:

(a) Contractor has paid (or credited against the Contract Price) all Substantial Completion Delay Liquidated Damages due under this Contract;

(b) Owner has received copies of all Contractor Acquired Permits required to be obtained by Contractor pursuant to Section 4.6 (other than such permits as the failure to obtain could not reasonably be expected to have a material adverse effect on Owner's ability to own, operate and maintain the Project at the design levels specified in this Contract and the Statement of Work), which Contractor Acquired Permits shall be in full force and effect and neither (i) subject to any legal proceeding or any unsatisfied condition that could reasonably be expected to result in material modification or revocation to any such Contractor Acquired Permit, nor (ii) under appeal, nor (iii) subject to any appeal period available under Applicable Law;

(c) Owner has received all Essential Contractor Deliverables;

(d) Contractor has certified by a Notice to Owner that all training of Operating Personnel is complete;

(e) Contractor has achieved Project Mechanical Completion;

(f) all Work other than Non-Essential Contractor Deliverables and other Non-Critical Deficiencies has been completed;

(g) any Defects existing in the Work have been corrected and the inclusion of any Defects on the Punchlist has been mutually agreed by the Parties pursuant to Section 15.1.2;

(h) the Project is capable of being operated in a safe and proper manner in accordance with Applicable Laws and Applicable Permits;

(i) the Project has been constructed in accordance with this Contract and the Drawings and Specifications;

(j) all Acceptance Tests have been successfully completed (other than the "Availability Test" set forth in Exhibit I, which shall be completed for Final Completion), the Project shall have fully satisfied the Minimum Performance Criteria, Must Meet Performance Guarantees, and either:

(i) have achieved the Performance Guarantees in a Performance Test,

or

(ii) all Buy-Down Amounts due pursuant to Section 16.2 have been paid (or credited against the Contract Price) and all of the other requirements set forth in Section 16.2 have been satisfied, as applicable;

(k) Contractor has delivered to Owner the Acceptance Test results indicating that the Project has successfully completed each such Acceptance Test pursuant to the applicable Acceptance Test Procedures;

(l) Contractor has delivered a certification to Owner stating that all major items of Equipment and Materials within Contractor's scope of Work have been properly installed and tested in accordance with the applicable manufacturers' recommendations and requirements in all material respects;

(m) Substantial Completion of the Project will require that the Project satisfies the Must Meet Performance Guarantees for the Project as further set forth in Exhibit I;

(n) other than Non-Essential Contractor Deliverables, all Critical Spare Parts to be purchased by Contractor pursuant to Section 4.18 have been delivered or purchased for delivery to Owner free and clear of liens;

(o) Contractor has delivered to Owner the Warranty Bond in accordance with Section 7.7; and

(p) Contractor has delivered to Owner a Notice of Substantial Completion stating that Contractor believes it has satisfied the conditions set forth in Section 0 through 0, and a report of the Work completed with sufficient detail to enable Owner and the Engineer to determine whether Substantial Completion has been achieved.

After satisfaction by Contractor or waiver by Owner of the conditions set forth in this Section 15.2, Owner shall execute and acknowledge Contractor's Notice of Substantial Completion confirming that Substantial Completion has occurred; provided, however, that the Substantial Completion Date shall be the date that Contractor delivers the Notice of Substantial Completion that is ultimately executed and acknowledged by Owner, acknowledging actual satisfaction or waiver of the conditions set forth in this Section 15.2, not the date Owner executes and acknowledges Contractor's Notice of Substantial Completion. Owner shall execute and acknowledge Contractor's Notice of Substantial Completion as soon as possible, and in no event more than ten (10) Business Days after satisfaction in full by Contractor of all of the conditions set forth in this Section 15.2; provided, however, it being understood and acknowledged by Owner that, notwithstanding any election by Owner to so delay executing and acknowledging such Notice of Substantial Completion or paying Contractor for achievement of Substantial Completion, (i) the Substantial Completion Date shall be the date of actual satisfaction or waiver of the conditions set forth in this Section 15.2 and (ii) Contractor shall not be obligated to pay, or otherwise be liable for, Substantial Completion Delay Liquidated Damages in respect of any day, time or period following the date of actual satisfaction or waiver of the conditions set forth in this Section 15.2.

### 15.3. Final Completion

Final Completion shall be deemed to have occurred upon satisfaction by Contractor or waiver by Owner of the following conditions precedent:

(a) Substantial Completion, including payment of all Substantial Completion Delay Liquidated Damages and Buy-Down Amounts;



(b) The “Availability Test” set forth in Exhibit I has been successfully completed;

(c) Owner has received copies of all Contractor Acquired Permits required to be obtained by Contractor pursuant to Section 4.6, which Contractor Acquired Permits shall be in full force and effect and neither subject to (i) any legal proceeding or any unsatisfied condition that could reasonably be expected to result in material modification or revocation to any such Contractor Acquired Permit, nor (ii) under appeal, nor (iii) subject to any appeal period available under Applicable Law;

(d) Contractor has completed all items on the Punchlist except with respect to any item for which Owner has deducted from the final payment under Section 15.1.4;

(e) Owner has received all Non-Essential Contractor Deliverables, spare parts lists, and other technical information each as required hereunder for Owner to operate and maintain the Project;

(f) All Contractor’s and Subcontractors’ personnel, Equipment and Materials, surplus materials, waste materials, rubbish, and other Temporary Work other than those to which Owner holds title have been removed from the Site as required by Exhibit A, and any permanent facilities used by Contractor and the Site have been restored to the same condition that such permanent facilities and the Site were in on the Notice to Proceed Date, taking into account the construction of the Project, ordinary wear and tear excepted. All cleanup and disposal shall be conducted in accordance with all Applicable Laws;

(g) Owner has received from Contractor all information requested by Owner and required for Owner’s final fixed asset records (including any FERC accounting requirements) with respect to the Project in accordance with Section 4.8;

(h) Contractor has assigned to Owner, or provided Owner, with all warranties or guarantees that Contractor received from Subcontractors to the extent Contractor is obligated to do so pursuant to Article 18;

(i) Contractor has delivered the lien releases from Contractor and the lien releases from Subcontractors or the bonds, all in accordance with Section 7.2;

(j) the final as-built documentation accurately reflects the Project as constructed;

(k) Contractor has delivered to Owner all operation and maintenance manuals and final documentation in accordance with this Contract;

(l) Contractor has delivered true and correct copies of all Intellectual Property Rights and otherwise assigned such Intellectual Property Rights to Owner to the extent Contractor is obligated to do so pursuant to Article 27; and

(m) Contractor has delivered to Owner a Notice of Final Completion stating that Contractor believes it has satisfied the provisions of Sections 15.3(a) through (l).

After satisfaction by Contractor or waiver by Owner of the conditions set forth in this Section 15.3, Owner shall execute and acknowledge Contractor's Notice of Final Completion confirming that Final Completion has occurred; provided, however, that the Final Completion Date shall be the date that Contractor delivers the Notice of Final Completion that is ultimately executed and acknowledged by Owner, acknowledging actual satisfaction or waiver of the conditions set forth in this Section 15.3, not the date Owner executes and acknowledges Contractor's Notice of Final Completion. Owner shall execute and acknowledge Contractor's Notice of Final Completion as soon as possible, and in no event more than ten (10) Business Days after satisfaction in full by Contractor of all of the conditions set forth in this Section 15.3.

#### 15.4. Contractor's Access After Substantial Completion

Following Substantial Completion, Contractor shall be responsible for coordinating remedial work with the Owner, and Owner shall provide Contractor with reasonable and timely access to complete all items on the Punchlist and to satisfy the other requirements for Final Completion. The Parties expect that Contractor shall accomplish any necessary modification, repairs or additional work with minimal interference to commercial operation of the Project and that reductions in and shut-downs of the Project's operations will be required only when necessary, taking into consideration:

- (a) the length of the proposed reduction or shut-down, and
- (b) Owner's obligations and liabilities to Suppliers, customers or others.

Notwithstanding the foregoing, should a reduction in or shut-down of the Project's operations be required to complete any items on the Punchlist, then such reduction or shut-down shall be scheduled solely at the discretion of Owner, and Contractor shall use all reasonable efforts to complete such Work during such Owner scheduled reduction or shut-down. Contractor acknowledges that Owner may schedule such reduction or shut-down at any time including off-peak hours, nights, weekends and holidays.

#### 15.5. Changes in the Substantial Completion Guaranteed Date

Except as otherwise set forth in this Contract (including pursuant to Article 9 and 17), no action by either Party (unless Owner and Contractor mutually agree in writing to the contrary) required or permitted under this Article 15 shall modify the Substantial Completion Guaranteed Date.

### **16. DELAY DAMAGES; BUY-DOWN AMOUNTS**

#### 16.1. Substantial Completion Delay Liquidated Damages

Contractor understands that if the Substantial Completion Date does not occur on or before the Substantial Completion Guaranteed Date, Owner will suffer substantial damages, reduction of return on Owner's equity investment in the Project and other operating and construction costs and charges. Therefore, Contractor agrees that if Substantial Completion is not achieved by the Substantial Completion Guaranteed Date, then (subject to the terms of Sections 15.2 and 32.2.2) Contractor shall pay liquidated damages to Owner in an amount equal to (i) three hundred fifty Dollars (\$350) per day per each MWac of guaranteed net capacity for each day of delay that occurs

prior to June 1 and after September 30 of a calendar year and (ii) one thousand Dollars (\$1,000) per day per each MWac of guaranteed net capacity for each day of delay that occurs on or after June 1 and on or before September 30 of a calendar year, (“Substantial Completion Delay Liquidated Damages”) for each day (or portion thereof) by which the Substantial Completion Date is delayed beyond the Substantial Completion Guaranteed Date. Any amount Contractor is obligated to pay to Owner under this Section 16.1 shall be due and payable ten (10) days after receipt of a request therefor from Owner.

#### 16.2. Buy-Down for Performance Tests

If Contractor has completed the Acceptance Tests on or before the Substantial Completion Deadline Date, and Contractor has successfully satisfied the guarantee value for each Performance Guarantee, then the remaining provisions of this Section 16.2 shall no longer apply. If, on or before the Substantial Completion Deadline Date:

- (a) Contractor has achieved Project Mechanical Completion;
- (b) Contractor has provided Owner with Notice that it will not perform any further Acceptance Tests;
- (c) Contractor’s results from the most recent Acceptance Tests shall have satisfied the Minimum Performance Criteria for the Project; and
- (d) the guarantee value for any Performance Guarantee has not been satisfied;

then (subject to the terms of Section 32.2.2) Contractor shall pay the Buy-Down Amount set forth on Exhibit H based on Contractor’s most recent attempted Performance Test for the Project. Any such payment shall be made as a credit against the Contract Price. Upon the credit of the Buy-Down Amount to the Contract Price, the applicable Performance Guarantees shall be deemed amended to reflect the actual performance levels used in calculation of the Buy-Down Amount for all other Acceptance Tests.

#### 16.3. Sole Remedy

With the exception of Contractor’s obligation to satisfy the Minimum Performance Criteria during the Acceptance Tests, Owner’s sole remedies for delays in achieving Substantial Completion and for the failure of the Project to meet the Performance Guarantees during the Acceptance Tests shall be the amounts payable under Sections 16.1 and 16.2 as limited by Article 32, the other remedies expressly provided for in this Article 16, and, if such delays or failure constitute a Contractor Event of Default, the remedies provided for in Sections 20.2(a)-(g). The Parties agree that Owner’s actual damages, as applicable, in the event of such delays and failures would be extremely difficult or impracticable to determine and that, after negotiation, the Parties have agreed that the Substantial Completion Delay Liquidated Damages and the Buy-Down Amount are a reasonable estimate of the damages that Owner would incur as a result of such delays or failures and are in the nature of liquidated damages, and not a penalty.

## 17. CHANGES IN THE WORK

### 17.1. Change in Work

A Change in Work may result only from any of the following:

(a) Changes in the Work required by Owner in writing, including an acceleration of Work, in accordance with Section 8.8 or Section 17.2;

(b) The occurrence of an Excusable Condition (as and only to the extent permitted by Section 9.4.2);

(c) The occurrence of an event of Force Majeure (as and only to the extent permitted by Section 9.4.1);

(d) An Owner Directive (as and only to the extent permitted by Section 17.4);

or

(e) A Change in Work to which Contractor is otherwise expressly entitled under this Contract.

### 17.2. By Owner

17.2.1. General. Owner shall have the right to make changes in the Work, within the general scope thereof, whether such changes are modifications, accelerations, alterations, additions, or deletions. All such changes shall be made in accordance with this Article 17, be documented in accordance with Section 17.3.1 and shall be considered, for all purposes of this Contract, as part of the Work. Notwithstanding the foregoing, and except as set forth in Section 8.8, Section 17.2.2, and Section 17.4, unless Contractor and Owner shall have agreed upon a Change in Work Form in accordance with the provisions of Section 17.3 or Owner shall have issued an Owner Directive, Contractor shall have no obligation to, and shall not, perform or comply with any modification, acceleration, alteration, addition, or deletion by Owner to the Work after execution of this Contract that:

(a) conflicts, or could conflict, with this Contract;

(b) accelerates, or could accelerate, the Project Schedule;

(c) affects, or could affect, the performance of the Project under the Performance Guarantees and those other requirements and guarantees set forth in Exhibit I; or

(d) increases, or could increase, the costs of the Contractor.

17.2.2. Change in Work for Optional Spare Parts. In the event that Owner elects to cause Contractor to procure operating spare parts pursuant to Section 4.18.2, then the Contract Price shall be adjusted solely as provided in Section 17.3.1.1 without limiting Contractor's other rights under this Contract.

### 17.3. Procedures

#### 17.3.1. Preparation of Change in Work Form Due to Acceleration, Owner Initiated Change in Work.

17.3.1.1. Contractor's Estimate. If Owner provides Notice to Contractor that Owner is considering a Change in Work permitted pursuant to Sections 4.18.2, 8.8 or 17.2, then Contractor shall, as soon as practicable, prepare a Change in Work Form, which shall include, subject to the remaining provisions of this Section 17.3.1, a detailed proposal for such Change in Work, together with a detailed explanation and basis thereof:

(a) the change, if any, to the Project Schedule and the Guaranteed Dates associated with such Change in Work; and

(b) the increase, if any, in the cost and time required to complete the Work on the Change in Work Form.

Contractor's proposed change in the Contract Price for such Change in Work shall not exceed the sum of: (i) the Direct Costs expected to be actually, demonstrably and reasonably to be incurred by Contractor because of such Change in Work plus (ii) a ten percent (10%) allowance for profit overhead and contingency, minus any net savings expected to be incurred because of such Change in Work which shall be documented and presented to Owner prior to any increase in the Contract Price. The adjustment in the Contract Price specified in this Section 17.3.1.1 and the Project Schedule shall be the sole adjustment related to a specific Change in Work unless stated otherwise therein. For the avoidance of doubt no Change in Work shall apply with respect to Contractor's implementation of any Schedule Recovery Plan or Remedial Plan.

17.3.1.2. Execution of Change in Work Form. If Contractor and Owner reach agreement on the matters listed in the Change in Work Form submitted by Contractor pursuant to this Section 17.3.1, then Contractor shall execute such Change in Work Form and Owner shall sign "Accepted by Owner" on such Change in Work Form and execute such Change in Work Form (indicating any amendments necessary to reflect the agreement of the Parties).

#### 17.3.2. Preparation of Change in Work Form Due to an Excusable Condition, Event of Force Majeure or Other Entitlement.

17.3.2.1. Contractor's Estimate. If Contractor provides Notice of, becomes aware of, or is entitled to, a Change in Work permitted pursuant to Sections 17.1(b), (c) (e), then Contractor shall as soon as practicable serve Notice thereof to Owner, and Contractor shall, as soon as practicable, prepare a Change in Work Form, which form shall include, subject to the remaining provisions of this Section 17.3.2, a detailed estimate for such Change in Work, together with a detailed explanation thereof, of:

(a) the Actual Delay, if any, to the Project Schedule and the Guaranteed Dates associated with such Change in Work; and

(b) (a) for an Owner Caused Delay and failure of Owner to issue NTP in accordance with the definition of Excusable Condition, Contractor's proposed change in the Contract Price for such Change in Work which change shall not exceed the sum of: (i) the Direct

Costs expected to be incurred by Contractor because of such Excusable Condition plus (ii) a ten percent (10%) allowance for profit, overhead and contingency, minus any net savings incurred because of such Excusable Condition; and (b) for all other Excusable Conditions other than an event of Force Majeure, Contractor's proposed change in the Contract Price for such Change in Work which change shall not exceed an amount equal to the sum of: (A) the Direct Costs expected to be incurred by Contractor because of such Excusable Condition plus (B) the Margin; provided, that if the aggregate amount of Margin paid by Owner pursuant to this subsection (B) equals five hundred thousand Dollars (\$500,000), the Margin shall not apply to any further Contract Price increases with respect to subsection (b) or Section 22.3 and Owner shall only be liable for the Direct Costs actually, demonstrably and reasonably incurred by Contractor because of such Excusable Condition.

A Change in Work for Force Majeure shall be subject to Section 9.4.1(b). The adjustment in the Contract Price specified in this Section 17.3.2.1 and the Project Schedule and the Guaranteed Dates shall be the sole adjustment related to a specific Change in Work unless stated otherwise therein; provided that, the actual payment to Contractor of amounts identified in such Change in Work shall be based on the Direct Costs actually, demonstrably and reasonably incurred by Contractor.

17.3.2.2. Execution of Change in Work Form. If Contractor and Owner reach agreement on the matters listed in the Change in Work Form submitted by Contractor pursuant to this Section 17.3.2, then Contractor shall execute such Change in Work Form and Owner shall sign "Accepted by Owner" on such Change in Work Form and execute such Change in Work Form. If the Parties cannot reach agreement on the matters listed in the Change in Work Form submitted pursuant to this Section 17.3.2, then such matter shall be referred to dispute resolution under Article 33 unless an Owner Directive is issued under Section 17.4.

17.3.3. No Obligation or Payment Without Executed Change in Work Form. IN NO EVENT SHALL CONTRACTOR BE ENTITLED TO UNDERTAKE OR BE OBLIGATED TO UNDERTAKE A CHANGE IN WORK UNTIL CONTRACTOR HAS RECEIVED A CHANGE IN WORK FORM SUBMITTED BY CONTRACTOR AND ACCEPTED BY OWNER AND, EXCEPT AS SET FORTH IN SECTION 17.4 OR IN ORDER TO RESPOND TO ANY EMERGENCY, IN THE ABSENCE OF SUCH SIGNED CHANGE IN WORK FORM, IF CONTRACTOR UNDERTAKES ANY CHANGES IN THE WORK, THEN CONTRACTOR SHALL MAKE ANY SUCH CHANGES AT CONTRACTOR'S SOLE RISK AND EXPENSE AND SHALL NOT BE ENTITLED TO ANY PAYMENT HEREUNDER FOR UNDERTAKING SUCH CHANGES.

#### 17.4. Owner Directives

If Contractor and Owner are unable to agree on the matters described in the Change in Work Form submitted by Contractor pursuant to Section 17.3.1, then Contractor shall perform the Work as modified by the contemplated change if Owner so directs in writing identified as an "Owner Directive" and such change is not illegal, does not affect the safe performance of the Work, does not require or cause the Contractor to otherwise be in breach of this Contract, and is not inconsistent with the fundamental nature of this Project as a energy storage facility (an "Owner Directive"). In such an event:

(a) the Contract Price shall be increased by the sum of: (i) the Direct Costs actually, demonstrably and reasonably incurred by Contractor because of such Change in Work plus (ii) with respect to an increase pursuant to Section 17.3.1, a ten percent (10%) allowance for profit, overhead and contingency, minus any net savings expected to be incurred because of such Change in Work which shall be documented and presented to Owner prior to any increase in the Contract Price; and

(b) the Project Schedule and the Guaranteed Dates shall be equitably adjusted to allow Contractor to overcome the impact, if any, of such Owner Directive.

Contractor expressly waives any other compensation as a result of such Owner Directive unless otherwise stated therein.

17.5. Express Waiver

Except as may be expressly set forth in Sections 6.1, 8.1.2, Articles 9, 17 and 22, Contractor expressly waives any compensation for any Change in Work executed pursuant to the provisions of Article 17, including any other change in the Project Schedule, the Guaranteed Dates and the Contract Price.

17.6. No Suspension

Contractor shall not suspend the Work pending resolution of any proposed Change in Work unless directed by Owner in writing in accordance with Article 22, except (i) as specifically provided for in Section 20.5(a) herein or (ii) with respect to a Change in Work that (A) is a prohibited Owner Directive under the first sentence of Section 17.4, or (B) Contractor cannot reasonably perform any other Work until such prohibited Owner Directive is resolved.

**18. WARRANTIES CONCERNING THE WORK**

18.1. Work Warranties

Contractor warrants to Owner with respect to the Project (the “Work Warranties”) that all Work (other than Work covered by the Materials Warranty), including the construction and design of the Project and the installation of the Equipment and Materials:

- (a) shall be in accordance with Industry Standards;
- (b) shall be free from Defects;
- (c) shall conform to all applicable requirements of this Contract, Exhibit A, any Applicable Law and the Applicable Permits

18.2. Materials Warranty

Contractor further warrants that all Equipment and Materials and other items furnished by Contractor and any Subcontractors and Vendors hereunder (the “Materials Warranty”):

- (a) shall be new and of good and suitable quality when installed;

(b) shall conform to the requirements of this Contract, Exhibit A, any Applicable Law and the Applicable Permits;

(c) shall be free from any charge, lien, security interest or other encumbrance; and

(d) shall be free of any Defects including Defects in design, materials or fabrication.

### 18.3. Warranty Period

Contractor shall have no liability under Sections 18.1 or 18.2 with respect to any matter with respect to which Owner first notifies Contractor after the end of the Warranty Period (as such period may be extended in accordance with the terms hereof); provided, however, that the Warranty Period for any item or part required to be repaired, corrected or replaced following a warranty claim that is made during the original Warranty Period shall be extended from the time such repair, correction or replacement is complete for a period equal to the original Warranty Period for such item or part, but in no event shall such extended Warranty Period exceed twelve (12) months after expiration of the original Warranty Period. Subject to the terms hereof, Contractor shall perform all warranty work so that the respective repair or replacement parts are complete and reasonably expected to perform satisfactorily for a reasonable period of time after the date of repair, correction or replacement.

### 18.4. Enforcement Prior to Expiration

Prior to the expiration of the Warranty Period, or such later date as is provided in Section 18.3 with respect to Work required to be re-performed, Owner, at its option and upon prior written Notice to Contractor, may enforce the particular warranty, the Work Warranty or the Materials Warranty against any Subcontractor or Vendor if:

(a) Owner determines that Contractor has not diligently pursued such warranty against the Subcontractor or Vendor in a timely and diligent manner (in each case which shall mean following Notice to Contractor, during the months of June through September, no greater than five (5) Business Days and for any other months means no greater than ten (10) Business Days) or commenced performance of the warranty work itself, or

(b) Contractor Event of Default exists.

### 18.5. Exclusions

The Work Warranty and Materials Warranty shall not apply to:

(a) Damage to or Defects in any Work, or Equipment and Materials to the extent such damage or Defect is caused by:

(i) Owner's failure to operate and maintain such Equipment and Materials or the Work in accordance with the recommendations set forth in the Required Manuals but only if such failure occurs after Substantial Completion;



(ii) operation of such Equipment and Materials or the Work materially in excess of operating specifications for such Equipment and Materials or Work as set forth in the Required Manuals but only if such failure occurs after Substantial Completion;

(iii) the use of spare parts and normal consumables in the repair or maintenance of such Equipment and Materials or Work that are not in accordance with specifications and recommendations set forth in the Required Manuals but only if such failure occurs after Substantial Completion;

(iv) normal wear and tear or normal degradation of the Work, but only if such failure occurs after Substantial Completion,

(v) material deposits from fluids, lubrication oil or support water systems but only if such failure occurs after Substantial Completion;

(vi) an event of Force Majeure (which excludes warranty failure hereunder);

(vii) the negligence or willful misconduct of Owner or Operating Personnel;

(viii) repair or modification of such Equipment and Materials or Work contrary to Contractor's expressly provided recommendations; or

(ix) failure by Owner to keep records of operation and maintenance of such Equipment and Materials or Work in accordance with its customary procedures.

(b) Normal Operating Consumables or items that require replacement due to casualty loss (other than as a result of any failure of the Work Warranty or the Materials Warranty).

Notwithstanding the foregoing, damage caused by Contractor or Operating Personnel while under the direction of Contractor shall be the responsibility of Contractor, unless such damage is due to or arises out of the Operating Personnel's negligence or willful misconduct.

#### 18.6. Subcontractor and Vendor Warranties

Without in any way derogating from Contractor's own representations and warranties and its Performance Guarantees and other testing requirements and guarantees set forth in Exhibit I with respect to all of the Work, Contractor shall use commercially reasonable efforts to obtain warranties for all Work performed by each Subcontractor or Vendor on similar terms as this Article 18. Without limiting the generality of the preceding sentence, Contractor shall obtain warranties for Major Equipment consistent with the durations set forth in Exhibit N. Contractor hereby assigns to Owner all continuing warranties and rights necessary to effectuate and enforce such warranties of all Subcontractors and Vendors effective upon the earlier of the end of the Warranty Period or termination or expiration of this Contract. . Contractor shall deliver to Owner promptly following execution thereof duly executed copies of all contracts containing such representations, warranties, guarantees, and obligations; provided, however, that terms unrelated to the warranty may be redacted.

## 18.7. Correction of Defects

18.7.1. General. Owner shall promptly provide Notice to Contractor upon discovery that any of the Work fails to satisfy the Work Warranty or the Materials Warranty prior to the end of the applicable Warranty Period, including any extensions of the Warranty Period pursuant to Section 18.3. Contractor shall, at its own cost and expense (including overtime and any taxes), re-perform any necessary engineering and purchasing relating to such Work as applicable, and shall pay the cost of removing any Defect and the cost of replacement thereof, including, without limitation, necessary disassembly, transportation, reassembly and retesting, as well as reworking, repair or replacement of such Work, disassembly and reassembly of Equipment and Materials or other Work as necessary to give access to improper, defective or non-conforming Work as shall be necessary to cause the Work and the Project to conform to the Work Warranty or Materials Warranty. Within five (5) days after receipt by Contractor of a Notice from Owner specifying a failure of any of the Work to satisfy Contractor's Work Warranty or the Materials Warranty and requesting Contractor to correct the failure, Contractor shall respond to and acknowledge such claim and identify how Contractor shall remedy such failure. Notwithstanding the foregoing and subject to Section 18.7.2.2, if any of the Work shall fail to satisfy Contractor's Work Warranty or the Materials Warranty, and such failure endangers human health or property or materially and adversely affects the operation of the Project, then Contractor shall correct the failure as soon as is reasonably practicable.

### 18.7.2. Owner Performance.

18.7.2.1. Upon Contractor's Request. Notwithstanding the foregoing, Contractor may request Owner to perform all or any portion of Contractor's obligations with respect to any warranty claim, and, if Owner desires (in its sole discretion) to perform such obligations, Owner shall perform such obligations for Contractor's account (including, without limitation, drawing from the Warranty Bond provided pursuant to Section 7.7 to pay for costs and expenses incurred in performing such obligations). Owner shall have no liability to Contractor in respect of the performance of such obligations and (subject to Section 18.5) such performance by Owner shall in no way limit Contractor's continuing warranty obligations under this Contract.

18.7.2.2. Failure of Contractor to Perform Warranty Work. If Contractor does not use commercially reasonable efforts to proceed to complete warranty work approved by Owner pursuant to Section 18.7.1 within the agreed time, or acknowledge the claim with an associated remedy within such five (5) day period set forth in Section 18.7.1, then Owner shall have the right to perform the necessary remedy, or have third parties perform the necessary remedy, and Contractor shall bear the Direct Costs demonstrably and reasonably incurred by Owner (which may include, without limitation, Owner drawing from the Warranty Bond provided pursuant to Section 7.7 to pay for these costs incurred in performing such remedy). In the event any of the Work fails to satisfy the Work Warranty or the Materials Warranty during the applicable Warranty Period and any such failure occurs under circumstances in which there is an imminent and material threat to human health, the environment, or property and Contractor is not immediately available after providing Contractor reasonable notice in light of the circumstances, then Owner may perform such warranty work and Contractor shall bear the Direct Costs demonstrably and reasonably incurred by Owner (including, without limitation, drawing from the Warranty Bond provided pursuant to Section 7.7 to pay for these costs incurred in performing such obligations). Neither Owner nor any such third parties shall have any liability to Contractor in respect of their performance of such obligations and (subject to Section 18.5) such performance

by Owner shall in no way limit Contractor's continuing warranty obligations hereunder. In the event Owner performs any of the warranty work pursuant to this Section 18.7.2.2, then within sixty (60) days of completing the Work, and prior to drawing from the Warranty Bond, Owner shall provide Contractor with an invoice and supporting documentation evidencing the Direct Costs in performing the Work. Nothing in this Section 18.7.2.2 is intended or shall be deemed to be a waiver or modification of Owner's rights relating to the Warranty Bond.

#### 18.8. Chronic Failure Repairs/Root Cause Analysis

If a component of the Major Equipment requires repair or replacement due to a defect that has the same failure mode deemed to be from the same root cause in an amount equal to fifteen percent (15%) or more of the installed quantity of any such component within any three hundred sixty five (365) consecutive day period during the Warranty Period (any such set of failures, a "Chronic Failure"). The Party first becoming aware of a potential Chronic Failure shall provide written notice and supporting description to the other Party of a potential Chronic Failure. At which time, the Contractor shall: (i) start or cause to be started, an investigation of the cause of such Chronic Failure by conducting a rigorous process (including a root cause analysis) of evaluating the evidence and the physical sequence of events involving the Contractor, and/or any third party expert(s) to determine the underlying reason for such Chronic Failure or the factor(s) the absence of which would have avoided such Chronic Failure, and Contractor shall provide the results of such investigation and process to Owner upon their completion; and (ii) if Chronic Failure is confirmed, make such reperformance, repairs, replacements, or adjustments necessary to correct the cause of the Chronic Failure.

#### 18.9. Limitations on Warranties

EXCEPT FOR THE EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS CONTRACT (INCLUDING IN ANY EXHIBIT HERETO), CONTRACTOR DOES NOT MAKE ANY OTHER EXPRESS OR ORAL WARRANTIES OR REPRESENTATIONS, OR ANY IMPLIED WARRANTIES OR REPRESENTATIONS, OF ANY KIND WHATSOEVER, AND NO IMPLIED, STATUTORY, OR COMMON LAW WARRANTY OF ANY KIND, INCLUDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY.

### 19. **EQUIPMENT IMPORTATION; TITLE**

#### 19.1. Importation of Equipment and Materials

Contractor, at its own cost and expense, shall make all arrangements, including the processing of all documentation, necessary to import into the United States, Equipment and Materials to be incorporated into the Project, and any other equipment and other items necessary to perform the Work, and shall coordinate with the applicable Governmental Authority in achieving clearance of United States customs for all such Equipment and Materials and other items. In no event shall Owner be responsible for any delays in customs clearance or any resulting delays in performance of the Work; provided that Contractor may seek relief related to delays in customs clearance in accordance with the definition of Force Majeure.

## 19.2. Title

19.2.1. Contractor warrants good title, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, to all Equipment and Materials and other items furnished by it or any of its Subcontractors as part of the Work that become part of the Project.

19.2.2. Title to all Equipment and Materials and other items shall pass to Owner free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever, upon the earlier of (i) payment for such Equipment and Materials in accordance with Exhibit B and (ii) incorporation of such Equipment and Materials in the Project.

19.2.3. The transfer of title shall in no way affect Owner's rights as set forth in any other provision of this Contract. Contractor shall have care, custody, and control of all Equipment and Materials and other items and exercise due care with respect thereto until the time set forth in Section 19.4 below.

## 19.3. Protection

For the purpose of protecting Owner's interest in all Equipment and Materials and other items with respect to which title has passed to Owner pursuant to Section 19.2 but that remain in possession of another party, Contractor shall take or cause to be taken all steps reasonably necessary under the laws of the appropriate jurisdiction(s) to protect Owner's title and to protect Owner against claims by other parties with respect thereto; provided, however, that Contractor shall assist Owner when any filing with any security interest registry is necessary to protect Owner's title or to protect Owner against claims by other parties; and provided, further, that it shall be Owner's responsibility to make any such filings.

## 19.4. Owner Possession

Owner shall take care, custody and control, and otherwise take complete possession of the Project at 12:01 a.m. of the day after the Substantial Completion Date.

## **20. DEFAULT**

### 20.1. Contractor Events of Default

Contractor shall be in material default of its obligations pursuant to this Contract upon the occurrence of any one or more events of default set forth below (each, a "Contractor Event of Default"):

(a) Contractor or its parent corporation or guarantor makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated as bankrupt or insolvent; files a petition or answer seeking for Contractor any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation; Contractor files any answer admitting or not contesting the material allegations of a petition filed against Contractor (as applicable) in any such proceeding, or Contractor seeks, consents to, or acquiesces in, the appointment of any trustee, receiver, custodian, or liquidator of Contractor or of all or any

substantial part of Contractor's properties; or Contractor's directors, or shareholders take action to dissolve or liquidate the Contractor;

(b) involuntary petitions in bankruptcy are brought against Contractor or an answer proposing the adjudication of Contractor as a debtor or bankrupt or proposing Contractor's liquidation or reorganization pursuant to any applicable bankruptcy law is filed in any court and Contractor consents to or acquiesces in the filing thereof or such petition or answer is not dismissed within sixty (60) days after the filing thereof;

(c) any material representation or warranty made by Contractor in this Contract was materially false or misleading when made and Contractor fails to remedy such false or misleading representation or warranty, and to make Owner whole for any consequences thereof, within thirty (30) days after Contractor receives a Notice from Owner with respect thereto except such thirty (30) day limit shall be extended if (a) such failure is reasonably capable of cure and curing such failure reasonably requires more than thirty (30) days, and (b) Contractor commences such cure within such thirty (30) day period and diligently prosecutes and completes such cure within forty-five (45) days thereafter, in each case, after the date on which Contractor becomes aware of such false or misleading representation;

(d) Contractor assigns or transfers this Contract or any right or interest herein, except as expressly permitted under Article 28;

(e) (i) Contractor fails to maintain any insurance coverages required of it in accordance with Article 23 and (ii) (A) Contractor fails to remedy such failure within five (5) Days after Contractor receives a Notice from Owner with respect thereto, or (B) if such failure is not capable of being cured within such five (5) Day period but Contractor has commenced the cure within such period, is diligently pursuing it and has stopped the affected portion of the Work, Contractor fails to remedy such failure within an additional twenty-five (25) days. Contractor's stoppage of the Work pursuant to this Section 20.1(e) shall not entitle it to any adjustments to the Contract Price or Guaranteed Dates unless otherwise specified in this Contract;

(f) Contractor fails to perform or observe in any respect any provision of this Contract providing for the payment of money that is owed to Owner under this Contract (other than payments of money subject to good faith disputes), or any other material provision of this Contract not otherwise addressed in this Section 20.1, and such failure continues for ten (10) days in the case of a payment obligation or thirty (30) days in the case of any other obligation, except such thirty (30) day period shall be extended if (i) curing such failure reasonably requires more than thirty (30) days, (ii) Contractor commences such cure within such thirty (30) day period and diligently prosecutes such cure, and (iii) such cure is accomplished within seventy-five (75) days, in each case after Contractor receives a Notice from Owner with respect thereto;

(g) (i) Contractor fails to timely deliver a Remedial Plan pursuant to Section 8.5 or, following approval of a Remedial Plan pursuant to Section 8.5, Contractor fails, other than for an Excusable Condition or an event of Force Majeure or Change in Work, to meet the schedule set forth in the Remedial Plan (as determined from the revised Project Schedule established by the Remedial Plan), or (ii) Contractor fails to timely deliver a Schedule Recovery Plan pursuant to Section 8.4.2 or, following approval of a Schedule Recovery Plan pursuant to Section 8.4.2, Contractor fails, other than for an Excusable Condition or an event of Force Majeure or Change in

Work, to meet the schedule set forth in the Schedule Recovery Plan without attempting to further remedy, and (iii) in the case of either (i) or (ii), Contractor fails to remedy such failure within thirty (30) days after Contractor receives a Notice from Owner with respect thereto;

(h) Contractor Abandons (except for a suspension or Abandonment under Section 20.5(a) herein or due to an Excusable Condition or an event of Force Majeure or Change in Work) the Work and Contractor fails to cure such suspension or Abandonment within ten (10) days after Contractor receives a Notice from Owner with respect thereto. “Abandonment” for the purposes of this Section 20.1(h) shall mean that, except to the extent caused by an event described under Section 20.5(a) herein or due to Force Majeure or Excusable Condition, Contractor or Contractor’s Subcontractor has ceased work and operations at the Project for more than sixty (60) Days or substantially reduced personnel at the Site or removed further required equipment from the Site such that, in the reasonable opinion of the Engineer, Contractor or Contractor’s Subcontractor would not be capable of achieving Substantial Completion by the Substantial Completion Guaranteed Date as adjusted pursuant to the terms of this Contract for any Excusable Condition or event of Force Majeure.

(i) with respect to a Performance Bond or Warranty Bond, the failure by Contractor to provide for the benefit of Owner (1) a substitute Performance Bond or Warranty Bond, as applicable; (attached hereto as Exhibit M from an alternate issuer reasonably acceptable to the Owner); or (2) cash, in either case, in the amount required hereunder within five (5) Business Days after Contractor receives notice of the occurrence of any of the following events:

(i) the issuer of the outstanding Performance Bond or Warranty Bond is no longer qualified as an Eligible Issuer;

(ii) the issuer of such Performance Bond or Warranty Bond (A) files a petition or otherwise commences, authorizes, or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (B) makes an assignment or any general arrangement for the benefit of creditors, (C) otherwise becomes bankrupt or adjudicated insolvent, (D) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (E) acknowledges that it is generally unable to pay its debts as they fall due;

(iii) the issuer of the Performance Bond or Warranty Bond shall fail to comply with or perform its obligations under such bond and such failure shall be continuing after the lapse of any applicable grace period permitted under such bond;

(iv) the issuer of the Performance Bond or Warranty Bond shall fail to honor a properly documented request to demand for payment or performance thereunder for which it is legally required to honor under such bond;

(v) the issuer of the outstanding Performance Bond or Warranty Bond shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such bond; or

(vi) Contractor shall fail to renew or cause the renewal of the Performance Bond or Warranty Bond on a timely basis as provided in such bond and as provided

in accordance with this Contract, and in no such event less than thirty (30) days prior to the expiration of the outstanding Performance Bond or Warranty Bond.

(j) The Maximum Substantial Completion Delay Liquidated Damages has been met;

(k) The Substantial Completion Date has not occurred by the Substantial Completion Deadline Date, as the date may be extended pursuant to this Contract;

(l) Final Completion has not occurred on or before the Final Completion Expected Date, as the date may be extended pursuant to this Contract; or

(m) Contractor fails to comply with the Owner approved safety plan and such failure continues for five (5) Business Days after Contractor receives notice.

## 20.2. Owner's Rights and Remedies

In the event of a Contractor Event of Default, subject to Article 32, Owner or its assignees shall have the following rights and remedies, in addition to any other rights and remedies that may be available to Owner or its assignees under this Contract and Applicable Law, and Contractor shall have the following obligations:

(a) Owner, without prejudice to any of its other rights or remedies, may terminate this Contract by delivery of written notice to Contractor;

(b) Owner may, without prejudice to any of its other rights or remedies, seek performance by enforcing any security given by or for the benefit of Contractor for its obligations hereunder;

(c) Owner may require Contractor to, and Contractor shall, (i) withdraw from the Site, (ii) assign to Owner (without recourse to Contractor) such of Contractor's Subcontracts as Owner may request, and (iii) (to the extent permitted by Contractor's contracts with third parties) deliver and otherwise make available to Owner all information, patents, and licenses of Contractor or an applicable third party (including Subcontractors or Vendors) related to the Work reasonably necessary to permit Owner (or Owner's designee) to complete or cause the completion of the Work, and in connection therewith Contractor authorizes Owner and its respective agents to use such information in completing the Work, shall remove such materials, equipment, tools, and instruments used by, and any debris or waste materials generated by, Contractor in the performance of the Work as Owner (or Owner's designee) may direct, and Owner may take possession of any or all Contractor Deliverables and Site facilities of Contractor related to the Work necessary for completion of the Work (whether or not such Contractor Deliverable and Site facilities are complete);

(d) Owner may seek equitable relief to cause Contractor to take action or to refrain from taking action pursuant to this Contract, or to make restitution of amounts improperly received under this Contract;

(e) Owner may make such payments or perform such obligations as are reasonably required to cure any Contractor Event of Default and offset the cost of such payment or performance against payments otherwise due to Contractor under this Contract;

(f) Owner may seek damages as provided in Section 20.3, including proceeding against any bond, or other security given by or for the benefit of Contractor for its performance under this Contract; and

(g) Owner may avail itself of any other rights and remedies that may be available to Owner or its permitted assignees under this Contract and Applicable Law including any legal or equitable remedy to enforce the obligations of Contractor under this Contract.

### 20.3. Damages for Termination Due to Contractor Default

In the event Owner terminates this Contract in accordance with Section 20.2(a), and subject to Article 32, if the Completion Costs (defined below) exceed the Outstanding Balance at the time of Owner's termination, then subject to Article 32, Contractor shall be liable and pay to Owner within sixty (60) days following completion of the Project and the Work the amount, not otherwise disputed in good faith by Contractor, equal to the difference between (i) Owner's Direct Costs (including out-of-pocket compensation for obtaining a replacement contractor or for obtaining additional professional services required as a consequence of Contractor's Event of Default) incurred by Owner in a commercially reasonable manner (but excluding any liquidated damages (including Substantial Completion Delay Liquidated Damages or any Buy-Down Amount) that Contractor would have been otherwise liable for on or following the effective date of Owner's termination, had Owner not terminated this Contract) (the "Completion Costs") and (ii) the Outstanding Balance (calculated at the time of Contractor's default). If the Outstanding Balance so calculated exceeds the Completion Costs, then (X) Contractor shall not be liable for any such difference and the Contractor shall not be liable to pay Owner any damages under this Section 20.3, and (Y) Owner shall, within the earlier of seven hundred twenty (720) Days after the date of such termination or thirty (30) Days after completion of the Work, pay Contractor an amount equal to the sum of (i) any unpaid portion of the Contract Price attributable to the Work performed by Contractor prior to the date of such termination plus (ii) the value of any unused or partially used equipment, parts or materials furnished by Contractor which are used by Owner and have not already been paid for as part of the Contract Price paid to Contractor. In the event of a Contractor Event of Default, and subject to Article 32, Owner shall be entitled to withhold further payments to Contractor for the Work performed prior to termination of this Contract until Owner determines the liability of Contractor, if any, under this Section 20.3. Upon determination of the Completion Costs and the Outstanding Balance, Owner shall notify Contractor in writing of the amount, if any, that Contractor shall pay Owner, subject to Contractor's review in accordance with the terms hereof. Contractor acknowledges that in the event of such a termination, Owner may enter into a turn-key contract for the completion of the Project with the same performance guarantees, completion deadlines and liquidated damages as are provided for in this Contract and that the cost to complete the Project in such event may greatly exceed the cost hereunder.

### 20.4. Owner Event of Default

Owner shall be immediately in default of its obligations pursuant to this Contract upon the occurrence of any one or more events of default below (each, an "Owner Event of Default"):



(a) Owner makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated as bankrupt or insolvent; files a petition or answer seeking for Owner any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation; Owner files any answer admitting or not contesting the material allegations of a petition filed against Owner (as applicable) in any such proceeding, or Owner seeks, consents to, or acquiesces in, the appointment of any trustee, receiver, custodian, or liquidator of Owner or of all or any substantial part of Owner's properties; or Owner's directors, or shareholders take action to dissolve or liquidate the Owner;

(b) involuntary petitions in bankruptcy are brought against either Owner or an answer proposing the adjudication of Owner as a debtor or bankrupt or proposing Owner's liquidation or reorganization pursuant to any applicable bankruptcy law is filed in any court and Owner consents to or acquiesces in the filing thereof or such petition or answer is not dismissed within sixty (60) days after the filing thereof;

(c) any material representation or warranty made by Owner in this Contract was materially false or misleading when made and Owner fails to remedy such false or misleading representation or warranty, and to make Contractor whole for any consequences thereof, within thirty (30) days after Owner receives a Notice from the Contractor with respect thereto; except such thirty (30) day limit shall be extended if (a) such failure is reasonably capable of cure and curing such failure reasonably requires more than thirty (30) days, and (b) Owner commences such cure within such thirty(30) day period and diligently prosecutes and completes such cure within forty-five (45) days thereafter, in each case, after the date on which Owner becomes aware of such false or misleading representation;

(d) Owner fails to perform or observe in any respect any provision of this Contract providing for the payment of money that is owed to Contractor under the terms of this Contract (other than payments of money subject to good faith disputes) or any other material provision of this Contract not otherwise addressed in this Section 20.4, and such failure continues for ten (10) days in the case of such a payment obligation or thirty (30) days in the case of any other obligation, except such thirty (30) day period shall be extended if: (i) curing such failure reasonably requires more than thirty (30) days, (ii) Owner commences such cure within such thirty (30) day period and diligently prosecutes such cure, and (iii) such cure is accomplished within seventy-five (75) days, in each case after Owner receives a Notice from Contractor with respect thereto;

(e) Owner assigns or transfers this Contract or any right or interest herein, except as expressly permitted under Article 28; or

(f) (i) Owner fails to maintain any insurance coverages required of it in accordance with Article 23 and (ii) (A) Owner fails to remedy such failure within five (5) Days after Owner receives a Notice from Contractor with respect thereto, or (B) if such failure is not capable of being cured within such five (5) Day period but Owner has commenced the cure within such period, is diligently pursuing it and has stopped the affected portion of the Work, Owner fails to remedy such failure within an additional twenty-five (25) days.

## 20.5. Contractor's Remedies

In the event of an Owner Event of Default (or Owner Inchoate Default, with respect to "a") and subject to Article 32, Contractor shall only have the following remedies:

(a) suspend performance of the Work until Owner cures such Owner Inchoate Default or Owner Event of Default (in which event, Contractor shall be compensated in the manner specified in Section 22.3) as the case may be, it being understood that Contractor may at any time it sees fit rescind a suspension under this Section 20.5(a);

(b) if the Owner Event of Default is not cured within thirty (30) days of Notice of the default, Contractor may give Owner notice of Contractor's intent to terminate this Contract, which termination will be deemed a termination for Owner's convenience; or

(c) avail itself of any other rights and remedies that may be available to Contractor or its permitted assignees under this Contract and Applicable Law including any legal or equitable remedy to enforce the obligations of Owner under this Contract.

## 21. **EARLY TERMINATION**

### 21.1. General

Owner may in its sole discretion terminate this Contract with or without cause at any time by giving Notice of termination to Contractor, to be effective upon the receipt of such Notice by Contractor or upon such other termination date specifically identified by Owner therein; provided that, where such termination is without cause, Owner shall provide ten (10) days' Notice. If Owner terminates the Work without cause or for any cause other than a Contractor Event of Default specified in Section 20.1, or if this Contract is terminated pursuant to any of Sections 20.5(b), 21.4 or 22.2, then Owner and Contractor shall have the following rights, obligations and duties:

21.1.1. Termination Value. If this Contract is terminated pursuant to Section 21.1 following Owner's issuance of the Notice to Proceed, then as compensation for the Work performed through the effective date of termination pursuant to Section 21.1, Owner shall pay to Contractor:

(a) in the event of a termination for cause for Contractor Event of Default, subject to Section 20.3, the Termination Value, and

(b) in the event of a termination without cause or for Owner Event of Default, the Termination Value plus Contractor's and its Subcontractors' actual and demonstrable demobilization costs and commercially reasonable Subcontractor cancellation or termination fees for which Contractor is legally liable to pay, plus ten percent (10%), provided that Subcontractor cancellation or termination fees shall be reasonably documented, less any recoverable deposits paid to Suppliers, plus any outstanding amounts pursuant to Article 9 or Article 17.

Notwithstanding the foregoing in this Section 21.1.1, the Termination Value with respect to the any partially completed Milestones shall be based upon the percentage of Work completed as verified and validated by a third-party engineer mutually agreeable to the Parties; provided

further that any amounts in dispute related thereto shall be placed into escrow as mutually agreed by the Parties.

21.1.2. Assumption of Contractor Contracts. Owner shall have the right, but only following the Notice to Proceed Date, at its sole option, to assume and become liable for any obligations that Contractor may have in good faith incurred for its Site personnel and for any written obligations and commitments that Contractor may have in good faith undertaken with third parties in connection with the Work to be performed at the Site. If Owner elects to assume any obligation of Contractor as described in this Section 21.1.2 and has paid Contractor in full for all due and owing amounts for the in accordance with Section 21.1.1 above, then (a) Contractor shall execute all documents and take all other reasonable steps requested by Owner which may be required to vest in Owner all rights, set-offs, benefits and titles necessary to such assumption by Owner of such obligations described in this Article 21, and (b) Owner shall simultaneously agree to indemnify Contractor against liabilities thereafter arising under the assumed obligations or commitments.

21.1.3. Completion of Work. Upon a termination of this Contract pursuant to Section 8.1.3 or this Article 21 and payment in full of all due and owing amounts, Owner may require Contractor to, and Contractor shall (if so required), (a) withdraw from the Site, (b) deliver to Owner all Work completed as of the effective date of such termination, (c) assign to Owner (without recourse to Contractor) such of Contractor's Subcontracts as Owner may request, and (d) deliver or make available to Owner all patents, and licenses (and to the extent reasonably available, requested information regarding the Work) of Contractor or an applicable third party (including Subcontractors or Vendors) related to the Work reasonably necessary to permit Owner (or Owner's designee) to complete or cause the completion of the Work, and in connection therewith Contractor authorizes Owner and its respective agents to use such information in completing the Work, shall remove such materials, equipment, tools, and instruments used by, and any debris or waste materials generated by, Contractor in the performance of the Work as Owner (or Owner's designee) may direct, and Owner may take possession of any or all Contractor Deliverables and Site facilities of Contractor related to the Work necessary for completion of the Work (whether or not such Contractor Deliverable and Site facilities are complete).

## 21.2. Claims for Payment

All claims for payment by Contractor under this Article 21 must be made within one hundred eighty (180) days after the effective date of a termination hereunder. Owner shall make payments under this Article 21 in accordance with Article 7.

## 21.3. Nature of Termination Payments

The payments described in Section 21.1.1 are intended to constitute Contractor's sole compensation for: (a) all costs of Equipment and Materials, temporary equipment, labor, transportation, engineering, design and other services relating to Contractor's performance of its obligations under this Contract (including any Intellectual Property Rights licensed under this Contract, expressly or by implication) provided by Contractor or its Subcontractors or Vendors, (b) all national, state, regional and local taxes, and other sales taxes effective or enacted as of the date of execution of this Contract or thereafter, each as imposed on Contractor or its Subcontractors or Vendors, (c) all other taxes, duties, levies, imposts, fees, or charges of any kind (whether in the United States or elsewhere) arising out of Contractor's or any such Subcontractor's or Vendor's

performance, including any increases thereof that may occur during the term of this Contract, and (d) any duties, levies, imposts, fees, charges, and royalties imposed on Contractor or its Subcontractors or Vendors with respect to any such Equipment and Materials, labor, or services provided under this Contract. The taxes covered hereby include occupational, excise, unemployment, ownership, value-added, sales and income taxes and any and all other taxes and duties on any item or service that is part, whether such tax is normally included in the price of such item or service or is normally stated separately, all of which shall be for the account of Contractor. The above-described payments shall not be increased with respect to any of the foregoing items or with respect to any withholdings relating to any of the foregoing items that Owner may be required to make.

#### 21.4. Failure to Obtain Permits

If, within three hundred sixty (360) Days following Owner's issuance of the Notice to Proceed, Owner is unable to obtain all of the Owner Acquired Permits necessary for Contractor to perform the Work, either Party may, upon thirty (30) Days' notice to the other Party, terminate this Contract. Such termination shall, for all purposes hereof, be deemed a termination pursuant to Article 21 for a termination for convenience and Contractor shall be entitled to such amounts set forth in Section 21.1.1(b).

## 22. **SUSPENSION**

### 22.1. General

Owner may suspend performance of the Work at any time by giving Notice thereof to Contractor. Such suspension shall continue for the period specified in the suspension Notice. The Guaranteed Dates and Contract Price shall be adjusted as provided in Section 22.3 (other than for a Suspension for Cause). At any time after the effective date of the suspension, Owner may require Contractor to resume performance of the Work on five (5) days' Notice.

### 22.2. Contractor's Termination Right

If, at the end of the specified suspension period, Owner has not requested a resumption of the Work or has not notified Contractor of any extension of the suspension period (but in no event beyond one hundred eighty (180) days for all such suspensions, other than a Suspension for Cause) at Contractor's option this Contract shall be deemed terminated pursuant to Article 21. For the avoidance of doubt, Contractor shall not have a termination right where there has been a Suspension for Cause.

### 22.3. Extension of Time and Compensation Rights

In the case of any suspension under this Article 22 or any suspension by Contractor under Section 20.5(a), other than a Suspension for Cause:

- (a) the Guaranteed Dates shall be extended by the period of Actual Delay;
- (b) (i) with respect to a suspension by Owner due to an Excusable Condition other than an Owner Caused Delay, the Contract Price shall be increased by the sum of those Direct

Costs (plus five percent (5%)) actually, demonstrably and reasonably incurred during the suspension period, to the extent attributable to the suspension, or

(ii) with respect to a suspension by Owner for any other reason or Contractor pursuant to Section 20.5, the Contract Price shall be increased by the sum of those Direct Costs (plus ten percent (10%)) actually, demonstrably and reasonably incurred during the suspension period, to the extent attributable to the suspension, and, in each case, that are:

(i) for the purpose of safeguarding and/or storing the Work and the Equipment and Materials at the point of fabrication, in transit, or at the Site;

(ii) for personnel, Subcontractors, or rented Equipment and Materials, the payments for which, with Owner's prior written concurrence, are continued during the suspension period;

(iii) for reasonable costs of demobilization and remobilization;

(iv) for rescheduling the Work; or

(v) other reasonable Direct Costs related to such suspension;

less any net savings incurred because of such suspension;

(c) the Project Schedule and the Critical Path Items on the Project Schedule shall be adjusted to account for same.

#### 22.4. Claims for Payment

All claims by Contractor for compensation or extension of time under this Article 22 must be made within ninety (90) days after the suspension period has ended and the Work has been either terminated or resumed. Failure of Contractor to make such claim within said period shall be deemed a waiver by Contractor of any such claims, but only to the extent that such failure or delay actually prejudices the Owner.

### 23. **INSURANCE**

#### 23.1. General

(a) Contractor shall procure at its own expense and maintain in full force and effect the insurance coverages and limits as required under Section 23.2, with insurance companies authorized to do business in the State of New Mexico, throughout the performance of the Work under this Contract, commencing with any and all Work performed on Site or off Site in preparation for the Notice to Proceed and Contractor's mobilization at the Site (with the exception that the umbrella/excess liability insurance set forth in Section 23.2.4 and extended completed operations coverage of the commercial general liability coverage set forth in Section 23.2.2 need not commence until Contractor's mobilization at the Site in connection with the Notice to Proceed) and shall be maintained in force and effect until Final Completion. All policies shall be on an occurrence basis with the exception that the Umbrella or Excess Liability Insurance described in Section 23.2.4 and Professional Liability Insurance described in Section 23.2.6 may be written on

a claims made form and the Pollution Liability Insurance as described in Section 23.2.7; provided that the policy (a) has a retroactive date prior to the date of the commencement of the Work, and (b) is maintained by Contractor throughout the performance of the Work and for at least three (3) years after Final Completion either through policy renewal or an extended reporting period.

(b) Owner shall procure at its own expense and maintain in full force and effect as required under this Contract, with insurance companies authorized to do business in the State of New Mexico, the types and limits of insurance as set forth in Section 23.3 and 23.4 and maintained by Owner throughout the performance of the Work and for at least three (3) years after Final Completion either through policy renewal or an extended reporting period.

(c) Such insurance companies shall be rated by A.M. Best Company as having a financial strength rating of “A-” or better and a financial size category of “VIII” or greater.

(d) Capitalized terms used in this Article 23 and not otherwise defined in this Contract shall have the meanings generally ascribed to them in the commercial insurance industry in the United States.

(e) Each Party, at its own cost, may purchase any additional insurance it believes necessary to protect its interests.

(f) Any insurance coverages required below may be satisfied through a combination of primary and excess liability policies.

(g) To the extent permitted by law, Contractor shall waive on behalf of itself and its insurers all rights to assert claims for any losses, damages, liabilities, and expenses, such expenses to include but not be limited to attorney’s fees, against Owner, Owner’s subsidiaries and Affiliates along with their respective directors, officers, and employees, to the extent proceeds realized from policies of insurance maintained or required to be maintained in connection with services or products provided under this Contract are applied to such losses, damages, liabilities, and expenses. Each policy of insurance required herein, with the exception of the professional liability insurance required under Section 23.2.6, shall include an endorsement acknowledging such waiver of subrogation. To the extent permitted by law, Owner shall waive on behalf of itself and its insurers all rights to assert claims for any losses, damages, liabilities, and expenses, such expenses to include but not be limited to attorney’s fees, against Contractor and its Subcontractors, Contractor’s subsidiaries and Affiliates along with their respective directors, officers, and employees, to the extent proceeds realized from policies of insurance maintained or required to be maintained under this Contract by Owner are applied to such losses, damages, liabilities, and expenses. Each policy of insurance required herein shall include an endorsement acknowledging such waiver of subrogation.

### 23.2. Contractor’s Insurance

Contractor shall obtain and maintain in full force and effect the insurance policies specified in this Section 23.2. Any and all deductibles and premiums associated with the policies specified in this Section 23.2 shall be assumed by, for the account of, and at the sole risk of Contractor. Each policy of insurance, as allowed by statute and with the exception of the insurance required under Section 23.2.6, shall waive all of the insurer’s rights of recovery under subrogation or

otherwise, against Owner and its Affiliates and their respective directors, officers, managers, Representatives, agents and employees and any other parties as the Owner may designate.

23.2.1. Workers' Compensation and Employer's Liability Insurance. Contractor shall maintain workers' compensation insurance and such other forms of insurance which Contractor is required to maintain in order to comply with statutory limits in the State of New Mexico or under workers' compensation laws of any applicable jurisdiction in the United States (and any other location in which the Work is to be performed) and employer's liability (including occupational disease) coverage with limits of one million Dollars (\$1,000,000) per accident for bodily injury by accident and, one million Dollars for each employee and policy limit for bodily injury by disease. Such insurance shall cover all of Contractor's employees, whether full-time, leased, temporary or casual, who are engaged in the Work.

23.2.2. Commercial General Liability Insurance. Contractor shall maintain commercial general liability insurance written on an occurrence basis and with a combined single limit of ten million Dollars (\$10,000,000) per occurrence, ten million Dollars (\$10,000,000) general aggregate, ten million Dollars (\$10,000,000) products and completed operations aggregate. Such insurance shall include coverage for premises/operations liability, products and completed operations liability, personal and advertising injury liability, contractual liability, and independent contractor's liability for Work performed on Site and off Site. With respect to the performance of construction activities, Contractor shall maintain extended completed operations coverage, for at least ten (10) years after Final Completion. Such insurance shall provide severability of interests or cross liability provisions permitting one insured to bring a claim against another insured, and shall be endorsed to include Owner and its Affiliates and their respective directors, officers, managers, Representatives, agents and employees or any other parties that Owner may be contractually obligated to include as additional insureds prior to a loss. Owner shall be added as an additional insured with respect to Contractor's ongoing operations through CG 20 10 07 04 or a substitute equivalent form and with respect to Contractor's completed operations through CG 20 37 07 04 or a substitute equivalent form, limited only to the extent required, if applicable, by NMSA 1978 § 56-7-1, as amended. Such additional insured status shall apply regardless of the enforceability of the indemnity provisions in this Contract. Such insurance maintained by Contractor shall be primary with respect to the interest of Owner, and any other insurance or self-insurance maintained by Owner or its Affiliates is in excess and not contributory to Contractor's insurance in all instances regardless of any like insurance that Owner or any of its Affiliates may have.

23.2.3. Automobile Liability Insurance. Contractor shall maintain automobile liability insurance (including coverage for owned, non-owned and hired automobiles) covering vehicles used by Contractor in connection with the Work in an amount of one million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage. Contractor's automobile liability insurance coverage shall contain appropriate no-fault insurance provisions or other endorsements in accordance with Applicable Laws. Such insurance shall be endorsed to include Owner and its Affiliates and their respective directors, officers, managers, Representatives, agents, employees or any other parties that Owner may be contractually obligated to include as additional insureds. Owner shall be added as additional insured prior to a loss, limited only to the extent required, if applicable, by NMSA 1978 § 56-7-1, as amended. Such additional insured status shall apply regardless of the enforceability of the indemnity provisions in this Contract. Such insurance maintained by Contractor shall be primary with respect to the interest of

Owner, and any other insurance or self-insurance maintained by Owner or its Affiliates is in excess and not contributory to Contractor's insurance policies in all instances regardless of any like insurance coverage that Owner or any of its Affiliates may have.

23.2.4. Umbrella or Excess Liability Insurance. Contractor shall maintain up until Final Completion umbrella/excess insurance covering itself and its Subcontractors and Vendors against claims in excess of the underlying insurance described in Section 23.2.2 in the amount of twenty-five million Dollars (\$25,000,000) per occurrence, twenty-five million Dollars (\$25,000,000) general aggregate, and twenty-five million Dollars (\$25,000,000) products and completed operations aggregate (with coverage for completed operations to be in place throughout the performance of the Work and for ten (10) years after Final Completion through an extended reporting period endorsement).. Insurance coverages and limits required herein should not in any way limit the extent of Contractor's responsibilities and liabilities specified elsewhere in this Contract. Such insurance shall be written as follow-form or with an insurance coverage form that provides coverage that is at least as broad as the primary insurance policies, and shall satisfy the maintenance of the required limits through a combination of umbrella liability and/or excess liability insurance policies.

23.2.5. [Reserved.]

23.2.6. Professional Liability Insurance. Contractor shall secure and maintain, professional liability insurance (errors and omissions) covering financial loss arising from engineering, architectural, construction management, and other design build professional services rendered, required or reasonably inferable from the Statement of Work, with a single limit of five million Dollars (\$5,000,000) each claim and five million Dollars (\$5,000,000) annual aggregate. This insurance shall include coverage for professional services provided in connection with the Work performed by Contractor, its Subcontractors, and anyone directly or indirectly employed by any of them in connection with the Project unless Contractor can evidence pursuant to Sections 23.5 and 23.6 that insurance in compliance with this Section 23.2.6 and Section 23.1 is being maintained by each Subcontractor performing such Work. Contractor shall require Subcontractors maintain professional liability insurance with a single limit of two million Dollars (\$2,000,000) each claim and two million Dollars (\$2,000,000) annual aggregate.

23.2.7. Pollution Liability Insurance. Contractor shall maintain on behalf of itself and its Subcontractors contractors pollution liability insurance or the equivalent, with a limit of five million Dollars (\$5,000,000) per occurrence and ten million Dollars (\$10,000,000) annual aggregate. Such insurance shall include coverage for pollution losses, including but not limited to bodily injury, property damage (including but not limited to clean-up costs), and financial loss arising out of pollution conditions resulting from Contractor's and its Subcontractors' and Vendors' operations and completed operations under this Contract. Such insurance shall define pollution conditions at a minimum as the discharge, dispersal, release, or escape of any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, medical waste and waste materials into or upon land, or any structure on land, the atmosphere or any watercourse or body of water, including groundwater, provided such conditions are not naturally present in the environment in the concentration or amounts discovered. Such insurance shall include Owner and its Affiliates and their respective directors, officers, managers, Representatives, agents and employees as an additional insured with respect to Work performed under this Contract (but limited only to the extent required, if applicable, by NMSA



1978 § 56-7-1, as amended). In lieu of Contractor maintaining the insurance for pollution losses arising from the Work on behalf of itself, its Subcontractors and Vendors, and anyone directly or indirectly employed by any of them, Contractor shall evidence pursuant to Section 23.5 and 23.6 that insurance in compliance with this Section 23.2.7 and Section 23.1 is being maintained by each Subcontractor for which the Work involves exposure to pollutions conditions as described above or invasive testing.

23.2.8. Property Insurance. Consistent with its obligations pursuant to Section 24.1(a), Contractor shall assume the risk of loss for Temporary Work, Equipment and Materials (stationary or mobile), supplies, tools, and other personal property (including employee tools) (a) belonging to Contractor or to any of its Subcontractors or (b) used by or on behalf of Contractor or any of its Subcontractors for its performance hereunder which is not intended to become a permanent part of the completed Work. Such Temporary Work, Equipment and Materials, supplies and other personal property shall be brought to and kept at the Site at the sole cost, risk and expense of Contractor or such Subcontractor, and Owner shall not be liable for loss or damage thereto. It is agreed that Owner shall be held harmless by Contractor and its Subcontractors for any loss or damage to such property and that any property insurance maintained by Contractor and its Subcontractors covering such equipment, supplies and materials shall include a waiver of subrogation precluding any claims being made against the Owner and its Affiliates and their respective directors, officers, managers, Representatives, agents and employees and any other parties Owner may be contractually obligated to do so. Contractor may elect to self-insure this requirement.

23.2.9 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 and 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 (to the extent allowed by law), and claim expenses arising from negligent acts, errors and omissions, in rendering or failing to render professional or technology based services performed or on behalf of Contractor and in the provision of technology products in the performance of this Contract, including the failure of products to perform the intended function or serve the intended purpose. Services insured, include, but are not limited to (1) computer systems analysis (2) custom software programming (3) data processing (4) systems integration (5) systems design, consulting, development and modification (6) training services relating to computer software or hardware (7) installation, management, repair and maintenance of computer products, networks and systems (8) Contractor's legal obligation to pay damages and/or defense costs as a result of violation of federal, state or foreign privacy laws and regulations including but not limited to investigative and notification costs arising out of Contractor's requirement to comply with a Breach of Notice or similar law. No exclusion/restriction for unencrypted portable devices/ media may be on the policy. Policy shall have 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. 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 than an occurrence basis as long as the policy, (a) has a retroactive date prior to the date of project commencement, and (b) is

maintained by Contractor throughout the performance of services or storage of data in connection with this Contract and for at least three (3) years thereafter either through policies in force or through an extended reporting period.

If Contractor is providing services which provide direct access to PNM's systems or holding sensitive information of PNM, 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, for up to one (1) year.

### 23.3. Owner's Insurance

Owner shall obtain and maintain in full force and effect the insurance policies specified in this Section 23.3 with respect to Owner's employees.

23.3.1. Workers' Compensation Insurance and Employers' Liability Insurance. In accordance with the laws of the State of New Mexico, Owner shall maintain in force workers' compensation insurance for all of its employees. Owner shall also maintain employer's liability coverage in an amount of not less than one million Dollars (\$1,000,000) per accident and per employee for disease. In lieu of such insurance, Owner may maintain a self-insurance program meeting the requirements of the State of New Mexico along with the required employer's liability insurance.

### 23.4. Builder's Risk Insurance

Contractor shall provide standard form "All Risk" Builders Risk or Installation insurance covering one hundred percent (100%) replacement value of property built or installed on a completed value basis covering the Project against loss or damage during the period of construction commencing at the latest of the Notice to Proceed Date or delivery of any Major Equipment and expiring upon Substantial Completion of the Project. The insurance shall be endorsed to include (a) replacement cost coverage; (b) delayed completion coverage; (c) property in transit coverage for materials and equipment to be incorporated into the project; (d) ordinance or law coverage, including (i) coverage for loss to the undamaged portion of the project, (ii) demolition cost coverage, and (iii) increased cost of construction; and (e) a loss payable endorsement naming PNM as a loss payee as their interests may appear. The delayed completion coverage endorsement shall provide on an actual loss sustained basis indemnification for scheduled soft costs, and loss of gross earnings arising from any delay in the completion of the insured project due to direct physical loss or damage to the insured structures or materials. Insurance proceeds shall be paid to and used by the Party having risk of loss at the time of the claim pursuant to Article 24 and any disputes between Owner and Contractor regarding the application of insurance proceeds shall be addressed in accordance with Article 33.

### 23.5. Subcontractor Insurance

To the extent permitted by law, Contractor shall determine the appropriate levels of insurance to be maintained by its Subcontractors and Vendors and shall cause said Subcontractors

and Vendors to waive on behalf of themselves and its insurers all rights to assert claims for any losses, damages, liabilities, and expenses, such expenses to include but not be limited to attorney's fees, against Owner, Owner's subsidiaries and Affiliates along with their respective directors, officers, and employees, to the extent proceeds realized from policies of insurance maintained or required to be maintained in connection with services or products provided under their respective Subcontracts are applied to such losses, damages, liabilities, and expenses. Each policy of said Subcontractor and Vendor required herein shall include an endorsement acknowledging such waiver of subrogation.

#### 23.6. Contractor Certificates

No later than (i) thirty (30) Days prior to the commencement of performance of the Work, including any and all Work performed on Site or off Site in preparation for the Notice to Proceed, and (ii) thirty (30) Days prior to Contractor's mobilization at the Site in connection with the Notice to Proceed, and thereafter prior to the renewal of any policy required herein, Contractor shall furnish to Owner certificates of insurance from each insurance carrier showing that the above required insurance for the Project is in full force and effect, the amount of any deductibles and retentions, and all limits of liability including sublimits. Each policy shall provide that it will not be canceled or non-renewed until the expiration of at least thirty (30) days (or ten (10) days in the case of cancellation due to non-payment of premiums) after Notice of such cancellation or non-renewal has been furnished to Owner. Contractor shall also be responsible for obtaining certificates of insurance maintained by all Major Subcontractors prior to the commencement of any Work. Upon request, Contractor shall provide Owner certificates of Insurance of all Major Subcontractors.

#### 23.7. No Limitation of Liability

Subject in all respects to the terms of Article 32, the insurance coverages required of Contractor set forth in Section 23.2 shall in no way affect, nor are they intended as a limitation of, Contractor's liability with respect to its performance of the Work.

### **24. RISK OF LOSS OR DAMAGE**

#### 24.1. Risk of Loss for Project Before Substantial Completion.

(a) Prior to Substantial Completion Contractor assumes risk of loss for, and full responsibility for the cost of replacing or repairing any damage to, the Project and all Equipment and Materials, and maintenance equipment (including temporary materials, equipment and supplies) which are purchased by Contractor for permanent installation in or for use during construction of the Project or otherwise supplied or to be supplied by Contractor or its Subcontractors, regardless of whether Owner has title thereto under this Contract;

(b) If prior to Substantial Completion any portion of the Project is lost or damaged, then Contractor shall replace or repair any such loss or damage and complete the Work.

(c) However, if any portion of the Project is lost or damaged before Substantial Completion of the Project due to any negligent or intentional act or omission of Owner, any Affiliate of Owner or any Owner's Separate Contractor, or anyone employed by any of them, or

anyone for whose acts such Person may be liable, then Owner shall bear the cost and expense of replacing or repairing such loss or damage.

**24.2. Risk of Loss for Equipment and Materials or Work Supplied by Contractor**

Notwithstanding anything to the contrary in Section 24.1, Contractor shall, until Substantial Completion, bear the risk of loss for, and full responsibility for the cost of replacing or repairing any damage to, any Equipment and Materials or Work supplied or to be supplied by Contractor or its Subcontractors. If any portion of such Equipment and Materials or Work is lost or damaged, then Contractor shall replace or repair any such loss or damage in accordance with this Contract unless such damage is due to any negligent or intentional act or omission of Owner, any Affiliate of Owner or any Owner's Separate Contractor, or anyone employed by any of them, or anyone for whose acts such Person may be liable, then Owner shall bear the cost and expense of replacing or repairing such loss or damage.

**24.3. Risk of Loss for Project After Substantial Completion.**

Generally, but subject to and without limiting Contractor's obligations expressly set forth in this Contract arising from and after Substantial Completion, Owner shall bear the risk of loss for, and full responsibility for, the cost of replacing or repairing any damage to the Project from and after Substantial Completion of the Project. However, if any portion of the Project is lost or damaged after Substantial Completion of the Project due to the acts or omissions or negligence (but not the gross negligence or willful misconduct) of Contractor, any Affiliate of Contractor or any Subcontractor or Vendor, or anyone directly or indirectly employed by any of them, or anyone whose acts such Person may be liable, then Contractor shall bear all of the cost and expense of replacing or repairing such loss or damage up to an amount equal to six hundred thousand Dollars (\$600,000).

**25. INDEMNIFICATION**

**25.1. By Contractor**

Contractor shall defend, indemnify, and hold harmless Owner, and its respective employees, agents, partners, Affiliates, shareholders, directors, officers, and permitted assigns (each an "Owner Indemnitee"), from and against all Losses to the extent that they directly or indirectly arise out of or result from the following:

(a) any negligent act, tortious act or negligent omission during the performance of its obligations under this Contract, or any curative action under any warranty following performance of the Work, of Contractor or any Affiliate thereof, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable, but only to the extent not caused or resulting from the negligence, act or omission of the Owner Indemnitees, Owner's Separate Contractors, or any other third party for which Contractor is not responsible causing (i) personal injury or death of a third party or (ii) physical damage to property on or off the Site owned by a third party.

(b) Contractor Liens filed by Contractor, Subcontractors, Vendors or any other Person performing any Work provided Contractor has been paid undisputed amounts owed under this Contract;

(c) any fines or penalties imposed on Owner Indemnitees by a Governmental Authority related to the failure of Contractor or any of its Subcontractors to comply with Applicable Laws or the conditions or provisions of Applicable Permits;

(d) (i) the use or release of Hazardous Materials at the Site that were brought onto, or generated at the Site by Contractor or any Subcontractor and (ii) the use or release of pre-existing Hazardous Materials at the Site to the extent such Hazardous Materials are negligently used or released by a Contractor Party; and (iii) a breach of Contractor's obligations under Article 29;

(e) the failure of Contractor to pay, as and when due, all lawfully imposed taxes, duties, levies, assessments, tariffs, imposts, fees or charges or any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any Governmental Authority for which Contractor is obligated to pay pursuant to the terms of this Contract.

#### 25.2. By Owner

Owner shall defend, indemnify, and hold harmless Contractor and its respective employees, agents, partners, Affiliates, shareholders, directors, officers, and permitted assigns (each a "Contractor Indemnitee") from and against all Losses to the extent that they directly or indirectly arise out of or result from the following:

(a) any negligent, tortious act or negligent omission by Owner or any of Owner's Separate Contractors during the performance of Owner's obligations under this Contract or any Affiliate thereof, including the performance of any Owner's Separate Contractor, but only to the extent not caused or resulting from the negligence, act or omission of the Contractor Indemnitees or any other third party for which Owner is not responsible causing (i) personal injury or death of a third party or (ii) physical damage to property on or off the Site owned by a third party;

(b) any fines or penalties imposed on Contractor Indemnitees by a Governmental Authority related to the failure of Owner or any of its Owner's Separate Contractors to comply with the terms and conditions of Applicable Laws or the conditions or provisions of Applicable Permits;

(c) the use or release of Hazardous Materials at the Site that were brought onto, or generated at the Site by Owner or Owner's Separate Contractors and for which Contractor does not have an indemnity obligation pursuant to Section 25.1(d);

(d) the failure of Owner to pay, as and when due, all taxes, duties, levies, assessments, tariffs, imposts, fees or charges or any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any Governmental Authority for which Owner is obligated to pay pursuant to the terms of this Contract.

#### 25.3. Actions by Governmental Authorities

Contractor shall defend, indemnify, and hold the Owner Indemnitees harmless from and against all claims by any Governmental Authority claiming taxes based on gross receipts or on

income of Contractor, any of its Subcontractors, or any of their respective agents or employees with respect to any payment for the Work made to or earned by Contractor, any of its Subcontractors, or any of their respective agents or employees under this Contract and any fines imposed by a Governmental Authority due to Contractor's performance under this Contract. Owner shall defend, indemnify, and hold the Contractor Indemnitees harmless from and against all claims by any Governmental Authority claiming taxes based on gross receipts or on income of Owner, any Owner's Separate Contractors, or any of their respective agents or employees with respect to any payment made to or earned by Owner, any Owner's Separate Contractors, or any of their respective agents or employees under this Contract.

#### 25.4. Patent Infringement and Other Indemnification Rights

Contractor shall defend, indemnify, and hold harmless the Owner Indemnitees against all Losses arising from any Intellectual Property Claim (subject, however, to Section 25.6). Without limiting the provisions of Section 25.5, if Owner provides Notice to Contractor of the receipt of any such claim, Contractor shall, at its own expense, settle or defend any such Intellectual Property Claim and pay all damages and costs awarded in such Intellectual Property Claim against Owner and (a) procure for Owner, or reimburse Owner for procuring, the permanent right to continue using the infringing service, Equipment and Materials, or other Work, as the case may be; (b) modify the infringing service, Equipment and Materials, or other Work, as the case may be, so that the same becomes non-infringing; or (c) replace the infringing service, Equipment and Materials, or other Work, as the case may be, with non-infringing service, Equipment and Materials, or other Work, as the case may be. If Owner is enjoined from completing the Project or any part thereof, or from the use, operation, or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, then Contractor shall promptly use commercially reasonable efforts to have such injunction removed and to take one or more of the actions under the preceding clauses (a), (b) or (c), provided, that in no case shall Contractor take any action which adversely affects Owner's continued use and enjoyment of the applicable service, Equipment and Materials, or other Work, as the case may be, without the prior written consent of Owner. Owner's acceptance of the Contractor Deliverables or supplied Equipment and Materials shall not be construed to relieve Contractor of any obligation hereunder. Notwithstanding anything in this Contract to the contrary, Contractor's obligation to indemnify, defend and hold Owner harmless against infringement of Intellectual Property Claims does not apply to: (i) Equipment and Materials or other Work if provided according to Owner's or Owner's Separate Contractors design or instructions where Contractor has provided Owner written Notice of the specific infringement of Intellectual Property Rights that would occur due to such design or instructions, (ii) the Equipment and Materials or other Work being used for the Project for which this Contract is executed where such Equipment and Materials or other Work is not being used by the Owner for its intended use or (iii) if such Equipment and Materials is materially modified for use not in accordance with Industry Standards. Any Equipment and Materials or other Work not manufactured or developed by Contractor or its Affiliates will be limited to the indemnity, if any, of the manufacturer, supplier or Vendor of said Equipment and Materials or other Work.

#### 25.5. Claim Notice

An indemnitee hereunder shall provide Notice to the indemnifying party, within ten (10) Days after receiving written notice of the commencement of any legal action or of any claims or threatened claims against such indemnitee in respect of which indemnification may be sought

pursuant to the foregoing provisions of this Article 25 or any other provision of this Contract providing for an indemnity (such notice, a “Claim Notice”). The indemnitee’s failure to give, or tardiness in giving, such Claim Notice will reduce the liability of the indemnifying party by the amount of damages attributable to such failure or tardiness, or to the extent the indemnifying Party is prejudiced by such failure or late notice, but shall not otherwise relieve the indemnifying party from any liability that it may have under this Contract. In case any such claim or legal action shall be made or brought against an indemnitee hereunder and such indemnitee shall notify (by sending a Claim Notice) the indemnifying party thereof, the indemnifying party shall have the right, by Notice given to the indemnitee within ten (10) Days after the date of the applicable Claim Notice, and if applicable, after notifying and consulting with any insurers who may provide claims coverage for the claim subject to such Claim Notice, to assume and control the defense of the claim that is the subject of such Claim Notice, including the employment of counsel selected by the indemnifying party after consultation with the indemnitee and the indemnifying party shall pay all expenses of the conduct of such defense. The indemnitee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such claim, but the fees and expenses of such counsel shall be borne by the indemnitee unless the indemnifying party shall agree otherwise; provided, however, if the named parties to any such proceeding (including any impleaded parties) include both the indemnitee and the indemnifying party, the indemnifying party requires that the same counsel represent both the indemnitee and the indemnifying party, and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, then the indemnitee shall have the right to retain its own counsel at the reasonable cost and expense of the indemnifying party. If the indemnifying party shall have failed to assume or diligently prosecute the defense of any claim in accordance with the provisions hereof, then the indemnitee shall have the absolute right to control the defense of such claim and the fees and expenses of such defense, including reasonable attorneys’ fees of the indemnitee’s counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnifying party, provided that the indemnifying party shall be entitled, at its expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnifying party shall control the settlement of all claims, in coordination with any insurer as required under the applicable insurance policies set forth in Article 23, as to which it has assumed the defense; provided, however, that (i) such settlement shall include a dismissal with prejudice of the claim and an explicit and unconditional release from the party bringing such claim or other proceedings of all indemnitees; and (ii) the indemnifying party shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld; and (b) except as provided in the preceding sentence concerning the indemnifying party’s failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnifying party, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless such indemnitee reasonably believes based on written opinion of legal counsel that the matter in question involves potential criminal liability. The indemnitee shall provide reasonable assistance to the indemnifying party when the indemnifying party so requests in connection with such legal action or claim, including executing any powers-of-attorney or other documents required by the indemnifying party with regard to the defense or indemnity obligations, and any expenses in connection therewith in excess of the indemnitee’s ordinary administrative costs and de minimus expenses shall be at the indemnifying party’s expense.

## 25.6. Limitations

With respect to Section 25.1, Section 25.2 and Section 25.3, the Parties intend that principles of comparative negligence will apply, and each Party shall bear the proportionate cost of any loss, damage, expense, and liability attributable to that Party's negligence, recklessness or otherwise tortious conduct.

## 26. TREATMENT OF CONFIDENTIAL INFORMATION

### 26.1. Confidentiality Obligation

Except as otherwise expressly agreed in writing by the other Party, and except as otherwise agreed in Section 26.2, each receiving Party shall (a) keep strictly confidential and take reasonable precautions to protect against the disclosure of (i) the terms and conditions of this Contract and (ii) all Confidential Information, and (b) use all Confidential Information solely for the purposes of performing its obligations under this Contract and not for any other purpose; provided that a Party may disclose facts, terms and conditions referred to in clause (a) above and Confidential Information to those of its Representatives who need to know such information for the purposes of performing the receiving Party's obligations under this Contract if, but only if, prior to being told of such matters or being given access to Confidential Information, such Representatives are informed of the confidentiality thereof and the requirements of this Contract and are directed to comply with the requirements of this Contract. Each Party will be responsible for any breach of this Contract by its Representatives.

### 26.2. Disclosures to Governmental Authorities

Provided that Owner complies with the notice requirements set forth in Section 26.3.1, Owner may disclose the terms, conditions or other matters relating to this Contract and all Confidential Information furnished or made available by either Party pursuant to this Contract:

(a) to duly authorized Governmental Authorities, including without limitation the Federal Energy Regulatory Commission, the NMPRC and the Securities and Exchange Commission; and

(b) to the extent necessary to comply with any Applicable Law or any discovery or data request of a party to any proceeding pending before any of the foregoing.

Owner shall have no liability whatsoever to Contractor in the event of any unauthorized use or disclosure by a Governmental Authority of any Confidential Information or other information disclosed to any of them by Owner.

### 26.3. Compelled Disclosure

26.3.1. Notice of Disclosure Requirement. If any Party or its respective Representatives become subject to a requirement of an Applicable Law or other request of a Governmental Authority to disclose any Confidential Information, or any part thereof, or any other matter required by Section 26.1 to be kept confidential, such Party will promptly notify the other Party of the existence, terms, and circumstances of such requirements so that such other Party may seek an appropriate protective order or waive compliance with the provisions of this Contract.



26.3.2. Limitation of Disclosure. If Contractor complies with Section 26.3.1 but it or its Representatives are compelled, in the opinion of its legal counsel, to make disclosure in response to a requirement described in Section 26.3.1 or else stand liable for contempt or suffer other penalty, the compelled person may disclose only that portion of the Confidential Information which is legally required and will exercise commercially reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the disclosed Confidential Information or other matter.

#### 26.4. Ownership and Return of Information

All Confidential Information shall be and remain the property of the Party providing it; provided, however, that all Confidential Information obtained, developed or created by or for Contractor exclusively for the Project, including copies thereof, is the exclusive property of Owner, without any further consideration to be paid therefor, whether delivered to Owner or not. No right or license is granted to Contractor or any third party respecting the use of such Confidential Information by virtue of this Contract, except to the extent required for Contractor's performance of its obligations hereunder. Upon the request of a Party, all Confidential Information, including all written or recorded copies thereof, shall be promptly returned to the requesting Party or destroyed, and if destroyed, such destruction shall be certified in writing to the requesting Party by a responsible officer of the other Party; provided, however, the receiving Party may retain one copy of the disclosing Party's Confidential Information solely for audit compliance purposes, and the receiving party shall (i) notify the requesting Party in writing promptly following any disclosure of such Confidential Information and (ii) return such copy to the requesting Party promptly following the conclusion of the applicable audit compliance procedures.

#### 26.5. Enforcement

The Parties agree that irreparable damage could occur if the confidentiality obligations under this Contract were not performed in accordance with its terms or were otherwise breached. Accordingly, a Party will be entitled to seek an injunction or injunctions to prevent breaches of this Article 26 and to enforce specifically its provisions in any court of competent jurisdiction, in addition to any other remedy to which the Party may be entitled by law or equity.

#### 26.6. Other Pertinent Confidentiality Provisions

Upon completion of the Work, Contractor shall destroy all copies, replicas or reproductions in any form in its possession of the Confidential Information and data. Notwithstanding the foregoing, the Contractor may retain a single copy of such Confidential Information and data as may be reasonably required for purposes of compliance with the Contractor's legal retention policies, and Applicable Laws and regulations. In addition, the Contractor shall not be required hereunder to destroy or remove Confidential Information and data stored in an electronic database until such time as such data would, in the regular course of business, be purged. Further, Contractor acknowledges and agrees that all data and Confidential Information collected, produced or generated, and all reports, test results, plans, models, documents and other written materials produced pursuant to this Contractor in connection with any Work to be performed or contemplated to be performed hereunder or in connection with any Equipment and Materials to be provided or contemplated to be provided/purchased hereunder, shall be and remain the sole property of Owner, shall be strictly confidential, shall not be copied or reproduced in any way,

except for the use by Contractor for the Work, and shall not be disclosed or communicated, verbally or in writing, by Contractor to any third party, or used in any way except as required by law or for the purposes required or intended by the Contract.

## **27. INVENTIONS AND LICENSES**

### **27.1. Work Product**

Any and all material and information prepared, accumulated or developed by Contractor, any Subcontractor or their respective employees or Representatives, including, without limitation, documents, drawings, designs, calculations, maps, plans, workplans, text, filings, estimates, manifests, certificates, books, specifications, sketches, notes, reports, summaries, analyses, data models and samples, including summaries, extracts, analyses and preliminary or draft materials developed in connection therewith, prepared, or to be prepared, in connection with the Work shall become the sole property of Owner without any further consideration, provided, however, Contractor shall remain the sole owner of all of its intellectual property.

### **27.2. Contractor Patents and Proprietary Licenses**

Contractor further agrees to grant and hereby grants to Owner an irrevocable, perpetual, fully-paid, non-exclusive, royalty-free license under all Intellectual Property Rights and other proprietary information of Contractor related to or incorporated into the Work now or hereafter owned or controlled by Contractor to the extent reasonably necessary:

(a) for the operation, maintenance or repair (or alteration in accordance with the Project's intended use), of the Project; or

(b) to the extent such patents, copyrights and other proprietary information of Contractor are related to any specific design concepts developed primarily for the Project.

Contractor shall cause each Subcontractor to grant a corresponding license to Owner.

Contractor's grant of a license for Intellectual Property Rights shall include all Intellectual Property Rights not otherwise assigned to Owner pursuant to Section 4.16.

No other license in such patents and proprietary information is granted pursuant to this Contract.

### **27.3. Software Licenses**

To the extent Contractor purchases any software that is necessary or otherwise desirable for the continued operation of the Project after Substantial Completion, Contractor shall register the Owner as the licensee of such software with the applicable Vendor, and Contractor shall be responsible for any registration, renewal or transfer costs incurred through the Warranty Period. If any of the licenses for required software are not transferable from Contractor to Owner, then Contractor shall obtain fully functional versions of the applicable software for Owner. Such

software shall be licensed to Owner, and any costs incurred to obtain the software license shall be at Contractor's sole expense.

## **28. ASSIGNMENT**

Each Party understands that this Contract is personal to such Party. Subject to the other terms of this Section 28, neither Party shall have no right, power, or authority to assign or delegate this Contract or any portion thereof, either voluntarily or involuntarily, or by operation of law. Any attempted assignment or delegation of any of its Work hereunder in contravention of the terms of this Section 28 shall be null and void and shall be ineffective to relieve such Party of its obligations hereunder. Notwithstanding the foregoing, (i) prior to the issuance by Owner of the Notice to Proceed, subject to Owner's written approval (such approval to be in Owner's sole discretion), Contractor may assign its rights and obligations under this Contract to any of Contractor's qualified Affiliates under a form of assignment acceptable to Owner. Contractor may employ Subcontractors on the terms and conditions set forth in this Contract to perform the Work; provided, however, that the use of Subcontractors shall not in any way relieve Contractor of its responsibilities and obligations under this Contract. Owner may, without Contractor's consent, assign all (but not part) of this Contract to an Affiliate of Owner subject to a customary assignment and assumption agreement under which such assignee shall agree to be bound by the terms and conditions of this Contract.

## **29. HAZARDOUS MATERIALS**

Contractor shall not, and shall not permit any of its Subcontractors to permit, directly or indirectly, the manufacture, storage, transmission or presence of any Hazardous Materials on the Site except in accordance with Applicable Laws. Contractor shall not, and shall not permit any of its Subcontractors, to release, disturb, discharge or otherwise dispose of any Hazardous Materials on the Site. Contractor shall conduct and complete all investigations, studies, sampling and testing of the Site in connection with the potential presence of Hazardous Materials at the Site to the extent required under any Applicable Laws, and Contractor shall promptly comply with all lawful orders and directives of all Governmental Authorities regarding Applicable Laws. If Contractor discovers, encounters or is notified of the existence of any contaminated materials or Hazardous Materials at the Site, then:

(a) Contractor shall promptly notify Owner thereof and cordon off the area containing such contaminated materials or Hazardous Materials;

(b) if a Contractor Party is responsible for bringing onto the Site or the placement of or discharge of such Hazardous Materials, then Contractor shall remove such Hazardous Materials from the Site and remediate the Site at Contractor's sole cost and expense; and

(c) if a Contractor Party is responsible for bringing onto the Site or the placement of or discharge of such Hazardous Materials, then Contractor shall not be entitled to any extension of time or additional compensation under this Contract for any delay or costs incurred by Contractor as a result of the existence of such Hazardous Materials.

If neither Contractor nor any Subcontractor is responsible for the placement or discharge of such Hazardous Materials, then Contractor shall be entitled to an appropriate Change in Work which

will entitle Contractor to an adjustment to the Contract Price and/or Guaranteed Dates as a result of the original scope of Work being delayed or made more difficult by the existence of such Hazardous Materials as if such an event constituted an Excusable Condition in accordance with Article 17.

### **30. NON-PAYMENT CLAIMS**

To the extent Contractor has been paid undisputed amounts owed under this Contract, Contractor shall not directly or indirectly create, incur, assume or suffer to be created by it or any Subcontractor, employee, laborer, materialman or other supplier of goods or services any right of retention, mortgage, pledge, assessment, security interest, lease, advance claim, levy, claim, lien, charge or encumbrance on the Work, the Site, the Project or any part thereof or interest therein (each a "Contractor Lien"). Contractor hereby waives any such Contractor Lien to the extent allowed by Applicable Laws, and Contractor shall keep the Site, the Work and all Subcontractor Equipment and Materials free of Contractor Liens. Contractor shall promptly pay or discharge, and discharge of record, any such Contractor Lien or other charges which, if unpaid, might be or become a Contractor Lien. Contractor shall promptly notify the Owner of the assertion of any Contractor Lien. Contractor shall indemnify and hold harmless Owner and its Affiliates (collectively, the "Lien Indemnitees") and defend each of them from and against any and all Losses arising out of any and all Contractor Liens and other claims for payment, whether or not reduced to a lien or mechanics lien, filed by Contractor or any Subcontractors, or other persons performing any portion of the Work, including reasonable attorneys' fees and expenses incurred by any Lien Indemnitee in discharging any Contractor Lien. If any Lien Indemnitee becomes aware of any Contractor Lien, then such Lien Indemnitee may so notify Contractor in writing, and Contractor shall then (a) satisfy such Contractor Lien, or (b) defend the Lien Indemnitees against any such Contractor Lien and provide assurances of payment as described in the last sentence of this Article 30. If Contractor does not promptly, and in any event within fifteen (15) days after such Notice, satisfy such Contractor Lien, give such Lien Indemnitee reasons in writing that are reasonably satisfactory to such Lien Indemnitee for not causing the release of such Contractor Lien, or contest such Contractor Lien in accordance with the provisions of the last sentence of this Article 30, then any Lien Indemnitee shall have the right, at its option, after written notification to Contractor, to cause the release of, pay, or settle such Contractor Lien, and Owner at its sole option may (i) require Contractor to pay, within five (5) days after request by Owner, or (ii) offset against any amount due or to become due to Contractor (in which case Owner shall, if it is not the applicable Lien Indemnitee, pay such amounts directly to the Lien Indemnitee causing the release, payment, or settlement of such liens or claims), all costs and expenses incurred by the Lien Indemnitee in causing the release of, paying, or settling such Contractor Lien, including reasonable attorneys' fees, and other expenses. Contractor shall have the right to contest any such Contractor Lien, provided it first provides to Owner a bond or other assurances of payment reasonably satisfactory to Owner in the amount of such Contractor Lien and in form and substance reasonably satisfactory to Owner.

### **31. NOTICES AND COMMUNICATIONS**

#### **31.1. Requirements**

Any Notice pursuant to the terms and conditions of this Contract shall be in writing and deemed effective as follows: (a) delivered personally, upon delivery; (b) sent by certified mail,

return receipt requested, upon certified receipt; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, upon receipt; or (d) sent by confirmed facsimile transmission or electronic mail, when acknowledged by recipient as having been received in full, to the following addresses:

If to Contractor:

Justin Bloch, President  
DEPCOM Power, Inc.  
9185 E. Pima Center Pkwy, Ste 100  
Scottsdale, Arizona 85258  
[jbloch@depcompower.com](mailto:jbloch@depcompower.com)  
(908) 655-6752

With copy to: Charlotte Scaglione, General  
Counsel  
DEPCOM Power, Inc.  
9185 E. Pima Center Pkwy, Ste 100  
Scottsdale, Arizona 85258  
[cscaglione@depcompower.com](mailto:cscaglione@depcompower.com)  
(314) 276-6003

If to Owner:

Public Service Company of New Mexico  
2401 Aztec Rd, NE  
Albuquerque, NM 87107  
E-mail: [jason.jones@pnm.com](mailto:jason.jones@pnm.com)  
Attn: Jason Jones, Director of Generation  
Engineering

With a copy to:

PNM Resources, Inc.  
Legal Department MS 0805  
Albuquerque, NM 87158  
E-mail:  
[Christopher.Atencio@pnmresources.com](mailto:Christopher.Atencio@pnmresources.com)>[@pnmresources.com](mailto:@pnmresources.com)  
Attn: Christopher Atencio

### 31.2. Representatives

Any technical or other communications pertaining to the Work shall be with the Parties' designated Representative. Each Party shall notify the other in writing of the name of such Representative. The Project Manager and the Project Representative each shall have knowledge of the Work and be available at all reasonable times for consultation. Each Party's Representative shall be authorized on behalf of such Party to administer this Contract, agree upon procedures for

coordinating the efforts of the Parties, and, when appropriate, to furnish information to or receive information from the other Party in matters concerning the Work.

## **32. LIMITATIONS OF LIABILITY AND REMEDIES**

### **32.1. Limitations on Damages**

Except for the liquidated damages specified under Sections 16.1, 16.2 and 21.1, and notwithstanding anything else in this Contract to the contrary, no Party shall be liable to the other Party (or any of its Affiliates or any of its or their respective employees, agents, shareholders, members, directors, or officers) for any loss of profits, loss of revenue, or loss of use of the Project or any indirect, incidental consequential, exemplary, special or punitive damages arising out of this Contract, regardless of whether any such damages arise out of breach of contract, guaranty or warranty, tort, product liability, indemnity, contribution, strict liability or any other legal theory; provided, however, that the foregoing shall not limit a Party's obligation to pay damages that may be awarded to a party other than an Owner Indemnitee or Contractor Indemnitee in connection with such Party's obligation to indemnify the other Party for such Loss pursuant to Article 25.

### **32.2. Limitations on Contractor's Liability**

**32.2.1. Liability Under Contract.** In no event shall Contractor's aggregate liability to Owner or any of Owner Indemnitee in connection with this Contract, the Work and the Project, whether arising in contract, warranty or guaranty, tort, product liability, indemnity, contribution, strict liability or otherwise, be greater in the aggregate than an amount equal to the Liability Cap; provided, however, that nothing contained in this Section 32.2 or in any other provision of this Contract shall be construed to limit Contractor's liability (a) with respect to any gross negligence, willful misconduct or fraud on the part of Contractor or any Subcontractor, or (b) with respect to any of Contractor's indemnity obligations under Article 25 relating to claims for third parties (other than Owner Indemnitees).

**32.2.2. Liquidated Damages.** In no event shall Contractor's liability for Substantial Completion Delay Liquidated Damages and the Buy-Down Amount exceed, in the aggregate, the Maximum Contractor Aggregate Liquidated Damages and the Substantial Completion Delay Liquidated Damages shall not exceed the Maximum Contractor Aggregate Liquidated Damages and the Buy-Down Amount shall not exceed the Maximum Performance Liquidated Damages. The Parties agree that Owner's actual damages in the event of such delay or failure may be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that the Substantial Completion Delay Liquidated Damages and Buy-Down Amount are in the nature of liquidated damages and are a reasonable and appropriate measure of the damages that Owner would incur as a result of such delays or failures, and do not represent a penalty.

### **32.3. Limitation on Owner's Liability**

**32.3.1. Liability Under Contract.** In no event shall Owner's liability in connection with this Contract, the Work and the Project, whether arising in contract, warranty or guaranty, tort, product liability, indemnity, contribution, strict liability or otherwise, be greater in the aggregate than the Liability Cap; provided, however, that nothing contained in this Section 32.3 or in any other provision of this Contract shall be construed to limit Owner's liability (a) for its obligations to pay the Contract Price hereunder, provided payments towards the Contract Price

shall not reduce the Liability Cap, or (b) with respect to any gross negligence, willful misconduct or fraud on the part of Owner, or (c) with respect to any of Owner's indemnity obligations under Article 25 relating to claims for third parties (other than Contractor Indemnitees).

32.3.2. Exclusions from Limitation on Liability. Notwithstanding anything herein to the contrary, for purposes of determining whether the limit on Owner's liability pursuant to this Contract has been exceeded, liabilities of Owner to Contractor covered by insurance required to be carried by Owner pursuant to Article 23 (except deductibles paid by Owner) shall be excluded from the calculation of Owner's aggregate liability.

#### 32.4. Releases, Indemnities and Limitations

Except as expressly set forth herein, releases, assumptions of and limitations on liabilities and limitations on remedies expressed in this Contract as well as waivers of subrogation rights shall apply even in the event of fault, negligence, or strict liability of the Party released or whose liability is limited or assumed or against whom the right of subrogation is waived and shall extend to the officers, directors, employees, licensees, agents, partners, or entities of such partners, such as their partners and related entities.

#### 32.5. Representations

Each Party makes no representations, covenants, warranties, or guarantees, express or implied, other than those expressly set forth in this Contract and in the Exhibits thereto.

### **33. DISPUTES**

#### 33.1. Referral to Senior Management

Any and all controversies, disputes or differences between the Parties to this Contract, if not amicably settled by the Parties within thirty (30) days following written notice of dispute, shall be referred to executive officers (senior vice president or higher) of the Parties for resolution. In the event the dispute has not been resolved within thirty (30) days following referral to senior management, or such longer period as the Parties may mutually agree, then either Party, upon ten (10) days' notice to the other Party, may submit the dispute to arbitration pursuant to Section 33.2.

#### 33.2. Arbitration

In the event the Parties are unable to resolve the dispute pursuant to Section 33.1), then the dispute shall be resolved by binding arbitration. Such arbitration shall be governed by the then-prevailing Construction Rules of the American Arbitration Association; provided, however, that the arbitration may be conducted independently of the American Arbitration Association. A Party electing to submit a dispute to arbitration shall give the other Party a timely demand for arbitration and, if such Party wishes the American Arbitration Association to also conduct the arbitration, shall file the demand and the requisite fee with the American Arbitration Association. In either case, such demand for arbitration shall describe the nature of the dispute and the amount in controversy. There shall be three (3) arbitrators: (i) claimant shall appoint an arbitrator in its demand for arbitration, (ii) respondent shall appoint an arbitrator within twenty (20) days after receipt of a copy of the demand, and (iii) within fifteen (15) days after the appointment of the second arbitrator, the two (2) arbitrators appointed by the Parties shall select a third arbitrator who

shall serve as chair of the arbitral tribunal. Any arbitrator not timely appointed shall be appointed by the American Arbitration Association using the listing ranking and striking procedures in the Construction Rules, with each Party being given three (3) strikes. Each Party and the American Arbitration Association (when acting as appointing authority under this Article 33) shall, unless no such arbitrator is available, appoint as each arbitrator, including any chair, an attorney who has experience with and is knowledgeable regarding, and has extensive experience with, the engineering, procurement, and construction industry as well as the utility scale solar renewable energy industry, including projects and disputes of similar size and complexity to that issue. The arbitration shall be held in Albuquerque, New Mexico. Discovery shall be by agreement of the Parties or as ordered by the arbitrator, provided that the Parties shall comply with the following minimum discovery requirements: at least ninety (90) calendar days prior to the arbitration, the Parties shall exchange copies of all exhibits to be used at the arbitration, all Contract documents in any way related to the dispute, a list of witnesses and a summary of the matters as to which each witness is expected to testify. A reasonable number of depositions may be taken. The arbitration panel shall decide the dispute in strict accordance with this Contract and by providing a reasoned award within thirty (30) days of the conclusion of the hearings. The award entered by the arbitrator shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction thereof. All costs of arbitration (including the fees of the arbitrator) shall be split equally by the Parties, except that the Parties shall be responsible for payment of their own attorney fees, expert fees, preparation fees, travel costs, witness fees, photocopying and similar costs. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of New Mexico. Indemnity claims are not subject to mandatory arbitration. Work to Continue

Unless otherwise agreed in writing, Contractor shall diligently carry on the Work during the pendency of any dispute proceeding so long as all undisputed amounts payable to Contractor hereunder have been paid and Owner shall also diligently comply with the requirements of this Contract during a pendency of a dispute, including payment of all undisputed amounts due and owing hereunder.

### **34. LEGAL AND REGULATORY COMPLIANCE AND NMPRC APPROVAL**

#### **34.1. Governmental Approvals**

Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Applicable Permits relative to its respective obligations under this Contract and shall timely and properly pay its respective charges and fees in connection therewith.

#### **34.2. NMPRC Approval**

Other than with respect to Preliminary Work, the obligations of the Parties hereunder shall be conditioned upon the delivery of a Notice to Proceed following NMPRC Approval in connection with (i) the execution and performance of this Contract; (ii) the execution and performance of the CCN; (iii), any requested financing or other cost recovery method; and (iv) any waivers as set forth in Owner's request for approval of this Contract or the CCN (collectively, "Requested Actions"). In particular:

(a) Owner agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Contractor agrees to cooperate with and assist



Owner in these efforts as Owner may reasonably request.

(b) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to appeal or further proceedings on remand (i) approving this Contract, including authorization to recover the costs of the Requested Actions; or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Contractor and Owner agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval relating to Requested Actions (i) and (ii) in Section 34.2 as sufficient; provided, however, Owner has sole discretion whether to accept conditions, modifications or partial approvals relating to Requested Actions (iii) and (iv) in Section 34.2 (collectively, “NMPRC Approval”).

(c) If the NMPRC disapproves any of the Requested Actions, then this Contract 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 obligations incurred prior to termination.

(d) If any NMPRC Approval is issued as described in Section 34.2(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 Owner or Contractor wishes to amend this Contract to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this Contract. If the Parties are unable to mutually agree on any amendments to this Contract to address such NMPRC Approval order, then this Contract 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, except obligations incurred prior to termination, unless Owner and Contractor mutually agree in writing within such ten (10) Day period that this Contract remain in effect.

(e) If the NMPRC has not, for any reason, entered an order upon the request for approval by June 1, 2024 (“Regulatory End Date”), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this Contract shall automatically terminate ten (10) Days after the date on which the Parties conferred 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 other than as set forth in a Limited Notice to Proceed, unless Owner and Contractor mutually agree in writing within such ten (10) Day period that this Contract remain in effect.

## **35. MISCELLANEOUS**

### **35.1. Severability**

The invalidity or unenforceability of any portion or provision of this Contract shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Contract and the balance of this Contract shall be construed and enforced as if this Contract did not contain such invalid or unenforceable portion or provision. If any such provision of this Contract is so declared invalid,

the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity and to restore this Contract as near as possible to its original intent and effect.

35.2. Governing Law

This Contract shall be governed by the internal laws of the State of New Mexico, excluding its conflict of laws provisions.

35.3. Survival of Termination

The provisions of this Contract which by their nature are intended to survive the termination, cancellation, completion or expiration of this Contract including, but not limited to, any express limitations of or releases from liability, shall continue as a valid and enforceable obligation of the Party notwithstanding any such termination, cancellation, completion or expiration.

35.4. Contract Modifications

No oral or written amendment or modification of this Contract (including a Change in Work Form accepted under Article 17) by any officer, agent, or employee of Contractor or Owner, either before or after execution of this Contract, shall be of any force or effect unless such amendment or modification is in writing and is signed by any officer of the Party (or of the managing member or managing partner of the Party on behalf of the Party or other duly authorized signatory) to be bound thereby; provided, however, that neither Party shall have any duty to confirm the identity, title or office of any signatory of the other Party, and each Party may rely on the signature of a natural person whom such Party reasonably believes to have the authority to sign on behalf of the other Party.

35.5. No Waiver

Either Party's waiver of any breach or failure to enforce any of the terms, covenants, conditions, or other provisions of this Contract at any time shall not in any way affect, limit, modify, or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition, or other provision hereof, any course of dealing or custom of the trade notwithstanding. All waivers must be in writing and signed on behalf of Owner and Contractor in accordance with Section 35.4.

35.6. Headings for Convenience Only

The headings contained in this Contract are not part of this Contract and are included solely for the convenience of the Parties.

35.7. Third Party Beneficiaries

The provisions of this Contract are intended for the sole benefit of Owner and Contractor. There are no third party beneficiaries of this Contract, other than assignees contemplated by the terms herein.

### 35.8. Other Assistance

Each Party shall to the extent commercially reasonable and requested by the other Party, assist such other Party in dealing with Suppliers, customers, and Governmental Authorities in matters relating to the Work (including any interconnection facilities) subject to Contractor's rights pursuant to Article 9.

### 35.9. Further Assurances

Owner and Contractor will each use commercially reasonable efforts to implement the provisions of this Contract, and for such purpose each, at the request of the other, will, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assistance, or assignments, consents or other instruments in addition to those required by this Contract, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Contract; provided, however, nothing contained in this Section 35.9 shall require either Party to expend additional material monetary amounts to comply with this Section without reimbursement from the other Party therefor.

### 35.10. Record Retention and Audit Rights

Contractor will maintain complete and accurate records concerning the Work and all related transactions for at least three (3) years from the Final Completion Date. Contractor's obligation to maintain complete and accurate records will include, but is not limited to, records relating to compliance with Applicable Laws relating to employee certifications and qualifications, drug and alcohol use, environmental, and, if applicable, United States Department of Transportation requirements. At any time, but not later than three (3) years after final payment under this Contract, PNM may make such audit of Contractor's records and substantiating material as deemed necessary by PNM. Each payment made will be subject to reduction and refund to PNM, or offset on future payments due Contractor, to the extent of amounts which are found by PNM not to have been properly payable or to have been overpaid, and will also be subject to increase and payment to Contractor for underpayments to the extent of any amounts which are found by PNM to have been underpaid. Upon request by PNM, Contractor will insert a clause containing all the provisions of this Section in all Subcontracts to permit PNM to make identical audits and inspections of the records of all Subcontractors involved in performance of the Work.

### 35.11. Binding on Successors, Etc.

Subject to Article 28, this Contract shall be binding on the Parties hereto and on their respective successors, heirs and assigns.

### 35.12. Merger of Prior Contracts

This Contract supersedes any other agreement, whether written or oral, that may have been made or entered into between Owner and Contractor or by any office or officer of such Party relating to the Project or the Work. This Contract and Exhibits hereto constitute the entire agreement between the Parties with respect to the Project. There are no other agreements or commitments with respect to the Project except as set forth in this Contract.

35.13. Counterpart Execution

This Contract may be executed by the Parties hereto in any number of counterparts (and by each of the Parties hereto on separate counterparts), each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

35.14. Data Security

Contractor shall comply with the Data Security requirements attached hereto as Exhibit T.

35.15. Set-Off

Either Party may at any time, but shall be under no obligation to, set off any and all undisputed sums due from the other Party under this Contract against undisputed sums due to such Party hereunder.

35.16. Independent Contractor

Contractor is an independent contractor, and nothing contained in this Contract shall be construed as constituting any relationship with Owner other than that of owner and independent contractor, or as creating any relationship whatsoever between Owner and Contractor's employees. Neither Contractor nor any of its employees is or shall be deemed to be an employee of Owner.

35.17. Public Statements

Without the prior written consent of Owner, Contractor shall make no public announcement or release any information concerning Owner, the Project, this Contract or its business relationship with Owner, to any member of the public or press and it shall prevent all Subcontractors from doing the same.

35.18. Gratuities, Anti-Kickback and False Claims Provisions

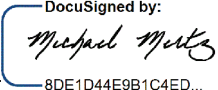
Contractor shall not, under any circumstances, extend any gratuity or special favor to employees of PNM that might be reasonably constructed as an attempt to influence the recipients in the conduct of their official duties. Contractor agrees to abide by the Anti-Kickback Act of 1986, 41 U.S.C.A. § 51, *et seq.*, which prohibits any Person from (1) providing, attempting to provide or offering to provide any kickback; (2) soliciting, accepting, or attempting to accept any kickback; or (3) including, directly or indirectly, the amount of any kickback in the cost of work charged to PNM by the Contractor. It is also agreed that Contractor will not engage the services of any individual who has been convicted after September 29, 1988, or for a period of five (5) years after the date of conviction, of fraud or any other felony arising out of a contract with the Federal Government. Such person(s) is (are) prohibited from working in a management or supervisory capacity, serving as a consultant, or serving on the board of directors.

(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)

IN WITNESS WHEREOF, the Parties hereto have caused this Engineering, Procurement, and Construction Contract to be executed as of the date and the year first above written.

OWNER:

PUBLIC SERVICE COMPANY OF NEW MEXICO,  
a New Mexico corporation

By:  \_\_\_\_\_  
8DE1D44E9B1C4ED...

Its: Vice President, New Mexico Operations, and  
Chief Information Officer

CONTRACTOR:

DEPCOM Power, Inc,  
a Delaware corporation

By:  \_\_\_\_\_  
D9B6C9413FAF414...

Its: \_\_\_\_\_  
President, Solar



**Public Service Company of New Mexico  
PNM 2026 to 2028 Generation Resources RFP**

**Exhibit A  
Technical Specification**





**Public Service Company of New Mexico  
PNM 2026 to 2028 Generation Resources RFP**

**Exhibit A  
Technical Specification**

Document No.: 10345130-0ZP-M0101  
Issue: For Contract  
Issue Date: October 24, 2023  
Revision: 1



## **EXHIBIT A – STATEMENT OF WORK AND SPECIFICATIONS**

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## **2 SUMMARY OF WORK**

The provisions outlined within this Exhibit A - Statement of Work and Specifications (Also "Specification" or "Technical Specification") are intended to indicate the general extent of the Work. They are not exhaustive insofar as any detailed items of associated Work are concerned and shall in no way relieve the Contractor of its responsibility to comply in full with the Specification requirements.

This Exhibit A – Statement of Work and Specifications is applicable to the Contractor’s work at the Project. Site specific data and scope requirements for the Project are included in the Appendices of this Exhibit A.

### **2.1 GENERAL RESPONSIBILITIES**

Contractor shall provide for all activities associated with designing, procuring, installing, starting up, and testing the Project, except as specifically defined otherwise herein as provided by Owner.

The scope of Work to be covered by this Specification shall include, unless specified otherwise, all Work required to provide a complete operational energy storage facility. This shall include all design, supply, manufacture, and delivery to Site, installation and erection, commissioning, and testing. This shall also include provision for spares (as detailed in Section 07- Spare Parts), training, and documentation to meet the requirements of the Contract.

#### **2.1.1 Engineering**

Contractor shall be responsible for performing all engineering necessary to produce a design which results in a Project that is reliable, readily operable, maintainable, and complies with the technical requirements of this Exhibit A. Contractor’s design shall be based on proven systems, equipment, and materials.

All Work shall be produced in accordance with the rules applicable to Professional Engineers practicing in the state of New Mexico. Where required by law or local code, design documents and specifications produced shall be sealed by a Professional Engineer licensed to practice in the state.

Contractor is the systems integrator for all Project systems. As such, Contractor shall be responsible to ensure that all Project systems work together in a seamless and reliable manner. Contractor shall design the Project to meet the design basis described in Section 03 – Project Design Basis.

Contractor shall also provide Project management and Project controls services to monitor and ensure the engineering activities fulfill the Contract requirements.

#### **2.1.2 Procurement**

Contractor shall purchase all equipment and materials, consumables, and services to complete the Project.

Contractor supplied equipment and materials shall be procured in accordance with the Milestone Payment Table.

Equipment and materials purchased for the Project shall be new and unused, and intended for industrial service typical of power plant environments (Prudent Industry Practices).

Contractor shall provide Project and procurement management services to monitor and ensure the equipment fulfills the Contract requirements.

### **2.1.3 Construction**

Contractor shall supply everything required for the construction of the Project including:

- Labor
- Supervision
- Consumables
- Temporary facilities
- Construction tools and equipment
- Job Site management
- Job Site security
- Start-up and commissioning services
- Training services
- Performance testing services
- First fills of consumables (lubricants, etc.)

Contractor shall be responsible for obtaining permits identified in Exhibit C2 – Contractor Acquired Permits. For permits to be obtained by Owner, Contractor shall supply data, information, and necessary revisions required to support Owner, within commercially reasonable limits, permit application submission and approval as needed.

Contractor shall provide Project and construction management services to monitor and ensure the construction activities fulfill the Contract requirements.

## **2.2 PROJECT EXECUTION**

### **2.2.1 Project Management (Section 04)**

Contractor shall manage all the activities associated with designing, procuring, installing, starting up, and testing the Project.

Contractor shall provide a management organization and implement a management process to control and complete the Work. Owner and/or its appointed representative will closely monitor the progress of the Work.

Contractor shall provide all necessary and appropriate Project management, including:

- Provide reasonably requested assistance to Owner in obtaining and maintaining, the necessary permits for the Work that are specifically required to be issued in the name of the Owner (Owner Acquired Permits)

- Obtain and maintain all other permits including local building permits for the Project in sufficient time to ensure construction and commissioning activities will be achieved in accordance with the Project Schedule

- Perform job Site investigation and development Work necessary to confirm the design

- Provide all equipment and systems necessary to meet permit or environmental control requirements

- Provide and maintain a software database (Viewpoint for Projects), to be mutually agreed upon by Contractor and Owner, of drawings, design documents, and equipment

Support periodic meetings, either virtual or in-person, on a mutually agreed upon recurrence, to coordinate and provide status on the Project with Owner and Owner's representative.

Provide and maintain a Project Schedule

### **2.2.2 Submittals (Section 05)**

Contractor shall provide the Owner with engineering data, drawings, and construction documentation for review, comments, and approval in accordance with Section 05 – Submittals.

### **2.2.3 Equipment, Material, and Services Procurement (Section 06)**

Contractor shall provide all necessary procurement services, including:

- Prepare specifications for procurement

- Source equipment, materials, and services for key items from the approved vendors

- Equipment and materials shall be new and unused

- Manage the entry, storage, handling, and disposal of any hazardous substance entering and/or leaving the Site for the construction of the Project

- Establish job Site procedures for receipt processing, inspection, and assignment of laydown areas for equipment and material entering the job Site

- Provide data to support Owner's asset management system

### **2.2.4 Spare Parts (Section 07)**

Contractor shall provide and turn over to Owner all spare parts and special tools or special lifting equipment required for operation and maintenance of the systems/equipment supplied. These tools and lifting equipment shall be turned over in serviceable like-new condition. Contractor shall also provide a recommended spare parts list as further detailed in Section 07 – Spare Parts.

## **2.3 PROJECT SYSTEMS AND EQUIPMENT**

Project systems and equipment shall be in accordance with the following sections. Reference the Appendices of this Exhibit A for further clarifications regarding site specific requirements.

Provide all equipment and systems necessary to meet permit or environmental control requirements.

### **2.3.1 Site Work (Section 11)**

Contractor shall perform the Site Work described and design, furnish, and install the following:

- Any Site surveying and geotechnical investigations required to design and build the Project

- Initial Site prep; clearing and grubbing (vegetation and topsoil), and rock removal as outlined in Section 11 – Site Work

- Site roads, entrance(s) and associated road fixtures within the Project boundary

- Prepare temporary staging areas required for material and equipment storage

New job Site construction entrance(s) and gate(s) as required to support labor to and from the job Site without impeding existing plant traffic

A complete storm water management system including, for example, diversion structures, grading for drainage, culverts, pipe drains, and erosion control measures, where required by the design and in accordance with the approved Plans

Sedimentation, erosion, and dust control during construction in accordance with applicable permits or zoning requirements

Excavation and backfill for underground utilities

### **2.3.2 Structural/Architectural (Section 12)**

Contractor shall be responsible to obtain all necessary Site data and to perform required surveys and geotechnical investigations for the design and construction of the Project.

Contractor shall furnish and install enclosed structural steel buildings in accordance with the latest state building code and with all applicable interior equipment foundations, drainage, electrical, mechanical, HVAC, and life safety systems intended for proper function. The enclosures provided shall include the following as applicable to the Project:

Power Distribution Centers (PDC) (where required by the design)

Project Switchyard Control Enclosure

Structural and architectural provisions provided shall include all foundations, associated piling (as required), lifting equipment, steel structures, and protective coatings. Architectural aspects of the Project shall comply with the applicable codes and requirements, including those defined by the local city/county with jurisdiction.

### **2.3.3 Balance of Plant (BOP) Mechanical Systems and Equipment (Section 16)**

All mechanical systems and equipment as required for a complete Project shall be furnished as required including, but not limited to:

Fire Detection and Protection System

Heating, Ventilation and Air Conditioning (HVAC) Systems

### **2.3.4 Electrical Systems (Section 17)**

All electrical systems and equipment required for a complete Project, unless specifically noted as Owner furnished in this Exhibit A, shall be furnished including, but not limited to:

Project Generating Unit step up transformer (GSU) and BESS step up transformers.

Generating Unit breakers

2x100% Unit Auxiliary, and all necessary Project power transformers

Project alternate station power system and transformer (as required based on site specific requirements)

Power Distribution Centers (PDC)

All necessary Project power transformers, MV and LV switchgear, motor control centers (MCCs), and motor starters as applicable

Project batteries and charging system to permit safe shutdown of essential systems

Uninterruptible power supply (UPS) system for battery enclosures and Switchyard Control Enclosure

All revenue metering for net electricity export/import and metering of auxiliary power consumption

Bus duct or cable bus

All cables, cable support, termination, and identification systems

Grounding system

Communication and fiber-optic cabling

Lighting and small power systems

Lightning protection systems

Generating Unit protection system, including protective relays

### **2.3.5 Instrumentation and Control (Section 18)**

Contractor shall provide the instrumentation and control systems for the Project based on a philosophy of centralized operation using a Distributed Control System (DCS) including operator stations located in new Central Control Room (CCR) located in the Switchyard Control Enclosure. Detailed requirements for the instrumentation and control systems can be found in Section 18 – Instrumentation and Control and other appropriate areas of this Exhibit A - Statement of Work and Specifications.

The instrumentation and control Work shall include but is not limited to the following:

Installation of new Project Distributed Control System (DCS)

Instrumentation and control equipment

Furnishing and installing all installation materials as required for a complete functional system as described in this Specification

Instrument racks, instrument enclosures, support brackets, and hardware

Field calibration, loop testing, and start-up services

### **2.3.6 Telecommunications and Security Systems (Section 19)**

Contractor shall be responsible for designing, furnishing, and installing a telecommunications system to provide voice and data communications required for construction Work and for long-term Project operations, protection, and surveillance. Communications, described in Section 19 – Telecommunications and Security Systems of this Exhibit A - Statement of Work and Specifications shall include:

Permanent voice and data communication

Permanent voice and data communication for operation, and protection of the Project and outlying buildings

Project security system

### **2.3.7 High Voltage System (Section 20)**

The Contractor shall design and construct the Project high voltage (HV) system.

This shall include an outgoing line breaker, motor operated disconnect switch (MOD), and dead end termination structure.

Owner will be performing design, procurement, construction and commissioning of the HV interconnection facilities beyond the Energy Delivery Point which is the Contractor furnished outgoing HV dead end structure.

Contractor shall provide coordination services to support the integrated design, construction, startup, and commissioning of the Contractor furnished and Owner furnished HV interconnection facilities.

Refer to Section 20 – High Voltage System for additional descriptions regarding Contractor responsibilities related to the HV System.

## **2.4 SITE ACTIVITIES**

### **2.4.1 Construction (Sections 21 through 23)**

Contractor shall be responsible for the following:

- Overall Site Management
- Providing Temporary Facilities and Controls
- Inspection and Testing of the Work
- Start-up and Commissioning

### **2.4.2 Training (Section 24)**

Contractor shall provide comprehensive operations and maintenance training of Owner's personnel. The Contractor shall integrate his training with any training provided by the Contractor's Equipment suppliers to provide a coordinated all-inclusive course outline for operation of the Work.

### **2.4.3 Performance Requirements (Exhibit I)**

#### **2.4.3.1 Performance Tests**

The requirements for the Performance Tests are provided in Exhibit I – Acceptance Tests and Testing.

#### **2.4.3.2 Demonstration Tests**

During the commissioning period and during Performance Tests, in addition to the test measurements required by the agreed upon test standards, Contractor shall log additional measurements to provide a comprehensive set of operational data for modes of operation including, but not limited to: startup, shutdown, run up, run down, steady operation at minimum load, etc., all as further detailed in Exhibit I – Acceptance Tests and Testing.

This data shall be compiled by Contractor into a report that provides sufficient detailed information to allow Owner to validate compliance with the requirements of the Contract.

## **2.5 MAJOR EQUIPMENT**

### **2.5.1 Major Equipment (Sections 37)**

Major Equipment provided by the Contractor shall be furnished in accordance with this Exhibit A - Statement of Work and Specifications as applicable.

## **2.6 WORK PERFORMED BY OWNER**

Owner will be responsible for the following matters, but with the support of Contractor when directed by Owner.

### **2.6.1 Permits**

Owner will obtain and maintain only the Owner Acquired Permits listed in Exhibit C-1 of the Contract.



Contractor shall provide all reasonably requested support, as part of the Work, to the extent such technical information is required to execute the Work. This is anticipated to include production of technical and design information to an agreed upon Project Schedule and in an agreed upon format, and attendance at presentations, negotiations, and meetings.

The resulting approvals and agreements may contain several conditions (not yet identified), such as those relating to environmental issues. Contractor shall comply with those aspects that affect its scope of Work to allow Owner to meet its commitments. Contractor shall confirm that the design is not in conflict with the Owner's Permits.

### **2.6.2 Site Access Date**

Owner will make the job Site available in accordance with the Contract.

### **2.6.3 Utilities**

Owner will arrange and provide backfeed power of a specified quality and quantity for Project testing and commissioning. Contractor shall be responsible for the supply and cost of all other utilities required for Project construction. All water, temporary power feeds, and other utilities provided for the Contractor by the Owner shall be metered and totalized using metering provided by the Contractor.

### **2.6.4 Transmission Connection**

Owner will provide the transmission connection in accordance with the Contract. Access to the grid will be coordinated through the Owner. Owner will furnish an energy management system interface SCADA/AGC remote terminal unit (RTU) for installation and integration by Contractor within the Project.

END OF SECTION

## SECTION 03 - PROJECT DESIGN BASIS

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### 3 PROJECT DESIGN BASIS

#### 3.1 SUMMARY

This Section contains general Project design basis requirements.

Site specific design basis requirements are included in Appendix 03 – Project Data and Terminal Points.

##### 3.1.1 Acronyms

AGC	=	Automatic Generation Control
BESS	=	Battery Energy Storage System
BOP	=	Balance of Plant
CCR	=	Central Control Room
DCS	=	Distributed Control System

##### 3.1.2 Definitions

The following terms when used in this Specification, shall have the meaning defined below:

The following words "equipment erection", "erect", "install" or "installation" shall be considered equivalent

The following words "provide", "supply", or "furnish" shall be considered equivalent

Approved Equal = means a satisfactory equivalent to what was specified as accepted by Owner in writing

Equipment Supplier = means the Contractor.

Furnish = means supply and deliver to the job Site, ready for unloading, unpacking, assembly and similar operations

Generating Unit or Unit = means a single BESS equipment grouping capable of independent load control

Indicated = means as shown, noted, called for, or specified in document

Install = describes operations at the job Site including, unloading, unpacking, assembly, erecting, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning, and similar operations

Large Bore Piping = means piping 2.5 inch NPS and larger

Small Bore Piping = means piping smaller than 2.5 inch NPS

#### 3.2 PROJECT DESIGN PARAMETERS

##### 3.2.1 Project Design Life

The Project shall be designed for a minimum life of 20 years.

Although the Project output will vary with changes in ambient conditions, the performance and output shall not be limited by a constraint from BOP or auxiliary support systems over the range of ambient conditions. The limiting factor shall be BESS equipment performance.

### **3.3 DESIGN PARAMETERS**

#### **3.3.1 Laws & Regulations**

The Project shall be designed in compliance with all applicable laws and regulations. In particular, the Project shall comply with all relevant U.S. and New Mexico environmental and occupational health and safety regulations.

#### **3.3.2 Codes and Standards**

The following codes, standards, and publications of the latest issue in effect at date of the Agreement shall be used in the design and installation of the Work.

AASHTO	American Association of State Highway and Transportation Officials
ACI	American Concrete Institute
AFBMA	Anti-friction Bearing Manufacturer's Association
AGA	American Gas Association
AGMA	American Gear Manufacturer's Association
AHRI	Air-conditioning, Heating, and Refrigeration Institute
AI	Asphalt Institute
AISC	American Institute for Steel Construction
AISI	American Iron and Steel Institute
AMCA	Air Moving and Conditioning Association
AMPP	Association for Materials Protection and Performance
ANSI	American National Standards Institute
API	American Petroleum Institute
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASNT	American Society of Nondestructive Testing
ASSP	American Society of Safety Professionals
ASTM	ASTM International
AWS	American Welding Society
AWWA	American Water Works Association
CAGI	Compressed Air and Gas Institute
CFR	U.S. Code of Federal Regulations
CGA	Compressed Gas Association
CMMA	Crane Manufacturer's Association of America
CRSI	Concrete Reinforcing Steel Institute
CTI	Cooling Tower Institute
EJMA	Expansion Joint Manufacturing Association
EPRI	Electric Power Research Institute
HEI	Heat Exchange Institute
HI	Hydraulic Institute

IBC	International Building Code
ICEA	Insulated Cable Engineers Association
IEC	International Electrotechnical Commission
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineers Society
ISA	International Society of Automation
ISO	International Standards Organization
MBMA	Metal Building Manufacturer's Association
MSS	Manufacturer's Standardization Society of the Valve and Fittings Industry
NAAMA	National Association of Architectural Metal Manufacturer's Metal Bar Grating Manual
NAFM	National Association of Fan Manufacturer's
NAIMA	North American Insulation Manufacturers Association
NBBPVI	National Board of Boiler and Pressure Vessel Inspectors
NEC	National Electric Code
NERC	North American Electric Reliability Corporation
NEMA	National Electrical Manufacturer's Association
NESC	National Electric Safety Code
NFPA	National Fire Protection Association
NIOSH	National Institute of Occupational Safety and Health
NMED	New Mexico Environment Department
PFI	Pipe Fabrication Institute
PPI	Plastic Pipe Institute
SDIS	Steel Deck Institute Standards
SJIS	Steel Joint Institute Standard
SMACNA	Sheet Metal and Air-conditioning Contractors National Association
TEMA	Tubular Exchanger Manufacturers Association
UL	Underwriters Laboratories

Adoption of alternative standards shall be subject to Owner's prior approval. When requested, Contractor shall provide one English language copy of the requested alternative for Owner's sole use.

Contractor shall be consistent in their application of codes and standards in execution of the Work.

### **3.3.3 Design Objectives**

The Project shall be designed and constructed to operate safely throughout its design life and for the job Site conditions while minimizing its environmental impact on its surroundings and generating power in a cost effective way.

### **3.3.4 Forbidden Materials**

Equipment and materials or any other temporary or permanent items which contain PCBs, asbestos or asbestos bearing materials, nuclear sources, lead based paint (1.0 mg/cm<sup>2</sup>, or

0.5% by weight), methyl ethyl ketones (MEK), or mercury are prohibited from use at the Project.

Contractor shall provide written documentation to the Owner at the end of the Project that all materials used during construction were free of asbestos, PCBs, lead paint, or other forbidden materials as noted.

Contractor shall provide the Owner with a list of all Hazardous Materials to be brought on job Site for Owner review and approval. Contractor shall provide a spill prevention/clean-up plan if desired by the Owner.

### **3.4 OPERATIONAL CONSIDERATIONS**

#### **3.4.1 Operational Requirements**

The output of the Project shall be determined by system dispatch instructions. The Project shall be capable of steady state part load and full load charge/discharge operation, voltage control, continuous charge/discharge load changes, and frequency response.

Operating modes for BESS are described in Section 37 – Battery Energy Storage System.

The Project shall be able to charge/discharge continuously at the following conditions or perform the following functions without unusual operator intervention, loss of component redundancy, or in a condition that could damage any component:

Fully remote dispatch operation

The Project shall include emergency systems necessary to ensure safe shutdown and to safeguard the Project Equipment and systems from any damage or degradation in the event of unscheduled short-term isolation from the transmission grid.

The Project shall include a backup power system that can sustain the Generating Unit critical BMS loads using on-board UPS to support critical monitoring and shutdown .

The Project shall include provisions for connection of a backup power system (by others) that can sustain the unit offline systems during maintenance and outages or other extended outages. Reference Section 17 – Electrical Systems for additional information.

Generating Units shall be capable of operating standalone with other Generating Units out of service, starting, ramping, at steady-state or shutting down.

A trip of one Generating Unit shall not cause other Generating Unit(s) to trip during startup or normal operation.

The Project shall be capable of AGC with continuous charge/discharge load changes.

The Project shall be capable of shutting down in 5 minutes or less.

The Project shall be capable of restarting the Generating Units after shutdown within the minimum wait time defined by the BESS and PCS Equipment Supplier.

The project shall be capable of starting and operating continuously at any ambient temperature above the Extreme Cold Weather Temperature with a concurrent 20 mph wind speed as defined in NERC EOP-012-1.

#### **3.4.2 Operational Control and Automation**

The Project configuration shall support the minimization of Operations and Maintenance (O&M) requirements.

The Project shall be controlled and monitored from a CCR to permit safe and efficient operation in all modes of operation. Automatic sequence and modulating control systems shall be provided. Control system manual operation shall also be possible from the CCR.

The automation and monitoring systems shall be capable of allowing Project operation by one on-site or off-site control room operator.

All valves and devices that are required to startup, shutdown or operate the Project shall be provided with actuators for remote operation. Manually operated valves shall only be used for maintenance isolation, initial filling and venting, and outage draining.

### **3.4.3 Safety**

The Project shall be designed and constructed to comply with 29 CFR 1910, Occupational Safety & Health Administration regulations.

The Project shall also comply with the following safety standards:

#### American National Standard Institute (ANSI)

B11.19 - Performance Requirements for Safeguarding

Z535.1 – Safety Colors

Z535.2 – Environmental Facility and Safety Signs

Z535.3 – Criteria for Safety Symbols

Z535.4 – Product Safety Signs and Labels

Z535.6 – Product Safety Information in Product Manuals, Instructions, and Other Collateral Materials

#### National Fire Protection Association (NFPA)

70E – Standard for Electrical Safety in the Workplace

Machinery shall include guards, safeguarding devices, awareness devices and other safeguarding methods for employee safety in accordance with recommendations of ANSI B11.19.

### **3.4.4 Reliability and Availability**

#### **3.4.4.1 General**

Reliability and availability of the Project operation are prime requirements. The design and selection of systems, equipment and components shall be based on the potential effect on Project reliability and availability.

Systems that can cause an outage if one of its components fails shall be designed for high reliability by:

Selection of redundant equipment as defined in these specifications

Selection of materials

Use of proven design concepts

Consideration for ease of maintenance

The following reliability criteria shall be applied to all systems, equipment and components:

Contractor's designs shall be based on proven design concepts, which have been applied successfully in the power generation industry and met performance expectations under commercial operation for similar applications.

#### **3.4.4.2 Equipment Redundancy and Design Margins**

Electrical system redundancy is defined on the Single Line Diagrams in Appendix 11. Additionally, the Contractor has identified the following equipment that will be provided without redundancy based upon standard practice:

- BESS collection circuit cabling
- Switchboard and LV Distribution Cabling
- Metering and protection schemes
- Substation protection and control scheme, except where redundancy has been specified elsewhere in Exhibit A
- Sub-systems within the individual Generating Units including BESS enclosures, Inverters, and BESS Step-up transformers

Where not defined on the single line diagram, or listed above, Equipment and systems that have redundancy specified in this Exhibit A - Statement of Work and Specifications shall be provided as specified. Additionally, equipment and systems shall be redundant such that the loss of any single piece of equipment or system does not result in the shutdown of or inability to operate more than one Generating Unit or the entire Project.

The Contractor shall size equipment and systems with sufficient margin above the calculated maximum continuous rating duty to ensure a safety margin for successful operation. The margin specified shall be based on prudent engineering, industry experience, and anticipated loss of efficiency over time. Within the detailed sections of this Exhibit A - Statement of Work and Specifications, design margins specified shall be minimum margins that the Contractor shall meet or exceed when purchasing items.

#### **3.4.5 Operability and Accessibility**

The Project shall be designed and constructed to allow operation with a minimal level of operator surveillance utilizing methods including, but not limited to:

- Designing and selecting equipment for minimal operator attention
- Maximizing CCR based operations
- Locating systems and equipment for easy operational access with special consideration for access requirements during major maintenance intervals

The Project shall be controlled and monitored from the CCR to permit safe and efficient operation in all modes and configurations. Fully automatic sequence and modulating control systems shall be provided. This shall be the preferred method of operation, but the capability for manual operation of equipment from the CCR shall be possible. The automation and monitoring systems shall be designed to minimize the number of Project staff personnel required to operate and maintain the Project.

Convenient permanent access, including sufficient clearance in accordance with all applicable laws, shall be provided to all valves, instruments, electrical panels, and equipment for both operation and maintenance. Any elevated location that requires access on a regular basis shall be accessible by using permanent platforms and stairways as defined in Section 12 – Structural/Architectural. Temporary ladder utilization and locations may be used only with prior approval from Owner. Portable ladders are not acceptable as access to permanent Project equipment.



### **3.4.6 Maintenance Requirements**

The systems, equipment, and materials shall be designed to minimize maintenance requirements and downtime. The required maintenance intervals and periods shall be compatible with Industry Standards.

During the design phase of the Work and before finalization of the design, Contractor shall provide maintenance access and lay down concepts for Owner review. These concepts shall be based on minimizing: maintenance durations and manpower input, double handling of equipment and materials, extensive preparatory Work in providing access and setting up of lifting equipment, and interferences with piping and other equipment and materials.

The Project layout shall provide access to equipment and devices without the need for portable ladders and lifts.

All systems and equipment shall incorporate all necessary access doors, access walkways and ladders, lifting equipment, lighting, power, air and water supplies, and lay down areas. Arrangements for access, lifting, handling, and associated lighting for operation and maintenance shall be included in the design to ensure that practical, safe, and cost effective arrangements are provided for persons, materials, tools, and components to enable operation and maintenance Work to be carried out efficiently with minimum risk to personnel.

### **3.5 WORK PLACE SOUND**

In the design and layout of the Project, Contractor shall endeavor to meet Occupational Safety and Health Administration (OSHA) permissible sound exposure levels without the use of hearing protection for a typical 12 hour shift.

#### **3.5.1 Equipment Near-Field Sound Criteria**

Equipment shall be designed to not exceed a spatially averaged A-weighted sound pressure level (ref: 20 microPa) of 85 dBA along the equipment envelope during startup, shutdown, and normal operation. The equipment envelope is defined as the perimeter line that completely encompasses the equipment package at a distance of three feet from the Equipment face and at a height of five feet above the equipment base elevation. If the equipment will generate impulsive or impact noise levels above 85 dBA during abnormal or emergency conditions, the A-weighted sound pressure levels (ref: 20 microPa) due to the equipment shall not exceed 115 dBA or 140 dB peak sound pressure level.

If it is necessary to provide a sound enclosure around the equipment to meet the above sound criteria, the enclosure shall include access doors and hand holes as required. If the sound enclosure (or room) covers the entire piece of equipment and would require an operator to completely enter the enclosure to access or maintain the equipment, man-safe access shall be provided such as ventilation and internal lighting, and all required clearances around the equipment inside the sound enclosure shall be maintained unless it can easily be removed for maintenance.

#### **3.5.2 Project Far-Field Sound Criteria**

The far field sound levels shall be per requirements for the specific Project site as defined in Exhibit I – Acceptance Tests and Testing and the latest local noise ordinances. A local noise control ordinance has been included in Exhibit R – Owner Supplied Information.

Contractor is responsible for sound modeling of the entire Project site and associated equipment to ensure compliance with the far field requirement. Contractor shall specify, procure, and install equipment and sound attenuation provisions to comply with this design criteria. Contractor's planned provisions are described in Section 11- Structural/Architectural

and the General Arrangement drawing included in Appendix 09. Contractor shall submit the noise model contour maps and noise study to the Owner under the LNTP phase of the Project. In the event the noise study determines additional mitigation beyond what is described in Section 11 – Site Work of this Exhibit A is required to comply with the Emissions Guarantees within Exhibit I – Acceptance Tests and Testing, Contractor shall submit a change order request to the Owner during the LNTP phase of the Project. If the initial LNTP noise study does not identify requirements for additional mitigation, or if additional mitigation is identified and the Owner approves the associated change order request, Contractor shall verify the noise emissions comply with the Emissions Guarantees within Exhibit I – Acceptance Tests and Testing. Noise criteria and compliance shall apply to steady state operation as well as startup and shutdown.

### **3.5.3 Workplace Sound Survey**

Contractor shall perform a workplace sound survey after the Project has been completed to provide the overall A-weighted sound levels in typical occupied spaces and near major Equipment and to identify areas that exceed 85 dBA. Contractor shall submit a report of the workplace sound survey.

The workplace survey shall be conducted with the Project operating at or within five percent of the full output throughout the Project and at all locations and positions normally occupied by personnel.

Contractor shall be responsible for providing signs marking high sound areas requiring hearing protection.

### **3.6 OIL POLLUTION PREVENTION**

The Project shall be subject the oil pollution prevention requirements in 40 CFR 112. Contractor shall design the Project to provide secondary containment for areas with oil storage and use.

The following design requirements shall be incorporated into the Project design:

Buried oil storage tanks and piping are prohibited.

Outdoor secondary containments that require removal of precipitation shall include an isolation valve on the drain line of the secondary containment for controlled releases to grade or removal by vacuum truck. The accumulated water shall be capable of being observed and sampled for signs of oil prior to draining. The isolation valve shall be kept in a closed position and locked except when draining the containment.

All oil storage containers shall include active overfill prevention systems.

Any petroleum products stored in containers 55-gallons or larger brought on the job Site by the Contractor during construction will need to be added to the Project Spill Prevention, Control, and Countermeasure (SPCC) plan. Contractor shall work with Owner on any required modification of the SPCC plan prior to storing applicable containers on the job Site.

### **3.7 WELDING PROCESS CONTROL**

Contractor shall maintain a program that provides written practice for process control to include welding and weld heat treatment.

#### **3.7.1 Welding**

Contractor program shall include provisions for indicating that all welding conforms to the applicable code of construction. The scope of the program shall include activities in vendor

fabrication facilities as well as at the job Site, and shall provide written practice for the following elements:

- Welding Procedure Specifications
- Performance Qualification
- Welding Practice
- General Welding Requirements
- Weld Repair
- Inspection, Examination and Testing

The program shall include provisions for records retention, to include but not limited to the following:

- Procedure qualification records
- Welding procedure specifications
- Performance qualification records
- Completed weld records, weld joint geometry, weld maps, or other similar documentation
- Pre and Post weld heat treat records
- Inspection and test personnel certifications
- Nonconformance reports
- Code data reports

All welding certification and testing records for both shop and field welding shall be provided to the Owner.

### **3.7.2 Welding Procedure Specifications**

Welding procedure specifications shall conform to the requirements of

- ASME Boiler and Pressure Vessel Code Section IX
- AWS D1.1 Structural Welding Code for non-pressure boundary applications, or
- Other specified code of construction

Contractor shall review and accept all subcontractor WPS and PQR prior to their use for production welding.

### **3.7.3 Performance Qualifications**

Welders and welding operators shall be qualified in accordance with the applicable code of construction. The welder and welding operator qualification records shall be available at the shop or construction job Site and shall be made available for review when requested.

A record of the names of welders who have made each weld on piping within the jurisdiction of the ASME Boiler and Pressure Vessel Code shall be maintained by Contractor and a copy transmitted to Owner. Certified copies of any of the above records shall be furnished to Owner upon request.

Unless otherwise approved by Owner, welders shall be qualified for this Project, and at Contractor's expense.

### **3.7.4 Welding Practice**

Recommended procedures for control of welding practice include:

- Control and storage of filler material procedures
- Positive material identification

Documentation such as weld records and/or weld maps  
Documentation of welder identification

### **3.7.5 General Welding Requirements**

All welding shall be protected from wind, rain, and other harmful weather conditions which could affect weld quality.

All surfaces to be welded shall be dry and substantially free of mill scale, oil, grease, dirt, paint, galvanizing or other contaminants.

Backing rings or straps shall not be used.

All weld joints in pressure retaining applications including socket welds shall have a minimum of two passes.

Peening shall not be used. The use of pneumatic tools or steel shot for slag removal is not considered peening.

Weld progression for vertical welding shall be vertical up unless approved by Owner or Owner's representative.

For field welds, the root pass and one fill pass shall be made with the gas tungsten arc welding (GTAW) process if using consumable inserts or open butt joints, except for carbon steel piping having a Design pressure less than 250 psia. SMAW or GTAW can be used for the second and remaining passes.

Gas metal arc welding (GMAW) in the short arc mode shall not be used for making root passes in a shop or in the field.

Temporary welded attachments shall be removed and surface inspections performed using Magnetic Testing (MT) or Penetrant Testing (PT) in the affected area.

Welding of stainless steel and nickel based materials shall be performed in a manner to ensure that carbon contamination by tools, grinding, or contact does not occur.

As-welded surfaces are permitted; however, the surfaces of welds shall be uniform in width and size throughout their full length and shall be free from coarse ripples, grooves, overlaps, abrupt ridges, and valleys. The surface condition of the finished welds shall be suitable for the proper interpretation of nondestructive examinations. If the surface of the weld requires grinding to meet the above criteria, care shall be taken to avoid reducing the weld or base material below the minimum required thickness.

### **3.7.6 Weld Repair**

Written practice for repair of welds or repair of base metal shall be in accordance with the requirements of ASME Boiler and Pressure Vessel Code, Section IX, or AWS D1.1 Structural Welding Code for non-pressure boundary applications, as applicable.

### **3.7.7 Weld Inspection, Examination and Testing**

#### **3.7.7.1 General Requirements**

Personnel performing or supervising the visual examination of welds, including ASME Boiler and Pressure Vessel Equipment, shall be qualified as a Certified Welding Inspector (CWI) in accordance with the American Welding Society AWS QC 1 or previously approved equivalent programs.

Visual weld examination acceptance criteria shall be in accordance with applicable referenced codes and specifications.

All nondestructive examinations shall be documented in accordance with the applicable code and as specified herein.

Nondestructive examination personnel qualifications shall be qualified and certified in accordance with ASNT Recommended Practice SNT-TC-1A unless otherwise approved in writing.

### **3.7.7.2 Pressure Retaining Components**

Weld inspections shall be conducted according to the requirements of the State Building Code and the applicable code of construction.

### **3.7.7.3 Load Bearing Structures**

As a minimum, weld inspections and examinations shall be conducted according to the requirements of AWS D1.1, Structural Welding Code-Steel, or the applicable code of construction.

### **3.7.7.4 Field Erected Tanks**

Weld inspections shall be conducted according to the requirements of the applicable code of construction.

## **3.8 PAINTING AND COATINGS**

This article outlines the general requirements and scope of painting and lining for the Project, including "shop painting" requirements for subcontractors supplying equipment and commodities and "field painting" and application of touch-up to constructed Project components by the Contractor. The requirements herein apply to preparation of surfaces to be painted, the protection of surfaces not to be painted, furnishing and application of paint and lining materials, and other Work incidental to painting/lining that is required to properly execute the Work, including color coding, identification, and marking/tagging.

Except as otherwise specified, all structures, equipment and commodities shall receive the respective subcontractor's standard shop finish; Owner and Contractor may mandate other requirements in selected Equipment Specifications. Finish colors shall be selected from among the paint manufacturer's standard colors and submitted to Owner. The "Paint/Lining System Application Table" contained herein includes specific definition of primer and finish paints and lining materials, touch-up, and application of galvanizing and other similar materials.

### **3.8.1 Definitions**

"Paint" refers to materials used to protect underlying components (e.g., equipment and piping) from environmental exposure that may lead to degradation, including primer, intermediate and finish paint products, galvanizing, sprayed-on metals, rubber, and other similar products. Paint is typically applied in one or more coats or multi-layer systems ("coating" is synonymous for "paint").

"Lining" refers to a high solids material, typically applied in multiple layers or as a solid product, with similar protective properties as "paint" and often used for concrete vaults, basins, tanks, secondary containments, floors, and similar structures.

### **3.8.2 Standards**

In addition to the codes and standards listed in Article 3.3.2, the following specific codes and standards apply:

American Concrete Institute (ACI)

- 222R Protection of Metals in Concrete Against Corrosion  
515.1R Guide to the Use of Waterproofing, Damproofing, and Decorative Barrier Systems for Concrete

ASTM International

- A 123 Standard Specification for Zinc (Hot-Dip Galvanized) Coatings on Iron and Steel Products  
D 520 Standard Specification for Zinc Dust Pigment  
D 3359 Standard Test Method for Cross Hatch Adhesion Test of Coatings  
D 4417 Standard Test Methods for Field Measurement of Surface Profile of Blast Cleaned Steel

American Society of mechanical Engineers (ASME)

- A13.1 Scheme for Identification of Piping Systems

International Concrete Repair Institute (ICRI)

- 310.1R Guideline for Surface Preparation for the Repair of Deteriorated Concrete Resulting from Reinforcing Steel Corrosion

Association for Materials Protection and Performance (AMPP)

- AB1 Mineral and Slag Abrasives  
AB2 Cleanliness of Recycled Ferrous Metallic Abrasives  
AB3 Ferrous Metallic Abrasive  
PA2 Measurement of Dry Coating Thickness with Magnetic Gages  
SP1 Solvent Cleaning  
SP3 Power Tool Cleaning  
SP6 Commercial Blast Cleaning  
SP10 Near-White Blast Cleaning  
SP11 Power Tool Cleaning to Bare Metal  
SP13 Surface Preparation of Concrete  
Paint 20 Zinc-Rich Primers (Type I, Inorganic, and Type II, Organic)  
Paint 30 Weld-Through Inorganic Zinc Primer  
SP0178 Design, Fabrication, and Surface Finish Practices for Tanks and Vessels to Be Lined for Immersion Service

**3.8.3 Submittals**

Contractor shall submit a color design criteria document early in the Design phase. The document shall coordinate the color selection of all buildings, equipment, and materials within the Project to allow the Owner to select colors and to coordinate the color scheme of the Project prior to procurement activities. The color design criteria shall use RAL or Munsell color System designations to ensure color integrity between suppliers. The color design criteria shall also include siding surface profiles to coordinate siding.

Contractor shall provide manufacturer's product data indicating conformance to specifications for each paint, coating and lining type to be applied. For shop applied paint, the Contractor shall submit instructions, subcontractor's data, and safety data sheet (SDS or MSDS) to support touch-up painting or lining repair on the Work at the job Site.

Contractor shall provide samples of supplier and subcontractor's colors for paint and lining selection consistent with Article 3.8.8. When possible, the paint colors used for new equipment, commodities, and materials shall match the colors previously used in other components in the same system.

Contractor shall identify all shop applied painting systems and linings on the shop drawings by name and product designation.

Contractor shall provide maintenance data for all equipment and commodities supplied as part of Final Completion as defined in the Agreement.

### **3.8.4 Regulatory Requirements**

If a specified coating material does not conform to the applicable regulations, alternate materials that do conform may be proposed. Information on the alternate materials shall be submitted to the Owner for acceptance prior to application. Volatile Organic Compound (VOC) content of all material shall comply with applicable regulations. Paints and coatings shall be selected with reduced VOC content when practicable. No lead-bearing paints or coatings are permitted on this Project, nor should any such coatings be brought to the job Site by Contractor.

### **3.8.5 Delivery, Handling, Storage, and Warranty**

The Contractor (and all subcontractors) shall protect all shop-coated surfaces from impact, abrasion, discoloration, and other damages resulting from shipping, handling, and storage, within commercially reasonable means. All materials, including painting materials shipped for use in field painting or touch-up shall be delivered to the job Site in paint manufacturer's original, unopened packages bearing manufacturer's name, label, and shelf life expiration date. Such materials shall be properly stored at the job Site by Contractor and protected from freezing, physical, fire, and health hazards throughout all handling, mixing, application, and storage steps. Paint/lining materials which have reached their shelf life shall not be utilized and shall be removed from job Site by Contractor.

### **3.8.6 Acceptable Paint Manufacturers**

Multi-manufacturer paint systems are acceptable only if all primer selections are compatible with ensuing intermediate and finish coats.

Paint systems shall not contain any lead additives or asbestos. Zinc rich primers shall contain no more than 0.01% lead (ASTM D520 type II zinc dust).

### **3.8.7 Painting Scope and General Requirements**

In general, all metallic equipment and commodities that will be located outdoors and which are not insulated shall be finish painted except as noted herein. Indoor metallic equipment and commodities shall typically be prime painted as a minimum. The following surfaces shall not include protective painting:

- Surfaces to be fireproofed with spray-on material
- Pipe flange faces and weld preparation surfaces
- Piping internal surfaces (unless specified otherwise)

Anodized aluminum (jacketing), stainless steel, chromium plate, glass, copper, bronze or similar materials

Code labels and other signage, such as UL/FM signs that are mylar or flat (non-embossed) plates. Embossed plates and labels stamped into frames will be furnished shop-painted. Labels and information on labels must be readily visible and convenient for identification operating staff and by authorities having jurisdiction. Printed labels and stamps on non-combustible plywood back boards are acceptable.

Equipment identification or rating plates

Other equipment and commodities for which no paint is specified (e.g., shop galvanized or aluminum conduit and cable tray, plastics, rubber, cable)

Painting shall comply in every way with the paint manufacturer's instructions. This includes, but shall not be limited to, humidity, temperature, mixing and thinning operations, and surface preparation. The manufacturer's instructions for surface preparation and application requirements particular to each coating material shall be followed. At least the minimum dry film thickness (DFT) mils per paint manufacturer's recommended standard shall be applied and the paint manufacturer's maximum DFT per coat shall not be exceeded. Application requirements and minimum DFT's are specified in Tables located herein. If manufacturer's requirements vary from the specifications provided herein, manufacturer's acceptance from this variant shall be retrieved by Contractor and submitted to Owner.

Cleaned surfaces shall be painted or lined with the specified primer, intermediate, finish, or touchup coat within 6 hours of cleaning or before rust bloom occurs. No blast cleaned surfaces shall stand overnight before coating. Primer and subsequent coats of paint shall be from the same paint manufacturer. Varying paint manufacturers in the same paint/coating system shall not be permitted unless written approval has been received from both manufacturers.

All hardware, accessories, plates, fixtures, finished Work, and similar items that are not to be painted shall be provided with ample in-place protection (drop cloth, other). Upon completion of painting, carefully replace removed items and remove and properly dispose of protection.

Painting shall not be carried out when insects, windblown dust, dirt, or debris would adhere to the freshly applied coat. Where paint application or curing of coated surface is in progress, there shall be no blast cleaning, grinding, grading, or welding operations in the adjacent area.

After application of each coat of the specified coating system, the dry and/or wet film thickness of the coated area shall be checked by the Contractor before application of the next coat. The dry film thickness shall be checked with a calibrated dry- or wet- film thickness detector when technically possible. Areas with inadequate film thickness shall be recoated by Contractor as recommended by the coating manufacturer at no additional cost. Any areas that are determined to be defective shall be identified, marked, recoated, relined, repaired, and retested by the Contractor until the entire painted or lined area is free from defects (e.g., pinholes, runs, and holidays).

The Contractor shall touch up with acceptable materials abraded areas of shop prime coats before subsequent coats are field applied. Touchup coating shall be applied and previously coated surfaces repaired to provide a continuous protective film over each surface. Surfaces shall be cleaned, rubbed, sanded, or wire brushed so that edges of adjacent coating are feathered to provide a smooth surface when coated. Paint, lining, or galvanizing made



brittle or damaged by heat from welding or cutting shall be completely removed and replaced.

Indicated colors are proposed and subject to review and acceptance by Owner. Touch-up paint for primed and finished painted equipment and materials shall be a direct color match for the system to which it is a part of.

### 3.8.8 Painting/Lining System Tables

#### PAINT/LINING SYSTEMS APPLICATION TABLE

Item to be Coated	Initial Surface Prep	Repair Surface Prep	Coating System (Note 1)	Color (Note 2)
<b>Structural Steel (See also Section 12 Structural/Architectural)</b>				
Structural steel framing; Exterior and Interior	SSPC-SP1	SP3/11	Hot dipped galvanized with a minimum 2 oz/sf per ASTM A123 or equal	N/A
<b>Miscellaneous Steel (See also Section 12 Structural/Architectural)</b>				
Handrails and guardrails; Interior and Exterior	SSPC-SP1	SP3/11	Hot dipped galvanized with a minimum 2 oz/sf per ASTM A123 or equal	N/A
Ladders, safety cages; Interior and exterior, ≤220°F noncorrosive	SSPC-SP1	SP3/11	Hot dipped galvanized with a minimum 2 oz/sf per ASTM A123 or equal	N/A
Stair stringers, toe-plates, treads and grating; Exterior and interior, ≤220°F, noncorrosive	SSPC-SP1	SP3/11	Hot dipped galvanized with a minimum 2 oz/sf per ASTM A123 or equal	N/A
<b>Building and Structural Components (See also Section 12 Structural/Architectural)</b>				
Pre-engineered or custom building frames	SSPC-SP6	SP3/11	B, C, E, F, G, I, J	Standard
Metal siding, roofing and gutters	Manufacturers std (Note 3)	N/A	Typically 50-70% fluoropolymer, shop applied and cured over galvanizing	Owner-selected (see table herein)
Misc steel and structures for switchyards	SSPC-SP1	SP3/11	Hot dipped galvanized with a minimum 2 oz/sf per ASTM A123 or equal	Steel / aluminum
<b>Major Equipment</b>				
BESS Enclosures	Manufacturers Standard	Man. Std.	Manufacturers Standard	Owner-selected
<b>Piping/Ductwork</b>				
Carbon / low alloy steel pipe and fittings; large and small bore, <220°F (un-insulated)	SSPC-SP6	SP3/11	E, I	Refer to Section 3.9.4
Carbon / low alloy steel pipe and fittings; large and small bore, ≥220°F, <750°F (un-insulated)	SSPC-SP10	SP3/11	K	Refer to Section 3.9.4

Item to be Coated	Initial Surface Prep	Repair Surface Prep	Coating System (Note 1)	Color (Note 2)
Carbon / low alloy steel pipe and fittings; shop fabricated, insulated	SSPC-SP6	SP3/11	Shop coat with manufacturer's standard primer except zinc rich not used for <350°F or above 750°F	Refer to Section 3.9.4
Valves, < 220°F (un-insulated)	SSPC-SP6	SP3/11	E, I	Manufacturer's Std
Welded pipe joints; Interior and exterior (applies to pre-fabricated piping that was shop coated)	SSPC-SP6	SP3/11	E, I	Manufacturer's Std
Un-insulated pipe supports, Interior or exterior, <220°F	SSPC-SP6	SP3/11	E, I	Silver / aluminum
Un-insulated pipe supports, Interior or exterior, ≥220°F, <1000°F	SSPC-SP10	SP3/11	K	Silver / aluminum
Ductwork; HVAC and other, interior and exterior, <220°F	SSPC-SP6	SP3/11	E, I,	Silver / aluminum
<b>Tanks</b>				
Field and shop erected tanks	SSPC-SP6	SP3/11	B, C, E, F, G, I, J	Owner-selected
<b>Miscellaneous Equipment</b>				
Fire protection equipment and apparatus	SSPC-SP6	SP3/11	G, J	Safety Red
First aid and safety equipment	SSPC-SP6	SP3/11	G, J	Safety Green
Equipment: Motors, pumps, etc.	SSPC-SP6	SP3/11	G, J	Manufacturer's standard
Machine Guards, Coupling Guards, Shaft Guards, etc.	SSPC-SP6	SP3/11	G, J	Safety Orange
Electrical, I&C panels	SSPC-SP6	SP3/11	G, J	ANSI Gray
<b>Concrete/Masonry</b>				
Exterior Masonry block	SSPC-SP13	ICRI 310.1R	M	Owner-selected
Interior Masonry block (dry)	SSPC-SP13	ICRI 310.1R	N <sup>2</sup>	Owner-selected
Interior Masonry block (wet)	SSPC-SP13	ICRI 310.1R	O	Owner-selected
Slabs, sumps and curbs, subject to weathering, deicing salts and mildly corrosive environments.	SSPC-SP13	ICRI 310.1R	Q	White and striped for visibility
Concrete surfaces for corrosive containment: slabs, sumps and curbs	SSPC-SP13	ICRI 310.1R	R	Standard
Concrete containments subject to oil drips/spills	SSPC-SP13	ICRI 310.1R	R	Owner-selected
Concrete foundations subject to oil drips/spills	SSPC-SP13	ICRI 310.1R	Q	Owner-selected

**Notes:**

1. See Paint/Linings Material Table below. Where modifier number (second digit) is not used, either parent coating type may be used (e.g., B1 or B2, where B is specified)
2. Physical color samples shall be submitted to Owner for approval for all exterior paint colors.
3. Building wall, roof, and liner panel coatings shall meet the guarantees stated in Section 11 – Site Work; typically this is accomplished with a shop two-coat galvanizing and fluoropolymer system. Internal liner panels shall be white or machine gray in color.

**PAINT/LININGS MATERIAL TABLE**

<b>System (Note 5)</b>	<b>Shop or Initial</b>	<b>DFT mils</b>	<b>Intermediate</b>	<b>DFT mils</b>	<b>Finish</b>	<b>DFT Mils</b>	<b>Touch Up</b>	<b>FINAL DFT Mils</b>
B1	Organic or Reinforced Inorganic, zinc primer	2.0-4.0			Water based acrylic	2.0-4.0	Bare metal – same as primer; all – same as finish coat	4.0-8.0
B2	Inorganic, zinc primer <sup>1</sup>	2.0-3.0			Water based acrylic	2.0-4.0	Bare metal – organic zinc primer; all – same as finish coat	4.0-7.0
C1	Organic or Reinforced Inorganic, zinc primer	2.0-4.0			High build Aliphatic Urethane final coat	3.0-5.0	Same as primer followed by same final coat	5.0-9.0
C2	Inorganic, zinc primer <sup>1</sup>	2.0-3.0	Epoxy Intermediate	2.0-3.0	High build Aliphatic Urethane final coat	3.0-5.0	Bare metal – organic zinc primer followed by same final coat	7.0-11.0
E1	Organic or Reinforced Inorganic, zinc primer	2.0-4.0	High build epoxy mastic intermediate coat	4.0-6.0	Aliphatic Urethane final coat	2.0-3.0	Same as intermediate coat or as recommended by coating manufacturer	8.0-13.0
E2	Inorganic, zinc primer <sup>1</sup>	2.0-3.0	High build epoxy mastic intermediate coat	4.0-6.0	Aliphatic Urethane final coat	2.0-3.0	Same as intermediate coat or as recommended by coating manufacturer	8.0-12.0
F1	Organic or Reinforced Inorganic, zinc primer	2.0-4.0	High build epoxy mastic intermediate coat	4.0-6.0	Acrylic Polysiloxane final coat	2.0-3.0	Same as intermediate coat or as recommended by coating manufacturer	8.0-13.0

System (Note 5)	Shop or Initial	DFT mils	Intermediate	DFT mils	Finish	DFT Mils	Touch Up	FINAL DFT Mils
F2	Inorganic, zinc primer <sup>1</sup>	2.0-3.0	High build epoxy mastic intermediate coat	4.0-6.0	Acrylic Polysiloxane final coat	2.0-3.0	Same as intermediate coat or as recommended by coating manufacturer	8.0-12.0
G	High Build Epoxy primer	4.0-6.0			High build Aliphatic Urethane final coat	3.0-5.0		7.0-11.0
I	Epoxy Primer	2.0-3.0	High build epoxy mastic intermediate	4.0-6.0	Aliphatic Urethane final coat	2.0-3.0		8.0-12.0
J	Polyaspartic High Build Primer/Finish	6.0-9.0						6.0-9.0
K	Inorganic, zinc primer	2.0-4.0			Silicone with or without aluminum	1.5-2.5	Bare metal – same as primer; all	3.0-4.5
M	Heavy Duty Acrylic Block Filler/Surfacers	7.0-14.5	Elastomeric Intermediate (Smooth)	6.0-12.0	Elastomeric Finish (Smooth)	6.0-12.0	Same as finish coat	19.0-38.5
N	Acrylic Block Filler	7.0-14.5	Acrylic <sup>2</sup>	2.5-3.5	Acrylic <sup>2</sup>	1.5-4.0		11.0-22.0
O	Epoxy Block Filler	9.0-11.0	Epoxy	4.0-8.0	Epoxy	4.0-8.0		17.0-27.0
Q	Two-component 100% solids, epoxy primer	1.0	Heavy Duty Epoxy Coating	5.0-7.0	Heavy Duty Epoxy Coating	5.0-7.0		11.0-15.0
R	Two-component 100% solids, epoxy primer	1.0	Epoxy Novolac Chemical Resistant Coating <sup>3,4</sup>	5.0-6.0	Epoxy Novolac Chemical Resistant Coating <sup>3,4</sup>	5.0-6.0		11.0-13.0

**Table Notes:**

1. When top coating over inorganic, zinc silicate primers, a mist coat is necessary to avoid bubbling. A mist coat may be a thinned coat or applied by a quick pass of the spray gun prior to applying the full coat, but allowing sufficient time for solvent evaporation. Please consult coating manufacturer's technical product data sheets for further details.
2. Two coats of Epoxy at 4.0 – 8.0 mils DFT per coat can be substituted for two of Acrylic if desired.
3. Acid containments shall be rated for full immersion; system shall be Carboline Semstone, Blome TL 400 HWM vinyl ester resin lining with fiberglass reinforcing, or Owner approved equal.
4. Chemistry of cargo must be specified along with product concentration, temperature, etc.
5. See Paint/Linings Application Table above.

**3.9 STATION NOMENCLATURE, LABELING AND SIGNAGE REQUIREMENTS****3.9.1 Project Nomenclature**

Project nomenclature (tagging) system shall be proposed by the Contractor and submitted to the Owner for review and input.

**3.9.2 Tagging**

Contractor shall tag the following items at a minimum:

Equipment  
Instrumentation  
Raceway  
Electrical equipment (panels, junction boxes, breakers, PCS, Battery Enclosures)  
Circuits  
DCS I/O

Contractor shall develop and maintain equipment lists, which shall list out all equipment and components for the Project. The lists shall be used as the basis for names in all system descriptions, equipment labeling, and operating instructions and maintenance manuals. Contractor shall submit the lists to Owner periodically when revisions to the lists are made.

### **3.9.3 Labeling**

All items that receive a tag number shall also be physically labeled.

Nametags or nameplates shall be provided for all Equipment, electrical equipment, valves, and instruments supplied. To the extent practicable, nameplates or tags shall be constructed of .02" thick 304 stainless steel or laminated phenolic material (where operating temperatures permit).

To the extent practicable, Tag labels shall be 1 inch high x 3 inches wide. Lettering shall be at least 1/4 inch in height.

Tags shall include the item tag number (include unit and system if not incorporated into tag number)

Nameplates or tags shall be stamped, as a minimum, with the manufacturer's name, the equipment identification number used to identify that piece of equipment on the Contractor's drawings.

Valve and instrumentation tags shall include the tag number and P&ID number of the item.

Nametags shall either be permanently attached to the equipment or component using rivets, stainless steel pan head machine screws, or shall be wired to the item using braided stainless steel cable with crimped connections. Installation of a tag shall not interfere with the operation of the component. Bar code tags shall be affixed in a similar manner as appropriate.

### **3.9.4 Signage**

Contractor shall provide complete signage for the Project per Owner's minimum requirements herein.

Within the Project, Contractor shall provide signs for the following:

Main security gate access, with intercom instructions

"No Trespassing" signs at 200-foot intervals attached to security fencing around Project perimeter

Roadway direction signs and striping (delivery instructions, visitor parking, emergency response, warehouse and control room locations, out-structure locations)

Building and structure names

Room names (on doors) and building-internal signs for telephone and in-Project communication device locations

Areas requiring hearing protection, other personal protective equipment (PPE), confined space access, heat stress, chemical handling needs, or similar safety instructions

Locations where extra care is needed to enter (e.g., flammable material storage, forklift traffic areas, other)

Locations where manual drain valves are included on secondary containment areas (e.g., describing when valves are to be opened/closed)

General directions to safety shower/eyewash stations

Required NFPA 704 placards where applicable

Required signage for arc flash areas on all equipment rated at above 300V

OSHA safety and emergency response signs (throughout Project)

Electrical equipment enclosures, and electrical safety signs therein

Fire protection system access/direction signs

Switchyard access/warning (on fencing/gates)

Building column identification at ground level and elevated platforms;

Other security gates (notification to call Project control room to access)

Any signage required by federal, state, or local regulations.

Cautionary paint or tape where applicable (e.g. low hanging beams, trip hazards, high voltage, etc.

END OF SECTION

## **SECTION 04 - PROJECT MANAGEMENT**

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## **4 PROJECT MANAGEMENT**

### **4.1 INTRODUCTION**

This Section describes Contractor's responsibilities in managing Work activities.

#### **4.1.1 Project Management**

Contractor shall provide a management organization and implement a management process to control and complete the Work.

Owner and/or its appointed representative shall closely monitor the progress of the Work.

Owner participation shall not in any way affect Contractor's obligations to complete the Work in accordance with the Contract.

#### **4.1.2 Access to the Work**

Contractor shall allow access to its management, design and manufacturing facilities and those of its subcontractors at all reasonable times and with prior arrangement to permit the participation of Owner in monitoring the performance of the Work and satisfaction of other obligations.

### **4.2 MANAGEMENT ORGANIZATION**

The authority and responsibility of those Contractor personnel assigned to manage the Project shall be clearly established. An organization chart, or similar graphical technique, showing the relationship between management and engineering, procurement, fabrication, construction, inspection and quality control is required to show the actual organization.

Contractor personnel acting as liaison to Owner who provides information or coordinates information transfer between Contractor and Owner shall be proficient in English.

### **4.3 PROJECT SCHEDULE**

#### **4.3.1 General Requirement**

Contractor shall develop and maintain a fully integrated Project Schedule for engineering, procurement, construction and commissioning. This shall be the master Schedule for the Project and shall become the baseline to which progress updates are measured. Contractor shall incorporate schedule dates needed for coordination of the Work included in additional Project Schedules submitted by the Owner. Schedule dates shall include logic ties within the integrated Schedule. Summary Schedule

A Level I summary Schedule shall be prepared and based on the major Project milestones and will be covered in the weekly customer calls. The summary Schedule shall illustrate the start and finish dates of the key activities that support the milestones. The Level I Schedule shall be based on the detailed Schedule used to plan and monitor the Work. The Level I Schedule shall be included in the monthly progress report.

#### **4.3.2 Detailed Schedule**

Contractor shall submit a master integrated Project Schedule which covers the engineering, procurement, construction and commissioning of the Project. This Schedule shall be based on the Project achieving the Guaranteed Substantial Completion Date and the Guaranteed Final Completion Date and Owner schedule dates required for coordination of the Work as described in Section 4.3.1. The detailed Schedule shall be in sufficient detail as defined as the AACE Level 3 to allow Owner to monitor progress for all parts of the Work, including that of vendors and subcontractors. The Project Master Schedule shall be updated on a



monthly basis to reflect actual progress. The updated Schedule shall be submitted to Owner as part of the monthly progress reporting requirement.

Contractor shall use Microsoft Project scheduling software.

The master integrated Project Schedule shall be a AACE Level 3, which encompasses all of the Work activities from Full Notice to Proceed to Guaranteed Final Completion. The Level 3 Schedule shall have activities in sufficient detail to support Owner's monitoring and evaluation of the Work progress. The Schedule shall include:

All individual subcontractor mobilizations and demobilizations shall be identified.

Activity descriptions which define the scope of Work for the task.

Activities which are discrete items of Work when logically assembled define the Project scope of Work.

Activities which have a defined duration in working days

Capable of calculating the Project critical path. Critical path is defined as the longest continuous chain of activities through the network schedule that establishes the minimum overall Project duration and contains zero total float.

Personnel who prepare the Schedule shall be qualified and experienced in Critical Path Method (CPM) scheduling.

Contractor shall provide Daily automated production reports from the past working day and Weekly Reports following the Weekly Progress Meetings detailing progress of individual activities. Construction Progress curves for each activity will be provided in the Weekly Reports.

During the engineering phase of the Project, Contractor shall prepare a look-ahead Schedule which shall be available to Owner for review. This look ahead shall cover the period of at least four weeks beyond the data date. This Schedule shall be generated by the Microsoft Project electronic schedule.

During construction, Contractor shall submit a weekly detail Schedule which defines activities for the next three-week period. This Schedule may be separate from the Microsoft Project Schedule although the Work activities must be able to be recognized as activities which support those in the electronic Microsoft Project Schedule. The look-ahead Schedule shall display activities four weeks in advance of the revision date. This Schedule shall be submitted in advance of the weekly progress meeting where the look-ahead shall be reviewed.

On a monthly basis the Schedule shall be updated with actual progress for the month. The cut-off date for the Schedule shall be in alignment with the monthly progress report. Contractor shall electronically transmit Schedule to Owner and Owner's Engineer when the update is complete and available for review. It is anticipated that Contractor shall continue to Work in order to generate the reports in an Excel table format with percent complete and projected finish dates for Engineering and Procurement. Reports which shall be available include a current Schedule report, critical path report and comparison to the Project baseline Schedule. Each report shall display the current start and finish, baseline start and finish dates, remaining duration plus the physical percent complete.

#### **4.3.3 Commissioning Schedule**

Contractor shall provide a detailed commissioning and startup Schedule two months before the start of commissioning showing a phased sequence of submission to Owner of the commissioning documents and network schedules.

The first draft of these commissioning documents and network schedules shall be submitted not later than two months before the start of commissioning activities.

Copies of the final agreed commissioning documents and detailed commissioning network schedules shall be made available to Owner not later than one month before start of commissioning activities for each generating unit.

Commissioning shall not commence until appropriate documentation has been submitted to and approved by Owner.

#### **4.4 PROJECT CONTROLS**

##### **4.4.1 Project Controls Representative**

Contractor shall designate a Project controls representative who and shall be able to speak for Contractor on matters of planning and progress and be of sufficient status to have free access to Contractor's management staff, Contractor's workshops, job Site, etc.

Owner or his designated representative shall be entitled at all times to visit the job Site and all premises, including those of subcontractors, where design, manufacturing and construction of the system/equipment is being carried out in order to monitor and verify progress. Manufacturing facilities may have scheduled visits with sufficient prior notice to facility as arranged by Contractor at Owner's request.

The monitoring and verifying of progress by Owner shall not release Contractor from any obligations under the Contract.

##### **4.4.2 Progress Curves**

As part of the baseline Schedule development, separate progress curves shall be developed for construction, startup and commissioning (represented as a discrete schedule only, which provides a per Generating Unit detailed individual test name and schedule date for completion), and an overall Project progress curve. On a monthly basis Contractor shall update the progress curves with actual earned production progress. In addition, Contractor shall prepare and update progress commodity curves which identify planned and earned progress for:

- Cable Install
- Trenching, Conduit, and backfill
- Civil
- Ground Grid
- Equipment Set
- Raceway, if applicable
- Terminations
- Foundations
- Structural Steel

#### **4.5 WORKFORCE PLANNING**

##### **4.5.1 Labor Management**

Contractor shall be wholly and entirely responsible for establishing and maintaining sound labor management practices, good industrial relations and acceptable levels of labor productivity to achieve safe completion of the Work within quality, Schedule and budget.

Contractor shall be responsible for the assessment of subcontractor's proposed labor policies and shall ensure their compliance and compatibility with their own policy. Contractor shall

ensure that there shall be no changes to a subcontractor's policy without the approval of Contractor.

#### **4.6 QUALITY ASSURANCE**

Contractor shall ensure that all items supplied are designed, manufactured and tested under a quality assurance program that either complies with the requirements of ISO 9001 or is functionally equivalent to ISO 9001.

Contractor shall provide and work to a set of defined procedures. The procedures shall define the arrangements and methods that shall be used to ensure that all components of the Work comply with the Specification requirements.

Contractor's quality assurance program shall be submitted to Owner for review and shall include the preparation of and adherence to Project specific quality plans.

Contractor shall ensure that all subcontractors comply with their quality assurance program. Contractor shall be responsible for monitoring of subcontractor quality assurance programs. Contractor shall provide sufficient documentation to satisfy Owner that Contractor is implementing those provisions of the agreed and accepted procedures that relate to the monitoring by Contractor of subcontractor quality assurance arrangements.

Audits of subcontractor quality assurance arrangements shall be recorded in such a manner that the relevant documentation constitutes, amongst other things, objective evidence of the extent of the audits and of the effectiveness with which they have been conducted. All such documentation relating to any one audit shall be made available to Owner, on request, as a single self-contained document.

##### **4.6.1 Surveillance and Routine Inspection**

Owner shall indicate on the quality plans any requirements for surveillance or other routine inspection activities.

Contractor shall adhere to the agreed quality plans. Any substantial deficiencies or other conditions adversely affecting quality shall be reported to Owner.

##### **4.6.2 Monitoring of the Procedures**

During the course of the Work, Owner may monitor the implementation of the procedures. Monitoring shall be by means of surveillance of activities at the Work location and/or by formal audits of the adherence of Contractor to the systems and procedures that constitute its procedures. A corrective action Schedule shall be agreed and implemented in respect of any deficiencies revealed by such monitoring.

Contractor shall provide any facilities, including access, which may be required by Owner or its representative for monitoring activities.

Owner reserves the right to participate in Contractor's monitoring of subcontractors' quality assurance arrangements.

##### **4.6.3 Certification to ISO 9001**

The possession of valid certification to ISO 9001 shall not affect Owner's right to monitor Contractor's procedures.

In the event of Contractor's or its subcontractor's certification being withdrawn, cancelled, or lapsing, Contractor shall advise Owner immediately together with an explanation statement and his intended proposals to rectify any quality deficiencies.

#### **4.6.4 Inspections and Tests**

Contractor, or Contractors designated 3<sup>rd</sup> Party representative for Factory Acceptance Tests, shall be responsible for the inspection and testing of the Work, including:

- Factory inspection and testing of components, systems and equipment
- Factory performance testing of systems and equipment
- Job Site inspection and testing during erection and commissioning of the Work
- Performance and Demonstration Tests (Exhibit I – Acceptance Tests and Testing)
- All inspection and testing required by applicable laws

The test codes and testing procedures shall be agreed between Contractor and Owner in advance of tests commencing.

Contractor shall notify Owner of inspections and tests as required in the Contract.

All measuring equipment and special apparatus required for carrying out inspections and tests shall, unless otherwise agreed by Owner, be provided by Contractor without extra cost to Owner. All such equipment shall be calibrated, with valid calibration certificates available for inspection.

Contractor shall check the electrical and mechanical connections to all systems/equipment supplied and other requirements of the quality assurance program, before energizing, and shall be responsible for the correctness of such connections. Qualified staff shall be employed for this aspect of the Work.

Contractor shall, not later than three months prior to commencement of any tests and for the duration of the tests, be responsible for ensuring that any systems, equipment and cables to be involved in the test or be electrically charged, intentionally or inadvertently, are suitably protected against damage to the Work and/or other adjacent systems/equipment. Contractor shall also ensure that all systems, equipment, and cables are de-energized, made safe and grounded after each test.

Contractor shall, not later than one month prior to the commencement of any test of major Balance of System, SCADA or other Major Equipment, provide to Owner a Schedule of said inspections and tests. This shall include factory tests, construction tests and job Site commissioning tests. Notification requirements shall be reflected in the quality plans for the Project.

Contractor shall give particulars of the tests that will be carried out during erection and commissioning of the Work to comply with the Specifications, together with any additional tests that are proposed. The details shall include how equipment is to be tested.

All non-destructive testing (NDT) procedures for key systems, equipment, or structures and for systems and equipment subject to statutory inspections shall be submitted to Owner for Contract prior to testing, together with details of the certification scheme used for NDT operatives. NDT at job Site using radiography shall be subject to safety rules agreed by Owner.

Where applicable, hydraulic and non-destructive tests of the various components, and also mechanical tests on the materials thereof, shall be carried out at the manufacturer's factory in accordance with the appropriate standard. Steel maker's certificates of chemical and heat treatment shall be provided in all cases.

Systems and equipment performance tests, where required and where practical, shall be carried out at the manufacturer's factory and a method of test shall be agreed between

Manufacturer, Contractor and Owner. Tests shall be conducted to the appropriate U.S. standard, shall cover the normal operating range of the systems or equipment, and curves shall be drawn showing the relevant performance characteristics over this range.

#### **4.6.5 Inspection and Test Certificates**

The following documents shall be provided to Owner:

- Copies of inspection and test certificates for systems, equipment, or materials subject to quality assurance in accordance with the Contract and quality assurance plan

- Copies of inspection and test certificates for all other systems, equipment, materials, and lifting equipment

Each test certificate and graph shall indicate clearly the material, equipment, or system to which it refers and be identifiable with such material, system, or equipment at all times until completion of the Work.

During commissioning of systems/equipment or materials subject to quality assurance and quality plan, copies of inspection and test certificates shall be made available when requested by Owner.

For all permanent lifting equipment and all other systems and equipment subject to statutory inspection used during commissioning and then handed over upon taking over of the Work, one original copy of inspection and test certificates shall be supplied to Owner at the time of commissioning.

Contractor shall ensure that valid certification on all systems and equipment, subject to statutory inspection, is maintained up to and including the date of issue of the Certificate of Substantial Completion by Owner.

Copies of all certificates shall have been provided by Contractor to Owner as part of the requirements to achieve Substantial Completion.

Following an activity, inspection and test certificates shall be prepared in a timely manner.

#### **4.6.6 Inspection and Testing Facilities**

For the purposes of monitoring the implementation of the Procedures, Contractor shall coordinate suitable facilities for all inspections and tests required for the Work as commercially reasonable, by the quality plan and for statutory purposes. Suitable office accommodation for the duration of inspections shall be made, at Contractor's expense, for Owner's quality assurance representatives at the manufacturers' facilities.

Individual factory performance tests for equipment shall be specified by Contractor and agreed with Owner during the design phase of the Work, and shall include a test plan document together with references to all applicable standards.

### **4.7 PROJECT RECORDS**

#### **4.7.1 General**

Contractor shall maintain the necessary and specified Project records which shall be available to Owner for inspection at all reasonable times. Contractor shall provide a copy to Owner as part of Final Completion. The records shall include, but shall not be limited to, the following:

- Reports
- Manuals

Calculations

Technical data and latest review/mark-up or all drawings

Procurement Specifications

Subcontractor, supplier, and manufacturer information and correspondence

Schedules

Construction records

Start-up records

#### **4.7.2 Job Site Records**

Contractor shall maintain on the job Site up-to-date records of all relevant documentation and shall ensure that these are available to meet obligations to all regulatory or statutory bodies, to all governmental authorities having jurisdiction, and to any commissioning committees, working parties, or test teams that are established to meet the needs of the Work. These records shall be maintained and retained until completion of all Work on the job Site and shall be subject to audit by Owner. Prior to turnover records shall be made available for Owner review.

The relevant documents include, but are not limited to:

- Job Site apprenticeship information per Sections 11.8 and 11.9 of the Contract produced and maintained at Job Site

- Job Site working drawings and construction records

- Job Site management and safety documents

- Job Site register for lifting equipment, cranes, slings, hooks, lifting beams and tackle used for construction of the Works, either mobile or fixed

- Job Site register for lifting equipment, cranes, slings, hooks, lifting beams and tackle supplied as part of the permanent Works

- Job Site register for all portable powered apparatus and tools, both temporary and permanent

- Job Site register for all scaffolding

- Progress records

- Commissioning documents

- Operation and maintenance instructions

- Quality assurance documents

- Photographic evidence as agreed with Owner

- Environmental compliance records

- Test certificates from manufacturing Works and job Site

- Safety reports

- Health and Safety file

- Safety data sheets

Contractor shall enter safety records into Owner's tracking system. Owner will work with designated Contractor representative for training and access to this system.

END OF SECTION

## SECTION 05 – SUBMITTALS

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**Public Service Company of New Mexico**  
PNM 2026 to 2028 Generation Resources RFP

**Specification: 10345130-0ZP-M0101**  
Issue: For Contract  
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## **5 SUBMITTALS**

### **5.1 SUMMARY**

Contractor shall submit design documents for all areas of Work to enable Owner and Owner's Representative to understand fully the proposed design. Such design submissions in the form of design reports, basis of design, or design intent memorandum, shall include a system description, control and operation descriptions, schedules of major characteristics of system/equipment items, and such other information as is required to describe the systems fully.

Owner's review and comment on the design documents prepared by Contractor is to enable compliance with the Contract to be confirmed, particularly in respect to quality, operability, maintainability, and safety of the Work. Where "Owner" is listed below, it shall be understood to include Owner's Representative.

### **5.2 REFERENCES**

#### **5.2.1 Definitions**

The use of the term "drawing" shall be interpreted as "document" when used in the context of a submittal.

The term "Submittal" shall refer to drawings, documents, and other information.

### **5.3 SUBMITTAL REQUIREMENTS**

Contractor and their sub suppliers and vendors shall prepare submittals in accordance with the provisions specified herein.

#### **5.3.1 Reference Standards**

Submittals shall be prepared using Contractor's standard templates in a neat and orderly fashion for Owner's review as required in the Contract.

#### **5.3.2 General Requirements**

Contractor shall submit drawings and documents listed in tables herein and throughout the specification for review and shall revise and resubmit them as necessary to establish compliance with the Contract.

Contractor shall prepare project specific drawings and documents. The use of standard drawings shall only be allowed when there is no deviation from the depicted information and the actual intended installation conditions.

Submittals shall be in the English language.

Submittals shall use U.S. customary units. In addition to U.S. customary units, SI unit symbols may also be referenced.

Equipment drawings shall have the equipment name and tag number clearly displayed.

Information on all subcontractor documents shall be checked and reviewed by the Contractor for accuracy before submitting.

Where required by applicable law, submittals shall be prepared, reviewed, and stamped by the applicable discipline design professional (e.g., Professional Engineer registered in the project state).

### **5.3.3 Drawings**

#### **5.3.3.1 Title Block**

Contractor shall use their standard drawing title block and provide a space for the Owner's drawing number within the title block. References to other drawings may use the Contractor's drawing number scheme.

The Owner's name and project name information shall be included in or around the Contractor's title block in a format which is approved by the Owner.

#### **5.3.3.2 Drawing Sizes**

Drawing sizes shall comply with ASME Y14.1 or ISO 216 A series. Use of a drawing size other than listed here shall be as approved by the Owner.

#### **5.3.3.3 Scale and Measurements**

Drawings shall be made accurately to a scale, and sufficiently large to show all pertinent aspects of the item and its method of connection to the Work.

#### **5.3.4 Submittal Media**

Contractor shall submit documents in the form of electronic PDF files. Equipment instruction books and operating manuals shall be provided in paper copies in addition to specified electronic PDF format.

Electronic PDF file format shall be in accordance with ISO 32000-1. Each PDF file shall contain only one submitted document. Drawings that contain multiple sheets shall be consolidated in one PDF file provided that the drawing number is the same for each sheet (only the sheet number changes). Files shall have "comments enabled".

Submit a final "record set" of all documents, drawings and other submittals in electronic PDF files. Final electronic PDF files shall be in accordance with ISO 19005-2 PDF/A-2 format only. In addition to the PDF files, native files for the following submittals shall be provided:

- CAD drawings shall be provided in the latest version native AutoCAD format as applicable, fully bound with all x-refs and internal reference files.

- Electrical system modeling shall be submitted in native SKM format (software revision to be coordinated with the Owner).

- Databases including asset breakdown, master lists, and design lists

- Construction progress photographs (JPEG).

#### **5.3.5 Quality Assurance**

Submittals shall be complete with respect to dimensions, design criteria, materials of construction, and other information specified to enable Owner to review the information effectively. Subcontractor and Contractor parts lists shall be used during receipt inspections at the job Site.

Information on all Contractor and subcontractor documents shall be reviewed by the Contractor for compliance with design and quality assurance documentation prior to submittal to the Owner.

Where standard drawings are furnished which cover a number of variations of the general class of equipment, each drawing shall be annotated to indicate exactly which parts of the drawing apply to the equipment being furnished. Hatch marks or strike-throughs shall be

used to indicate variations which do not apply to the submittal. The use of "highlighting markers" is not an acceptable means of annotating submittals.

#### **5.4 CONTRACTOR PREPARED DOCUMENTS**

Contractor shall utilize their standard document numbering and naming convention.

#### **5.5 SPECIFIC SUBMITTAL REQUIREMENTS**

The following paragraphs provide general requirements for specific types of submittals.

##### **5.5.1 General Arrangement Drawings**

The general arrangement (GA) drawings shall indicate at a minimum three perspective views of the subject matter (plan view, elevation view, and side view). Additional views or sections shall be provided to clearly indicate the extents and features of the subject.

The GA drawings shall include the details of the Contractor's Work and that of all Subcontractors that the Contractor uses in the Work. The Contractor shall be responsible for consolidation of all information from their subcontractors onto its GA drawings.

Pull spaces, electrical panel access zones, and maintenance removal zones shall be indicated on the GA drawings. The Contractor shall indicate any areas that require more than three feet of clearance around their equipment boundary on the GA drawings for access or maintenance requirements.

Contractor shall provide information regarding the location of access doors or view ports.

##### **5.5.2 Vendor Literature**

Where contents of submitted literature from manufacturers include data not pertinent to the submittal, Contractor shall clearly show which portions of the contents are being submitted for review by marking or crossing out all irrelevant material.

##### **5.5.3 Dimensioned Outline Drawings**

Outline drawings shall depict graphically and dimensionally the configurations, profile, and limitations of parts and assemblies. Perspectives and reference points shall be indicated clearly for each view.

##### **5.5.4 Schedules**

Contractor shall submit Schedules as specified in Section 04 – Project Management.

##### **5.5.5 Performance & Correction Curves**

Performance and correction curves of either the predicted or demonstrated type, as required, shall provide definitive, quantitative, and graphic performance data. The format and conventions used in defining performance variables and parameters shall be consistent with the codes and standards applicable to the equipment. Performance curves shall include major and minor graduations on the axis. The graph shall fill the entire page, one graph per page. The graph should use as much of the graph paper as possible; select the best scale as necessary to achieve this. The axes should extend beyond the first and last data points in both directions. All graphs shall have a short, descriptive title at the top of each graph, detailing what is being measured. Each axis shall be clearly labeled with titles and units. Where possible, intervals on the axis should be whole integer values, such as 1, 2, 5, 10, not 3.25, 6.5, 1.5. Each curve shall be provided in both graphical and numerical format. When applicable, the line equation to the graph shall be provided.

### **5.5.6 Wiring Diagrams**

Wiring, connection and interconnection diagrams shall show the electrical connections of an installation or its component devices and parts. Schematics and connection diagrams, such as one line and three line diagrams, may also be included in this category.

Drawings supplied under this category shall provide such detail as is necessary to make or trace the connections involved. The individual drawings may cover internal or external connections, or both.

References to vendor documentation shall be provided.

### **5.5.7 Bill of Materials**

A bill of materials shall consist of all components or bulk materials used in the item to which the list applies. The list may be either integral to the design drawings or separate, and shall include sufficient descriptive data to facilitate procurement of equivalent parts or materials.

### **5.5.8 Cross Sectional Drawings**

Cross sectional drawings shall present a view of an object in a perspective that cuts away all or part of an object to show its shape and construction at the cutting plane. Cross sectional drawings shall be furnished where the construction or hidden features of an object cannot be shown clearly by outside views.

### **5.5.9 Fabrication Drawings**

Fabrication drawings shall provide, in detail appropriate to the nature or complexity of the items, configuration and dimensional data, required processes, procedures, sequences and materials required to fabricate the required items. The information shall be indicated directly on the drawing or by reference to other documents.

### **5.5.10 Shop Detail Drawings**

Detail drawings shall depict complete item requirements for the parts depicted on the drawings including, as applicable, configuration, dimensions, tolerances, materials, mandatory processes, surface finish, protective coatings, and symbols.

### **5.5.11 Assembly Drawings**

Each assembly drawing shall show the relationship of parts, components, and assemblies to each other. Subordinate parts or components shall be called out on the field of the drawing, by part or finding numbers, and reference shall be made to related drawings and listed as required.

### **5.5.12 Erection Drawings**

Erection drawings shall show the procedures and operations sequences required for erection or assembly of individual items and/or of assembly of component parts of total items or facilities.

### **5.5.13 Calculations**

Records of design calculations shall be identifiable by subject (including structure, system or component to which it applies), originator, reviewer, and dates. Calculations shall be sufficiently detailed (as to purpose, method, assumptions, design input, and units) so that a person technically qualified in the subject can review and understand the analysis and verify the adequacy of the results without recourse to the originator.

#### **5.5.14 Inspection/Test Procedures**

Inspection and test procedures shall be provided in a documented form that adequately defines the elements, prerequisites, acceptance, criteria, equipment, sequence responsibilities, and personnel qualifications for completion of the inspection and testing activities required by Exhibit A - Statement of Work and Specifications and/or code for the items or services supplied.

#### **5.5.15 Inspection/Test Data**

Inspection/test data shall be detailed quantitative and qualitative data which results from examination, observation, measurement, or subjecting components, assemblies, or systems to actual physical, chemical, environmental, or operating conditions. Inspection/test data reports shall include, or include by reference: the applicable codes, standards, and specifications; the procedures and methods utilized; and the prerequisite qualifications of personnel and equipment required for the inspection/testing activities. Acceptance/rejection criteria shall be clearly indicated or referenced to the extent that knowledgeable individuals can review and interpret the data without recourse to the originator.

#### **5.5.16 Statement or Certification of Compliance**

This documentation shall be in the form of written statements, signed by a member of the Contractor's or subcontractor's organization who has the authorization to commit or obligate the organization in legal or contractual matters. Various compliance statements are required by the specification in addition to other compliance statements specified elsewhere in the Contract. Written, signed statements required by the specification typically are described as shown below:

Personnel Certifications – Written documents issued by a laboratory, school, or other organization recognized or authorized by a board or standards committee to determine the qualification of an individual to perform a particular task, test, or inspection along with continuity certificates. If welding is to occur on site, certifications such as Welder's Certification per AWS D.1.1, NDE Certifications per ASNT SNT-TC-1A, and other such certification statements are in this category.

Equipment Certifications – Written documents, signed by an authorized representative of the Contractor, subcontractor, vendor, or fabricator, certifying that the item of equipment conforms to the specified requirements.

Test Data Certifications – Written documents or forms, signed by an authorized representative of the organization that conducted the test, attesting that the actual properties or results of the test comply with the specified requirements. Mill test reports, concrete cylinder breaks, metallurgical test results, and other such results or reports are in this category.

#### **5.5.17 Receiving Instructions**

Receiving instructions shall include, where appropriate, detailed requirements for receipt, inspection, unloading, unpacking, testing, marking, identification, documentation, and other requirements unique to the supplied equipment or materials.

#### **5.5.18 Storage Instructions**

Storage instructions shall provide, in written form, the detailed requirements necessary to minimize the possibility of damage or deterioration of the items supplied. Special requirements, environments, or materials and equipment shall be adequately prescribed to assure the continuing integrity and performance of the items supplied. Storage instructions shall be provided prior to the time storage activities begin.

### **5.5.19 Handling and Lifting Instructions**

Handling and lifting instructions shall provide written procedures for handling the supplied items and shall include (as appropriate) weights, sling locations, balance points, methods of attachments, maximum hoist line speeds, special fixtures and equipment, and other pertinent features considered necessary for safe handling. Handling and lifting instructions shall be provided prior to the time handling or lifting activities begin.

### **5.5.20 Lists**

For the following commodity lists, the Contractor shall submit such information in Microsoft Excel or Microsoft Access using Contractor's standard format.

#### **EQUIPMENT LIST**

- Tag number
- Description
- Nominal rating or size (gpm, gallons, etc.)
- Outline/assembly drawing(s)
- Data sheet (if applicable)
- Motor horsepower (if applicable)
- Manufacturer / model number
- Remarks

#### **I/O LIST**

- Tag number
- Tag name
- Service description
- Process range
- Process units
- Voltage level
- Signal range

#### **INSTRUMENT LIST**

- Tag number
- Tag name
- Service description
- Process range
- Process units
- Set Points
- Subcontractor
- Product model number

#### **ELECTRICAL LOAD LIST**

- Tag number
- Tag name
- Rated power
- Voltage level
- Startup current

## TURNOVER RECORDS

- Asset breakdown summary
- Asset management table(s)

### **5.5.21 Maintenance Management System Submittals**

#### **5.5.21.1 General Requirements**

Contractor shall coordinate and provide the following services to allow Owner to set-up and use their existing software based maintenance program.

#### **5.5.21.2 Equipment Data Sheet**

Contractor shall prepare and submit an equipment data sheet and asset management table for all equipment that has a tag number assigned.

#### **5.5.21.3 Electrical Relay Study**

Contractor shall provide a complete list of all electrical relay settings for all high, medium, and low voltage equipment supplied by the Contractor. Included with the list shall be documentation of the Contractor's coordinated relay study.

### **5.5.22 O&M Manuals**

#### **5.5.22.1 Scope**

Contractor shall provide vendor Operation and Maintenance (O&M) manuals for the equipment, systems, and components procured by the Contractor for the Project. These manuals shall be provided in both hard copy and electronic file format, inclusive of any as-built revisions.

#### **5.5.22.2 Contractor QC Review**

Contractor shall be responsible for reviewing the contents of all vendor O&M manuals for compliance to the specification requirements defined herein. Contractor shall prepare a QC checklist for their review of vendor O&M manuals; the checklist shall be filled out and signed by the Contractor's responsible person reviewing the manual for compliance. The checklist shall be submitted to Owner in conjunction with submission of the vendor O&M manual to Owner.

#### **5.5.22.3 Vendor O&M Manual Content**

Vendor provided O&M manuals for all balance of plant equipment (BOP) shall be fully indexed. The content shall be complete and specific for all the systems, auxiliary systems and equipment supplied.

Material and information that does not contribute to the understanding of the design, operation and maintenance of the equipment shall be excluded from the manuals. Information that does not apply shall be removed from the manual or redacted. Drawings, diagrams, pictures, or photographs shall be used to add to the understanding of the text. Where vendor's standard brochures are available in a suitable form and relating specifically to the equipment supplied, these may be used, provided the brochures are edited to remove irrelevant material and are integrated into the overall manual.

The manuals shall contain information suitable for personnel who have received a basic training and/or have a knowledge and experience of similar equipment.

The manuals shall alert the Owner's operating staff to any hazard inherent in the equipment or likely to arise in the implementation of operating or maintenance procedures.

The O&M manual shall be organized by sections. If the overall quantity of information is greater than what can fit in a four inch binder, the manual shall be organized in multiple volumes. The manual shall be arranged to enable normal operation of the equipment without undue reference to other documents.

The O&M manuals shall contain the functional content as listed below, however the organization and format shall be in accordance with the Contractor's standard practice.

#### Operation

1. Table of contents
2. Overall system (or equipment) overview description, operating philosophy, and operating conditions
3. Detailed description of equipment
4. Detailed description of instrumentation & controls, interlocks, and alarms
5. Operational procedures, including:
  - Safety warnings
  - Operating limits, design data and characteristic curves
  - Start-up instructions
  - Operating instructions
  - Emergency procedures
  - Shutdown instructions
  - The start-up, operating and shutdown instructions shall include step by step procedures, precautions, critical points to be observed and any differences in procedures for initial operation, normal operation, and pre- and post-maintenance activities
  - Preservation instructions, lay-up guidance / procedures
  - Initial startup and commissioning instructions
  - Troubleshooting and malfunction response
6. Details of software programs for all control and supervisory equipment, with adequate comments to enable their comprehension by programming engineers other than those originating the material
7. As-built arrangement drawings, if available, pictures or photographs of major equipment items, piping and instrument diagrams, single line diagrams and block cable diagrams
8. Complete equipment lists, cable lists, piping lists, valve lists

#### Maintenance

1. Table of contents
2. Recommended routine maintenance activities and the frequency at which they should be performed
3. Preventative maintenance procedures, including:
  - List of tools and specialist required
  - Maintenance instructions



Settings, clearances and adjustment data

Re-commissioning instructions

Preservation instructions with procedures and precautions to be taken in the event of prolonged shutdown

4. Recommended lubricants and capacities. Provide a cross-reference of lubricant suppliers and lubricant required for each component. The cross-reference shall identify where commercially available at least two lubrication suppliers and their lubricant type.
5. Documentation. This shall include as a minimum all drawings and lists submitted during the procurement of the equipment, test reports, test curves, inspection reports, correspondence between subcontractor and Contractor, design interface requirements.
6. Schedule of safety critical high integrity interlocks and control circuits

#### Parts Catalogue

1. Table of contents
2. Replacement parts lists and part drawings
3. Contact information for subcontractors and instructions for ordering replacement parts
4. Contact information for authorized service centers
5. Any special handling or storage procedures required for spare parts.

#### Quality Documentation, Miscellaneous

1. Table of contents for section
2. Factory test and calibration certificates, test reports, and QA documentation.
3. Miscellaneous Documentation

#### **5.5.22.4 Component O&M Manuals**

Reduced-size O&M information shall be provided by Contractor for commodities and components purchased for Contractor's balance of plant systems. This information, such as catalogs and cost lists, shall be consolidated into larger binders with binders organized based on system(s) that are used. Contractor shall organize and index the binders for ease of use.

#### **5.5.23 Project Job Book**

Contractor shall prepare a Project Job Book, which shall be provided to the Owner in both hard copy and electronic form, inclusive of information affected by As-Built revisions.

##### **5.5.23.1 Content of Job Book**

The Project Job Book shall be prepared by Contractor to describe the Project and to explain the scope, major equipment and operation of the Project systems, including standard operating procedures that integrate operating and maintenance requirements for all systems and equipment including Owner Furnished Equipment (OFE). The Project Job Book shall include but not be limited to:

- Table of contents (replicated in each volume)
- Overall Project description and design criteria

Site Plan; a plot showing all major equipment and enclosures. It shall depict utility corridors, roads, walls, fences, landscaping, where applicable. It shall include a survey and coordinate system.

General arrangement drawings from equipment and enclosure vendors and by engineering discipline

System descriptions for all Project systems including equipment ratings, design criteria, operating modes and relevant restrictions or limitations.

System overview drawings (e.g. Single Line) depicting major components of the system and interconnections.

Project overall startup, steady-state, and shutdown procedures

Cross references to subcontractor (original equipment manufacturer) O&M manuals

Project performance test procedure, final report

Copies of all warranties for the equipment

The Project Job Book shall include complete O&M procedures and instructions for the Project to the Owner, including overarching startup, normal operations, shutdown, runback, and other operations guidelines and general preventive maintenance instructions for the power block and all systems and auxiliaries. To avoid duplication, the Project O&M Manual shall be drafted in parallel with and make reference to related O&M Manuals furnished from equipment Subcontractors, and Major Equipment suppliers.

The Contractor's Project and O&M Manuals will also be a critical part of the Owner's training program and, as a result, must be jointly finalized in conjunction with the Owner in advance of training execution.

#### **5.5.24 O&M and Project Job Book Format and Binder**

Both Subcontractor O&M manuals and Project Manuals shall be provided in hard cover binders with the following format requirements

##### **5.5.24.1 Format**

Size           ANSI "A" (8-1/2" x 11")

Paper:        White, bond, at least 20 lb. weight

Drawings:    8-1/2" x 11" in height preferable, 11" x 17" foldout acceptable; larger drawings should be avoided if possible, but if included should be folded and inserted into a drawing pocket or bind in with text.

Flysheets:    Separate each portion of the manual with neatly prepared flysheets briefly describing contents of the ensuing portion; flysheets may be in color.

Binders:       Heavy-duty post D-ring binders with metal hinges. All binders are subject to the Owner's approval. O&M manual binder size shall not exceed 4"; Project manual size shall not exceed 3" and shall be uniformly sized.

The manuals shall be punched to fit standard U.S. three-hole fixings. The manuals shall be produced by xerographic, lithographic, or similar processes and shall be suitable for electronic scanning. The use of coated papers and dyeline prints for drawings or script shall not be accepted.

Provide the following accessories as applicable:

Label holder

Business card holder

Sheet lifters  
Horizontal pockets

**5.5.24.2 Hard Copies**

Contractor shall provide two duplicate hard copies of each binder.

**5.5.24.3 Electronic Files**

Contractor shall provide binder's contents in electronic format. Electronic files shall be in Adobe portable document format (PDF).

The PDF file shall be bookmarked, indexed, and capable of electronic searching of the material and text.

**5.5.24.4 Binder Cover**

The following information shall be imprinted, inserted, or affixed by label on the binder front cover:

- Owner's name
- Owner's Project name
- Equipment item name or Project Manual volume
- Volume number (if applicable)
- Subcontractor's name and address (if applicable)
- Subcontractors order number (if applicable)

The following information shall be imprinted, inserted, or affixed by label on the binder spine (except Project Manual will consist of multiple volumes versus being aligned by subcontractor):

- Owner's name
- Owner's Project name
- Equipment item name
- Volume number (if applicable)

Contractor shall submit a mockup of cover and spine for Owner's review. Contractor shall follow the below layout and formatting unless directed otherwise by Owner.

<p>PNM</p> <p>(+6'7Ä2.,'</p> <p>ÄCÄÄÄDÄ</p> <p>Volume* _____</p>	<p>!"#\$%&amp;'()*\$%'Ä*+,-./0Ä+1Ä</p> <p>2'3Ä4'5\$%+</p> <p>(+6'7Ä2.,'</p> <p>89:4Ä4.!.#;Ä8 (+6'7Ä4.!.#;</p> <p>for</p> <p>[ ]</p> <p>&lt;+#!,'Ä2!,'"(&gt;&gt;&gt;&gt;&gt;&gt;&gt;&gt;</p> <p>&amp;!--#\$(?@Ä2.,'</p> <p>&amp;!--#\$(?@ÄÄÄÄ('@@</p> <p>4./1BÄ9(A'(Ä2!,'"(Ä&gt;&gt;&gt;&gt;</p>
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NOTES:

1. Choose either "O&M Manual" or "Project Manual."
2. All lettering shall be a block style font, imprinting color to contrast with binder color specified.
3. Spine letter shall be 14-point minimum.
4. \*Volume number required only if instructions are contained in more than one volume.

**5.6 COORDINATION OF SUBMITTALS**

**5.6.1 Number All Submittals**

All submittals shall include a document identification number and a revision level.

**5.6.2 Submittal Log**

Contractor shall maintain a submittal log for the duration of the Work, showing current status of all submittals. The log shall include the following fields: document number, description, revision level, and date of revision.

The log shall include the Contractor's documents and all vendor's documents that have been, or will be submitted to the Owner.

The first submittal of the log shall include all submittals the Contractor anticipates to submit during the duration of the Work, to the best of their knowledge. The log shall then be maintained current for the duration of the Project.

Submission of the log shall occur on a monthly basis, or when requested by the Owner. The Contractor may utilize and maintain Viewpoint for Projects for the purposes of document and drawing management including Contractor's documents and vendor's documents if the requirements described herein are maintained. Transmittals and submittals to Owner will be issued through Viewpoint for Projects.

### **5.6.3 Grouping of Submittals**

When practicable, Contractor shall make submittals in groups containing all associated items to assure that information is available for checking each item when it is received.

### **5.6.4 Purpose of Issue**

All items issued for construction shall be marked "Issued for Construction" or "Issued for Use". Where required for submittal to a governmental authority, engineering documents issued for construction shall, to the extent required by such governmental authority, be reviewed and stamped by a professional (e.g., Professional Engineer) registered in the State of New Mexico in the applicable discipline.

### **5.6.5 Manifest**

Each submittal or package of submittals shall include a manifest. The manifest shall contain a listing of each submittal with the following data fields: document number, description, revision level, number of sheets.

### **5.6.6 Document Management Website**

Contractor shall host an internet based document management website, Viewpoint for Projects. Owner and Owner's Representatives shall be able to access all of Contractor's design documents, and vendor drawings to download or provide comments on drawings.

### **5.6.7 Transmittal Notification**

For each submittal or submittal package, Contractor shall provide a transmittal notification e-mail including a manifest (or attached manifest) listing all documents that have been issued. Contractor and Owner shall mutually agree to the transmittal notification distribution list.

## **5.7 SUBMITTAL REVIEW**

Owner reserves the right to review and comment on all documents submitted by Contractor, subcontractors, and vendors throughout the Contract period.

Owner shall within 15 business days of receipt of a transmittal notification provide comments to Contractor prepared documents.

Owner shall within 7 business days (or the same turnaround time as Contractor) of receipt of a transmittal notification provide comments to Contractor's critical documents requiring expedited review and vendor documents. Contractor shall notify Owner prior to receipt of a transmittal that an expedited review period is required and identify the respective critical documents and reason for expedited review request.

For documents requiring third party review (e.g., entities outside of Owner and Owner's Engineer), Owner shall provide the consolidated comments and / or approval within 30 business days of submittal of the documents from the Contractor or as soon thereafter as such comments are received from the third party.

Contractor shall identify early in the project execution, any and all critical document(s) that require expedited review period(s) outside of the timeframes presented herein for Owner's planning purposes.

Owner's review of submittals will cover only general conformity to the Contract documents. The review shall not be construed as relieving the Contractor from any responsibility for errors or deviations from the requirements of the Technical Specifications or Contract. Contractor shall be responsible for assuring that all drawings are accurate, including those for Owner Furnished Equipment.

## **5.8 SUBMITTAL REVISIONS**

Contractor shall perform all appropriate due diligence in response to Owner's comments on submittals and either revise the submittal to reflect specified requirements or provide reasoned response to address the comment for consideration no later than two weeks from receiving Owner's comments. All changes or responses shall be reflected in or accompanying the next resubmittal. All resubmittals incorporating Owner's comments shall be resubmitted to the Owner at the next scheduled issuance, unless otherwise agreed to by the Owner.

Submittals that are revised shall indicate the changes in the document. Drawings shall be revision clouded and labeled with the revision level change. Documents shall have revision bars in the margin and bold and strikethrough marking in the text. All documents shall have a current revision level indicated on the document.

## **5.9 AS-BUILT DRAWINGS**

Three months prior to Substantial Completion Date, Contractor shall supply Owner an electronic list of all the final documents and drawings produced during the Contract period. Owner shall have the right of access and to make copies of the documents and drawings listed in this list until six months after Final Completion Date.

All documents and drawings listed herein and in Table 5-1 as "As-Built" shall be updated to incorporate all modifications made during manufacture, erection and commissioning period to reflect actual installed conditions. Final As-built documents shall be electronically submitted.

If any modifications are made during the Warranty Period in pursuance of Contractor's obligations, Contractor shall update the final Contract documents and drawings and supply final copies.

## **5.10 SUBMITTALS**

Contractor shall make available to Owner all design documents used in the Work.

In addition to the general submittals indicated in Table 5-1 below, specific submittals are identified in the various sections of the Contract and Technical Specifications. Specific submittals not listed in the table below are not required to be As-Built.

Table 5-1 lists the documents intended to be submitted for the Project, including those that shall be submitted at 30% and As-Built milestones where indicated with an "X" in the associated column. Documents without a 30% designation are intended to be issued once each document is initially complete. All document revisions after the initial submittal shall

be submitted to the Owner for review. All document processing shall comply with Subsections 5.7 – Submittal Review and 5.8 – Submittal Revisions.

**Table 5-1: Submittals**

<b>SUBMITTAL DESCRIPTION</b>	<b>30%</b>	<b>As-Built</b>
<b>COMMERCIAL</b>		
Accrual Forecast (Monthly)		
Letter of Credit		
Certificates of Insurance		
Notice of Cancellation, Termination or Material Changes to Insurance Policy		
Partial and Final Lien Waivers (each invoice)		
<b>PROJECT MANAGEMENT</b>		
Submittal Master Document List		
Level III Schedule		
Project Organization Chart		
Monthly Progress Reports		
Published Meeting Minutes		
Project Execution Plan including Construction Execution Plan		
Color Design Criteria Document		
<b>SITE STUDIES</b>		
Soil Boring Samples and Geotechnical Report	X	
Push / Pull Tests	X	
Stormwater Report	X	
Hydrology Studies	X	
Critical Issues Assessment	X	
Biological Survey	X	
Topographic Survey	X	X
Archeological Studies	X	
Wetland Delineation	X	
Access /Traffic Study	X	
Easement Study	X	
Sound Study	X	X
<b>PROJECT LAYOUT</b>		
Site Plan with survey and coordinate system	X	X
Discipline and vendor general arrangement drawings	X	X
Switchyard Control Enclosure layout drawings, including CCR	X	X
<b>PROCUREMENT DOCUMENTS</b>		

<b>SUBMITTAL DESCRIPTION</b>	<b>30%</b>	<b>As-Built</b>
Technical specifications	X	
Vendor submittals	X	X
Shop inspection reports		
Receipt inspection reports		
Recommended spare parts lists		
Equipment warranties		
<b>ARCHITECTURAL</b>		
Building architectural plans and elevations		X
Building finish samples		
Architectural specifications		
<b>CIVIL/STRUCTURAL</b>		
Site grading and drainage drawings	X	X
Roadways	X	X
Fencing arrangement drawing	X	X
Foundation drawings	X	X
Embedment Details	X	X
Erection drawings	X	
Equipment mounting details (included on foundation drawings)	X	X
Civil and structural specifications (to be provided on the drawings)	X	X
<b>MECHANICAL/CHEMICAL</b>		
Hazard Mitigation Analysis	X	X
Vendor Thermal Management System equipment layout plan, elevations, and details		X
System descriptions		X
<b>ELECTRICAL</b>		
Electrical one-line	X	X
Electrical three-line diagrams (Protective relaying only)	X	X
Electrical equipment list	X	X
Cable and raceway list	X	X
Electrical panels layout and details	X	X
Electrical equipment mounting details		
Electrical schematic/block diagrams	X	X
Electrical termination drawings		X
Relay (breaker coordination) study (Note 1)		X
Cable tray layout (if applicable)		X



<b>SUBMITTAL DESCRIPTION</b>	<b>30%</b>	<b>As-Built</b>
Underground ductbank and conduit drawings including elevations		X
Embedded conduit plans, elevation, and details		X
Conduit and raceway schedule		X
Electrical cable specifications		
Fire alarm and annunciator system drawings		X
Project lighting drawings		X
Lightning protection drawings		X
Project grounding drawings and details		X
Electrical equipment and component data sheets	X	X
System descriptions	X	X
Electrical specifications	X	X
Electrical hazardous area classification drawings	X	X
<b>INSTRUMENTATION &amp; CONTROLS</b>		
Control architecture drawings (DCS block diagram)	X	X
Communication Plan	X	X
Project control logic diagrams	X	
Digital Logic/Functional Block diagrams	X	
Control graphic displays	X	
DCS I/O list	X	
Instrument list		X
Instrument data sheets		
Project HVAC system controls		X
<b>CONSTRUCTION</b>		
Contractor's safety plan		
Temporary facilities plan	X	
Contractor's construction and craft parking and laydown plans	X	
Environmental Management Plan (including construction-phase environmental controls and permit plan)		
Hazardous Subsurface Management Plan		
Emergency response plan		
Consumables list		
Punch Lists		
Heavy Lifting Plans		
<b>QUALITY ASSURANCE</b>		
Contractor's QA/ QC Plan & Documentation		

<b>SUBMITTAL DESCRIPTION</b>	<b>30%</b>	<b>As-Built</b>
Factory test reports and results		X
Factory test procedures where available		
Nonconformance reports		
Weld procedures		
Welder qualification records		
Non destructive examination reports		
Heat treatment records		
<b>START-UP AND COMMISSIONING</b>		
Turnover and start-up plan		
System and equipment Start-up and Functional Test plans and procedures		
System Turnover Packages		
Punch Lists		
Initial startup and commissioning documentation created by Contractor		
<b>TRAINING</b>		
Contractor O&M and Project Manuals		X
Training program		
Training manuals		
<b>PERFORMANCE TESTING</b>		
Noise Emission Test Procedures	X	
Performance Test Procedures		
Performance Test Reports		X

END OF SECTION

## **SECTION 06 - EQUIPMENT, MATERIAL, AND SERVICES PROCUREMENT**

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## **6 EQUIPMENT, MATERIAL, AND SERVICES PROCUREMENT**

### **6.1 PROCUREMENT**

#### **6.1.1 Specifications**

Contractor shall prepare Equipment Specifications for procurement of Equipment.

Where specific requirements for Equipment are included herein, Contractor shall ensure that these requirements are included in their specifications and are complied with by the selected manufacturer. Contractor shall be responsible for proposing resolutions to any exceptions taken by suppliers to the requirements outlined herein and obtaining the Owner's concurrence with these resolutions prior to accepting the exceptions and purchasing.

#### **6.1.2 Approved Vendors**

Contractor shall source Equipment, materials and services for key items from approved vendors (refer to Exhibit G – Approved Subcontractors).

During Contractor's bid evaluation phase, Owner may elect to nominate a specific vendor at the final selection stage. Costs and any Schedule or performance implications associated with the Owner's nomination shall be identified by Contractor and an agreed upon change order for the associated item will be processed. Other Equipment not listed in Exhibit G – Approved Subcontractors shall be obtained from reputable suppliers who normally produce the type of Equipment specified for use in heavy industrial applications.

Contractor shall procure like Equipment from a common manufacturer to minimize the Owner's need for spare parts inventory and service support. Specifically, the instrumentation shall be standardized, to the greatest extent possible, throughout Contractor's scope of supply.

#### **6.1.3 New Material**

Contractor's Equipment and material supplied shall be new and unused. Used equipment or material is unacceptable. The use of recycled material combined with virgin material in the production of a new product is allowed.

#### **6.1.4 Vendor Inspections**

The Owner reserves the right to participate in scheduled vendor inspections of any Equipment. Contractor shall submit to the Owner a listing of their planned inspections for the Equipment to be supplied.

#### **6.1.5 Degree of Shop Assembly**

Components shall be modularized and preassembled to the maximum extent practical, considering shipping constraints.

### **6.2 PACKAGING, SHIPPING, AND DELIVERY**

#### **6.2.1 General**

This article provides packaging and shipping requirements for all materials to be delivered to the job Site.

These requirements apply to Contractor all subcontractors for materials and products covered by this Exhibit A - Statement of Work and Specifications that are to be delivered to the job Site.

Provide in advance, and include with all shipments, instructions for special handling or requirements for special storage.

### **6.2.2 Marking and Labeling**

All shipping containers or shipped items shall be identified by marking. Markings shall be project specific and, as a minimum, must include the following:

All markings must be in English

Markings shall include a shipping mark, information mark, and handling instructions

Markings shall be applied on two opposite sides of the shipping container (box, carton, bundle, crate, drum, equipment skid, etc.).

Markings are to be in black color, if the color of the package is such that black markings would not show clearly, a panel of a suitable contrasting color, preferably white, shall be provided as a background

International cautionary symbols shall be red color.

Hazardous materials shall be marked in accordance with U.S. Department of Transportation Hazardous Materials Regulations (Title 49 Code of Federal Regulations Parts 100-185).

The following data shall be included in the shipping markings:

Project Name

Description of Equipment or Item

Shipping unit piece number

The following data shall be included in the information mark:

Gross weight

Dimension of package

The following data shall be included in the handling instructions:

Graphical markings shall comply with ISO standard 780

Lifting Points

Center of Gravity

### **6.2.3 Transport**

Contractor shall be responsible for controlling and ensuring timely delivery of all shipments. Contractor shall be responsible for traffic and logistics. Contractor shall implement procedures and specifications to adequately control and ensure delivery of all materials and products, including requirements for export/import documentation package, package/container identification, packing, and preservation.

### **6.2.4 Safety Data Sheets**

A Safety Data Sheet (SDS) for all substances shipped to the job Site that requires an SDS in accordance with regulations shall be included with the shipment. For shipments of any dangerous, toxic, or hazardous materials, an SDS shall be furnished to the Owner prior to shipment.

### **6.2.5 Delivery**

All vendor deliveries shall be arranged in advance to be received during normal business hours at the job Site.

**Public Service Company of New Mexico**  
PNM 2026 to 2028 Generation Resources RFP

**Specification: 10345130-OZP-M0101**  
Issue: For Contract  
Section Revision: 1

Refer to Section 21 - Site Management for further requirements.

END OF SECTION

## **SECTION 07 - SPARE PARTS**

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## **7 SPARE PARTS**

### **7.1 SUMMARY**

This Section defines Contractor's responsibilities regarding Spare Parts and Special Tools.

### **7.2 REFERENCES**

#### **7.2.1 Definitions**

"Special Tools" means tools specific to an equipment supplier's product and not readily available from a third-party supplier. Special Tools do not include those items found in a normal maintenance facility. Special Tools shall include instruments, devices, or software necessary for the calibration, setup, commissioning, start-up, operation or maintenance of equipment.

Start-up Spare Parts = Start-up Spare Parts are those items that may be required during installation, start-up, testing, and commissioning to allow the equipment to be put into operation.

Operating Spare Parts = Operating spare parts are those items that wear out or need to be replaced on a set schedule to maintain the continuous operation of the equipment or parts that have a high probability (75 percent or greater) of failure or wearing out within a three year time frame (or between major overhauls).

Critical Spare Parts = Critical spares are major parts or components that require significant lead time for manufacture and delivery. Critical spare parts are those items that are not expected to wear out or break during normal operation and have a probability of failure less than 75 percent. Critical spares are a strategic asset to allow the equipment to be serviced during unexpected failure or maintenance events to provide high equipment availability.

### **7.3 SPECIAL TOOLS**

Contractor shall provide all Special Tools required to maintain the Equipment.

All Special Tools shall be clearly tagged and identified as to which Project equipment they pertain to and for what specific tasks. Contractor furnish Special Tool storage racks or containers. Special Tools shall be stored by Contractor prior to turn over to the Owner.

Contractor shall prepare a consolidated Special Tools list that contains all Special Tools to be turned over to the Owner. Contractor shall revise, maintain, and periodically submit the list prior to turnover to the Owner.

### **7.4 START-UP AND COMMISSIONING SPARE PARTS**

Contractor shall provide all spare parts required during Equipment installation, start-up, commissioning, and testing.

Contractor shall be solely responsible for all start-up and commissioning parts, including purchase, job Site availability, and replacement until Final Completion. Contractor shall not rely on Owner's warehouse or inventory to support start-up and commissioning. Owner will support start-up and commissioning activities with parts on hand if mutually agreed to; however, Contractor must replace with new parts at Contractor's cost.

### **7.5 RECOMMENDED SPARE PARTS**

Contractor shall provide a recommended spare parts list for the preventive and corrective maintenance needs for all Equipment within the scope of Work. Contractor's recommendations shall include:



Operating Spare Parts  
Critical Spare Parts

Contractor shall use the following criteria in its recommendations for spare parts:

- Frequency of replacement or type of duty
- Wear characteristics
- Frequency of preventive maintenance and overhaul requirements
- Supplier's historical data and experience
- Operating environment
- Impact on Project availability
- Delivery lead time
- Project location and access to shipping routes from supplier's source of parts

#### **7.5.1 Recommended Spare Parts List**

Contractor shall provide a consolidated recommended spare parts list for all Equipment and items within their scope of supply. The list shall be provided in an Excel™ database and shall be submitted as Contractor receives information from vendors.

The recommended spare parts database shall contain the following information:

- Equipment name and tag number(s)
- Spare part category: Operating Spare or Critical Spare
- Part name, part number, and assembly drawing number
- Original supplier name, supplier part number, and assembly drawing number
- Unit price
- Quantity recommended
- Lead time for delivery
- Storage requirement code

#### **7.5.2 Preventive Maintenance and Overhaul Schedule**

Contractor shall provide Owner with equipment preventive maintenance schedules and frequency of spare parts replacement to allow the review of the recommended spare parts list before commissioning activities begin.

END OF SECTION

## SECTION 11 – SITE WORK

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## **11 SITE WORK**

### **11.1 SUMMARY**

This Section describes the civil Site Work along with the design basis for Project yard facilities and infrastructure. The Work includes the Project job Site, the adjacent temporary construction and lay-down area, and all roadway modifications both on and off the Owner's property. The scope of this Work shall involve all items to engineer, procure, construct, commission, and bring into service the required Project and shall include, but shall not be limited to the following items:

- Clearing and grubbing, and disposal of non-hazardous waste
- Stripping and stockpiling of topsoil
- Installation and maintenance of construction parking and lay-down areas
- Excavation for subgrade utilities
- Construction and management of temporary and permanent drainage facilities, including, if necessary, storm detention pond or basins
- Providing temporary Best Management Practices (BMPs) for erosion and sediment control during earthwork
- Providing permanent BMPs for erosion and sediment control and surface water runoff as required
- Final job Site grading, cleanup, and restoration to original condition of the construction parking and lay-down area following Project completion
- Roads, paving, associated Project road fixtures
- Security wall
- Security

Contractor is responsible to inspect the job Site, obtain all necessary job Site data, and perform all required additional geotechnical and/or survey investigations for the design and construction of the Project.

While the Contractor's Scope generally includes the requirements outlined in this Exhibit A, Owner acknowledges the Contractor's basis of design for the purpose of providing a bid excluded any geotechnical investigation and resultant information. For the purpose of detailed design, the Contractor will perform geotechnical investigations under a Limited Notice to Proceed. As such, for the purpose of this Contract, Contractor assumes the following Civil Work Assumptions:

1. Contractor assumes the site can be optimized such that no import or export of fill is required;
2. Contractor assumes native backfill is clean and acceptable for compaction, cable bedding, road sub-base, and equipment foundations, such that no import fill is required to perform the Work;
3. Contractor assumes drainage design may include detention basins or sediment traps, but the actual design will be in accordance with the AHJ as described in Section 11.3;
4. Contractor assumes that standard sediment control measures shall be used to treat run-off during construction. Super silt-fence or similar design features are excluded.
5. Contractor assumes that all major equipment shall be set 12" above existing grade, pending final hydrology study to be performed. Ultimate design requirement will be

- 12 inches above the flood elevation or finished grade, whichever is worse, and will be determined in accordance with the hydrology study.
6. Contractor assumes no refusal will be encountered if pile foundations are elected to be used for BESS containers or PCS equipment, if the soil conditions are not suitable for mat foundations.
  7. Contractor assumes electrical resistivity of the soil is sufficient for ground grid spacing of not smaller than 30ft between ground grid conductors.
  8. At a burial depth between 18 and 36 inches, the 2% moisture content thermal resistivity of the soil shall be assumed to be no greater than 150°C-cm/W;
  9. At a burial depth between 18 and 36 inches, the soil temperature shall be assumed to be no greater than 25 deg C;
  10. Assume that there will be no surface rock at the burial depths outlined in 8 and 9 above that will impact the ability to perform site prep activities such as trenches, foundation preparation and rough-in, and site road construction;
  11. Contractor shall include crushed stone for footing resistance in accordance with industry practices;
  12. Contractor assumes that if encountered, soil excavations containing water shall be permitted to be stock-piled until dry, in order to be able to achieve compaction, so long as it does not impact Contractor's ability to maintain Project Schedule;
  13. Contractor assumes no material subsurface encumbrances in current design to perform the Work, in accordance with Appendix 09 of this Exhibit A. Such material subsurface encumbrances may include, but not be limited to, cultural findings, biological findings, hazardous materials, archeological findings, boulders, wells, oil tanks, or material encumbrances found as a result of the critical issues assessment identified in Section 5 of this Exhibit A to be performed during the LNTP.

### **11.1.1 Surveying**

The Contractor shall be responsible for obtaining any required surveying outside of the job Site boundary.

A permanent Project benchmark shall be established on the job Site by the Contractor based upon USGS vertical datum.

### **11.1.2 Geotechnical Investigation**

Geotechnical data provided by the Owner is for Contractor's reference only. Contractor shall be responsible for obtaining all soil investigation deemed necessary to complete engineering and design.

## **11.2 EARTHWORK**

Clearing and grubbing, earthwork, and grading shall be performed as required to construct the Work and achieve finished job Site grades as described in the following articles.

### **11.2.1 Protected Areas from Development**

Protected wetlands, trees, and other vegetation designated to remain undisturbed shall be protected from damage throughout the duration of construction. Any damages resulting from Contractor's operations or neglect shall be repaired or replaced by Contractor. Delineated wetlands shall maintain a 50-foot buffer zone from construction activities.

### **11.2.2 Erosion and Sediment Control**

The Contractor shall provide for erosion control during and after construction in accordance with Project permits and local and state laws and regulations and local practice. Best

Management Practices (BMPs) identified in the Storm Water Pollution Prevention Plan (SWPPP) such as check dams and sedimentation basins shall be used during construction to minimize erosion.

BMPs shall be utilized in the design and location of all erosion and sediment control devices prior to any land disturbance activity. The plans shall be prepared using a phased approach including clearing phase, grading phase, and final phase. These phased drawings shall ensure proper controls are in place at each phase of construction to mitigate erosion and to prevent silt from leaving the job Site.

Temporary BMP devices shall be provided by the Contractor for control of erosion and turbid runoff during clearing operations and from graded areas until they are stabilized. Temporary BMPs shall be acceptable to local authorities. The Contractor shall be responsible for obtaining any necessary erosion and sediment control permits.

The Contractor shall provide permanent BMPs as required for ditches and slopes, such as riprap, headwalls, rock surfacing, and slope pavement.

### **11.2.3 Dust Control**

Contractor shall be responsible for dust control at the job Site. Contractor shall prevent the spread of dust during its operations. Contractor shall moisten all surfaces with water to reduce the risk of dust becoming a nuisance to the public and neighbors. Contractor shall furnish all labor and equipment necessary for dust control including tank trucks and hoses to apply water. Contractor shall conform to all requirements of the applicable Permits and Final Commission Decision including the Project dust control plan.

### **11.2.4 Clearing and Grubbing**

The developed areas of the Site shall be cleared of all vegetation to the extent necessary. All trees not marked for preservation and all snags, logs, brush, stumps, shrubs, rubbish, and similar materials shall be cleared. All stumps, roots, and root clusters shall be grubbed out to a depth of at least 2 feet below subgrade for concrete structures and 1 foot below the ground surface at embankment locations and other areas.

The debris from clearing and grubbing operations shall be disposed of off-Site. Site burning for purposes of disposal is prohibited. Any materials from clearing and grubbing operations that is usable for recycling or reuse shall be used to the greatest extent possible.

### **11.2.5 Topsoil Stripping**

All topsoil and other organic materials shall be stripped from the areas to be graded prior to starting earthwork. Topsoil shall be placed in a stockpile for later recovery and use for landscaping the job Site. The stockpile shall be provided with temporary BMP erosion and sediment control devices.

### **11.2.6 Grading**

Contractor shall investigate, engineer, and construct a grade profile to provide a benched Site with level elevations to balance cut and fill considerations.

Temporary construction laydown areas shall be established at optimum elevations to support construction activities.

Site profile shall:

- Shape the natural grade as required to accommodate permanent Equipment and construction facilities while minimizing earthwork

- Obtain proper cross section, longitudinal slopes, and curvature for roads

Raise grade if necessary to eliminate flooding from external water courses due to the 100 year rainfall. The 100 year runoff from uphill drainage areas shall be diverted around the job Site and returned to the natural drainage course in a manner acceptable to the permitting agency.

Obtain proper area slopes to provide drainage without ponding

Construct stable, erosion-resistant earthen side slopes

### **11.2.7 Earth Retention Structures**

Earth retention shall be designed, engineered, and constructed with a minimum safety factor of 1.5 for lateral forces and moments including hydrostatic pressure, sliding and overturning. A design surcharge of either 250 PSF, AASHTO HS-20 loading, or operating weight of equipment, buildings, or structures, whichever of the above is greatest, shall be applied in addition to lateral forces due to earth and/or hydrostatic pressure.

### **11.2.8 Excavation**

All excavation work shall comply with CFR 1926 Subpart P – Excavations.

Excavation Work shall consist of removal, stockpiling and disposal of earth, sand, gravel, rock, boulders, and debris to the lines and grades necessary for construction.

Excavated materials which are suitable for on-Site fill or re-use, as determined by the geotechnical engineer, shall be stockpiled as for reuse at the job Site.

Excavated materials unusable for fills shall be spread on job Site by the Contractor. These materials shall be graded so as not to interfere with proper on-Site or off-Site drainage nor result in the creation of potential wetlands. Any material that cannot be reused on the job Site shall be disposed of off-Site by the Contractor in accordance with state and local requirements. Vegetation and organic matter encountered during excavation shall be disposed as described in Article 11.2.4.

Contractor shall ensure the stability of the sides of excavations and where appropriate provide temporary supports and/or sloping of the sides of excavations to meet the requirements of the applicable trenching and shoring standards in OSHA. Where appropriate, Contractor shall ensure safe access and egress is maintained into the excavation at all times.

If required, perform soft dig excavation to locate existing subsurface structures, utilities, or systems.

### **11.2.9 Trenching**

Excavate trenches to allow installation of top of pipe and other frost heave susceptible utilities below the frost line.

Excavate and shape trench bottoms to provide uniform bearing and support of pipes and conduit allowing for the bedding thickness. Remove projecting stones and sharp objects along trench subgrade.

Support existing utility lines where Work crosses at a lower elevation and stabilize excavation to prevent undermining of existing utility and Site piping.

### **11.2.10 Dewatering**

Prevent surface water and ground water from entering excavations, from ponding on prepared subgrade, and from flooding the Site and surrounding area.

Protect subgrade from softening, undermining, washout, and damage by rain or water accumulation.

Reroute surface water runoff away from excavated areas. Do not allow water to accumulate in excavations. Do not use excavated trenches as temporary drainage ditches.

#### **11.2.11 Backfill and Compaction**

A geotechnical engineer shall prepare a project specific backfill specification based upon the geotechnical investigations performed at the Site. Areas to be backfilled shall be prepared by removing unsuitable material before placing the fill. The bottom of the excavation shall be examined to reveal loose, soft, or otherwise unsuitable areas. Such areas shall be excavated fully and backfilled with compacted fill. Backfilling shall be done in uniform layers. Soil in each layer shall be properly moistened to obtain its specified density. To verify compaction, representative field density and moisture-content tests shall be made during compaction.

Structural fill under roads and parking areas subjected to heavy crane loads shall be compacted to a minimum of 95 percent of the Modified Proctor maximum dry density in accordance with ASTM D 1557. Embankments, dikes, and backfill surrounding structures shall be compacted to a minimum of 95 percent of Modified Proctor. General backfill shall be compacted to at least 90 percent of Modified Proctor.

#### **11.2.12 Flowable Fill**

Flowable fill shall be a mixture of cement, fly ash, fine sand, water, and air having a consistency which will flow under a very low head. The approximate quantities of each component per cubic yard of mixed material shall be as follows:

Cement (Type I or II): 50 pounds

Fly ash: 200 pounds

Fine sand: 2,700 pounds

Water: 420 pounds

Air content: 10%

Actual quantities shall be adjusted to provide a yield of 1 cubic yard with the materials used.

Approximate compressive strength: 85 to 175 psi.

Fine sand shall be an evenly graded material having not less than 95 percent passing the No. 4 sieve and not more than 5 percent passing the No. 200 sieve.

#### **11.2.13 Foundation Earthwork**

Foundation excavations shall be created and supported in such a manner as to prevent damage or interference to structures, utilities, other foundations, or stored equipment/materials.

Excavations for foundations shall be sealed with a concrete mud mat or seal slab, if required, as soon as possible after being excavated and inspected.

Site soils that are suitable for use as compacted fill shall be compacted to the desired compaction requirements as the material receives proper moisture treatment. Site soils shall not be used for wall backfill material.

Fill materials shall be suitable for the intended purpose and shall not include materials hazardous to health, material susceptible to attack by ground or groundwater chemicals,

material susceptible to swelling or shrinkage under changes in moisture content, highly organic or chemically contaminated materials or any other unacceptable materials.

Compaction of fill materials shall be carried out as soon as practicable after deposition of fill materials. Fill shall be compacted to the densities appropriate to the design requirements, fill type, and depth of layers.

Contractor shall specify requirements and implement a program for testing soils when the installation of underground utilities and the construction of foundations are performed.

The minimum moisture and density testing requirements for structural fill shall be one test per 75 cubic yards with at least one test under each foundation greater than 15 square feet.

Contractor shall maintain records of inspection and testing of soils to ensure compliance with design assumptions and shall comply with the requirements of the state and governmental authorities regarding notification and inspection.

#### **11.2.14 Construction Debris**

All construction related debris shall become the immediate property of Contractor and shall be removed from the premises and disposed of legally off the job Site by Contractor.

#### **11.2.15 Road Maintenance**

All permanent and temporary access roadways used by Contractor shall be maintained in serviceable condition. Contractor shall keep the surfaces of those roadways free from spills, mounds, depressions, and obstructions, which might present a hazard or annoyance to traffic. Contractor's responsibility for maintenance shall be continuous to a date mutually agreed to with Owner. Areas of improved and/or relocated roadways adjacent to and entering the job Site and temporary lay-down facilities shall be accomplished by establishing temporary lanes or other means as required to maintain normal daily traffic. Contractor must comply with local regulations for relocated road design, construction, approvals, and all temporary measures.

### **11.3 STORMWATER MANAGEMENT**

#### **11.3.1 General**

The Contractor shall be responsible to design and construct all on-Site systems for stormwater management, including collection, storage, treatment, and disposal. This Section describes the types of water, acceptable management methods, and design basis for each type of water to be managed.

Site specific information is included in Appendix 03 – Project Data and Terminal Points.

The scope of this Work shall involve all items to engineer, procure, construct, commission, and bring into service the required management and support systems listed in the following paragraphs.

The major water management requirements shall be based on the following types of water and management requirements:

Storm water (non-contact) - which has not contacted any construction or job Site features and does not require treatment

Storm water (contact) - which has contacted construction or job Site features including oil-contaminated areas and requires collection

Design and construction of storm water management systems shall apply to both waters during the construction and operating phases of the Project.



### **11.3.2 Codes and Standards of Practice**

Designs shall be based on good engineering practices and methods acceptable to the Owner and applicable regulatory agencies. Additionally, the following provisions of this document shall be adhered to, unless the Owner authorizes a change.

For job Site-related water management requirements, the Contractor shall be responsible for inspecting the job Site, obtaining all necessary job Site and design data, performing all required investigations, and coordinating all job Site and process requirements. It is the Contractor's sole responsibility to ensure that any water collection and handling system, storm water drainage, and related Site Work comply with all federal, state, and local code requirements; all industry codes and standards; and as directed by the Owner.

The storm water runoff system shall be designed and constructed in accordance with ASCE Manual No. 77 *Design and Construction of Urban Storm Water Management Systems*, or local jurisdictional code.

The Contractor shall provide the following documents:

- Drainage report for all drainage systems
- Storm Water Pollution Prevention Plan (SWPPP)
- Soil Erosion Control plan

### **11.3.3 Design Criteria**

Storm water management systems shall be designed to meet local and federal regulations for discharge rates, both quantities and quality, from areas disturbed by any construction and all future operation areas. These criteria shall apply to, but not be limited to: areas of grading; temporary and permanent roads, buildings, and facilities; storage areas (including construction lay down areas); and material and waste management areas. Requirements for discharge shall be based on the design events listed below or where no specific criteria is provide, based on a 25-year storm re-occurrence interval.

Surface drainage systems inside the Project shall be sized to discharge the 10-year, 24-hour runoff without flooding roads and the 100-year, 24-hour storm event without flooding the Project and Equipment.

The Contractor shall perform the hydrologic analysis, using approved engineering analysis methods to quantify the storm water volumes resulting from a storm with a 25-year recurrence interval, or as otherwise specified, for both on- and off-Site surface storm water (run-on) flows that could occur on the job Site.

All erosion control features, diversion structures, retention basins, channels or other structures designed and constructed for storm water management shall be constructed within the property boundaries of the job Site, except for entry road modifications occurring beyond property boundaries.

The following areas shall discharge into a storm drain system:

- Entire power block area within the loop roads around equipment
- Building roof drains

In the power block area, the storm drain system shall include catch basins for collecting surface water, underground piping systems with manholes at all junction points and turns, and collection ditches if required to meet the functional requirements defined herein. All areas not drained via storm drain system shall be drained via an open ditch system consisting of trapezoidal ditches with culverts at road(s).

When culverts are utilized, the inlets and outlets shall be provided with permanent riprap for erosion protection.

The slope angle for ditch side slopes shall not exceed 3H to 1V.

All storm water falling on the job Site or which might otherwise run-on to the job Site shall be accounted for and managed. All temporary and permanent storm water management system shall preserve the existing job Site drainage patterns to the maximum extent feasible.

Erosion control features shall be designed and constructed to minimize the downstream impact of all on- and off-Site flows around and across the job Site.

#### **11.3.4 Management During Construction**

During the Project construction phase, temporary erosion and sediment control measures shall be installed, maintained, relocated, and modified, as required by local, state, and federal regulations. These shall be removed when no longer required or incorporated into the permanent construction if properly designed for long-term service.

Storm water management systems implemented during construction shall comply with the same collection, conveyance, storage, and management requirements as permanent systems and shall be based on water classifications described above or otherwise applicable to the area of construction.

#### **11.3.5 Non-contact Stormwater**

The Site shall be graded to manage and divert the run-on flow into the Site using natural drainage courses to the extent feasible. Where infeasible, diversion structures shall be designed and constructed to direct run-on away from permanent construction features such as buildings, equipment, tanks, etc. without contacting any these features.

Non-contact stormwater shall be collected via a stormwater drain and ditch system and shall be conveyed to BMPs (e.g. detention ponds, infiltration basins, rain gardens) as required to comply with off-Site discharge requirements at the Site boundary outfalls.

Temporary erosion control features shall be designed and constructed to minimize soil erosion from stormwater conveyed off-Site during construction activities.

#### **11.3.6 Contact Stormwater**

Contact Stormwater with the potential of being contaminated with oil shall be stored within a containment sized for the design precipitation event. After the storm event, the collected contact stormwater will be inspected for contamination, and if none is found, will be manually released to the Facility's wastewater system. If contamination is discovered, then the contact stormwater will be pumped for off-site removal by Owner as required.

Contact stormwater with the potential of being contaminated with chemicals shall be stored within a containment sized for the design precipitation event. If a chemical contamination occurs within these areas, the contamination will require manual neutralization with cleanup and disposal with a portable sump pump/vacuum truck as specified in Section 16. If water-sampling tests show the collected water meets water quality standards, the detained water in the secondary containment may be released into the wastewater system.

#### **11.3.7 Stormwater Storage**

Stormwater storage shall be accomplished by surface detention ponds or other Owner approved method. Contractor shall optimize the storage methods to limit the impact on useable area that surface detention ponds would encroach on the Site operations.

## 11.4 PAVEMENT

### 11.4.1 General

Contractor shall provide temporary roads and the permanent Site roads and pavement.

Layout of permanent Site roads shall be per the General Arrangement shown in Appendix 09 – General Arrangements and Site Laydown Areas and be consistent with any and all permits and local fire official requirements.

All permanent road works shall be designed, constructed, and specified in accordance with relevant applicable U.S. standards and codes of practice and shall match as far as reasonably practical existing construction type, thicknesses, and widths.

At a minimum the following areas shall be paved:

All permanent Site roads and areas which require access to equipment by mobile cranes, cherry pickers, forklifts, or other wheeled vehicles for maintenance purposes, including the maintenance trailer parking area, shall be designed for the appropriate loading.

Truck unloading and storage areas for water treatment chemicals and other hazardous chemicals shall be paved with minimum eight inches thick reinforced concrete.

Storage areas for chemical totes, drums, gas cylinders, or other consumable items shall be paved, and have a paved access path to allow forklift access for delivery and removal.

### 11.4.2 Design

The Contractor shall modify, construct, or improve the following permanent Site roads:

The looped Site road shall be provided around the power block area.

Other interior Site roads shall be provided where access is required to equipment, pump structures, or entrances to buildings or enclosures.

Entrances must adhere to American Association of State Highway and Transportation Officials (AASHTO) specifications. The minimum road widths shall be as follows:

**Table 11.5-1**

Road	Total Width (ft)	Paved Width (ft)	Shoulder Width (ft)
Interior Roads	24	20	2
Access to Equipment	As required	As required	As available

Clearance requirements over roads shall be 22 vertical feet from high point of road to bottom of lowest overhead obstruction.

The minimum centerline turning radius for roads shall be 50 feet.

All road pavements shall be constructed to discharge surface water into the job Site drainage system. All drainage and services below roads shall be completed before finished pavement construction and shall be located to the side of roads, unless unavoidable.

Roads and parking lot pavements shall be gravel.

Road pavements shall be designed for AASHTO HS-20 truck loads, and loads due to a 65-ton wheel-mounted maintenance crane.

The method of transportation of large or heavy items across the existing job Site shall be the responsibility of Contractor, who shall undertake load route studies to determine limiting load criteria. Any upgrading of existing infrastructure necessary to move construction

Project or equipment to or across the job Site shall be the responsibility of Contractor. The design basis shall include an assessment of the total number of "standard axles" expected in the design life. Road alignments shall allow for any construction, job Site delivery, and abnormal loads or heavy maintenance requirements and shall be designed to accepted standards. Details of the findings of the studies shall be submitted to Owner.

Parking lot pavement shall be designed for automobile and light trucks.

Contractor shall provide specified mix-designs and related material testing for concrete and Bituminous Pavements (Asphalt), gradation for base course aggregate, bituminous aggregate, concrete aggregate including source location for each prior to construction to verify compliance. Contractor shall provide all other testing to verify strength, compaction, placement, and gradation of material placed to verify compliance to specifications. Owner may elect to have third party independent tests performed to verify compliance with material specifications. All materials and construction methods shall conform to AASHTO FP-03 *Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects*, and other applicable AASHTO and ASTM specifications.

Employee parking shall provide enough spaces for one shift plus an expectable amount of additional parking as deemed necessary by the Owner for shift turnover and temporary contractors.

Stalls shall be 90° angle, 10 feet wide by 19 feet long. All stalls shall be gravel and provided with signage as required by Owner.

#### **11.4.3 Surfacing**

Surfaces surrounding buildings and equipment shall be graded to have positive drainage away from foundations with material to prevent soil erosion and surface treated for dust abatement. Such surface shall maintain structural integrity during periods of precipitation.

The materials selected for road construction shall be of adequate strength and durability to meet the design requirements for the whole of the design life.

**Table 11.5-2**

<b>Type</b>	<b>Minimum thickness (in)</b>	<b>Location</b>
Gravel Roads	8	20 ft length by door width, in front of all maintenance doors Maintenance pads around equipment
Grubbed and smooth out soils.	N/A	Ditches

### **11.5 SURFACING AND SECURITY WALL**

The scope of Work shall include all permanent security wall and surfacing.

#### **11.5.1 Stone Surfacing**

Areas that do not require regular access to equipment by mobile cranes, man lifts, forklifts, pickup trucks, or other wheeled vehicles for maintenance purposes may be stone surfaced.

Stone surfaces areas shall at a minimum consist of:

- Initial layer of landscape fabric as a weed barrier to prevent soil erosion
- a three-inch base layer of clean #57 stone, compacted.

a three-inch final layer of #57 stone, compacted

Stone surfacing shall maintain structural integrity during periods of precipitation.

### **11.5.2 Walls and Gates**

This Article pertains to permanent Project perimeter walls and entrance gates.

Within the Contract there is an allowance for the security wall and gate that includes the design, supply, and installation of the security wall and gate.

Security wall design and installation shall comply with ASTM C27 and all referenced standards therein.

Security wall construction shall comply with the following requirements or as designed by 3B Protection and approved by PNM:

Walls shall comply with all local AHJ and building code requirements.

Wall shall encircle the Project Site.

Walls shall be 12' high consisting of precast concrete, ballistic panels spanning between precast concrete columns.

Concrete panels shall have 3'-0" of clearance between the inside or outside face to the nearest obstruction to allow for maintenance.

Wall construction shall consist of architectural finish (approved by Owner) precast concrete.

Column spacing should be per manufacturer allowed tolerances but shall not exceed 15'-0"

Wind loads shall be applied to the panels, columns, and projected foundation components per local building code requirements.

Decorative caps shall be provided to cover baseplate and anchor bolts as well as top caps on all columns.

Precast wall components shall be made of normal weight concrete having sand and gravel or crushed stone aggregates mixed with ASTM C-150, Type I or III Portland Cement and shall have a minimum compressive strength of 4000psi after 28 days.

For surfaces exposed to view in finished structure, use gray or white Portland cement of same type, brand, and mill source throughout precast concrete production. Standard gray Portland cement may be used for nonexposed concrete.

Precast wall reinforcement shall conform with ASTM A615 Grade 60, all wire mesh shall conform to ASTM A1064 Grade 60.

All components including hardware and incidentals necessary to erect and maintain the wall shall be provided by the precast concrete supplier with the exception of foundation material or anchor bolts.

Provisions for grounding to the site electrical grounding grid shall be provided.

Wall components and design shall be designed to satisfy the site Noise Emissions Guarantees as defined in Exhibit I of the Contract.

Entrance gates shall meet the following requirements:

Entrance gates shall be of a solid material construction aesthetically coordinated with the precast concrete perimeter wall (approved by Owner). Gate is not required to be

ballistic rated, but Contractor shall provide during the detailed design an optional price for ballistic rated gate for Owner consideration prior to purchase.

Gate construction shall inhibit view from outside the Project.

Entrances from public roads shall use cantilever style horizontal slide gates (12' tall) meeting ASTM F2200 Class IV; with a gate motor operator meeting UL Std 325 and activated by a gate access card reader.

Gates shall be grounded and shall include ground reels.

Security ground loop vehicle detectors shall be provided in concrete entrance aprons and shall be integrated with the site security system.

Entrance gate design shall be designed to satisfy the site Noise Emissions Guarantees as defined in Exhibit I of the Contract.

Detector ground loops on the interior would open the gate for exiting vehicles.

Refer to Section 19 – Telecommunications and Security Systems for additional requirements for electronic security and control of the fencing and gates.

END OF SECTION

## SECTION 12 – STRUCTURAL/ARCHITECTURAL

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## 12 STRUCTURAL/ARCHITECTURAL

### 12.1 SUMMARY

The Section outlines the minimum structural and architectural requirements for buildings and equipment support structures.

Contractor is responsible to inspect the job Site, obtain all necessary job Site data, and perform all required additional survey and geotechnical investigations for the design and construction of the Project.

### 12.2 BUILDINGS

Contractor shall supply and install the buildings, enclosures, and structures as shown on the general arrangement drawings included in Appendix 09 – General Arrangements and Site Laydown Areas and as indicated in the table below:

Building/Enclosure/Structure	Dimension WxLxH (ft-in)
BESS Enclosures	As Required
Power Distribution/Control (PDC) (if required)	As Required
Switchyard Control Enclosure	As Required
Miscellaneous Enclosures (if required)	As Required

#### 12.2.1 General Building Requirements

The building structural frames shall be pre-engineered using moment frame construction.

Structures shall be designed to support and provide personnel access to the mechanical equipment and piping/electrical/control systems directly or indirectly associated with power generation. All enclosed and non-enclosed structures shall have grating platforms, ladders, and stairways for personnel access. Structures and equipment components shall be supported by suitable concrete foundations bearing on existing soil and for heavier equipment and structures supported on deep foundations (piles).

For all buildings and enclosures, an applicable (future) collateral loading shall be provided in wall and roof framing to allow future conduit, cable tray, and mechanical piping to be top-supported (especially for any pre-engineered buildings). If collateral loading is not needed in a specific structure, the unity stress for all members shall be limited to 0.9 (as compared to a commonly used unity stress level of 1.0). For buildings with significant piping and tray, a lower unity stress allowance shall be used coupled with increased load factors on primary framing that will be affected. All wind girts shall be designed to support their own vertical dead weight rather than be supported by liner panel or temporary means so that they do not warp.

Contractor shall provide Owner with complete design calculations for each building, enclosure, or other structure signed and sealed by a professional engineer, registered in the State of New Mexico that account for all applicable loading and code requirements.

Liner panels on the insides of all buildings shall be used to absorb sound and protect insulation, while also providing a hard surface for maintenance. For general areas, the liner panel shall match the outer wall panel. Liner panels in areas of high traffic or where materials will be stored on the inside shall consider thick sections or even 3-foot high row of concrete masonry. The minimum liner and wall and roof metal panel gauge thickness that will be allowed for any building or enclosures is 24 gauge, without Owner approval. All roof and wall panels shall be protected with galvanizing base coat and finish painting coat with a



minimum guaranteed service life of 30 years (warranty required). The finish coating film integrity shall be for 30 years service against cracking, flaking, chipping and peeling, with chalking and fading resistance covered for at least 25 years. Gutter Systems shall be similarly coated, with debris guards provided.

The Project and individual interior building environment shall be laid out to provide the spaces required for the equipment and for maintenance and operation. Access aisles and clearances shall accommodate operation, routine maintenance, and equipment removal. Provisions shall also be made for personnel walkways to equipment (for routine maintenance only), doors, stairs, and other access points. Building arrangement drawings shall be submitted containing all room dimensions.

Architectural design of the Project shall be in compliance with local requirements. Vertical access hatches shall be located to facilitate moving equipment and materials. Fire separation walls and floors shall be provided in accordance with code requirements. The buildings shall be designed to use durable, low maintenance materials and systems compatible with Project's location and function. See following articles for additional architectural requirements.

### **12.2.2 Battery Energy Storage System (BESS) Enclosures**

BESS enclosures shall be a pre-engineered metal-sided enclosures and shall specifically designed for housing the BESS equipment, including all support systems such as thermal management system, fire protection systems, and additional systems as required.

### **12.2.3 Switchyard Control Enclosure**

The Switchyard Control Enclosure shall be a preassembled weather tight metal or composite type structure designed and furnished complete with a finish floor, doors, lighting, and required built in equipment cabinets to service the functional requirements of the associated equipment. The enclosure shall be specifically designed for housing the associated equipment, including all support systems such as thermal management system, fire protection systems, and additional systems as required.

Because the BESS will be remotely controlled, the Switchyard Control Enclosure will not normally be occupied, but during periodic maintenance, operational testing, or as otherwise needed shall be capable of supporting a total staff of 2 persons. The Control area of the enclosure shall be provided with the following areas/rooms:

- Central Control Room (CCR)

- DCS/telecom/corporate server equipment room(s)

- Refer to Section 18 – Instrumentation and Control and Section 19 – Telecommunications and Security Systems for additional requirements.

### **12.2.4 Power Distribution Centers (PDC's)**

PDC's (if needed) shall generally be a preassembled weather tight metal or composite type structures designed and furnished complete with a finish floor, doors, lighting, and required built in equipment cabinets to service the functional requirements of the equipment.

### **12.2.5 Miscellaneous Enclosures**

Miscellaneous enclosures (if required) shall be pre-engineered shelters. Overhead and/or double leaf hinged doors shall be provided to allow for maintenance access where required. Roof supported monorails shall be located to lift and remove the associated equipment to an adjacent maintenance area. When the contents require a heated or air conditioned space, walls shall be insulated.

## 12.3 ACCESS

Sufficient space shall be provided for operation and maintenance of all equipment, including equipment removal without excessive rigging or removal of surrounding equipment, piping, and valves. The following table indicates the access class category to be used for the components indicated unless identified otherwise for specific applications within these specifications.

**TABLE 1 - ACCESS CLASS**

Component	Access Class
Equipment	1
PLC's, HOA switches, Local Control Stations, Emergency Stop Switches, HMIs	1
Equipment local electrical disconnect switches	3

Class 1 Areas – Regularly attended areas for daily or weekly lubrication, start-up, operation, inspection, calibration or maintenance:

Provide walkways a minimum of 3 feet wide, clear of all obstructions. Platforms shall be adequately sized to allow two men to work simultaneously with tools and equipment internals (minimum of 20 square feet)

Provide permanent stairs to access the platforms

Provide emergency escape ladders for platforms as required by OSHA for platforms having dead ends

Class 2 Areas – Areas requiring access monthly, quarterly, or annually for lubrication, repair, inspection, calibration or maintenance:

Provide walkways a minimum of 3 feet wide, clear of all obstructions. Platforms shall be adequately sized to allow two men to work simultaneously with tools and equipment internals (minimum of 10 square feet)

Platforms shall be accessed by stair when feasible or a permanent ladder.

Class 3 Areas – Items anticipated not requiring access annually for lubrication, repair, inspection, calibration or maintenance:

Portable self supporting ladders not exceeding 8 feet (with item not exceeding 12 feet from grade);

Man-lifts;

Sufficient ground floor space shall be reserved in the general arrangement drawings I to allow set-up of the ladder or man-lift;

Ladders and man-lifts shall not be allowed on elevated platforms, walkways or any grated surface. Use of portable ladders or man-lifts is only allowed on concrete ground floors or concrete operating decks and mezzanines. The use of ladders for maintenance access on elevated platforms must be approved by Owner. For outdoor locations ladders may only be used on paved surfaces, and man-lifts on paved or gravel surfaces; and

Use of Class 3 access shall be limited to those callouts in the table above; Owner approval is required for Class 3 designation of any other proposed item.

### 12.3.1 Clearances

Prior to detailed design, general arrangement drawings of maintenance laydown areas shall be submitted to the Owner for approval.

Horizontal and vertical clearances (clear of all piping, structural steel, electrical conduit/cable trays, tubing, accessories, etc.) shall be maintained as provided in table below unless approved otherwise by Owner.

Contractor piping, electrical conduit/cable trays, tubing, accessories, etc. shall maintain the horizontal and vertical clearances defined in this section.

Fork truck / pick-up truck aisles on access side of all equipment with monorails, hoists, large manholes, or endplates, and next to all equipment requiring chemical addition or replacement of totes, shall be provided. A 9,000 lb. capacity, class V forklift shall be considered in clearance design.

Clearance for equipment that are mounted on manufacturer's standard skids need not be provided with clearance all around as specified below, however adequate operations and maintenance clearances are required. The specified clearance shall be provided around the outside of the skid.

**TABLE 2 - CLEARANCES**

AREA	CLEARANCE (MINIMUM)
<b>Horizontal Clearances</b>	
Mobile crane access ways	24'-0" (the width includes allowance for outriggers)
Forklift truck / pick-up truck access ways	12'-0"
Operating walkway aisle	4'-0"
Elevated platforms and walkway widths	3'-0"
Electrical equipment	3'-0" or NEC, whichever is greater
Equipment and skids	3'-0"
<b>Vertical Clearances</b>	
Inside buildings	7'-6"
Normal operating or maintenance access area	7'-6"
Above platforms and walkways	7'-6"
Station access road & crane access ways	20'-0"
Maintenance roads	16'-0"

### 12.3.2 Platforms

Platforms and walkways shall be designed to meet the governing building code for buildings. The more stringent of OSHA and ANSI A1264.1 shall be used for equipment platforms.

### 12.3.3 Ladders

Ladders shall comply with ANSI/ASC A14.3 - Fixed Ladders. Ladders over 24 feet tall shall include a ladder safety system (ladder cages are not acceptable and shall not be provided). All ladders within the Facility shall use the same manufacturer's ladder safety system. The ladder safety system shall extend above the upper level platform allowing operators to step off the ladder onto the platform prior to disconnecting from the safety system.

All ladders shall have a self-closing spring-loaded swinging safety gate installed on the top elevation/landing/platform. Safety gates shall be mild steel with powder coated safety yellow finish. Unless space is not available, ladder rungs shall be a minimum 24 inches wide and shall have rungs that are corrugated, knurled, dimpled, or formed with permanent skid-resistant material to minimize slippage. Smooth bars will not be allowed.

**12.3.4 Confined Spaces**

The design and layout of equipment within the Project shall preclude any confined spaces as defined by OSHA (CFR 1910.146). Owner approval is required for any confined spaces due to arrangement; confined spaces associated with equipment are acceptable where necessary for the functionality of the equipment.

**12.4 STRUCTURAL REQUIREMENTS****12.4.1 General**

Design shall be in accordance with the applicable local codes and regulations and industry standards referred to in this section. The design criteria discussed in this section shall govern the technical requirements for designing civil/structural elements.

**12.4.2 Codes and Standards**

Design shall conform to relevant aspects of the latest version of the New Mexico Building Code (NMBC), the latest American Concrete Institute (ACI), and American Institute of Steel Construction (AISC). Structural design will be in conformance with the latest standard accepted edition listed in Table 12.4-1, to the extent they apply, unless the building code requires a more conservative design.

Wind, snow, and earthquake loading shall be in accordance with NMBC or local jurisdictional building code, whichever is more stringent.

Work shall be produced in accordance with the rules applicable to Professional Engineers practicing in the State of New Mexico, using due standards of care, skill, and diligence. Design drawings and specifications produced shall be sealed by a Professional Engineer licensed to practice in New Mexico.

**Table 12.4-1 Codes and Standards**

<b>Organization</b>	<b>Publication</b>
American Concrete Institute (ACI)	ACI 117/117R: Standard Specifications for Tolerances for Concrete Construction and Materials and Commentary
	ACI 301 Specifications for Structural Concrete
	ACI 315: Details and Detailing of Concrete Reinforcement
	ACI 318/318R: Building Code Requirements for Structural Concrete and Commentary
	ACI350R Environmental Engineering Concrete Structures
	ACI 351.R1 Grouting between Foundations and Bases for Support of Equipment and Machinery
	ACI 351.R2 Static Foundations for Equipment and Machinery
	ACI 351.R3 Dynamic Foundations for Equipment and Machinery
	ACI 360 Design of Slab on Grade
	ACI 530/530.1R: Building Code Requirements for Masonry Structures and Specifications for Masonry Structures and Commentaries

Organization	Publication
American Institute of Steel Construction (AISC)	AISC: Specification for Structural Steel Buildings -Allowable Strength, or Load and Resistance Factor Design
	AISC: Seismic Provisions for Structural Steel Buildings
	AISC: Specification for the Design of Steel Hollow Structural Sections
	AISC: Code of Standard Practice for Steel Buildings and Bridges
Research Council on Structural Connections (RCSC)	RCSC: Specification for Structural Joints Using ASTM A325 or A490 Bolts
American Society of Civil Engineers (ASCE) Publications	ASCE 7: Minimum Design Loads For Buildings and Other Structures
	ASCE: The Structural Design of Air and Gas Ducts for Power Stations and Industrial Boiler Applications
American Welding Society (AWS) Publications	D1.1 Structural Welding Code-Steel
The Association of Iron and Steel Institute (AISI)	AISI: Specifications of the Design of Cold Formed Structural Steel Members
Metal Buildings Manufacturer Association (MBMA) Publications	Metal Building Systems Manual
Steel Deck Institute	Design Manual for Composite Deck, Form Decks and Roof Decks – Publication No. 30, April 2001
	Diaphragm Design Manual, 1991
Steel Joist Institute (SJI) Publications	Standard Specifications, Loads Tables and Weight Tables for Steel Joists and Joist Girders

### 12.4.3 Design Loads

Design loads and load combinations for all buildings, structures, structural elements and components, handrails, guardrails, and connections shall be determined according to the criteria specified herein and in Section 03 – Project Design Basis, unless the applicable building code requires more severe design conditions. Loads imposed on structural systems from the weight of all temporary and permanent construction, occupants and their possessions, environmental effects, differential settlement, and restrained dimensional changes shall be considered.

Live loads used in the design of buildings and structures shall be the maximum loads likely to be imposed by the intended use or occupancy, but not less than the following minimum uniform live loads:

Ground floor slabs = 250 psf

Storage areas = Weight of stored material, but no less than 150 psf

Other concrete floors = 100 psf

Grated floors for equipment maintenance = 100 psf

Stairs = 100 psf

Components of the structural system may be designed for a reduced live load in accordance with the local building code. Roofs shall be designed to preclude instability resulting from ponding effects by ensuring adequate primary and secondary drainage systems, slope, and member stiffness.

Additional design load criteria are specified in Appendix 03 – Project Data and Terminal Points.

### **12.4.3.1 Buildings and Other Structures**

Building superstructure support systems shall consist of pre-engineered steel moment frame construction with bracing in the orthogonal axis direction as required. Position of bracing shall meet spatial requirements for access and maintenance. The superstructure shall provide an integrated gravity and lateral load resisting system to transfer loads to the reinforced concrete foundation.

### **12.4.3.2 Construction Loads**

Construction or crane access considerations may dictate the use of temporary structural systems. Special considerations shall be made to ensure the stability and integrity of the structures during any periods involving use of temporary bracing systems.

### **12.4.3.3 Wheel and Crawler Loads**

Wheel and crawler loads shall be considered for roadway pavements, fueling islands, bridges, buried piping, culverts, embankments, pavements. All other roadways shall be designed for HS-20 loads.

### **12.4.4 Earthwork, Excavation and Fill**

Excavations shall be carried out and supported in such a manner as to prevent flooding or ponding of water, damage or interference to structure, services or stored equipment/materials.

Excavations for foundations shall be sealed with a concrete mud mat or seal slab, if required, as soon as possible after being excavated and inspected.

Site soils are suitable for use as compacted fill, and will achieve the desired compaction requirements as the material receives the proper moisture treatment. Site soils should not be used for wall backfill material.

Fill materials shall be suitable for the intended purpose and shall not include materials hazardous to health, material susceptible to attack by ground or groundwater chemicals, material susceptible to swelling or shrinkage under changes in moisture content, highly organic or chemically contaminated materials or any other unacceptable materials.

Compaction of fill materials shall be carried out as soon as practicable after deposition of fill materials. Fill shall be compacted to the densities appropriate to the design requirements, fill type and depth of layers.

The Contractor shall specify requirements and implement a program for testing soils when the installation of underground utilities and the construction of foundations are performed.

The minimum moisture and density testing requirements for structural fill shall be one test per 75 cubic yards with at least one test under each foundation greater than 15 square feet.

The Contractor shall maintain records of inspection and testing of soils to ensure compliance with design assumptions and shall comply with the requirements of the state and local authorities regarding notification and inspection.

### **12.4.5 Foundations**

Except as otherwise specified, the Contractor shall be responsible for all enclosure and equipment foundations. The scope of foundation work includes the design, furnishing and installation of all anchor bolts and embedment.

Settlement monitoring points shall be installed by the Contractor, with a minimum of four points for each major foundation [generating equipment, gas compressor, water storage

tanks, etc.]. The existing elevation at each point shall be inscribed on an embedded brass marker, prior to setting of equipment.

#### **12.4.5.1 General Criteria**

Foundations shall be designed using reinforced concrete to resist the loading imposed by the building, structure, or equipment being supported. The foundation design shall consider the following:

- Soil bearing capacities
- Deep foundation capacities
- Lateral earth pressures
- Fluid pressures and impact loads
- Allowable settlements
- Structure, equipment, and environmental loadings
- Equipment performance criteria
- Access and maintenance
- Temporary construction loading

Geotechnical exploration, testing, and analysis information shall be used to determine the most suitable foundation system. Elastic (short-term) and consolidation (long-term) foundation settlements shall be calculated and limited to the following approximate design values:

- Total settlement – 1.0 inches (shallow, non-settlement sensitive foundations)
- Differential settlement – 0.1 percent slope between adjacent column support points

Foundation design for all heavy and settlement sensitive equipment such as the generating equipment, gas compressors and transformers will be supported by mat foundations supported on piles. At grade outdoor tank foundations and cooling towers shall be in accordance with the requirements of the geotechnical evaluation. Foundation analysis for major equipment shall include the evaluation of total and differential settlement.

Where piled foundations are to be used, the Contractor shall conduct a pile load test program. The trial pile testing program shall be submitted to the Owner for review at least two weeks prior to the start of the pile testing.

Shallow foundations shall be designed using static analysis techniques assuming rigid elements and linear soil pressure distribution so that the allowable settlement and bearing pressure criteria are not exceeded. Foundations shall be proportioned so that the resultant of the soil pressure coincides as nearly as possible with the resultant of the vertical loading. The minimum factors of safety against overturning, sliding, and net uplift shall be 1.5.

All foundation floor elevations shall be above the 100-year flood plain. Floor elevation of buildings and the top of foundation for major outdoor equipment shall be a minimum of six inches above the high point of finished grade elevation. Above ground tanks, equipment skids, pumps and supports shall be installed on raised slabs or pads for corrosion protection.

Oil filled transformer foundations shall have an integral reinforced concrete spill containment area. Exposed surfaces of foundations exposed to contact with petroleum products due to spray, spills, drips, etc. shall receive an appropriate sealing system to minimize absorption and staining of the concrete.

The Contractor shall maintain records of inspection and testing of soils to ensure compliance with design assumptions and shall comply with the requirements of the state and local authorities regarding notification and inspection.

**12.4.5.2 Piled Foundations**

Heavy and settlement sensitive equipment shall be supported by mat foundations supported on piles, if piles are required based on geotechnical report and Contractor foundation design.

A geotechnical engineer shall be retained to oversee and monitor pile installation to ensure that design capacities are achieved.

Details and design values for piling springs (vertical and lateral) and group effects for dynamic analysis should be coordinated between the geotechnical engineer and structural engineer of record. Contractor shall be responsible for final selection and detail design of all piled foundations.

**12.4.5.3 Equipment Bases**

All equipment shall be supplied with an equipment base suitable for its operation. Where the equipment could induce vibration problems, the base shall have adequate mass to dampen vibration motions. Special consideration shall be given to vibration and stiffness criteria where specified by an equipment manufacturer.

Equipment bases may be concrete or an integral metal skid. Concrete bases shall have minimum temperature and shrinkage reinforcing unless it is determined that additional reinforcement is required for the equipment loads.

Exposed surfaces of equipment bases exposed to contact with petroleum products due to spray, spills, drips, etc. shall receive an appropriate sealing system to minimize absorption and staining of the concrete.

**12.4.6 Concrete**

Except as otherwise specified, or where precast structural elements can reduce Project cost and meet or exceed cast-in-place reinforced concrete performance, all concrete shall be reinforced cast-in-place concrete designed in accordance with ACI 318, *Building Code Requirements for Reinforced Concrete* and other applicable structure specific codes and standard.

Duct banks which run under roads and maintenance areas shall be adequately reinforced to withstand anticipated loads, supported by deep foundations if necessary by Design, and shall be marked with a permanent dye to identify it as electrical ductbank.

**12.4.6.1 Concrete Masonry Block Work**

Structural masonry design shall be in accordance with the latest edition of ACI 530, *Building Code Requirements for Masonry Structures*.

**12.4.7 Steel Structures**

Design and construction of steel structures shall utilize standard design practices as defined by local building codes and standards, but not less than those defined in Table 12.4-2 below.

**Table 12.4-2 - Structural Steel Design**

System	Criteria
Deflection, floors and roofs, live load only	Span/360, vertical, unless attached to more rigid, brittle members
Deflection, floors and roofs, dead and live load combined	Span/240, vertical
Deflection, roof beams and boiler girders	Span/360, vertical



Deflection, girts	Span/360, horizontal
Deflection, grating (100 psf uniform load)	1/4 inch maximum
Deflection, crane and hoist support beams	Span/800, vertical (with impact), Span/1000 vertical (without impact)
Deflection, duct plates (between stiffeners)	Span/100, normal operations only
Deflection, duct plate stiffeners	Span/240, normal operations only
Unbraced length, pipe bracing in ducts	$KL/r = < 120$ , checked for vortex shedding in flow and thermal restraint forces

#### 12.4.7.1 Pre-Engineered Buildings (if Required)

Design of the structural framing, by pre-engineered metal building manufacturer (PEB), shall be in accordance with the MBMA Metal Building Systems Manual.

Framing configurations shall conform to the architectural floor plans.

Prior to any pre-engineered building package being shipped to the job Site for erection, a letter of certification signed and stamped by a professional engineer registered in the State of New Mexico shall be provided to the Owner and shall include the following information and state that the building meets all applicable Contract and code requirements:

- Column base loads (for each load combination)
- Column base loads (for envelope solution)
- Allowable working stresses for framing members
- Critical reactions and locations
- Critical shears and locations
- Critical moments and locations

#### 12.4.8 Construction Materials

Materials, workmanship, and testing shall be in accordance with the appropriate specifications, standards, and codes of practice. Methods of quality control shall be clearly established and documented for all structural work (e.g., concrete, steel, connections, anchors, other) by Contractor, including the submittal of test records to the Owner. Third party shall be used to complete any special inspections and for job Site quality control functions (soils, asphalt, concrete, steel, connections, other).

Working methods shall ensure the construction of stable structures able to withstand all applied loadings during construction and for the design life of the Project without collapse, failure, or excessive deformation such as to cause any damage, loss of function, or any durability problems.

##### 12.4.8.1 Concrete

Materials for concrete shall comply with applicable ACI Committee publications. Materials shall be handled and stored as recommended in ACI 304, Chapter 2.

Construction of concrete structures shall use materials as defined in Table 12.4-3. The following criteria shall also apply to concrete mix designs and general construction:

1. Concrete accelerators shall be non-chloride type only per ASTM C 494 Type C or E. Calcium chloride is not permitted.
2. Concrete temperature at point of placement shall not exceed 90 degrees F or be below 40 degrees F unless ACI special provisions are followed and Owner approval

- is gained. Contractor shall take steps during mass concrete pours to avoid shrinkage and temperature related effects.
3. Ready mixed concrete shall be mixed and delivered in accordance with ASTM C 94 with the exception that only equipment trucks with rotary drum or agitator may be used for delivery.
  4. Addition of water at the job Site above the mix design limit is strictly prohibited. Ready mixed concrete shall be discharged at its final location within 90 minutes of water being added at the batch Project. Concrete not yet placed beyond this 90 minute time limit shall not be placed.
  5. Curing compound shall be used on all exposed concrete surfaces.
  6. Welding of rebar reinforcement is strictly prohibited.
  7. Bending of exposed reinforcing bars in hardened concrete is strictly prohibited.
  8. All exposed concrete edges shall be beveled or chamfered a minimum of 1"x1".
  9. Control joints shall be saw cut in accordance with ACI standards.
  10. Embedded conduit shall be placed to ensure a minimum of 2" cover is maintained around all rebar (all conduit embedded in concrete shall be galvanized steel).
  11. Concrete shall not be allowed to free fall more than 5 feet. A hopper or chute shall be used for drops exceeding 5 feet or for all poured walls regardless of wall height.

Contractor shall be responsible for developing concrete Quality Assurance/Quality Control (QA/QC) program for submittal to Owner for approval prior to any concrete procurement or placement. At a minimum concrete QA/QC program shall comply with requirements prescribed in the New Mexico Building Code and include proposed mix designs and testing intervals approved by a New Mexico licensed professional engineer.

**Table 12.4-3 Concrete Materials**

<b>Class</b>	<b>Use</b>	<b>F<sub>c</sub> 28 Day Strength, psi</b>
A	Mud slabs, fill, duct bank	2,500
B	General	4,500
C	Cooling towers, basins, structures in contact with water	5,000
Grout	Structure to concrete bearing surfaces	5,000 (or as required by Equipment manufacturers)
<b>Material</b>	<b>Usage</b>	<b>Requirements</b>
Cement	In accordance with mix design, local supply	ASTM C150, Type I (unless soils, process water, seawater, and mixing water contain sulfates that exceed Type I sulfate limits. Use ASTM C150, Type II or V as required by ACI 318-05 Table 4.3.1).
Admixtures and Pozzolan	Cement reduction, heat and crack control, workability	Fly ash, slag, plasticizers, and other admixtures are permitted if included in mix designs submitted to Owner; air entrainment to be used in all concrete exposed to the atmosphere
Water	In accordance with mix design, local supply	Potable, or clean and free of deleterious materials.
Aggregate	In accordance with mix design, local supply	ASTM C33. (verify that local aggregates are not reactive)

Class	Use	F <sub>c</sub> 28 Day Strength, psi
Reinforcing Steel, main	As required by design	ASTM A615, Grade 60.
Reinforcing Steel, ties and stirrups	No. 4 or as required by design	ASTM A615, Grade 60.
Welded wire fabric	As required by design	ASTM A185.
Forms	All exposed concrete surfaces (not flatwork)	Plywood or modular steel.

### 12.4.8.2 Structural Steel

Structural steel shall be detailed and fabricated in accordance with the AISC *Code of Standard Practice* and the AISC *Specification for Structural Steel Buildings*. Construction of steel structures shall use materials as defined in Table 12.4-4.

Where structural components are subject to severe corrosion due to chemical exposure but not elevated temperatures, the Contractor may use FRP (fiber reinforced polymer) material produced for structural application. All structural shapes shall be capable of carrying their intended load, contain ultraviolet (UV) light inhibitors and be flame retardant per ASTM E-84 Class 1 with flame spread of less than 25.

Provisions of Section H1.3 of the AISC Manual of Steel Construction shall not be used when any biaxial bending may occur under any loading case. Provisions of H1.1 shall be satisfied for all biaxial bending and compression load cases. All bolted connections in primary building, enclosure, and structure members shall be bolted using A325 or A490 bolts. Direct-tensioning indication devices shall be provided ("squirters") for both secondary and primary members. Secondary members may be bolted using A307 bolts.

**Table 12.4-4 Structural Steel Materials**

Material	Criteria
General Use Steel Shapes, Plates, Appurtenances	Multicertification ASTM A36/A572, Grade 50, or ASTM A992.
Steel Tube, rectangular or square	ASTM A500, Grade B or A1085
Bolts	ASTM A325 or A490
Weld Filler Metal	70 ksi tensile strength
Extreme Corrosion-Resistant Stainless Steel	ASTM A167, type as required
Guardrail and Handrail Pipe	1-1/2 inch nominal diameter (or as required by design), ASTM A53, Type E or S, Grade B for new construction.
Steel Grating	3/16 inch by 1-1/4 inch bearing bars (or as required by design), galvanized. Furnish with serrated surface for exterior applications
Toeboard, kickplate and grating panel ends	ASTM A36 or ASTM A1101, galvanized
Anchor Bolts, sized for design loads	ASTM F1554, Grade 36, or ASTM A193, Type 316 stainless steel
Miscellaneous Channels, Angles, Plates, and Embedded Shapes	ASTM A36
Stair Stringers	ASTM A36, C10 minimum. The fabricated assembly shall be galvanized to ASTM A123.
Stair Treads	Steel grating, galvanized, cast abrasive or bent checker plate nosings. The fabricated assembly shall be galvanized to ASTM A123.
Metal Deck, roof	1-1/2 inch profile depth (or as required by design), 22 gauge

Material	Criteria
	minimum, galvanized
Metal Deck, form	1-1/2 inch profile depth (or as required by design), 18 gauge minimum, galvanized.
Checkered steel floor plate	ASTM A786 (0.25 inch thick) (or as required by design)

#### 12.4.9 Protective Coatings and Painting

Exposed carbon steel and architectural surfaces of the facilities shall receive a protective coating system in accordance with Section 03 – Project Design Basis and as further clarified herein.

Indoor structures, such as building columns, and structural or supporting steel that is part of Project equipment shall be coated as outlined in the table below. Structural steel work to be fire protected shall be shop coated with a zinc primer compatible with self adhering fire protection material. Outdoor platforms, ladders, cages and stairs not in high moisture areas may be painted.

Paint coating systems shall consist of surface preparation, a prime coat and a finish coat. The Contractor will use high quality paint products as manufactured by Ameron, Porter, Tnemec, Sherwin Williams, Valspar, or approved by Owner. The color of the finish coat shall be selected by the Owner from color samples submitted by the Contractor.

Structural steel, structural components and miscellaneous steel work shipped to the Site for a pre-engineered building (PEB) shall have a manufacturer's applied zinc-rich primer. PEB components shipped to the Site with a top coat (final finish) shall have a coating system that meets or exceeds the requirements listed below. In all cases, the completed PEB building shall have coating system that meets or exceeds the requirements listed below.

Roof panels shall be painted white. Surface preparation and paint system application shall be in accordance with the paint system manufacturer's recommendations. The primer, intermediate coat and finish coat shall be from the same manufacturer.

The following protective coating systems shall be used as outline in Table 12.4-5 unless approved otherwise by the Owner:

**Table 12.4-5 Protective Coatings and Painting for Structural Materials**

Material	Criteria
Structural Steel: High moisture, extremely corrosive environment	Surface preparation per referenced standards; hot-dipped galvanized. Note; connection materials shall be coated the same; welded connections not allowed.
Structural Steel: Exterior/exposed, and/or Interior, moderately corrosive environment	Surface preparation as recommended by the paint manufacturer; a primer coat (2-4 mils) of two component inorganic zinc; and a finish coat (3-5 mils) of acrylic aliphatic polyurethane paint.
Structural Steel: Moderate chemical exposure (acidic, alkaline) environment	Surface preparation as recommended by the paint manufacturer; primer coats (4-6 mils) of polyamide epoxy paint; and a finish coat (2-3 mils) of acrylic aliphatic polyurethane paint.
Externally exposed metal surfaces with service temperatures at or above 450°F	SSPC SP10 surface preparation; a primer coat (2-2.5 mils) of silicone paint or inorganic zinc silicate paint; and a finish coat (1.5 mils) of silicone aluminum paint.

**12.4.9.1 Protective Coatings for Connection Materials**

Bolts connecting galvanized members/components shall be mechanically or hot-dip galvanized per ASTM B695, and A153/F2329 respectively. High strength bolts and nuts (A-490 or equivalent) shall have a post installed finish to match the connecting members coating requirements.

All anchor bolts and their assemblies shall be hot-dip galvanized. Anchor bolts for permanently or temporary submerged assemblies in basins shall be stainless steel.

Structural bolts, nuts, and washers connecting non-galvanized components shall have a post installed finish to match the connecting members coating. The top coat (final finish) shall not be applied to bolted and welded connections prior to the Contractor quality control inspections, special inspection, or quality control requirements as specified in the Specification.

**12.5 ARCHITECTURAL REQUIREMENTS****12.5.1 General**

The enclosures shall be designed based on the applicable codes and requirements as determined by the local jurisdiction requirements and the latest New Mexico Building Standards Code.

The Contractor shall perform a building code analysis and establish occupancy and type of construction for each building. The design and material selections in the interior building/office areas shall be driven by functionality. The buildings shall be designed for accessibility complying with applicable law.

**12.5.2 Exterior Architecture Criteria**

The exterior architectural systems shall provide a durable, weather tight enclosure to protect systems and personnel and allow for a controlled interior environment.

Exterior architectural systems shall conform to the following general design criteria. (Table 12.5-1).

**Table 12.5-1 Exterior Architecture Criteria**

Item	Criteria
Walls	Insulated or uninsulated metal wall panel; exposed surfaces to be non-reflective.
Roofs	Metal standing seam roofing. Built-up roofing or single-ply membrane over metal deck may also be used.
Thermal Insulation	Incorporated into the walls and roofs for thermal design.
Acoustical Insulation	Incorporated into the walls and roofs for acoustical design.
Louvers	Include stormproof louvers as required by the ventilation design.
Windows	Include windows, frames, and glazing. Selection shall be based on Project and environmental requirements.
Personnel Doors	Hollow, metal type personnel doors. Insulation and fire rating criteria shall be dictated by the interior and environmental requirements. Rain awnings or overhangs shall be provided at all exterior personnel doors.
Equipment Access Doors	Double mandors (for smaller equipment access) and/or large exterior metal curtain doors, motor operated with weather seals, windlocks, and backup manual chain operators.

Finish Painting	Exterior steel materials not galvanized or factory finished shall be finish painted. Colors shall be selected by Owner and may be subject to Federal, or local requirements. Exposed surfaces to be non-reflective. See previous article for painting systems of structural components.
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### 12.5.3 Interior Architecture Criteria

The interior architectural systems shall provide a functional, low maintenance, aesthetically pleasing environment. The materials in Table 12.5-2 have been selected to provide durability and offer flexibility in responding to occupant demands, while satisfying Project and code requirements.

The appropriate buildings and areas shall be provided with power receptacles and telephone and communications connections, as required by building function.

Floor treatments shall be as indicated in Table 12.5-2.

Rooms and/or enclosures containing Cyber Assets shall be coordinated with the Owner under NERC Cyber Security Standard CIP-006-1 as outlined in Section 18 – Instrumentation and Controls, and Section 19 – Telecommunications and Security Systems.

Interior architectural systems shall conform to the following general design criteria (Table 12.5-2) for main Project buildings.

**Table 12.5-2 Interior Architecture Criteria**

Item	Criteria
Partitions	Partitions constructed of masonry, mildew resistant drywall, or metal wall panel.
Windows	Interior fixed windows as required by the occupancy. Rated and nonrated glazing shall be installed in accordance with fire retardant criteria where applicable.
Personnel Doors	Hollow, metal type personnel doors. Insulation and fire rating criteria shall be dictated by the interior and environmental requirements. Wood doors are not allowed.
Concrete slabs	Garage, Stores, and Mechanical/Electrical/Communications areas – Concrete slab sealed with concrete hardener.
Ceilings	Ceilings in finished areas of the principal yard buildings shall generally consist of suspended, exposed grid, lay-in acoustical type systems (not applicable to pre-fabricated enclosures). Wet areas shall consist of moisture resistant materials.
Floor Coverings	Floor coverings in control and electrical equipment rooms may be static dissipative. High moisture areas shall incorporate unglazed ceramic tiles.
Wall Coverings	Wall coverings shall be identified in the painting section.
Interior drywall	Smooth, clean, and dry surface preparation; a primer coat (0.5-3.0 mils) of sealer or thinned finish coat as recommended by the paint manufacturer; and a finish coat (1-2 mils) of low gloss acrylic latex paint.
Finish Painting	Interior areas shall be coated where required for chemical resistance, light reflection, or aesthetics.

### 12.5.4 Architectural Codes and Standards

Normally occupied areas shall be designed in general accordance with the requirements of the latest applicable building codes and standards. Contractor shall not assume that variances and applicable local code interpretations will be obtained. However, these may be pursued and implemented as approved by the appropriate authority having jurisdiction during Work execution.

Fire rated assemblies shall be provided when required by building or fire codes. Penetrations through fire rated walls/partitions shall be provided with fire stops per NFPA. Insulation shall be used for sound and thermal control in walls between and around finished rooms and air-conditioned areas.

Other areas shall be designed to meet OSHA requirements for worker safety.

## **12.5.5 Materials**

### **12.5.5.1 Preformed Metal Siding**

Preformed metal siding panels shall be fabricated from galvanized sheet steel. Exterior and interior face panels shall be 22 gauge minimum. Exterior siding shall be either an insulated or an uninsulated field-assembled system as required by this Specification. Uninsulated siding panels shall meet the same finish and strength characteristics as the insulated siding system.

The wall system shall be designed to withstand the specified wind loading with practical and economical support girt spacing.

Exterior panel surfaces exposed to weather shall be coil coated with a finish designed to withstand all job Site specific conditions. The siding finish color will be selected by Owner, from among the siding manufacturer's standard colors if possible. The final finish shall be non-reflective. The interior surface of the exterior panels shall be finished with manufacturer's standard baked-on enamel finish. When required, the interior liner panels shall be galvanized sheet steel. Exposed panel surfaces shall have manufacturer's standard gloss white baked-on enamel finish.

### **12.5.5.2 Roofing**

Roofing for all major structures shall consist of the following roofing systems. The completed roofing system shall meet the requirements for a Factory Mutual Class I rating and fire code requirements for the type of building. Gutters shall be provided to grade on a splash block.

#### Acoustical standing seam metal roofing

Standing seam roof panels shall have a slope within the range of 1/2 to 1 inch of rise per 12 inches of run, but not less than required by local code. Standing seam roof decks shall have acoustical insulation built into the roofing panel or as a separate component of the roof system, placed directly below the roof panel. Minimum of R-19 fiberglass blanket insulation with UL 25 or less flame spread rating shall be used and attached to the ceiling with metal components such that there shall be no sagging. Standing seam roof panels shall have hidden (non-exposed) fasteners. Roof panel gage and shape of panels shall be sufficient to withstand all design loadings without excessive deflection or vibration.

### **12.5.5.3 Hollow Metal Doors, Frames, and Hardware**

Interior personnel doors shall be flush hollow metal on pressed steel door frames and shall include hinges, locksets, closers, weather-stripping, and accessory hardware. Fire doors and frames shall conform to NFPA 80 for the class of door furnished.

Doors shall meet the requirements of Steel Door Institute (SDI) - recommended specifications 100-91, Grade II, Model 2. Doors shall be heavy-duty seamless-composite construction using 18 gauge galvanized face sheets. Door frames shall be formed of 16 gauge steel to the sizes and shapes required.

Doors and frames in the outer limits of environmentally controlled areas shall be fully insulated. Where fire doors are required, the door, frame, and hardware shall bear a certification label from Underwriter's Laboratories for the class of opening and rating.

Doors shall be finished with glass and glazing at the following locations: building entries and exits, central control room, hallways and any other high traffic areas where viewing windows will help prevent the doors from being opened into oncoming traffic. Glass and glazing shall conform to the requirements for glazing materials for Category II products in accordance with the Safety Standards for Architectural Glazing Materials 16 CFR 1201, and installed in accordance with the publications of the Flat Glass Marketing Association.

#### **12.5.5.4 Windows**

Windows shall consist of aluminum frames with insulated and tinted glazing as used in commercial or industrial applications. The windows shall be weather tight including low-E insulated glass in thermally broken aluminum frames.

#### **12.5.5.5 Louvers**

Louvers shall be both the operable and inoperable types, fabricated of extruded-aluminum section alloy and provided with stainless steel fastenings and removable aluminum bird screen. Louvers shall have a paint finish meeting the specified finish requirements for the adjacent siding. Blades shall be storm proof. The louver-free area shall be a minimum of 50 percent of the louver face area. Louvers shall be designed for manual or gravity operation. Louvers shall be designed to meet wind loads. Horizontal or vertical louvers shall be provided, however Contractor shall be consistent and select only one style for the Project.

### **12.6 MECHANICAL SERVICES FOR BUILDINGS**

#### **12.6.1 Fire Protection System**

Refer to Section 16 – BOP Mechanical Systems and Equipment

END OF SECTION



## **SECTION 16 – BOP MECHANICAL SYSTEMS AND EQUIPMENT**

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## 16 BOP MECHANICAL SYSTEMS AND EQUIPMENT

### 16.1 SUMMARY

This Section contains the following systems:

- Fire Protection
- HVAC

### 16.2 FIRE PROTECTION SYSTEM

#### 16.2.1 Introduction

The Battery Energy Storage Unit(s) shall be provided with their own fire protection system consisting of varied forms of detection, alarm, notification, and mitigation. Other buildings and enclosures shall be provided with their own fire protection system consisting of varied forms of detection, suppression, alarm, and notification.

#### 16.2.2 Codes and Standards

In addition to the codes and standards listed in Section 03 – Project Design Basis, the fire protection systems shall be designed to the following specific codes and standards:

##### International Code Council (ICC)

IFC                      International Fire Code

##### National Fire Protection Association (NFPA)

NFPA 10	Standard for Portable Fire Extinguishers
NFPA 68	Standard on Explosion Protection by Deflagration Venting
NFPA 69	Standard on Explosion Prevention Systems
NFPA 70	National Electrical Code
NFPA 70E	Standard for Electrical Safety in the Workplace
NFPA 72	National Fire Alarm Code
NFPA 73E	Standard for Safety in the Work Place
NFPA 75	Standard for the Protection of Electronic Computer/Data Processing Equipment
NFPA 80	Standard for Fire Doors and Fire Windows
NFPA 90A	Standard for the Installation of Air-Conditioning and Ventilating Systems
NFPA 101	Life Safety Code
NFPA 110	Standard for Emergency and Standby Power Systems
NFPA 170	Fire Safety and Emergency Symbols
NFPA 220	Standard on Types of Building Construction
NFPA 241	Standard for Safeguarding Construction, Alteration, and Demolition Operations
NFPA 400	Hazardous Materials Code

NFPA 497	Recommended Practice for Classification of Flammable Liquids, Gases, or Vapors and of Hazardous (Classified) Locations
NFPA 704	Standard System for the Identification of the Hazards of Materials for Emergency Response
NFPA 780	Standard for the Installation of Lightning Protection Systems, as applicable
NFPA 850	Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations
NFPA 855	Standard for the Installation of Stationary Energy Storage Systems
NFPA 2010	Standard for Fixed Aerosol Fire-Extinguishing Systems

### **16.2.3 General**

All fire protection materials or services that require approval in accordance with NFPA shall be FM or UL approved.

The "Authority Having Jurisdiction" shall be the local fire marshal. Contractor shall be responsible for contacting the AHJ and determining if any local codes or rules apply to the Project, however additional equipment not identified in this scope of work and required by the AHJ including but not limited to fire suppression, fire/water hydrants, infrared flame detection systems, and additional spacing requirements above Generating Units' manufacturer recommendations or findings from the Hazard Mitigation Analysis (HMA) will be handled through the Change Order provision of the Contract.

All applicable recommendations of NFPA 855 shall be considered as required in the design of the Project unless specified differently herein.

The governing fire code shall take precedent over NFPA 101. Where the governing fire code does not apply, for example access and egress of large equipment, NFPA 101 shall be used.

### **16.2.4 Fire Protection Design Basis Document**

Contractor shall prepare a HMA in accordance with the requirements in NFPA 855 and 2021 International Fire Code Section 1207.1.4. The HMA shall identify each hazard, identify which fire prevention/protection features are to be provided, and identify where operational and administrative controls are assumed to be in place to mitigate the need for fire protection features including those for the BESS Generating Units, oil-filled transformers, electrical equipment rooms or PDC's (switchgear, MCC, etc.), cable spreading rooms or underground spreading vaults (if applicable), battery rooms, DCS equipment room, voice/telecommunication rooms, and Switchyard Control Enclosure. The HMA shall be submitted by the Owner to Owner's insurance provider for approval of design prior to construction. If the fire prevention/protection features or operational and administrative controls are altered, or new hazards are identified during the design phase of the Project, the approved HMA shall be updated and resubmitted to Owner. The HMA shall be submitted to the Owner for approval prior to construction.

### **16.2.5 Fire Alarm and Detection**

The alarm and detection system shall be in accordance with NFPA 72.

The fire alarm system shall be a supervised, intelligent, addressable type system that polls the individual input and output devices for status. Notification alarms shall provide the

location of the initiating device in text format using easily understandable words and not codes, e.g. "feedwater pump building smoke alarm".

Contractor shall provide a main annunciator fire control panel located in the central control room (CCR) which is located in the Switchyard Control Building. All local fire panels shall be connected to the main panel. All fire alarm control units shall be supplied by the same manufacturer and be fully compatible with the network communication system. BESS containers shall have their own control panels and feed alarms back to the main annunciator fire control panel via fiber.

Local alarm control panels shall accept signals from the detecting devices and alarm in the central control room and initiate release of the protection systems where they are provided. Local alarms and indication shall also be provided within the Project area.

Signal line, initiating, and notification appliance circuits shall be Class B. Circuits shall have a pathway survivability level of 1-3.

Fire alarm manual pull stations shall be double acting type.

Smoke detection shall be provided in areas of elevated risk. Aspirating smoke detectors for electronics and electrical rooms shall take samples from each electrical room to allow alarm indication down to the individual room level.

### 16.2.6 Fire Protection Systems

The table below outlines the minimum fire detection and suppression systems to be provided for the Project's buildings, enclosures, structures, and equipment. The governing Code may require additional features:

Area or Equipment	Suppression System	Detection
BESS Enclosures	Per NFPA 855 for specific battery chemistry.	Per NFPA 855 for specific battery chemistry. Contractor to provide complete details with proposal.
Oil-filled transformers	Spatial separation per NFPA 850	Linear heat detector or dry pilot
Electrical equipment rooms or PDC's (switchgear, MCC, etc.)	Portable extinguishers	Aspirating smoke detector
Cable spreading rooms or underground spreading vaults (if applicable)	Aerosol Suppression (NFPA 2010)	n/a
Battery rooms	Per NFPA 855	Per NFPA 855
Main DCS equipment room (processors, etc.)	Portable extinguishers	Aspirating smoke detector
DCS remote I/O cabinet rooms	Portable extinguishers	Aspirating smoke detector
Voice/telecommunication rooms	Portable extinguishers	Aspirating smoke detector
Central Control Room	Portable extinguishers	Smoke detection
Switchyard Control Enclosure	Portable extinguishers	Aspirating smoke detector

### 16.2.7 Battery Rooms

Battery rooms shall be constructed of a minimum 2-hour rated walls and ceiling.

### 16.2.8 Transformer Protection

All outdoor transformers shall meet the spatial separation guidelines of NFPA 850.

Dry type transformers shall be provided for all indoor applications.

The base approach for protection of all outdoor oil-insulated transformers is to use spatial separation and/or firewalls in accordance with NFPA standards in order to eliminate the requirement for water based suppression systems. Where this is not possible, fire suppression systems for oil-filled transformers with ratings greater than 5,000 kVA shall be provided.

### **16.2.9 Portable Fire Extinguishers**

Portable multipurpose dry chemical extinguishers shall be located throughout the Project. These extinguishers shall be sized, rated, and spaced in accordance with NFPA 10.

Supplemental CO<sub>2</sub> extinguishers having a minimum rating of 20B:C shall be located to serve electrical and IT equipment rooms.

### **16.2.10 Signage**

Placards and signs in accordance with NFPA 170 and NFPA 704 shall be provided.

## **16.3 HEATING, VENTILATING, AND AIR-CONDITIONING SYSTEMS**

The following articles define the HVAC requirements for the Project.

### **16.3.1 Design Conditions**

Refer to Appendix 03 – Project Data and Terminal points for basic HVAC design criteria.

Climatic conditions for the design of HVAC systems shall be based on site specific characteristics or from the nearest climatic data set published in the 2017 ASHRAE Fundamentals Handbook. For heating design the 99.6% parameter shall be used for the administration building, offices, labs and all other occupied spaces; otherwise the 99% parameter shall be used for equipment and non-occupied spaces. For ventilation design, the 0.4 % design parameters shall be used. For air conditioning design, the 1.0 % parameters shall be used.

### **16.3.2 Design Requirements**

In addition to the Codes and standards listed in Section 03 – Project Design Basis, the HVAC systems shall be designed to the following specific codes and standards:

#### Acoustics Society of America (ASA)

S12.2 Criteria for Evaluating Room Noise

#### American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE)

52.2 Method of Testing General Ventilation Air-Cleaning Devices for Removal Efficiency by Particle Size

55 Thermal Environmental Conditions for Human Occupancy

62.1 Ventilation for Acceptable Indoor Air Quality

90.1 Energy Standard for Buildings Except Low-Rise Residential Buildings

#### Sheet Metal & Air-Conditioning Contractors National Association (SMACNA)

006 HVAC Duct Construction Standards - Metal and Flexible

Buildings, enclosures, and interior spaces shall be heated, ventilated, and air-conditioned, to provide proper environmental control to meet equipment protection and safety requirements as well as to provide personnel comfort in areas normally occupied. For areas that are not continuously occupied, the HVAC systems shall be designed to provide a minimum level of personal comfort when maintenance activities are being performed.

The following areas shall be designed to maintain the minimum conditions as listed below:

INDOOR DESIGN CONDITIONS					
Building/Room Name	Cooling Design Temp, F	Heating Design Temp, F	System Type	Redundancy	Filtration
Control Room, Engineering Room	72	72	HVAC	Multiplicity	Yes
DCS Rooms, UPS Rooms, Electronics Rooms	72	72	HVAC	Multiplicity	Yes
Electrical Equipment Rooms	80	55	HVAC	Multiplicity	Yes
Battery Rooms	75 $\pm$ 2	68 $\pm$ 2	HVAC plus ventilation	Multiplicity	Yes

Notes:

1. Systems with multiplicity shall be configured as (n+1) redundancy.
2. Filtration requirements shall be in accordance with the recommendations of ASHRAE 62.1. Filters shall be at least a MERV 6 rating.
3. Electrical equipment rooms shall not exceed 104 °F (40 °C) under any operating condition during the loss of one HVAC equipment.

#### 16.3.2.1 Air Changes

Air changes per hour for the Switchyard Control Enclosure and associated CCR, shall comply with ASHRAE 62.1.

Any building or enclosure that has a hazardous area classification zone designated inside it shall maintain adequate ventilation at all times as defined by NFPA 497. Adequate ventilation shall be a ventilation rate that affords six air changes per hour, 1 cfm per square foot of floor area, or other similar criterion that prevents the accumulation of significant quantities of vapor-air concentrations from exceeding 25 percent of the lower flammable limit.

In addition to adequate ventilation, battery rooms shall have sufficient airflow to maintain less than 0.8% hydrogen concentration in the room based on manufacturer's data for hydrogen gas release.

Air changes per hour for non-occupied non-hazardous areas shall be at least one during winter heating mode.

#### 16.3.2.2 Design Pressure

The pressure in individual portions of the administration building shall be maintained positive in relation to the exterior, storage areas, vehicle maintenance/garage areas, and the vestibules. Toilet rooms, janitor's closets, and any other similar areas shall be maintained negative and exhausted directly to the outdoors with respect to adjacent building spaces.

#### 16.3.3 Heating, Ventilation and Air-Conditioning Equipment

HVAC rotating equipment (AHU's, ACU's, CDU's, and fans) shall be vibrationally isolated from their supporting structures and shall be purchased completely assembled, tested and balanced by the manufacturer. HVAC equipment and systems shall be designed such that components which require maintenance are easily accessible.

All HVAC systems that require ductwork shall be designed to utilize low pressure ductwork. All ductwork shall be tightly sealed, and rigidly supported. Supply and return ductwork serving air-conditioned areas shall be internally lined in accordance with SMACNA installation details for the entire distribution system. Exhaust systems in air-conditioned areas does not require insulation. Ductwork in non air-conditioned areas does not require insulation. Ductwork in any room or area with finished spaces shall be installed in the walls and ceiling and not exposed to view.

Smoke and fire dampers as well as fire rated caulks and sealants for fire rated wall penetrations associated with the ductwork shall be included in the design as required by NFPA and Building Codes.

Ducted systems shall be tested and balanced.

#### **16.3.4 Battery Rooms**

Battery room ventilation shall be designed in accordance with the recommendations of IEEE standard 1635 "IEEE/ASHRAE Guide for the Ventilation and Thermal Management of Batteries for Stationary Applications"

Battery Rooms shall be under negative pressurization and vented directly to the outdoors by 2 x 50% exhaust fans. Battery rooms shall be provided with HVAC to maintain a consistent temperature.

Loss of ventilation shall alarm on a local control panel located outside of the room. If belt driven exhaust fans are used, the ventilation fan monitoring shall be capable of detecting and monitoring loss of ventilation due to a broken belt.

END OF SECTION

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## **17 ELECTRICAL SYSTEMS**

### **17.1 GENERAL**

This Section provides basic technical details and guidance to minimum acceptable standards.

The electrical systems shall be based on the premise of redundancy through the Low Voltage (LV) auxiliary power distribution and communication systems, in accordance with this Exhibit A Section 17. Contractor shall provide the detailed design of all electrical systems. The electrical design and installation shall be performed in accordance with applicable governing codes and standards as outlined in Section 03 – Project Design Basis of these Technical Specifications.

The electrical equipment supplied shall be designed so that all maintenance and operational activities may be performed with suitable ease and the highest level of personnel safety. This shall include the provision of adequate space for the use of lifting and access equipment. Means shall be provided to prevent unauthorized access into electrical equipment, in accordance with applicable Codes. Means shall also be provided to support the augmentation requirements as defined in this Agreement, including access and available space for future installations of energy storage containers and/or inverter stations.

Floor mounted electrical equipment shall be provided with front and rear access, if required by the manufacturer.

The electrical systems and equipment supplied shall be as specified herein and in accordance with Section 06 - Equipment, Material, and Services Procurement and Exhibit G – Approved Subcontractors, and shall be suitable for the application.

All electrical equipment shall be provided with suitable environmental and corrosion protection. Enclosures located within dedicated space conditioned electrical/control equipment spaces shall be rated NEMA 1. All general Project area indoor enclosures shall be rated NEMA 12, except in hazardous locations.

Outdoor enclosures shall be rated NEMA 4, except in corrosive or dirty atmospheres, where they shall be rated NEMA 4X stainless steel construction including hinge. Battery and inverter specifications shall be in accordance with Exhibit A Section 37 – Battery Energy Storage System of this Contract. All outdoor enclosures shall be provided with drains for elimination of condensation. Thermostat-controlled space heaters shall be provided in outdoor control equipment enclosures, per manufacturer's recommendations and specifications.

Electrical systems and equipment shall be suitable for continuous operation in the installed environment, under all operating conditions, and for all extremes in operating environmental conditions. This requirement shall include measures for protection against aggressive/intruding insects, gnawing from rodents and other harmful vermin. Measures shall be taken to prevent internal condensation through use of suitable devices such as dehydrating breathers. Panel heaters shall be provided for enclosures located in unconditioned spaces containing devices requiring protection from excessive moisture or condensation.

Contractor shall submit copies of all major equipment test certificates and supporting documentation.

Protective measures shall be applied in order to reduce the risk of explosion in areas where dangerous quantities and concentrations of flammable or explosive gas, vapor, or dust may accumulate. Contractor shall identify, define, and indicate on the drawings all hazardous

areas, assigning the proper hazardous area classification and incorporate into the Project design all safeguards, components, and techniques associated with the area classification. All design requirements of NEC Articles 500 through 504, 705, and 706 shall be applied, where applicable, in addition to other general applicable sections of the Code. In addition, all electrical equipment shall be approved for installation in the area classification in which it is located. The Facility shall be designed and planned for access by qualified personnel only. The battery energy storage systems shall be planned and installed in accordance with the UL 9540 testing requirements. For clarity, the Facility's battery energy storage system shall not be required to meet Articles 500 through 504 unless furnished with equipment where fire or explosion hazards may exist due to flammable gasses, flammable liquid-produced vapors, combustible liquid-produced vapors, combustible dusts, or ignitable fibers/flyings.

Electrical auxiliary or power distribution equipment shall not be located where there is the potential for water leakage or spray. This includes, but is not limited to pipe flanges, couplings, fittings, valves, pressure reliefs, and trenches with splashing water.

Access to live (energized) parts shall not be possible during normal operation or maintenance activities, unless otherwise accessible by qualified personnel.

Non-metallic materials shall be non-hygroscopic and shall possess fire retardant characteristics that resist ignition and the spread of flame. No PVC materials shall be used inside any buildings, which are accessible during normal operations.

All electrical systems shall be designed to minimize the generation of harmonics and the effects of electrical interference between power and control/instrumentation circuits, and comply with U.S. standards, codes, and applicable laws governing electromagnetic compatibility. No equipment shall cause radio or television interference in excess of the limits specified in IEEE Std. 519, or any other U.S. Regulations or standards.

## **17.2 POWER SUPPLY SYSTEMS**

### **17.2.1 General**

Systems and equipment shall be capable of continuous operation at the highest service voltage for the system. Equipment used shall be suitable for use during transient conditions, such as 100% Generating Unit load rejection conditions as applicable to the Project.

The voltage and, where applicable, frequency at the input terminals to electrical systems and equipment shall not vary beyond the manufacturer's rated tolerances or limits during normal operation.

Auxiliary equipment, such as motors, transformers, and rectifiers, requiring electrical power shall be designed to operate from one of the nominal electrical power sources as follows:

<b>Volts</b>	<b>Phase</b>	<b>Hertz</b>
630	3	60
480	3	60
208/120	3/1	60

Alternating current motor voltage ratings with relation to horsepower shall be in accordance with the following:

<b>Horsepower</b>	<b>Volts</b>	<b>Phase</b>
Below 3/4	115	1
3/4 thru 200*	460	3
Above 200	4,160	3

\* Special consideration may be given for motors up to 250HP which are operated from a 460V VFD.

All valve motor operators shall be 460V, three-phase provided with integral starters and controls.

### **17.2.2 System Studies**

Contractor shall perform all necessary system studies to establish the equipment-rating basis for the electrical design. System analysis studies shall include:

#### Short Circuit Study

Relay coordination and settings study to include Generating Unit protective relays, transformer protection relays, switchgear and feeder protection relays, and motor protection relays

Load flow / reactive power capability study

Voltage drop/regulation study (steady state operation)

Cable ampacity study

AC and DC Arc flash studies

Lightning protection study

Ground grid step and touch study

Auxiliary power system sizing

Contractor to support Owner with utility required power systems stability study (to establish Power System Stabilizer (PSS) settings) including furnishing of PSSE or PSLF models.

System study shall be performed in ETAP or SKM software (software revision to be coordinated with the Owner). Full system model files and results shall be turned over to the Owner at the completion of the Work for future model updates. The ampacity study may be performed using Cymcap (Eaton Cyme) software suite. The system ampacity shall be suitable for two cycles per day.

The studies shall include the contribution from all motors, resistive loads, and skid "lumped loads" per manufacture material or name plate data. Details of the motor design parameters used for the system analysis studies shall be provided with the studies.

The limits of the studies shall be inclusive of all Project systems and shall include contribution from the transmission system, or any augmentation, as applicable.

Any design changes required to equipment or systems found during the repeat system analysis studies shall be the responsibility of Contractor. A final copy of the data files used in all studies shall be provided to the Owner when the equipment is commissioned in system software format including all non-standard library devices.

Arc flash labels shall be produced and applied to equipment per NEC 110.16 based on the final system study results.

For purposes of performing the electrical system studies, Contractor shall comply with the Civil Work Assumptions identified in Section 11 – Site Work of this Exhibit A.

### **17.2.3 System Grounding**

The AC systems shall be connected to ground as follows:

The high voltage system shall be solidly grounded at the GSU transformer (BESS step up) high voltage (HV) winding neutral terminals

Each PCS Unit Inverter Step Up Transformer may include a delta high-side configuration, with a low side in accordance with inverter manufacturer's requirements.

Balance of Plant Transformers (BOP) 480 V LV secondary winding neutrals shall be solidly grounded

The DC systems shall not be grounded. Ground fault detection and interruption shall be provided for ungrounded DC systems, in accordance with inverter manufacturer's specifications and recommendations. Equipment shall be connected through fuses to the positive and negative pole of the system. Double-pole switching or isolation shall be provided for all ungrounded circuit functions.

To support future maintenance activities, grounding bars shall be included in the design at strategic locations for equipment isolation.

#### **17.2.4 Transmission System Interconnection**

The design of the electrical systems and equipment shall fully comply with the Owner's requirements for connection of the Generating Unit(s) to the transmission system. Refer to Section 20 – High Voltage System.

Transmission system related criteria for the Generating Unit/GSU transformer (voltage regulation range and response, transient and sub-transient reactance values, time constants, and unit phasing) shall be coordinated with the Owner during the design phase of the Project. Others will carry out transmission system studies necessary to confirm the acceptability of connecting the Project to the transmission system.

The system interconnection and coordination study performed by the utility should identify the affected NERC/PRC standards. Contractor shall produce a NERC compliance report to ensure the system meets the governing system's requirements.

#### **17.2.5 Generating Units and Auxiliary Power**

The Generating Unit(s) shall be connected to the transmission system at the Project switchyard through a single, Project dedicated GSU. The GSU shall be connected to the HV substation via Generating Unit collector bus. Details regarding the HV system and connection are detailed in Section 20 – High Voltage System.

Primary operating electrical supplies for the Project auxiliary power system shall be obtained through unit auxiliary transformers (UAT) supplied from each of two Generating Unit collector circuits. Each UAT should be sized to carry the complete Project auxiliary power system including provisions to accommodate up to an additional 20% capacity, assuming the same equipment being planned with the original installation beyond that required for the planned system BESS augmentation. The auxiliary power system shall include an automatic transfer switch for automatic selection of the operating UAT in the event of a failure of the primary supply.

Power for the Switchyard Control Enclosure and other Switchyard auxiliary loads will be derived separately from the primary Project auxiliary power system. The Switchyard Control Enclosure power supply shall consist of three sources, a Station Service Voltage Transformer (SSVT) as the primary, a distribution feed as the secondary, and generator as the tertiary source. Contractor shall provide provisions for interconnection of an Owner-furnished, separately derived distribution backup power supply, which shall be brought to the Project boundary near the Project Switchyard. The Contractor shall also provide a tertiary backup source via standby diesel generator. The system shall include primary and secondary levels of redundancy via automatic transfer switches fed from both the dedicated UPS in the Switchyard Control Enclosure, as well as the secondary and tertiary backup supplies.

Generating Unit shall be connected to the MV Collector Bus using a circuit breaker located between the Generating Units and MV Collector Bus. The BOP auxiliary transformer primary voltage supply may be provided utilizing medium voltage cable connection or via non-segregated bus duct.

Each Generating Unit shall be provided with automatic, manually supervised, and manual synchronizing facilities located in the Central Control Room. The automatic equipment shall be tested under varying voltage conditions.

The GSU and collector circuits shall be capable of providing the associated Generating Units' anticipated future output of 80 MW to the transmission system, over the specified range of power factors and frequency/voltage variations. Contractor shall submit final transformer ratings including impedance to the Owner.

The voltage control equipment shall be capable of monitoring and regulating the flow of reactive power, as required by the transmission system operator, to maintain the transmission system voltage within operational limits in a secure and stable manner.

MV switchgear shall be double-ended, having independent supply feeders, for flexibility of operation and to accommodate continuous operation during a planned or forced outage of one of the supplies. MV switchgear shall be arc resistant Type 2B.

Synchronization (Sync) check relays shall be provided on MV switchgear or circuit breakers where ties between supplies may allow parallel operation and where the possibility of a variation of phase and/or frequency between the two supplies exists. An electronic interlock system shall be provided by Contractor to prevent inadvertent tie connection during service.

LV switchgear shall be double-ended with tie circuit breaker configuration, with dual independent supplies. LV switchgear shall be arc resistant Type 2B.

All MV, LV, and MCC equipment shall be designed to reduce the effects of arc flash to Category 2 or lower, with exception to the low voltage and DC buses of the energy storage system.

Contractor shall submit the design of the electrical auxiliary systems, including the basic power distribution schemes, the number and size of switchgear lineups, and the distribution and placement of motor and feeder circuits (within the scope of Work) on switchgear and motor control centers.

### **17.2.6 Essential Supplies System**

#### **17.2.6.1 Design Requirements**

Essential supplies shall be used to preserve the Project output and to protect systems and equipment from damage, due to a loss of a primary power supply. The essential supply systems shall offer simultaneous high reliability and high availability.

The essential supplies systems shall enable systems and equipment to be shut down in a safe manner on loss of the Project and incoming supplies. Afterwards, the essential supplies system shall allow a seamless return to normal service. Non-essential loads shall not be connected to the same motor control centers or power panels as essential loads.

HVAC system(s) shall be designed to maintain the temperature range required. The system shall be controlled either locally or by the DCS, and alarmed by the DCS.

#### **17.2.6.2 DC Supplies**

A packaged DC battery shall be provided within each Generating Unit auxiliary system enclosure.

In the Project Switchyard enclosure, the Contractor shall provide a 60 cell, 125 volt DC Project battery with facilities for distribution of BOP 125 VDC. High performance valve regulated lead-acid (VRLA) batteries (stationary) with sulfuric acid electrolyte shall be provided having a design life of at least 20 years. Project batteries shall be installed in a conditioned space, with maximum temperature limited to 77 °F, and complying with all codes and requirements including personnel safety shower/eye wash station.

Battery racks shall be of a stepped design so that the rear batteries can be easily viewed and sampled.

Terminal and/or cell covers shall be provided for personnel protection.

Local battery disconnect switches shall be included in the design.

Contractor shall determine in accordance with IEEE 485 the capacity of the BOP Project battery. With the actual discharge capacity of the battery at 80% of rated discharge capacity, with the battery initially fully charged at the floating voltage specified, and with the battery chargers disconnected, the battery shall be capable of supplying the duty cycle specified, four (4) hours. The batteries shall be sized to allow orderly shutdown of the Project under emergency conditions without a source of auxiliary power and without damage to equipment. The batteries shall be sized to include operation of DC emergency loads per the manufacturer's recommendations after loss of normal AC power.

A safety shower, eye wash station, and PPE storage cabinet shall be provided for each battery storage area.

Two 100% capacity battery chargers shall be provided. The battery chargers shall be sized so that one charger can provide the operating DC load under normal conditions, while maintaining float charge on the batteries. Each charger shall have the capacity to recharge the battery in 12 hours following complete discharge, while supplying DC Project loads.

DC panels shall use molded case circuit breakers for feeder protection and isolation. Main panels shall include a digital volt meter and ammeter.

### **17.2.6.3 Uninterruptible Power Supplies (Switchyard Control Enclosure)**

A Project uninterruptible power supply (UPS) shall be sourced from the BOP Project battery and include a voltage regulator, inverter, static transfer switch, a manual bypass switch, and distribution panelboards. The manual bypass switch shall be external to the UPS units. The equipment shall provide 120 volt AC power to essential Project control, safety, and information systems. The UPS shall be installed in a conditioned room with the Project batteries. The UPS shall be fed from two separate sources.

The equipment shall supply each Project essential load that would be affected by a loss of power of more than 1/4 cycle in duration, and voltage and frequency deviations from nominal. The equipment shall be rated so that one inverter can supply the total Project essential load demand with a design capacity margin of 30%.

The UPS shall be used for essential functions such as listed below that would not offer an adequate level of reliability if fed directly from the electrical auxiliary system. This includes loads that are required for post-incident monitoring and recordings following a main trip of the Project and loss of Project AC supplies.

- DCS processor cabinets
- DCS communications equipment
- DCS interposing relay and field I/O power
- DCS consoles (operator, supervisor, engineering stations, etc.)

Standalone PLC or control systems

All instrumentation not directly powered from the DCS, e.g. 4-wire type instrumentation.

Electrical actuated drives (modulating devices or open-close devices for Project/personnel protection)

Any critical controls not powered from DC sources

UPS system shall be tied to BESS enclosures if not already furnished by vendor

See Section 19 – Telecommunications and Security Systems for additional UPS systems.

## **17.3 CONTROL AND PROTECTION**

### **17.3.1 Control**

All equipment shall be provided with the Project for local tripping control only on the switchgear. Remote control of LV and MV switchgear distribution circuits shall be provided from the DCS. Critical circuits shall be provided with control from both the DCS and local or Central Control Room (CCR) remote controls. These include Generating Unit's breaker controls and MV collector circuit breakers.

Controls, interlocks, alarms, monitoring, indications, instrumentation, data acquisition and logging, event recorder, transient recorders, fault recorders, condition monitoring/recording equipment, operational metering (Project and Station loads), test and fault diagnostic facilities, isolation points, shall be provided for the secure, reliable and safe (fail safe) operation of the electrical systems.

Initiating contacts in hard-wired circuits performing essential functions such as main electrical protection and safety interlocking shall operate directly into their associated control circuits and not via secondary devices such as interposing relays.

### **17.3.2 Protection**

#### **17.3.2.1 General**

The protection system shall be designed that in the event of faults occurring, the faulty systems/equipment are safely disconnected, while continuity of supply consistent with system stability is maintained. The selection and setting of protection devices for the auxiliary systems shall be based upon the following major requirements:

Faults on systems/equipment items shall be interrupted as quickly as possible to minimize damage.

Faults external to major power sources, e.g. the Unit Auxiliary Transformers Generating Unit shall only open the circuit breaker controlling these power sources after all other protection nearest the fault has failed.

Faults internal to major power sources shall cause their circuit breakers to open as fast as possible to ensure that the transmission system can restore itself within the limits of stability.

The protection shall be designed to be stable in transient conditions such as motor starting and shall not operate for current surges caused by faults external to the auxiliary system, for which the Generating Unit would recover and the item of equipment protected would not be damaged.

Protection of systems/equipment shall be designed to match the systems/equipment operating characteristics and provide discrimination with other systems/equipment



Protective relays shall be microprocessor-based digital type. Protective relays shall be time synchronized to the sequence of event recorders and digital fault recorders by the use of a dedicated GPS time clock (delivered via IRIG-B or Ethernet NTP).

Protective relaying located in switchgear or relay panels shall be furnished with shorting blocks for current and potential circuits. Trips originating from lockout relays shall be wired through ABB FT-1 test switches.

#### **17.3.2.2 Generating Unit Protection**

Certain Generating Unit protection functions will be furnished with the Generating Unit(s) supplied by the Contractor. The Contractor's protective relaying system shall be fully integrated and coordinated with the Generating Unit manufacturer to provide the functionality defined in these Technical Specifications.

#### **17.3.2.3 GSU Transformer Protection**

Provide primary protection to include a multifunction microprocessor-based relay system, SEL-787. In addition to the functions included in the primary relay, the following discrete functions should be included:

- Buchholz/sudden pressure relay with lockout

- Neutral over-current backup protection

- Bus ground overvoltage protection

- Step-up transformer over-current backup protection

- Adequate alarms that shall allow operator to quickly identify any abnormal conditions. Alarms such as high/low level, high/low pressure, winding or top oil temperature shall only provide alarms and not trip the transformer.

- Bus differential relay system for high-side/low-side current differential

Two sets of current transformers shall be provided on each GSU transformer for substation protection. One set of C800 relay accuracy class current transformers shall be provided on the low voltage bushings and one set of C800 relay accuracy class current transformers shall be provided on the high voltage bushings. One three-phase set (3 CTs) of current transformers shall be provided on the high voltage bushings of each transformer rated ANSI 0.3-B1.8 metering accuracy for net metering.

#### **17.3.2.4 Medium Voltage Feeder Protection**

Medium voltage feeder and motor protection shall be provided by the use of microprocessor-based digital relays which incorporate fault recording and operating data logging capability. The protective relays shall be SEL-751 for feeder applications.

#### **17.3.2.5 Protection Relay Settings**

Contractor shall calculate and submit relay settings for all Project relays protecting equipment through the high voltage bushings of the GSU transformer(s). Transmission system electrical information required for the completion relay settings will be provided by the Owner.

During the design phase, AC and DC protection circuit diagrams and calculations showing how the proposed protection settings have been derived, shall be submitted to the Owner with a copy of the ETAP or SKM latest version software files used to develop the relay settings. In addition, overall protection coordination diagram(s) shall be submitted to demonstrate that the relay settings proposed offer satisfactory discrimination between the various protective devices.

The calculations shall also indicate NERC and PRC compliance reporting in both tabular and graphical form. The inverter set-points shall comply with current PRC-024 standards, unless otherwise required by Owner or transmission provider.

Contractor shall provide job Site testing and functional checks on all relays and their associated CT's, VT's, and protection circuits to confirm the operation of the protection.

Final relay settings shall be furnished to the Owner using files compatible with the manufacturer software used to install the settings in the relays (SEL in AcSELeRator and GE in Energista UR Setup format).

#### **17.3.2.6 Phasor Monitoring Units**

The SEL-787 relays shall be utilized as phasor monitoring units (PMU). The relay PMU functionality should be configured for future deployment and use by the Owner.

#### **17.3.3 Revenue Energy Metering**

Energy metering shall be provided and shall be compliant with the Owner's energy management requirements of power exports and imports to and from the power transmission system. Primary and back-up revenue metering systems shall be provided.

Energy shall be metered using solid state, high precision, digital display meters compliant with relevant U.S. and Utility Standards, SEL-735 with PQ optionality, with the specific model approved by the Owner.

Revenue metering, including backup metering, and auxiliary power metering shall exceed ANSI and IEC Class 0.1 with a total system watt hour measuring error not exceeding +/- 0.4% including PT and CT measuring error. Revenue metering shall be provided for net Generating Units Collector Circuits, and GSU transformer. Individual feeder circuits shall also include metering for protection and monitoring of generation parameters via the system DCS.

Each meter shall provide, as a minimum, two pulsed KYZ outputs proportional to each of the following energy measurements:

- Generating Unit Net, Gross and Auxiliary MW-hr energy
- Generating Unit Net, Gross and Auxiliary MVar-hr energy
- MW-hr energy consumed by Project auxiliaries

Pulsed outputs shall be transmitted to the Project DCS and SCADA/AGC RTU in real time.

All data collection, metering and data recording facilities shall have provisions for time stamping of measurements using a source signaling system that uses the IRIG-B or GPS nationally recognized time reference source as a basis.

The metering shall be provided with local alarms. In addition, common metering alarms shall be displayed in the Central Control Room.

#### **17.3.4 SCADA/AGC RTU Interface**

The Owner will furnish an energy management system interface SCADA/AGC remote terminal unit (RTU) for installation and integration within the Project by the Contractor. The RTU interface shall include redundant communications and the capability for remote dispatch including start/stop control and AGC (load) control by the Owner's dispatch center. The Contractor shall interface the RTU via the Project DCS. The protocol for the interface shall be determined later and coordinated with the Owner.

Contractor shall provide an enclosure located in the PDC with 125 volt DC, 120 volt AC uninterruptible power and 120 volt AC house power sources with the following I/O points:

Digital Signals

- Generating Units collector circuit breaker status (each Generating Units collector circuit)
- Automatic Voltage Regulation Status (net Generating Unit)
- Project on Control
- Project High Limit
- Project Low Limit
- Project Controller External Block

Analog Signals

- Net MW (each Generating Unit)
- Net MVAR (each Generating Unit)
- Gross MW (each Generating Unit)
- Gross MVar (each Generating Unit)
- Aux Power MW
- Aux Power MVar
- Generating Terminal Voltage (each Generating Unit)
- Individual Generating Unit High Regulating Limits MW
- Individual Generating Unit Low Regulating Limits MW
- Project MW set point demand signal
- Project MW set point feedback signal

KYZ Pulses

- Net MWh Output (each GSU)
- Net MVarh (each GSU)
- Gross MWh (each Generating Unit)
- Gross MVarh (each Generating Unit)
- Aux Power MWh
- Aux Power MVarh
- Net MWh In with Generating Unit off-line (each GSU)

The Contractor shall also provide necessary interface for the remote monitoring and control of the Project in accordance with Section 18 – Instrumentation and Control.

**17.4 GENERATING UNIT AND ASSOCIATED EQUIPMENT**

The Contractor's equipment shall be fully integrated and coordinated with the Generating Unit manufacturer to provide the functionality defined in these Technical Specifications.

**17.5 CABLE BUS**

If used, 34.5 kV cable bus between the Generating Unit Collector Bus and the GSU shall be rated for 105 percent of the associated Generating Units gross output at the full temperature rating of the equipment at the maximum continuous operating current conditions.

The 34.5 kV cable bus shall be designed to minimize the risk of faults. The connections shall be designed to withstand the mechanical and thermal effects of 3-phase short-circuit and

unrestricted ground faults at any point. The conductors shall be phased and supported to maintain low impedance and assure the mechanical strength to withstand the mechanical and thermal effects of 3-phase short-circuit and unrestricted ground faults at any point.

The conductor temperature at flexible connections shall not exceed the maximum value recommended for the contact materials involved under the worst combination of ambient temperature and load conditions. The enclosure shall not exceed a safe touch temperature.

All current carrying conductors shall be fully insulated power cable insulated to meet the specified BIL requirements. Conductor ampacities shall be based on full-load application, with consideration given for the effects of solar radiation. Transposition and interleaving of cables shall be done as required to ensure equal current distribution. Cables exposed to direct sunlight shall have ultra-violet resistant jackets. Cable shall be ozone resistant, fire retardant, and suitable for use in wet and dry locations. The cable shall pass the IEEE Standard 383 ribbon burner flame test employing the 70,000 Btu/burner.

The bus enclosure shall be grounded at sufficient intervals for the purpose of preventing a potential above ground on the bus enclosure in the event of a fault.

The cable bus support system shall consist of building steel supported hanging type structures for indoor routing and grade mounted freestanding structures for outdoor application.

## **17.6 GENERATING UNIT BREAKERS**

A Generating Unit switchgear or free-standing breaker shall be provided between each pair (2) of Generating Unit collector circuits and GSU transformer as shown on the single line included in Appendix 09. Each Generating Unit collector circuit breaker shall be IEEE C37.013 compliant and have a continuous current rating as required to transmit the Generating Unit output under all normally expected loading conditions. Each breaker shall have a short-circuit interrupting capability and short-time current carrying capability which is equal to or greater than the fault current available under any operating conditions. The potential transformers and current transformers shall be furnished as required for protective relaying, metering, and synchronizing of each Generating Unit collector circuit to the grid.

The breaker shall include all material required for termination of the 34.5 kV collector circuit cabling.

Each Generating Unit collector circuit breaker shall be furnished with the following:

- Two C800 current transformers per terminal (12pcs) with ratio to match CTs supplied by the Generating Unit manufacturer.

- Two per phase sensing PTs on Generating Unit side for metering relaying and regulating. Ratio full Generating Unit collector circuit line-line voltage: 120V

- One per phase sensing PT on transformer side for metering and relaying with broken delta winding for cable bus ground detection.

- A pair (2) of 1200A load-break disconnects for servicing each collector circuit and its associated BOP loads. For clarity, one pair of load-break disconnects shall feed and be protected by one (1) collector circuit breaker.

## **17.7 TRANSFORMERS**

Transformers shall comply with the applicable ANSI C57 series standards and all other applicable IEEE/NEMA Standards. Windings and internal power path connections GSU transformers shall be copper construction. Windings for other transformers and internal power path connections shall also be of copper unless aluminum construction is accepted by the Owner to maintain Project schedule. GSU transformer shall have a witnessed factory

heat run test. Other transformers shall have type-test factory heat run tests and witnessed impulse tests on one of each style and size. All ANSI routine tests shall also be witnessed.

Means shall be provided to prevent operation of no-load tap-changers on the UAT and GSU when the transformer is energized.

Transformers may be designed to take advantage of multistage cooling as prescribed by ANSI C57.

Transformer mineral oil shall contain no PCBs.

Oil filled transformer tanks shall be factory tested for oil leaks and vacuum withstand capability.

Oil sampling points shall be located at ground level.

Lightning impulse tests shall be carried out as a factory test.

All transformer gaskets shall be Viton.

### **17.7.1 Generating Unit Step Up Transformers**

The GSU Transformers shall be of the oil immersed conservator type. The GSU transformers shall be designed for ONAN/ONAF/ONAF multistage cooling as prescribed by ANSI C57, using mineral oil as the insulating medium. Each GSU transformer MVA capacity shall be rated for 105 percent of the maximum Project MW output capability across the specified range of ambient temperatures applied at 0.95 power factor and at a 65 °C transformer temperature rise. Ambient temperature based transformer loading compensation shall be in accordance with IEEE C57.91 and include a minimum 5 °C rise margin applied to the historic average daily ambient temperature adjustment.

The GSU Transformers shall be a three phase transformer, installed on foundations with provisions for 100 percent oil-containment and firewalls.

The GSU transformers shall be designed for termination of the main cable bus from the Generating Units Collector Bus (or MV Switchgear, as applicable).

The GSU transformers shall be designed for a solid grounding connection on the HV neutral terminal bushing.

Multi-ratio, distributed winding relaying current transformers shall be provided, with three per phase on the HV side and three per phase on the LV side of the core. All relaying current transformers shall be C800 accuracy class with five ampere secondary rating. The HV side shall be furnished with one three-phase set of metering current transformers with 0.15 accuracy class in accordance with ANSI/IEEE C57.13.

The GSU transformers shall be provided with a no-load tap-changer on the HV winding having a minimum of plus or minus 5 percent fully rated tap positions in 2-1/2 percent steps.

The low voltage winding of each GSU transformer shall be identical to the nominal voltage rating of the corresponding Generating Unit. The high voltage winding of each GSU transformer shall be selected by the Contractor to maximize the reactive capability of the Project. The Project minimum reactive capability shall consist of full real power output at a range of +/- 0.95 power factor at the transmission system (the POI).

The GSU transformers impedance and high voltage rating shall be selected to maximize the reactive power export or import without limiting the Project real power export to the transmission system across the transmission system operating voltage schedule. The impedance of each GSU transformer shall be no greater than 10.0% at the base MVA rating

of the transformer. The Contractor shall submit calculations for Owner review prior to procurement of the GSU transformers for final selection of impedance, high voltage rating and taps based on the transmission system voltage schedule.

A spark plug bushing for core ground connection testing shall be provided on the transformer to allow testing without removing the manhole cover. The bushings shall be oil filled condenser type with a power factor test plug.

Surge protection, in the form of station class surge arrestors, shall be provided for the transformer high voltage windings and bushings.

Suitable means of isolation shall be provided for removable components.

The GSU Transformers shall be provided with independent conductor and frame ground terminals with external ground connections for ease of testing.

The levels of dissolved gases in oil shall be measured and recorded before final testing of the GSU transformers. Further samples shall be measured and recorded following power frequency testing, following impulse testing and before, during and after load current runs.

The following transformer accessory devices shall be furnished:

- Oil level gauge, magnetic type, with low level alarm contact

- Oil temperature element

- Dial type, hot oil thermometer, with manually reset maximum indicating hand and high temperature alarm contact

- Winding temperature detector in each phase of each winding with high temperature alarm contact

- Two hot spot, 100 ohm resistance coils, for each winding

- Fault pressure device with alarm contacts

- Pressure relief device, mechanical automatic resealing type with alarm contact

- Tank high and low gas pressure alarms

- Cooling System alarms

- Oil flow indicator with alarm contact for loss of flow, low oil level alarm device, thermometer pocket and oil sampling device

- An oil drain valve, 1.5 inches minimum, and provision for a lower filter press connection, with a 3/8 inch oil sampling valve and connection. An upper filter press connection with 1.5 inch valve. A one inch tapped opening in the cover, with pipe plug, for vacuum pump connection.

The Generating Unit GSU Transformers shall be configured to permit utilization of a common spare transformer furnished by the Owner. The overall system design shall be planned to accommodate up to a spare 63MVA base rating unit, with an impedance value no less than 8.0%. The system's short circuit capability shall also be able to withstand the let-thru current available from the larger spare unit.

### **17.7.2 Project Auxiliary Transformers**

The Project Auxiliary Transformers (UAT) shall be of the oil immersed conservator type. Each UAT transformer shall be designed for ONAN/ONAF/ONAF multistage cooling as prescribed by ANSI C57, using mineral oil or FR3 as the insulating medium. The transformers may be designed to take advantage of multistage cooling as prescribed by ANSI/IEEE C57 series standards.

The maximum rating of each Project auxiliary transformer shall be selected to provide 100 percent of the required auxiliary power to the Generating Unit under all operating conditions. Auxiliary transformers shall be sized for future capacity necessary to service a Project expansion up to 20% additional capacity beyond that required for augmentation loads of the system. Calculations shall be submitted to validate sufficient spare capacity to meet this requirement.

The UATs shall be provided with an off-line tap changer on the HV windings, having a minimum of plus or minus 5 percent fully rated tap positions in 2-1/2 percent steps.

Suitable means of isolation shall be provided for removable components.

The UATs shall be provided with independent conductor and frame ground terminals with external ground connections for ease of testing.

The levels of dissolved gases in oil shall be measured and recorded before final testing of the UATs. Further samples shall be measured and recorded following power frequency testing, following impulse testing and before, during and after load current runs.

The Project Auxiliary Transformers shall be designed for low resistance grounding on the low side neutral bushing.

The following devices shall be furnished:

- Oil level gauge, magnetic type, with low level alarm contact

- Dial type, hot oil thermometer, with manually reset maximum indicating hand and high temperature alarm contact

- Winding temperature detector in 'B' phase of each winding with high temperature alarm contact

- Pressure relief device, mechanical automatic resealing type with alarm contact

- Tank high and low gas pressure alarms

- Oil flow indicator with alarm contact for loss of flow, low oil level alarm device, thermometer pocket and oil sampling device

- An oil drain valve, , and provision for a lower filter press connection, with a 3/8 inch oil sampling valve and connection.

### **17.7.3 Secondary Unit Substation Transformers**

Secondary Unit Substation (SUS) transformers shall be VPI dry type natural/air natural/ air forced (ANAN/ANAF) cooling with no more than 115 °C rise.

SUS transformers rated 1,000 KVA and above shall have no-load tap-changers on the HV windings with a minimum range of plus or minus 5 percent fully rated tap positions in 2-1/2 percent steps to suit the operational voltage requirements.

Dry type transformers shall be enclosed in naturally air-ventilated enclosures located only indoors in an adequately controlled environment. SUS transformers located outdoors shall be cast coil.

Dry type transformers shall be provided with a winding temperature indicator (simulated hot spot temperature) having a temperature high alarm.

Dry transformer shall include cabinets that have viewports for thermal imaging PDM cameras allowing unobstructed view of core and terminations.

## **17.8 SWITCHGEAR, BREAKERS, AND MOTOR CONTROL CENTERS (MCC)**

All switchgear and motor control centers shall be located indoors, in metal-clad sheet steel cubicles with front access doors. The equipment shall be selected from the manufacturer's standard product range and be fully tested as a product in accordance with relevant U.S. Standards. Switchgear shall be extendible a minimum of one section at each end. A minimum of two spare feeder cubicles per switchgear section shall be provided. One spare feeder breaker of each size/rating used in the particular switchgear lineup shall be provided. Installation clearance of all switchgear and MCCs shall follow the guidelines set forth by the NEC.

The main bus bars, together with the tee-off bus bars connecting the main bus bars to the isolating devices on all incoming and outgoing circuits, shall be contained in a separate compartment(s) within the switchgear. The bus bars shall be air insulated except where solid insulation is a design feature. The main bus bars shall have the same current rating throughout their length. These compartments shall have special glass ports with unobstructed view of bus and terminations for use with thermal-imaging PDM cameras without the removal of doors or panels while energized.

Contractor shall perform calculations and provide labeling for all electrical equipment, as required, to ensure compliance with NFPA 70E. Arc flash labels shall be provided per NFPA 70E and shall follow the existing Project color and layout labeling format. Labels shall be printed with Dura Label 300. Reduced fault stress shall be incorporated into the switchgear and MCC design, similar to zone selective interlocking or the use of arc flash detection relays.

Arc Flash ratings shall be reduced below CAT 2 (8 cal/cm<sup>2</sup>), where practicable. Category rating shall be reduced as necessary through the use of arc sensing fiber or arc flash maintenance switches, and arc flash settings.

The equipment shall be rated to withstand the mechanical forces and thermal effects of the maximum prospective 3-phase bolted fault current at the point of application. Test evidence of arc containment due to internal faults shall be provided.

Apparatus that has to be removed from a panel or cubicle for maintenance or replacement purposes shall be of the draw-out type.

Protection shall be provided against finger contact with live parts within switchgear with the access door open/cover plates removed. This requirement includes cable termination compartments and draw-out units when in the withdrawn position.

Control and operating status monitoring of the medium and low voltage switchgear, bus power, and motor control centers shall be hard wired directly from the switchgear and MCC's. The control and monitoring includes the following.

- Motor starts and stops

- Motor current monitoring

- Switchgear health monitoring, closing coil, trip coil, blown control fuses, temperature

- Operator alarms

Metering for all medium and low voltage feeders shall be provided with information displayed on the Project DCS.

Individual Medium and Low Voltage MCC buckets shall be equipped with dedicated overload relays and RED running and Green not running status lights.



Each MCC feeder shall include LED indication if the feeder cables are energized. LED indication shall be Grace Engineering Products Inc. part number R-3W-L or Owner approved equal.

Each MCC, MV, and LV switchgear shall include electrical testing connections on the outside of the electrical equipment for each motor feeder so that the equipment door does not require opening to perform motor testing and thereby reduce arc flash exposure. The test connections shall be compatible with PDMA electrical testing equipment. The final testing connection arrangement shall be approved by the Owner.

### **17.8.1 Medium Voltage Switchgear**

Medium-voltage (MV) switchgear shall consist of circuit breakers of the vacuum type.

All MV switchgear shall conform to the requirements of ANSI/IEEE C37 series standards.

MV switchgear shall be of the horizontally withdrawn type with 'connected', 'test', and 'disconnected' truck positions. These compartments shall have viewing ports with unobstructed view of bus and terminations for use with thermal-imaging PDM cameras without the removal of doors or panels while energized.

The medium voltage switchgear shall be Type 2B arc resistant construction.

All MV switchgear shall be supplied with remote racking for those breakers that are racked in/out of the bus.

Grounding devices shall be provided that fit into the switchgear cubicles and facilitate the attachment of portable grounding cables for the grounding of all incoming/outgoing circuits and bus bars. One complete set of grounding equipment shall be provided per MV switchgear. The fault rating (current and duration) of the grounding equipment shall not be less than the fault rating for the highest rated switchgear of that type.

Where grounding devices are not capable of fitting into switchgear cubicles, grounding ball studs shall be included in the design to support field grounding jumpers.

Each switchgear lineup shall be provided with all accessories necessary for the routine operation and maintenance of the equipment. This includes, but is not limited to, racking tools, door opening tools, breaker lift mechanisms, and wall-mounted breaker test stations.

All operational and maintenance interlocking and any other feature necessary to comply with statutory/safety requirements shall be provided including a padlocking (or interlock key) Project on:

- Bus bar and circuit shutters (independent facility for each shutter)
- Means of access to grounding device
- Voltage transformer (withdrawable type) shutters
- Circuit-breaker open/close control switch
- Circuit-breaker local/remote control selector switch

Medium voltage motors shall be fed from MV switchgear equipped with a digital motor protection relay for each motor circuit.

### **17.8.2 Low Voltage Switchgear**

Low Voltage (LV) switchgear shall consist of draw-out air break circuit breakers rated for 600V duty Type 2B arc resistant construction.

LV switchgear assemblies for power control centers shall comply with the following separation requirements. All LV switchgear shall be supplied with remote racking for those

breakers that are racked in/out of the bus. Functional units shall be separated from the bus bars and from all other functional units. The terminals for external conductors shall form an integral part of the functional unit and be located in an individual enclosed protected space or compartment within the functional unit. All separation requirements (between bus bars, functional units, and terminals for external conductors) shall be met by the provision of metallic or non-metallic rigid barriers or partitions. These compartments shall have special glass ports with unobstructed view of bus and terminations for use with thermal-imaging PDM cameras without the removal of doors or panels while energized.

All 480V switchgear shall conform to the requirements of ANSI/IEEE C37 series standards.

All points of isolation for maintenance or testing the LV switchgear shall incorporate facilities for the fitting of padlocks, or other locking device, for immobilizing in the isolated position. This requirement applies to:

- Isolation devices
- Access doors/covers
- Other securing devices

Low Voltage (LV) switchgear shall consist of draw-out air break circuit breakers rated for 600V duty Type 2B arc resistant construction.

### **17.8.3 FREE-STANDING BREAKERS**

Circuit breakers shall be a Siemens SDV7 or approved equal, non-arc-resistant unit with Stored Energy or Magnetic Actuator including the following features:

Type 3AH35-MA magnetic-actuator operator utilizes rare-earth magnets (neodymium-iron-boron) to maintain a stable CLOSED position, in combination with an electromagnetic coil structure to change from the OPEN position to the CLOSED position. The magnetic actuator uses a single coil design, providing a stable OPEN and a stable CLOSED position without supplemental energy input.

Circuit breaker shall be provided with a capacitor-trip unit, to supply tripping power on the loss of AC and/or DC control power to the circuit breaker control circuits.

Circuit breaker shall have two (2) trip coils, one connected to the Primary relaying, and one connected to the Backup relaying.

Each bushing shall have 2 current transformers (CTs): Utility-side CTs shall be Relay Class C400 and Plant-side CTs shall be one (1) Relay Class C400 and one (1) metering class 0.3B-1.8; all rated 600:5.

Enclosure shall be rated for outdoor exposure, with extended creep distance porcelain, dry-type bushings and stainless-steel exterior hardware.

Enclosure legs shall be adjustable, to maintain a minimum of 9-feet, 6-inches to the bottom of the medium-voltage terminal bushings.

### **17.8.4 Bus Duct**

Bus duct shall be non-segregated phase bus duct using individually insulated copper bar conductors enclosed in a steel or aluminum housing. The non-segregated bus duct shall be routed to avoid all potential hazards and shall be properly supported.

Each switchgear lineup shall be provided with all accessories necessary for the routine operation and maintenance of the equipment. This includes, but is not limited to, racking tools, door opening tools, breaker lift mechanisms, and wall-mounted breaker test stations.

All bus duct shall be located away from potential sources of water leaks.

All outdoor connections shall be cable connections, no outdoor bus duct permitted.

### **17.8.5 Motor Control Centers**

Motor control centers (MCCs) shall be 3-wire, 600V, with the ampacity as required for the load. Incoming feeder cable(s) shall be sized for the horizontal bus rating of the MCC.

Motor feeder circuits shall use magnetic-only molded case circuit breakers. Starters shall be NEMA rated with a minimum size of NEMA Size 1 with an electronic overload system in the starter re-settable from the front to protect the motor against overload. The maximum starter size shall be NEMA Size 5 (200 HP). Each motor feeder shall have an oversized control power transformer (CPT), protective fuses and a ground fault detection relay/sensing device that shunt trips the molded case breaker.

Control power transformer, auxiliary relays, current transformers, etc., as shown on the Contractor's one-line diagram, shall be installed in the same unit as the combination starter, even though a larger space may be required. Consolidating components of various units to conserve space is not acceptable.

Non-motor feeders shall use thermal magnetic molded case circuit breakers with integral shunt trips for ground fault protection. All feeder circuit breakers equal to and greater than 100A shall have an electronic LSI trip unit, breakers less than 100A can be fixed type unless indicated differently on the Contractor's one-line diagram. Any non-motor loads greater than 225A shall be fed from the LV switchgear. Each MCC shall be equipped with a common CPT for all non-motor loads to supply power for the ground fault detection relay/sensing device and breaker shunt trip.

Each MCC shall be provided with 20% spare compartments of each type and be field located such that it is expandable in at least one direction. All starter units and feeder tap units shall be readily interchangeable with units of the same type and size. All units except 400 ampere frame feeder tap units shall be automatically disconnected and connected to the bus as the units are removed or replaced in the motor control centers.

MCCs shall be provided with automatically operated shutters. Each vertical section shall include a full ground bus that is first to contact and last to disconnect from the cubical.

Rear access shall be provided to all MCCs unless the MCC is designed for front-only maintenance access to controller connections for troubleshooting.

MCCs shall not be located in areas where water infiltration is possible due to piping failures or equipment wash down is required.

Stand-alone motor starters shall not be used except for the following specific instances, unless otherwise approved by the Owner:

- Oil Water Separators
- Sanitary Waste Systems
- Chemical Feed Systems
- Sump Pumps

### **17.9 DIESEL GENERATOR**

Provisions for connection of a standby mobile diesel generator (provided by Others) rated at the required service voltage, shall be provided to support the emergency and standby essential service busses of the Project. The connection provisions shall be configured to support use of the diesel generator in the event of loss of the normal power supply.

The essential service loads shall include (as applicable to the Project):

Safety systems (e.g. fire panels, safety showers, emergency lighting, etc.)

Designated HVAC and normal lighting

Battery chargers

BESS EMS

DCS and PLC control systems

## **17.10 ELECTRICAL ENCLOSURES**

All electrical equipment shall be provided with suitable electrical enclosures in accordance with NEMA 250. Enclosures located inside weatherproof space conditioned rooms or enclosures shall be rated NEMA 1. All general Project area indoor enclosures shall be rated NEMA 12, except in hazardous locations. Outdoor enclosures shall be rated NEMA 4, except in corrosive or dirty atmospheres, where they shall be rated NEMA 4X stainless steel construction including hinge. All outdoor enclosures shall be provided with drains for elimination of condensation.

Thermostat-controlled space heaters shall be provided in control equipment enclosures.

Electrical systems and equipment shall be suitable for continuous operation in the installed environment, under all operating conditions, and for all extremes in operating environmental conditions. This requirement shall include measures for protection against aggressive/intruding insects, gnawing from rodents and other harmful vermin. Measures shall be taken to prevent internal condensation through use of suitable devices such as heaters and dehydrating breathers. Panel heaters shall be provided for enclosures located in unconditioned spaces containing devices requiring protection from excessive moisture or condensation.

Protective measures shall be applied in order to reduce the risk of explosion in areas where dangerous quantities and concentrations of flammable or explosive gas, vapor, or dust may accumulate. Hazardous areas shall be identified in accordance with NFPA 70 and 497. Identify, define and indicate on drawings all hazardous areas, assigning the proper hazardous area classification and incorporate into the Project design all safeguards, components and techniques associated with the area classification. All design requirements of NEC Articles 500 through 504 shall be applied where required except as further clarified in Section 17.1. The Facility shall be designed for unmanned operations, with access to qualified personnel, only.

## **17.11 RACEWAY**

The raceway system is defined to include conduit, flexible conduit, cable tray, underground duct, wireway, cabinets and boxes, and all materials and devices required to install, support, secure, and provide a complete system for support and protection of electrical conductors. Raceway system materials and devices furnished shall be in accordance with applicable standards of ANSI, NEMA, and UL. Raceway system components shall be installed in accordance with applicable requirements of the NEC.

The design and specifications for the raceway system used in supporting and protecting electrical cable shall be in accordance with the provisions of the NEC. Firestops shall be provided wherever raceways penetrate floors or fire rated walls.

Individual raceway systems shall be established for the following services:

HV Power (interconnection voltage)

34.5 kV Power

- 480 Volt auxiliary power
- 600 Volt control cable, 125 VAC, and 120 VDC
- Special electrical noise-sensitive circuits or instrumentation cable

Cable trays shall be of ladder-type, aluminum construction with a rung spacing of six to nine inches, nominal depths of four to six inches, and various widths as required. Cable trays shall be designed for a NEMA 20C rating and supported in accordance with NEMA VE-1 standards.

Solid bottom trays shall be provided for all special noise-sensitive circuits and analog instrumentation circuits.

Lighting branch circuits, telephone circuits, fiber optic cables, and intercommunication circuits shall be routed in separate conduit systems. Lighting circuits shall be routed in electrical metallic tubing (EMT) for indoor concealed areas, rigid aluminum conduit for hazardous exposed and outdoor areas, and Schedule 40 PVC conduit for underground.

Fiberglass tray shall be used in corrosive areas.

Rigid aluminum conduit shall be used for routing individual circuits from the cable tray system to devices and equipment in the field and Schedule 80 PVC may be used in lieu of rigid aluminum if the area is protected from access by equipment or vehicular traffic. Within electrical rooms and control rooms, EMT conduit with compression fittings may be used in lieu of Rigid aluminum.

Liquidtight flexible metal conduit may be used for lengths up to three feet unless otherwise approved by the Owner. Liquidtight flexible metal conduit shall be coated with a sunlight resistant thermoplastic jacket and be UL listed. High temperature jacket materials shall be used where required.

All underground duct banks shall consist of Schedule 40 PVC conduit encased in concrete, Schedule 80 if not encased in concrete. Concrete reinforcement for duct banks shall be provided where duct bank shall be exposed to vehicle or maintenance loads. Duct banks shall have red dye incorporated in the top of concrete while the concrete is wet and before the concrete cures. Two minimum 2/0 bare copper ground cables shall be applied to the top of the duct bank after it is poured. They shall be tied together in manholes and tied into the ground grids at the ends of the duct banks.

Galvanized steel conduit shall be embedded where required for digital and analog low-level circuits requiring noise immunity from adjacent power circuits. Spare ducts shall be provided in each duct bank run for providing 20% spare ducts sized equal to the largest size duct in the duct bank equal to 20% of the total number of ducts with the size of the spare ducts equal to the largest size duct in the duct bank. Spare conduits, beyond those required for planned augmentation schedule, may be excluded by Contractor, for all MV circuits, and DC collection circuits.

Contractor shall place sectionalizing cabinets on each MV feeder, with an open bay for future augmentation, in accordance with the future augmentation schedule. Additionally, Contractor shall include a spare 6 inch conduit from the open bay of the sectionalizing cabinet to no less than 30 feet from the designed trenching system for separation, capped for future augmentation. Contractor shall also run separate 4 inch conduits for purposes of auxiliary power feeds to the planned augmentation schedule capacity, capped for future use.

Reinforced concrete manholes shall be provided, where required, so that cable may be installed without exceeding allowable pulling tensions and cable sidewall pressures. Each manhole shall have the following provisions:

- Provisions for attachment of cable pulling devices

- Provisions for racking of cables

- Manhole covers of sufficient size to loop feed the largest diameter cable through the manhole without splicing

- Sealed bottoms and sumps

Cable racks may be utilized in electrical enclosure vaults and manholes. Cable racks shall be installed on spacing of not greater than 36 inches and shall be secured to permanent wall surfaces with concrete anchors.

The installation specifications included in this article apply to all raceway system components.

Contractor shall provide outdoor, NEMA type 3R junction boxes where indicated or required for outdoor cable pulling or termination. Where boxes are subject to vehicular damage, four-inch concrete pipe bollards shall be installed near the corners of the boxes for protection.

#### **17.11.1 Routing of Above Grade Raceway and Conduit**

Contractor shall route raceway and conduit and coordinate conduit locations with other equipment and structures. Raceway and conduit shall be routed so that, except where they are being lowered to enter equipment, the lowest part of the raceway or conduit, including its associated supports and appurtenances, is at least 6 feet-8 inches above the closest floor or walking surface beneath it. Raceway and conduit may be routed a reasonable distance away from the supporting wall, ceiling, or structural member so long as the specified support is provided, interference with other equipment and structures is avoided. Raceway and conduit, including their associated supports and appurtenances, which must be routed closer than 6 feet-8 inches above the closest walking surface beneath it, shall be routed as close as possible to surfaces of walls, columns, and the equipment served.

All raceway and conduit shall be installed in a neat, rectangular form. All raceway and conduit shall be installed perpendicular or parallel to the major Equipment, building structure, and floor levels. Conduit shall enter enclosures and devices from below. Conduit entry to NEMA 4 enclosures shall be made by using hubs, except in areas where Schedule 80 PVC Conduit entry to NEMA 4 enclosures is allowed per Section 17.11 where terminal adapters and conduit fittings are allowed. Moisture pockets are to be eliminated by means of low point drain fittings.

Raceway system shall be routed to permit all required equipment maintenance access. Raceway shall be routed in common corridors to the maximum extent possible. Raceway shall also not block walkways or be routed at ground level without continuous protection or covers, such as checker plate. Cable entries to equipment shall be from the bottom when possible, and adequately sealed from the elements and varmints

#### **17.11.2 Electrical Cable Tray System**

An electrical cable tray system shall be furnished and installed in accordance with these Technical Specifications. The electrical cable tray shall be in accordance with the requirements of NEMA VE1 except that, in case of conflict between the requirements of these Technical Specifications and the requirements of NEMA VE1, the requirements of the latter shall govern to the extent of such conflict.

All trays shall be of aluminum construction, width and depth as required for application. All trays shall be designed with a safety factor of 2.0.

### **17.11.2.1 Covers**

Except as specified otherwise herein, all indoor vertical trough and ladder-type trays shall be furnished with covers. All indoor horizontal trays located under grating floor or insulated pipe shall be furnished with covers which, on trough and ladder-type trays, extend at least two feet beyond that part of the trays directly exposed beneath the grating floor or insulated pipe. Indoors, covers may be omitted on those lower trays of stacked trough and ladder-type trays where a covered tray at a higher elevation in the stack provides complete vertical shielding to the lower tray. All outdoor trays shall be furnished with covers. Trays which are specified to have solid bottoms shall also have solid covers throughout including all horizontal runs, all fittings, and all vertical runs. Covers shall be secured with clamps and screws shall not be used.

### **17.11.2.2 Tray Supports**

Tray supports shall be furnished and installed in accordance with these Technical Specifications. Contractor shall design the cable tray support systems within the allowable limits specified by the manufacturer of the support hardware.

Each support shall be capable of supporting the uniform weight of the trays, plus their nominal uniform cable loads, plus a 200-pound concentrated load without exceeding the allowable limit of any element of the support system. The safety factor of support hardware shall not be considered in determining the suitability of any element, except that the safety factor shall not be less than 2.0 for any support element.

Hanger rods shall not be smaller than 1/2-inch diameter electro-galvanized threaded steel rods.

### **17.11.3 Underground Ductbank**

Underground duct system materials furnished under these Technical Specifications shall be new and undamaged and shall conform to the following requirements:

Duct	Polyvinyl chloride, Schedule 40 PVC in accordance with NEMA TC-6.
Couplings	Plastic, for use with duct previously specified and "Duct-to-steel" adapters as required, including joint cement.
Spacers	Plastic high impact, interlocking, base and intermediate type
Factory bends and sweeps	Schedule 40 PVC, minimum radius in accordance with the sizing (minimum cable bend radii) and application
End bells	Plastic
Plugs	Plastic, high impact, tapered to fit end bell provided
Riser termination	Rigid hot-dip galvanized mild steel coupling
Riser bends	Rigid steel conduit elbows, factory or field made, compliant with the minimum cable bend radii 90 degree, entirely concrete encased below grade; hot-dip galvanized rigid mild steel in accordance with ANSI C80.1 and UL 6; the conduit interior and exterior surfaces having a continuous zinc coating with an overcoat of transparent enamel or transparent lacquer.

Reinforcement shall be provided wherever equipment is exposed to vehicle or maintenance loads.

Underground ductbank shall be used for all underground cable installations unless specifically noted otherwise in these Specifications. Directional boring shall not be used unless approved by the Owner and where there is a transition required and due to obstructions preventing excavation (such as a railroad). In these cases, raceway shall be High-Density Polyethylene, Schedule 80 in accordance with UL 651A.

#### **17.11.4 Raceway List**

Contractor shall submit a complete raceway list. The raceway list shall document the following:

- Raceway Revision
- Distinct Raceway Number
- Raceway Size
- Raceway Material
- Drawing Reference
- Circuits Carried

Contractor shall permanently label each raceway, or raceway section in the Project with the distinct raceway number assigned in the raceway list. The raceway list shall be furnished with the as-built documentation to the Owner.

#### **17.12 CABLE**

All cable runs shall be continuous. Straight-through splices or joints shall not be permissible. Cable shall be suitable for the intended application. Cables exposed to direct sunlight shall have ultra-violet resistant jackets. Cable shall be ozone resistant, fire retardant and suitable for use in wet and dry locations.

The cable shall pass the Institute of Electrical and Electronics Engineers (IEEE) Standard 383 ribbon burner flame test employing the 70,000 Btu/burner.

Conductors shall be concentric Class B stranded copper and shall conform to ASTM B 8.

##### **17.12.1 Medium Voltage Power Cable**

Power cable conductor sizes shall be determined from consideration of the maximum conductor temperatures under sustained and three-phase short-circuit/ground fault conditions, disconnection time of the protection and voltage regulation under steady state, and motor starting conditions.

MV Power cables larger than 4/0 AWG shall be single conductor construction with separate ground conductor. Cables shall be permitted to be copper or aluminum, and shall be sized in accordance with the cable ampacity study.

Conductor insulation shall be ethylene propylene rubber (EPR) or TR-XLPE. Conductor and cable jackets shall be thermoplastic CSPE, CPE, or XLPE, unless otherwise approved by Owner. The jacket material shall be flame and oil resistant. All jackets shall meet the requirements of ICEA Standards.

Insulation thickness shall correspond to the level required for 133% insulation level. 100% insulation shall be acceptable if protective device coordination clears faults in less than one minute, and for solidly grounded systems.

Insulation shielding shall be applied over the insulation of MV cables.



Insulation shielding shall consist of a nonmetallic covering over the conductor insulation and a nonmagnetic metal component over the nonmetallic covering. The metal component of the insulation shield shall be a five mil tinned copper tape applied over the nonmetallic covering in a helical wrap with a minimum overlap of 15% of tape width. Copper concentric neutral shall also be an acceptable means of shielding, in lieu of copper tape shield.

Minimum bend radius shall be calculated and observed for all power cable installations.

Conductors shall be terminated using compression fittings. Conductors shall be adequately supported and arranged in a neat and orderly manner.

MV cable terminations shall be fully insulated and terminated with a heat shrink termination kit as manufactured by Raychem (Tyco) or equivalent, in accordance with Exhibit G – Approved Suppliers of this Agreement. Air terminations shall have adequate clearance and creep distances.

Connection boots are preferred at switchgear and motor connections but when taping is required, all joints shall be taped with TPC Vulco wrap or approved self-vulcanizing tape.

### **17.12.2 Low Voltage Power Cable**

All low voltage power cables shall be rated 600V class, minimum 90 !C insulation for use on solidly grounded systems.

Conductor insulation shall be ethylene propylene rubber (EPR) or XLPE. Conductor and cable jackets shall be thermoplastic CSPE, CPE, or XLPE. The jacket material shall be flame and oil resistant. All jackets shall meet the requirements of ICEA Standards.

Minimum bend radius shall be calculated and observed for all power cable installations.

Conductors shall be terminated using compression fittings. Conductors shall be adequately supported and arranged in a neat and orderly manner.

Cable termination boxes for high current single conductor power cables shall be designed to avoid cable heating due to closed magnetic loops.

### **17.12.3 Fiber Optic and Network Interface Cables**

Cables for DCS and control system communications shall be routed in conduit. When redundant communications are required, they shall be routed separately along opposite walls of trenches and in separate conduits.

Fiber optic cables shall be insulated with a low smoke, zero halogen (LSZH) insulation which is flame retardant, moisture, and UV resistant. It shall be rated for outdoor aerial and duct, indoor vertical riser and general purpose horizontal according to NEC Article 770.

The type and wavelength of the fiber shall meet the DCS or equipment supplier's requirements.

Multicore fibers shall be pulled from area to area and terminated in fiber optic patch panels using the manufacturer's recommended cable breakout and termination kits. Fiber jumpers utilizing type ST connectors shall be used from the patch panel to the final device except where specific manufacturers' equipment requires a different type connector.

Copper communications cables such as for device net, RS-485, or other device communications shall have the same requirements as for fiber cable.

Fiber quantities shall be coordinated with the Owner as part of the Contractor developed communication plan (Section 19 – Security and Communication Systems). See Section 18 – Instrumentation and Controls for additional DCS fiber communication requirements.

#### **17.12.4 Control and Instrument Cable**

General service control cables shall be stranded copper conductor rated for 600 volts. Minimum conductor size shall be 14 AWG. Multiconductor cables shall be used for all applications. Color coding shall be Method 1 (ICEA S-73-532 Appendix E, Para. E.3.1) using color pigmented compounds with colors as designated by Table E-2. Control cable insulation and jacket construction shall be as follows:

150 °C Tefzel (ETFE) compound insulation and jacket, or

90 °C Cross-linked polyethylene (XLPE) compound insulation and low smoke, low halogen polymeric jacket meeting UL 1685 and IEEE 1202.

General service instrument cable shall be rated for 600 volts and consist of twisted pairs or shielded triads copper conductors with an overall shield. Shielding cables shall consist of aluminum-polyester tape and copper drain wire. Minimum conductor size shall be 18 AWG. The shield drain wire for each instrument cable shall be insulated with a spaghetti sleeve and terminated on an ungrounded terminal. The ground wire shall be carried from the source device to the destination device without external ground contact. Instrumentation cable insulation and jacket construction shall be as follows:

150 °C Tefzel (ETFE) compound insulation and jacket, or

90 °C Cross-linked polyethylene (XLPE) compound insulation and low smoke, low halogen polymeric jacket meeting UL 1685 and IEEE 1202.

Thermocouple extension cable shall be rated for 600 volts. Thermocouple cable shall utilize solid conductors with twisted and shielded pairs. Insulation shall be color-coded in accordance with the requirements of ANSI MC96.1. The shield wire for each thermocouple furnished for external connections shall be insulated with a spaghetti sleeve and terminated on an ungrounded terminal. Thermocouple extension cables shall utilize conductors which are 18 AWG or larger. Thermocouple extension cable insulation and jacket construction shall be as follows:

150 °C Tefzel (ETFE) compound insulation and jacket, or

90 °C Cross-linked polyethylene (XLPE) compound insulation and low smoke, low halogen polymeric jacket meeting UL 1685 and IEEE 1202.

Control conductor terminal connectors shall be compression type connectors properly sized for the conductor and the terminal. The connectors shall be constructed of copper and shall be tin plated. The interior surface of the connector wire barrel shall be serrated, and the exterior surface of the connector wire barrel shall be furnished with crimp guides.

Uninsulated terminal connectors shall be used for conductors terminated on devices equipped with individual fitted covers. Preinsulated ring type terminal connectors shall be used on all current and potential transformer circuits. All other terminal connectors for conductors smaller than 8 AWG shall be preinsulated ring type.

Preinsulated terminal connectors shall include a vinyl sleeve, color coded to indicate conductor size.

Each terminal block, terminal, conductor, relay, breaker, fuse block, and other auxiliary device shall be permanently labeled to coincide with the identification indicated on the drawings.

All cables shall be marked with the designated cable or run number and the destination (device at the opposite end of the cable). The marker shall be white, slip-on generated by a commercially available wire label maker; Brady, Panduit, etc. For example:

12AAPH (*cable run number*)

TO JUNCTION BOX 1BMTB03 (*destination*)

Individual conductors of multiconductor cables shall be marked with the designated functional wire name. Marking methods shall be the same as above. For example:

1AQ-PT004+ (*functional wire name*)

Where wiring passes thru terminal blocks that can be labeled (such as GE EB-25 style blocks), new wire names shall be neatly written or printed and affixed to the blocks.

Conductor identification shall be permanent, unaffected by age, heat, solvents, or steam, and not easily dislodged. Adhesive labels are not acceptable.

#### **17.12.5 Telecommunications Cables**

For telecommunications cables see Section 19 - Telecommunications and Security Systems.

#### **17.12.6 Cable Segregation and Separation**

Adequate physical separation shall be insured by use of separate tray levels, between power cables, control cables and instrumentation cables to minimize the effects of electrical interference and other disturbances including those associated with unbalanced circuit working. Cables associated with the Project DCS system installed in cable tray shall be routed and isolated in accordance with DCS manufacturer's circuit separation criteria.

The "A" and "B" bus MV and LV power systems shall remain segregated from the transformer to the switchgear.

#### **17.12.7 Circuit List**

The Contractor shall submit a complete circuit list for the Project. The circuit list shall document the following as a minimum for each circuit:

- Circuit revision
- Distinct circuit number
- Circuit origination
- Circuit termination
- Cable size
- Voltage level
- Cable data
- Circuit routing

The Contractor shall label each individual circuit with a permanently attached label indicating the circuit number at each circuit end. The circuit list shall be furnished with the as-built documentation to the Owner.

#### **17.13 TERMINAL BLOCKS**

Terminal blocks shall be furnished with white marking strips and, where permitted by the safety codes and standards, shall be without covers. Spare unused terminals shall be furnished on each terminal block for circuit modifications and for termination of all conductors in a multi-conductor control cable. Not less than two spare unused terminals shall be furnished for every ten terminals used.

Fuses may be mounted on terminal blocks. Neither step type terminal blocks nor angle mounting of terminal blocks is acceptable.

All terminal blocks, except internal terminal blocks in factory prewired electronic systems cabinets, terminal blocks for thermocouple extension wire, and specialty vendor items, shall be rated 600 volts minimum and shall have strap screw terminals. Terminal blocks for 10 AWG and smaller 600 volt insulated conductors shall be Marathon 1500 Series or approved equal. Terminal blocks for thermocouple extension wire shall be Buchanan Medium Duty with thermocouple contacts, or Marathon 200 Series with Omega Engineering Inc., Type TL terminal lugs for terminal blocks, or acceptable equal. Terminal blocks shall be appropriately sized for larger wire size or higher voltage insulated incoming conductors as necessary.

Where fuse blocks rated 30 amperes, 250 volts are required, they shall be modular type with bakelite frame and reinforced retaining clips. Blocks shall be Class H, 2-pole, Model No. H25030-2SR screw terminal fuse blocks as manufactured by Underwriters Safety Device Co. or acceptable equal. Blocks for other current and voltage ratings shall be similar in construction and by the same manufacturer.

### **17.14 GROUNDING**

The Project grounding system shall be an interconnected network of bare copper conductor and copper-clad ground rods as required by the step/touch potential study. The system shall be designed to protect Project personnel and equipment from the hazards that can occur during power system faults and lightning strikes. The grounding system shall be designed to ANSI/IEEE standard 80, 142, 665 and NEC Sec. 96A. The grounding system shall be continuous throughout the Project.

The Project grounding grid shall be designed for adequate capacity to dissipate heat from ground current under the most severe conditions in areas of high ground fault current concentrations, with grid spacing such that safe voltage gradients are maintained.

Bare conductors to be installed below grade shall be spaced in a grid pattern. Each junction of the grid shall be bonded together by an exothermal welding process, or irreversible compression type fittings and connections rated for direct burial, in accordance with IEEE 837

Grounding pigtailed shall be connected to the building steel, fences, steel supports, and all equipment inside of the substation. The grounding system shall be extended, by way of pigtailed and conductors installed in cable tray to the remaining Project equipment. Equipment grounds shall conform to the following general guidelines:

Grounds shall conform to the NEC and NESC.

Major items such as generators, switchgear, motor control centers, relay panels, medium voltage motors, and control panels shall have integral ground buses which shall be connected to the Project ground grid.

Electronic panels and equipment shall be grounded utilizing an insulated ground wire connected in accordance with the manufacturer's recommendations. In some situations, a separate small grid and ground rod, isolated from the main ground, may be required by the vendor. Where practical, electronics ground loops shall be avoided. Where this is not practical, isolation transformers shall be furnished.

Ground conductors shall be sized in accordance with the NEC, Table 250.122.

All single conductor ground wires installed in conduit shall be insulated or bare. Ground conductors included in a multi-conductor power cable may be uninsulated.

Remote buildings and outlying areas with electrical equipment shall be grounded by establishing local sub-grade ground grids and equipment grounding systems in a manner

similar to the Project area. Remote grids shall be interconnected with the Project ground grid to reduce the hazard of transferring large fault potentials to the remote area through interconnecting instrumentation and communication cable shields.

Contractor shall provide DCS system power and cabinet grounding in accordance with the DCS manufacturer's requirements.

All grounding materials required shall be furnished new and undamaged in accordance with the following requirements:

Rods	3/4 inch 10-foot copper-clad standard type. The copper cladding shall be electrolytically bonded to the steel rod or bonded by a molten welding process. Cold rolled copper cladding is not acceptable.
Cable	4/0 or 500 kcmil
Bare	Soft drawn copper, Class B stranding, ASTM BB
Insulated	Soft drawn copper, Class B stranding with green colored polyvinyl chloride insulation, UL 83, Type TW, THW, or THHN.
Bus and Bars	Soft copper, cross section not less than 1/8 inch thick by 1 inch wide, ASTM 8187.
Exothermal Welds Ground grid junction bonding	If exothermic is utilized, mMolds, cartridges, materials, and accessories as recommended by the manufacturer of the molds for the items to be welded. Cadweld heavy duty or Owner approved equal. Molds and powder shall be furnished by the same manufacturer. molds, cartridges, materials, and accessories as recommended by the manufacturer of the molds for the items to be welded. Cadweld heavy duty or Owner approved equal. Molds and powder shall be furnished by the same manufacturer. Alternatively, irreversible compression type fittings and connections rated for direct burial, in accordance with IEEE 837 will be acceptable.
Flush ground plates	Cadweld B-162 Series, B-164 Series, or Approved Equal.

All clamps, connectors, bolts, washers, nuts, and other hardware used with the grounding system shall be of copper.

### **17.15 LIGHTNING PROTECTION**

The lightning protection scheme for the Project shall be designed in accordance with the requirements of NFPA 780 and UL 96.

The lightning protection installation shall be UL Master Label certified. Contractor shall provide field testing to verify the integrity of the lightning protection system at Project completion. Lightning protection system shall be included in the Project Switchyard, at a minimum. Contractor shall as a minimum include surge suppression and protection for the balance of plant areas, but may be entitled to a change order if lightning protection systems are required for the balance of plant.

### **17.16 LIGHTING AND RECEPTACLES**

Lighting and receptacle systems shall be provided for the operation and maintenance of the Project and shall include distribution boards, luminaires, luminaire controls, luminaire mounting, receptacle outlets, switches, heaters, welding receptacles, fan and air-conditioner unit power supplies, etc., and all necessary cabling.

### 17.16.1 Lighting

Lighting controls for interior and exterior lighting shall comply with local energy codes, which includes occupied vs unoccupied setbacks per energy code requirements. Exterior luminaires provided to service exterior equipment shall be controlled by manual switches; use of timed switches to turn off any exterior lights shall be evaluated with owner prior to implementation. Exterior switches shall have weatherproof enclosures. Exterior luminaires shall be controlled by photocells. Interior and exterior luminaires shall include proper emergency and security illumination and uniformity.

The design of the lighting systems shall be in accordance with the following:

Illuminating Engineering Society (IES) The Lighting Library

LP-1 Lighting Practice: Designing Quality Lighting for People and Buildings

LP-2 Lighting Practice: Designing Quality Lighting for People in Outdoor Environments

LP-11 Lighting Practice: Environmental Considerations for Outdoor Lighting

G-1 Guide for Security Lighting for People, Property and Critical Infrastructure

RP-7 Recommended Practice: Lighting Industrial Facilities

RP-8 Recommended Practice: Lighting Roadway and Parking Facilities

RP-10 Recommended Practice: Lighting Common Applications

Maintained illumination values shall be used for calculations during the design phase. Illuminance calculations shall be performed for all spaces and shall include appropriate light loss factors. Field measurements are expected to be within -10%/+20% or target values. Lighting calculations shall be performed for maintained average illumination values as follows:

#### Location Description

#### Foot-Candles

Offices – Ambient/Task

30 / 50 @ 30" AFF  
(dimmable)

Conference Rooms

50 @ 30" AFF  
(dimmable)

(Ambient/Vanity) Restrooms, Lockers, lunch and break rooms

10 @ Floor / 30 @36"  
AFF, 20 @ 30" AFF

Hallways, Corridors

10 / 1 @Floor

Central Control Room

50 @ 30" AFF  
(dimmable)

Emergency Lights for access/personnel safety areas

1 @ Floor (Max:Min ratio  
of 40:1)

Stairways (Min when occupied/unoccupied)

10 / 1 @  
Tread/Landing/Floor

**Location Description**

**Foot-Candles**

Major walkways	1 @ Floor
Exit Doors (inside/outside)	5 / 1 @ Floor
Indoor High Bay Areas	25 @ 36" AFF
Indoor Low Bay Areas, Equipment Rooms, PDC's	30 @ 36" AFF
<b>Exterior Areas (Occupied/Unoccupied: setbacks as required per energy code)</b>	
Exterior Areas without maintenance lighting	1 / 0.3 @ grade
Exterior Elevated Platforms with switched maintenance lights on	10 / 1.5 @ grade
Exterior Equipment Areas with switched maintenance lights on	30 / 1.5 @ 30" AFG
Access Road Security Gate	10 / 3 @ 36" AFG
Roadways	1 / 0.3 @ grade
Parking Lots	1 / 0.3 @ grade

Luminaires with integral LED arrays/modules shall be used, unless otherwise approved by Public Service of New Mexico. Luminaires shall be listed in compliance with UL 8750. Lighting circuits shall be arranged such that a single failure does not leave any area in total darkness.

Lighting panels shall be sized with a minimum of 20% future spare capacity. This spare capacity shall be 20% additional spare breakers above and beyond the total number of assigned breakers. No breaker shall be designed to exceed 80% of its rating. Lighting panels loads shall be balanced within 15% across phases. Lighting circuits shall be arranged such that a single failure does not leave any area in total darkness.

Exterior lighting shall include all parking, roadways, Equipment platforms, and general area lighting around equipment and systems and shall utilize full cut-off optics.

Outdoor luminaires shall be selected to comply with the dark sky requirements in accordance with IDA (International Dark Sky Association) standards (<https://www.darksky.org/about/>). Exterior luminaires shall have a 3000 Kelvin color temperature, or lower. Outdoor lighting fixtures shall be equipped with a "house-side shield" to mitigate light trespass.

All outdoor lighting shall be controlled with a photocell that will automatically extinguish luminaire when sufficient daylight is available (see target illuminance values above). Exterior pole mounted fixtures shall be designed to comply with ASHTO to withstand winds in given region, have integral surge protection, vibration dampeners, and proper grounding.

Emergency lighting shall be provided for emergency access/personnel safety and operational functions that have to be performed in the control room and systems/equipment areas during a normal power failure. Minimum levels of illumination for the emergency lighting shall be in accordance with NFPA 101 with a minimum of 15.0 foot-candles in equipment areas where operational functions may have to be performed during an emergency.

Office areas and the CCR lighting shall use dimmable indirect luminaires to avoid glare on computer displays. Offices shall have ambient ceiling mounted fixtures, with supplemental under cabinet or desk task lighting.

Conference rooms light fixtures shall be selected to provide two modes of lighting, one for general lighting and the second with reduced lighting for A/V presentation.

### **17.16.2 Receptacles**

Adequate single-phase receptacle outlet quantities shall be provided for the satisfactory operation and maintenance of the Facility. Receptacles shall be served by sensitive ground fault circuit interrupter protection. Convenience receptacles shall be located at each power conversion station so that extension cords can adequately reach all areas requiring power for maintenance activities.

END OF SECTION



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## **18 INSTRUMENTATION AND CONTROL SYSTEMS**

### **18.1 GENERAL REQUIREMENTS**

This Section defines the general design requirements for the instrumentation and control equipment, including the Central Control Room (CCR) equipment.

The extent of the instrumentation and control Work shall be as defined in Section 02 – Summary of Work and Appendix 03- Project Data and Terminal Points.

Contractor shall provide, install, test, and place in operation all instrumentation and control equipment to support the operating requirements defined herein and in Section 02 – Summary of Work Project unless specifically noted otherwise in these Technical Specifications (TS).

The instrumentation and control equipment shall be designed such that the performance of all systems and equipment, particularly in terms of reliability and availability, are as defined herein.

Instrumentation and control equipment redundancy shall be provided as defined in this Section. Under no circumstances shall lack of redundancy in the instrumentation and control system effectively reduce the redundancy provisions of the main systems and equipment.

Instruments required for performance tests shall be provided. Performance test instruments shall meet the requirements of the applicable test codes.

The following Articles identify the main functional requirements for the instrumentation and control equipment for the Generating Unit equipment, and associated auxiliary systems. Specific requirements of the major systems are described herein, but the Contractor's scope for instrumentation and control equipment shall include all additional minor and support systems necessary to meet the Project operating requirements. Instrumentation and control equipment for all systems shall be Contractor furnished in accordance with the requirements of these Technical Specifications.

### **18.2 DESIGN OBJECTIVES**

The instrumentation and control equipment shall enable Project operations to be carried out in a safe, effective and reliable manner without invoking equipment or system operational limits. In addition, the control system configuration shall support the overall performance requirements detailed herein and performance guarantees detailed in Exhibit I – Acceptance Tests and Testing.

The design of the instrumentation and control equipment shall to the greatest extent employ recognized principles leading to:

- A safe operating environment for personnel
- Protection of the Project operating equipment from damage
- Production of power to meet the needs of the remote dispatcher
- Cost effective control system architecture, that is maintainable and allows for future expansion
- High availability
- Maintainability
- Power production at the lowest possible cost
- Minimization of operating and maintenance labor

Primary Project control and monitoring shall be accomplished from DCS operator stations located in the CCR (reference Appendix 03 – Project Data and Terminal Points for site specific requirements). This shall include DCS interfaces with 3<sup>rd</sup> party control systems such as the Generating Unit controls and other systems. This will also include PLC based systems, where provided.

Local controls and indications shall be restricted to those necessary for non-routine operations for which there is ample time for a roving attendant to accomplish. Local control systems where provided shall allow for proper system maintenance, testing, and commissioning and include provisions for equipment isolation and essential tripping functions. Where local controls are employed, sufficient alarms and indications shall be provided to the CCR operator on the DCS operator workstations to remotely verify the local system is configured for the intended operating role and functioning within design parameters.

The extent of remote manual controls, indications, automatic modulating controls, automated sequences and Project/personnel protection systems shall be such as necessary to enable the following operations to be carried out from the DCS operator stations in the CCR:

- All routine Project operations (including start up, normal shut down, emergency shutdown, and on load operations)

- All non-routine Project operations for local controls for which there is not ample time for a roving attendant to accomplish

Protection equipment shall be provided with an appropriate level of redundancy to secure personnel safety, economic protection of the systems and equipment, environmental protection, and a low probability of loss of generation. In particular, no single failure within the protection system shall lead to inadvertent operation of the protection system or cause the loss of the protection function.

All equipment shall be designed such that any interruption in electrical, pneumatic, or hydraulic power supply shall not result in damage to personnel, systems, or equipment.

Analog instruments, where used, shall include "Smart" electronics and include HART communications capability where available.

Use of switch type instrumentation for measurement of process parameters shall not be used unless required by code requirements or specifically approved by the Owner. In all cases transmitters shall be utilized with indication of the process value and alarms prior to each shutdown condition provided on the DCS.

Contractor shall supply the necessary instrumentation, control elements, and primary measuring elements required to meet the control system criteria. Protection and interlock systems with redundant transmitters and multipoint measurement where required to meet the following criteria against failure shall be furnished:

- No single fault shall cause the complete failure of any system

- All parameters that may directly cause a Project load reduction of greater than 50 percent shall have measurement point redundancy (2 out of 3, de-energize to trip).

- If in-service equipment fails, standby equipment shall start automatically without any system interference, wherever practical.

- If the measurement devices for control functions and indication function are combined, ensure the integrity of measurement by adequate channel redundancy in order to avoid Project trip or load reduction. For all the critical parameters, provide

three independent measurements. Control and direct indication shall be derived from the median value of measurements. High deviation from the median value shall be alarmed. The operator shall have the ability to override the median selected value and select one or more instruments.

## **18.3 CONTROL PHILOSOPHY**

### **18.3.1 General**

The overall design of control systems and equipment shall be based on a philosophy of centralized operation from DCS operator stations located in the CCR. The Project shall be designed with a level of automation required by operating personnel to control each Generating Unit and other Project auxiliaries from the CCR. The Project shall be capable of going from minimum stable load to full load in automatic control while all controllers are in automatic, permissives are met, and with redundant equipment in standby and ready for service. The operator, when required by the loading requirements, must initiate startup of major equipment and other balance of plant (BOP) equipment.

Systems controlled by programmable logic controller (PLC) shall not be used unless specifically noted in these Technical Specifications or approved by the Owner. Each PLC control system shall include a communication interface to allow all normal startup, operation, and monitoring of the associated equipment from the DCS. Additional supplementary control and monitoring shall be provided at the local PLC operator stations as required for additional manual operating and maintenance functions. Comprehensive alarming and fault finding actions for all equipment controlled through PLCs shall be available through the PLC operator stations. The DCS interface with PLC control systems shall be through redundant Ethernet gateways. All critical control and safety functions shall be hardwired. PLC systems shall be configured to allow operations from either the associated PLC operator station or the DCS operator workstation. The DCS shall emulate the local PLC system graphics and alarming functions to provide equivalent functionality to the local system for all normal operations and monitoring functions (including start up, normal shut down, emergency shutdown and on load operations). Primary operations for PLC systems shall be via the DCS operator workstations in the CCR.

Other features of the control strategy shall include:

- Hardwired safety interlocks and trip functions shall be provided as required by applicable codes and equipment suppliers

- Minimum reliance shall be placed upon roving attendants except as required to perform local system and equipment operational checks, following a prolonged outage or maintenance

### **18.3.2 Availability**

To maximize Project availability, the design of the control system shall incorporate functional and geographic distribution of controllers and inputs/outputs (I/O) to minimize the impact of failures. Single failures within each functional area shall not result in a reduction of Project availability. This philosophy shall also extend to electrical and pneumatic power supplies for each area.

The instrumentation and control system shall be structured to reflect the redundancy provisions of the systems and equipment so that no single fault within the control system can cause the failure of the duty systems and equipment and at the same time cause the standby systems and equipment to be unavailable.

**18.3.3 Minimum Staff Requirements**

To minimize staffing and provide a consistent operator interface platform, the DCS operator workstations shall be utilized as the primary operator control, display, alarm, and trending system for all equipment systems.

Contractor shall submit a control and monitoring plan which includes a list of all Project systems and summarizes what type of control system shall be utilized for each system (DCS, PLC, vendor proprietary, standalone local, etc.). For each system which is not directly controlled by the DCS, details shall be provided on how each system shall be interconnected (communications, hard-wire, etc.) with the DCS for central monitoring and control. The plan shall clearly demonstrate that the functional requirements put forth in these Technical Specifications are met. The plan shall include the Contractor's strategy for complying with NERC CIP Standards. Prior to implementation, the control and monitoring plan shall be approved by the Owner.

For the following systems, the distribution of control functions between DCS, PLC, and standalone controls shall be as noted unless otherwise approved by the Owner:

<u>System/Functional Area</u>	<u>Preferred Control System</u>
Generating Unit(s)	Unit Control System
BOP Systems	DCS

**18.4 DISTRIBUTED CONTROL SYSTEM (DCS)****18.4.1 General**

The Contractor shall furnish and install all hardware and software as required to for the new Project DCS system.

The DCS system shall utilize the Rockwell Automation (RA) ControlLogix PAC hardware platform with Device Level Ring (DLR) communication to remote I/O systems. The system shall be configured with Rockwell Studio 5000 programming and FactoryTalk SE HMI configuration software.

The DCS shall provide operator controls, alarm data, and Project coordination functions necessary to achieve safe and effective remote control of systems and equipment from the CCR as defined herein. The Contractor shall also provide all engineering, programming, startup, and commissioning services as required for a complete functional system without impacting ongoing operations of the existing generating Station.

The Contractor-furnished DCS systems shall also record and be able to subsequently display system and equipment data and produce logs of statutory and management information which shall include environmental emissions, the results of performance calculations, and all Project operating data.

The DCS shall utilize geographical and functional distribution of control components and I/O to minimize field wiring requirements and impact on Project operation due to equipment failures.

The DCS shall perform both analog and digital control and display duties.

The DCS system shall include diagnostic routines and fault indicators so that failures can be rapidly identified and rectified.

Contractor shall be responsible for directly implementing all DCS based system control including balance of plant systems. This requirement is to assure that all system programming maintains a consistent format throughout.

Contractor shall develop detailed the design basis for the DCS programming including functional descriptions, P&ID's, and logic diagrams for all balance of plant systems as required to meet the requirements of these Technical Specifications. Contractor shall produce one consistent non-overlapping or duplicating P&ID set incorporating Contractor's and subcontractor's/manufacturer's P&ID's as a final document set before the start of the DCS implementation Work.

Contractor shall develop a common tagging, programming, and operator station graphics standard. These standards shall be fully consistent with that currently being used within the existing Station DCS (if applicable). The standard shall be developed in coordination with and approved by the Owner. After Owner approval the Contractor shall apply this standard to development and configuration of the DCS system including all Contractor-furnished equipment packages.

Smart transmitters and analog I/O cards capable of passing smart transmitter signals shall be used in the DCS. A software application shall be provided and installed on the DCS workstation to enable interrogation and communication with a variety of field devices from various manufacturers. The primary use for this software shall be to simplify Project commissioning activities and assist in developing an instrument database to create as found/as left calibration results and instrument data. The Contractor as part of the design process shall supply one electronic database of all instrumentation and control equipment and devices installed. This database shall include as a minimum the manufacturer name and model, class, size, location, calibration parameters, and the instrument ID number.

The Contractor, as part of the design process, shall also complete one I/O database for use in the DCS configuration and startup / checkout.

DCS system power supply and cabinet grounding shall be installed by Contractor in accordance with the DCS supplier requirements. The physical installation requirements of the DCS supplier, including signal separation criteria shall also be applied by the Contractor.

All clocks in the DCS shall automatically be synchronized to a primary system master clock.

#### **18.4.2 Operator Interface**

The normal operator interface, located in the CCR, shall be via use of LED displays and keyboards or equivalent 'soft' key devices (operator workstations) offering a hierarchy of operator selectable control and display formats.

The Contractor shall furnish and install a minimum of two (new or additional) 24" dual-screen LED operator/engineering stations in the CCR. The Contractor shall provide all programming and commissioning services related to existing and Contractor furnished DCS equipment and operator stations to provide the specified functionality.

In addition, the Contractor shall provide necessary interface for the remote operation of the Project when specified.

#### **18.4.3 Typical DCS I/O**

Device I/O shall include the following as a minimum as applicable to the required Project equipment:

Typical DCS I/O													
Equipment Type	DO			DI					AI	AO	I/O Comm (5)	Comments	
	1	2	3	1	2	3	4	5					
Switchgear Mains	Close (1)	Open(1)		Closed	Open	Control Pwr Avail	86B Trip	Relay Trouble			X	Bus V, A, PF, W, VAR, Arc Flash Maint. Mode, etc. via relay interface	
Switchgear Bus Tie	Close (1)	Open(1)		Closed	Open	Control Pwr Avail	86B Trip	Relay Trouble			X	V, A, PF, W, VAR, etc via relay interface	
MV Transformer feeder	Close (1)	Open(1)		Closed	Open	Control Pwr Avail	Relay Trouble	Relay Operated			X	Transformer V, A, PF, W, VAR, etc via relay interface	
MV feeder	Close(1)	Open(1)		Closed	Open	Control Pwr Avail	Relay Trouble	Relay Operated			X	V, A, PF, W, VAR, Arc Flash Maint. Mode, etc via relay interface	
MV Motor (pump or fan)	Start (1)	Stop(1)		Running	Not Running	Control Pwr Avail	Relay Trouble	Relay Operated	Motor / Pump IB/OB bearings		X	Motor A, PF, W, VAR, etc via relay interface	
Transformer (6)				Provide individual alarm contacts for all mechanical monitoring devices such as oil level, oil temperature, winding temperature, etc.								X	Transformer operational telemetry, PMU data, via relay interface,
LV Motor	Start (1)	Stop(1)		Running	Control Pwr Avail								
Single Solenoid valve	Open or Close (2)			Closed	Open								
Dual Solenoid valve	Open (1)	Close(1)		Closed	Open								



Typical DCS I/O										
Equipment Type	DO			DI			AI	AO	I/O Comm (5)	Comments
	1	2	3	1	2	3				
MOV	Open (1)	Close(1)	Stop(1) (3)	Closed	Open	Control Pwr Avail	Running Open(3)	Running Closed (3)	Position <sup>7</sup>	
Modulating Control Valve or damper (motor or air operated)				Closed (4)	Open(4)				Position Reference	
Damper (open/close)	Open (1)	Close(1)	Stop(1) (3)	Closed	Open	Control Pwr Avail	Running Open(3)	Running Closed (3)		
Battery Chargers, UPS				Trouble						
Analog Transmitters									Based on process measurement	

- (1) Momentary outputs
- (2) May be Open or Close depending on what the failsafe position is on the valve
- (3) Use additional I/O if stroke time is greater than 60 seconds (typically 12" and larger valves or large dampers).
- (4) Optional - dependent on safety or failsafe requirements.
- (5) Serial/Network I/O to be used for monitoring only - not control
- (6) Transformer alarms may vary depending on type and size of transformer. See Section 17 - Electrical Systems for additional information.
- (7) Large bore

#### **18.4.4 DCS Performance**

The performance criteria which are to be applied to the DCS shall ensure that there is adequate computer free time, network utilization time, program run time, memory utilization, and cabinet power loading under worst case traffic handling conditions. A demonstration of these requirements shall be required as a part of acceptance testing at the DCS manufacturer's facility.

In addition to the acceptance testing at the manufacturer's facility, the performance criteria shall also be demonstrated as a part of the operating tests to be carried out on job Site as described in Exhibit I – Acceptance Tests and Testing.

#### **18.4.5 Validity of Data**

The DCS shall have the ability to recognize that a particular analog signal is incorrect and to take alternative action or to indicate the doubt inherent in any calculated results or data display using that particular signal.

#### **18.4.6 NERC Critical Infrastructure Protection (CIP)**

The requirements of NERC CIP applicable to "critical infrastructure protection" shall apply to Project design although such compliance designation has not been made at this time. Regardless of the final designation, the Contractor shall meet the physical security requirements defined by CIP standards for that level, including:

- All electrical and control rooms to be 6 sided enclosures; no false ceiling to common areas is allowed;

- Card reader access for all electrical and control rooms shall be provided as part of the security requirements (Administration Area and other rooms)

For the base scope proposed by the Contractor, the DCS, inclusive of data linked instrumentation Generating Unit control systems, shall comply with the current enforceable NERC CIP standards as applicable to a low impact facility.

Contractor shall submit a NERC CIP compliance plan which includes a summary of how the Contractor's design will comply with the requirements described herein. The plan shall clearly demonstrate that the functional requirements put forth in these Specifications are met. Prior to implementation, the plan shall be approved by the Owner.

#### **18.4.7 Fault Diagnostics**

The DCS shall include a comprehensive fault diagnostic system. The equipment to interrogate the fault diagnostic system shall be independent of the operator interface used to control and monitor the operation of the Project.

Diagnostics of the DCS communication system shall include network connections, switches, routers, and port status.

The diagnostic system shall have the ability to display the DCS system schematically and highlight faulty elements pictorially down to individual I/O card and point level. The system shall also have the ability to report faults on additional equipment or controllers (i.e. PLCs) connected to the DCS.

The DCS shall have the capability for remote diagnostics to be carried out by the manufacturer via secure internet connection.

#### **18.4.8 Equipment Tag-Out and Operator Notes**

The DCS shall include a tagging capability for equipment lockout and tagging. DCS operator graphics shall display equipment tag-out status. Whenever equipment is put into tagged-out mode, the DCS control logic shall set the associated outputs to a "safe" state to prevent inadvertent operation. The DCS shall include an equipment note system allowing the operator to write notes at each piece of equipment as to its status. Each piece of tagged equipment shall be able to accept a uniquely identifying tag number when in the tagged state. At each equipment faceplate station, a means of identifying a note exists shall be displayed and when clicked on shall display the note. A password protected system for adding or removing notes shall also be provided and a log kept.

#### **18.4.9 Fault Tolerance**

Dual redundancy or similar approach shall be applicable to all components within the DCS such that operator monitoring and control functions cannot be lost following failure of any one major component in the system. Control shall be affected by a standard series of processors and I/O capable of both digital and analog functions. Control functions shall be distributed around a number of control cards such that a failure shall only affect one major functional group. Each functional area shall have redundant control modules, power supplies, and communication hardware. Special attention shall also be paid to control of equipment that serves more than one major piece of equipment as to not require dual outages for repair or software/hardware upgrades to servers or switches that may require redundant pairs to be done at the same time.

#### **18.4.10 Operator Displays**

Operator workstation displays (graphics) shall show overview and group or detailed information to assist the operator in any type of control action required.

Standard displays shall show the operational status of the communication system. The communications parameters of each module connected to the communication system (on-line, off-line, failed, primary failed, backup failed) shall be shown.

Graphics and symbols shall be designed to provide consistency in appearance and functionality to that which has been established at the generating Station. All displays shall be approved by the Owner. All operator graphics, (including those developed for PLC based systems if approved by the Owner) shall have consistent graphic symbols and navigation.

In general, operator interaction shall be via process graphics which shall be based on and functionally resembling the final P&IDs. Operator interactions shall be designed to use standard DCS pop-up faceplates. Faceplates shall show dynamic process and status information about a single control loop and shall permit an operator to change control parameter values or mode for the loop. Faceplates shall be defined to pop-up when the appropriate location on a process graphic is selected with the pointing device.

Operators shall be able to easily access specific displays or groups of displays and graphics by pressing dedicated function keys or screen targets, selecting from a list of displays in directories or menus, or by typing display or graphic names.

All DCS graphic displays shall be globally available to all operator workstations.

It shall be possible to move between related displays and graphics of different detail levels or of the same detail level with a maximum of two operator actions.

It shall be possible to cycle through a predefined series of displays with a maximum of one operator action.

Special indication shall be used to indicate that a value is invalid or in an alarm condition. Alarm conditions shall be displayed consistent with color coding used on the sequence of events (SOE) and DCS alarm summary displays.

In addition to the standard process graphics defined above, specialized graphics shall be provided as defined in the following Articles.

#### **18.4.10.1 Overview Displays**

Overview displays shall provide an "at a glance" view of Project and major subsystem status and provide the operator with a graphical view of the process to help with training and the visualization to understand the effect of control action. These displays must remain uncluttered when designed for control operations. Overview displays shall be created for each major system and shall include but not be limited to the following (as applicable):

- General Project overview
- Each Generating Unit
- Project auxiliary electrical protection, metering, and relaying
- Generating Unit protection, metering, and relaying
- Substation monitoring
- Annunciator/alarm summary
- Project charging/discharging overview

DCS graphics for the Generating Units shall replicate the appearance and functionality of the Generating Unit control system graphics.

#### **18.4.10.2 Faceplate Displays**

Faceplate displays consist of controls and supporting data organized together for best control of the process regardless of their physical location within the Project. Faceplate displays shall include but not be limited to:

- Each Generating Unit
- Coordinated load control
- One-button start

#### **18.4.10.3 Permissive/Interlock Displays**

Each controllable device shall have an accessible permissive display dynamically showing all interlocks, trips and conditions that would prevent operator control or automatic actions. All conditions, including those that are not monitored by the system, shall be included in the permissive displays. The DCS control logic shall have a "first cause of trip" indication for each major piece of equipment. The first cause of trip information shall be operator accessible via operator permissive/trip displays.

#### **18.4.10.4 Trend and Tabular Displays**

Trend and tabular data displays are related to overview displays and shall be provided. Common tabular displays shall organize key data to match the Project mode while eliminating unrelated data. Trend data displays shall be available from overview and detail displays to allow viewing of real time data as well as historical data.

Real-time trend displays shall graphically display measured variables vs. time. Each trended point shall have a resolution that is individually selectable.

Displays for real-time trends shall be updated at the end of each sample period with the most current value numerically displayed.

The operator shall be able to select any point in the system for trending.

Each trend log shall contain up to eight points. The historical trending package shall also include features for data compression that allow the definition of the allowable change in a given value prior to requiring a data point to be logged.

Trend displays shall include tag groupings which can be considered meaningful when viewed by the operator and shall typically be grouped by system. Trend display tag groupings shall be developed by Contractor and approved by the Owner.

#### **18.4.10.5 Equipment Operating Status Displays**

As a minimum, the DCS shall provide equipment operating status displays for the following equipment:

- Breaker cycle counter for all 480V and 34.5kV breakers

- Motor starts and operating hours for all motors larger than 50HP

#### **18.4.11 Coordinated Load Control**

The DCS shall provide for effective coordination of the Generating Unit(s) meeting the operating requirements for achieving the desired charging and discharging of the Project in the safest and most efficient manner. The coordinated load controller shall interface with and respond to automatic generation control (AGC) command signals from the load dispatcher.

The coordination controller shall output its commands to the Generating Unit(s) such that the individual Generating Units respond to sudden changes in system frequency with the coordination controller superimposing corrective action according to its pre-set characteristics. The coordination controller shall output commands to other systems and equipment as necessary.

It shall be possible to enter the load demand either locally by the operator via the operating console or remotely by the load dispatcher. The method of entry shall be selectable and subject to high and low limits corresponding to the major equipment operating status necessary to obtain those loads.

When entering a new or revised load demand requirement it shall also be possible to enter a value for the desired rate of change of load during the transition from the previous load demand to the new or revised load demand. The range of loading rates available shall be sufficient to meet the required operating conditions of the Project.

The coordination controller shall be capable of Project-wide reactive control. A master station bus voltage controller shall be provided to coordinate the reactive capability of each Generating Unit to maintain a system voltage set-point.

The coordination load control system shall be capable of maintaining overall control to fully meet the operational criteria of the load dispatcher. Should the requirements specified above for load control (including the requirements for frequency regulation) conflict in any respect with the operational requirements of the load dispatcher, the requirements of the load dispatcher shall take precedence.

### **18.4.12 One Button Start**

The DCS shall provide a one button start function which will assist the operator in achieving initiation of a Project startup varying from one to all available Generating Units as typical and applicable to inverter based control.

The following features shall be included in the one button start function:

The sequence shall allow operations to pre-select supporting BOP equipment which will be operated as part of the one button start function, including but not limited to selection of equipment auto/standby mode as well as start sequence as appropriate.

Pre-selection of these modes will be from the individual system process graphics or from a screen(s) designed to assist in the selection process.

The function is only intended to support initial operation of the Project. The one-button start function will not be used for subsequent operation of BOP equipment or additional unit start/shutdown operations; rather these functions will be initiated by the operator from the individual process graphic displays.

The one-button start function shall not preclude the operator from pre-starting certain BOP systems, nor prohibit manual start-up of the Project.

The one-button start function can be stopped at any time prior to completion

The one button start function shall include a multiple unit overview graphic display that includes:

Ability to select which Generating Units will run upon initiation

Ability to select each unit's load between minimum and 100 percent

Provide indication of each individual Generating Unit start permissive list

Provide a BOP system start permissive list including:

- All BOP equipment required to support operation of selected number of units operating or in Auto/Standby
- It is acceptable that the Operator be required to move between the individual system graphics to align equipment and satisfy BOP permits
- Equipment lead/lag, auto/manual, start order, etc. pre-defined on individual system graphics
- For systems with multiple pieces of equipment starting order for said equipment will be selectable.

Single Start/Stop Button

- Start button is not functional until Generating Unit and BOP permits are satisfied
- When depressed BOP equipment is started as necessary or confirmed to be already in operation for the number of units selected (quantity listed below will be adjusted during detailed design)
- Sequencer will start systems and equipment in a pre-determined order. Sequencer steps shall not be dependent on previous steps (that is sequencer will not become hung up on system or equipment mal-operation).
- Actual Generating Unit start commands are not issued until the Generating Unit customer start permits are satisfied.
- Standard Generating Unit startup sequences will be executed by the Generating Unit start command from DCS.

### **18.4.13 External Interfaces**

#### **18.4.13.1 Interface with Load Dispatcher**

Hardware and software shall be provided to interface the load dispatcher to the DCS in real time to allow the exchange of information between the load dispatcher and the DCS. Facilities shall be incorporated such that load dispatching commands from load dispatcher may either be registered or blocked at the CCR. Similarly facilities shall be provided such that Owner shall be able to determine the extent of data available on-line to the load dispatcher. See Section 17 – Electrical Systems for additional requirements.

#### **18.4.13.2 Interface with Systems**

The DCS shall be provided with hardware and software for interfacing with the applicable Project systems including but not limited to those listed below for control and monitoring purposes:

- Generating Unit Controls

- Protective Relay Interfaces

For the listed systems that are equipped with operator interfaces, DCS graphics shall be provided by Contractor to mimic the operator interface to allow primary Project control and monitoring from the DCS operator stations located in the CCR.

#### **18.4.13.3 System Master Clock**

Provide a means for the DCS, and Generating Unit control systems, and other BOP equipment to be synchronized via an external time source. The synchronizing source shall be set by a Global Position Satellite (GPS). The system shall have multiple pulse, frequency, and NTP outputs. The system shall include antenna, antenna cable, and all hardware and software to connect to the DCS. The master clock shall be self-adjusting for signal propagation delays from antenna cable length. The system shall use a SEL-2488 Satellite-Synchronized Clock and a SEL-3401 display for this application or an Owner approved equal.

Generating Unit and auxiliary transformer protective relaying shall also be synchronized with this signal via IRIG-B connections. All other microprocessor relays can receive NTP synchronization via communication network connection.

The satellite clock system shall be mounted in DCS system cabinets.

The antenna and antenna cable provided shall be suitable for outdoor installation shall include lightning protection.

#### **18.4.14 Communications Network**

The proposed form of communications network used in the DCS shall be adequate to provide the extent of traffic handling and 'free time' required under the worst conditions envisioned. The communication network shall be fault tolerant such that no single failure of a device or cable shall prevent communication between the processing equipment and the operator stations.

Contractor furnished networking equipment shall be consistent with the existing generating Station network hardware and approved by the Owner. Where applicable all networking equipment shall meet NERC CIP requirements. Contractor shall provide a list of all proposed networking equipment prior to purchase, for approval by Owner.

Fiber optic communications is preferred for all DCS network communications. As a minimum, all control system communications which travel through process areas, high electrical noise areas, or external to a building structure shall be fiber optic.

A minimum of 12 fibers shall be provided on each DCS network cable. A minimum of 6 fibers shall be provided on each DCS remote I/O or communication link cable. DCS fiber communication cables shall utilize different colored jackets to distinguish them from backbone fiber cabling. Jacket cover colors shall allow for distinguishing between primary and secondary DCS communications.

Copper and fiber optic communications shall be furnished in accordance with the requirements of Section 17 – Electrical Systems and Section 19 – Telecommunications and Security Systems.

#### **18.4.15 DCS Cabinets**

New Project dedicated DCS cabinets shall be provided. DCS cabinets shall be located in a space conditioned area.

All cables from external equipment connected to the DCS shall be via a termination panel or interposing terminal strips and not wired directly to DCS I/O. Relays, interposing relays, optical isolators and other isolation equipment shall as far as is practicable be housed in these panels and can be part of the DCS supplied cabinets. Wiring from these intermediate terminal strips to the DCS termination cards shall be done at the factory and checked during the FAT. Exceptions shall be allowed for hardware that incorporates standard module blocks that facilitate permanent terminations but allow plug and play type I/O modules or for systems that utilize digital bus technologies.

Each DCS digital input and output circuit shall be fused. Fused circuits shall utilize LED blown fuse indicators blocks.

Each DCS analog input shall be field convertible to accept either a two wire (DCS/loop powered) or four wire (field/externally powered) signal. Each DCS analog output shall be internally short circuit protected.

Cabinets shall be provided with any required environmental conditioning based on the physical location of the cabinets. Cabinet layout and design shall consider access for maintenance and repairs.

Instrument and control devices (transmitters, solenoid valves, etc.) shall be powered from the DCS to the greatest extent possible. Dedicated fusible provisions shall be provided to wet digital output contacts. DCS bus or processor power shall not be utilized for this purpose. Distribution of digital output wetting contact power shall be by the DCS supplier based upon the Contractor's I/O list and its power definition for digital outputs. DCS supplier's power distribution shall be configurable so that DCS and field powered digital outputs can be located on the same card.

DCS cabinets shall be constructed with protective covers over 120V terminals and utilize "finger safe" terminal blocks.

#### **18.4.16 Spare Capacity**

The Project DCS shall include 20 percent installed spare I/O capacity by I/O type. The DCS shall also include 20 percent spare cabinet and terminal space at the time of shipment. It is not sufficient to only meet the capacity requirements on a total system basis, spare capacity and spare cabinet requirements shall be met within each geographic and functional cabinet grouping. Processing capacity and communication network capacity shall be sufficient so that use of spare I/O does not impact system performance.



### **18.4.17 Engineering Support**

The Contractor shall include two additional 24" dual-screen LED operator/engineering stations (EWS) for DCS, or alternatively if EWS functions are included in the operator stations separate computers will not be required. Each EWS shall be capable of being used for normal Project operations as well as engineering and maintenance functions. EWS functions shall include design of operator graphics, control strategies, storage and printing of associated documentation, and monitoring of the network and attached equipment. Each DCS EWS shall be network ready to allow automatic backup to servers on a daily basis. Each EWS shall include a dedicated 11 inch by 17 inch color laser printer for printing system documentation and graphic displays.

Electronic copies of user DCS user manuals shall be loaded on the EWS/server and be accessible to users via any workstation. The DCS shall provide direct access to operating instructions by a dropdown menu selection within a display window or Owner approved method.

Any PLC control packages provided shall be networked and integrated in such a way that all systems can be configured and maintained from a dedicated common PLC EWS.

All EWS locations shall be reviewed with and approved by the Owner.

Configuration of the control system shall be done from the EWS where it is possible to download the individual control algorithms to the control cards. The system shall always record the latest configuration such that faulty cards may be replaced and be reconfigured in minimal time. The system shall provide automatic documentation of all control configurations and settings.

The system shall use a menu driven technique requiring alterations to a value to be confirmed by the operator before implementation. The system shall maintain a record of all changes made.

Equipment shall be provided to effectively support and secure control software contained in all user programmable devices during its life cycle, i.e. design, development, installation, operation, maintenance, and modification.

Provision shall be made to protect and maintain the integrity of the media upon which software resides by the use of unique labels. Unauthorized access to the EWS and other software based systems shall be controlled by the use of passwords.

### **18.4.18 Data Storage**

#### **18.4.18.1 Data Historian**

The Contractor shall provide a data historian integral with the DCS for the Project with all necessary hardware and software to provide a high level of system performance. This shall include redundant historian databases, data concentrators/interfaces, and any additional hardware and software as required meeting the performance requirements of this Technical Specification.

Parameters to be recorded for the Generating Units and Project auxiliary systems and equipment shall include but not limited to:

- The sequence of all individual system/equipment alarms
- The position of all main control actuators
- The measured power output
- Operational hours and number of starts of the Generating Units

Operational hours and running status of all motor driven equipment.

All measured process parameters including pressure, temperature, flow, and vibration

First outs for all tripped equipment

Commands from the operator workstations

The furnished historian system shall include a minimum 30% spare tag capability.

Additionally, the Contractor shall provide an OSI PI data historian system interface with the DCS system enabling all data defined above for the DCS historian to be accessible by the Owners OSI PI data historian system.

#### **18.4.18.2 Alarm and Event Management System**

The alarm and event management system shall be supplied to record and subsequently display Project conditions, events, and alarms prior to, during, and subsequent to any operational incident. The logging equipment shall provide statutory and management information to permit appropriate operational decisions to be made immediately after an incident and/or post-incident investigations to be carried out.

The loggers shall produce a record automatically on initiation by any critical system/equipment alarm and on any action by the protection system to shut down items of systems/equipment. The loggers shall also record commands from the Operator Workstations (e.g. start commands, stop commands, set point changes, alarm acknowledgment, manual controls, etc.).

The DCS shall provide the user with an "on-demand" capability to generate operation event reports. Information within operator event reports shall include the workstation the event originated from, ID of the user which issued the command, and date and time the operator event occurred.

In particular the design of the system shall allow pre and post status information to be captured following a major incident.

Log messages shall be stored in a database which shall allow sorting in any order and printing at any time to a networked printer or the dedicated EWS printer.

Event and alarm logs shall be capable of providing time stamps to events and alarms with a resolution of 100 milliseconds for most and a smaller number at one millisecond for Sequence of Event (SOE) points as described below.

#### **18.4.18.3 Sequence of Event Recording**

In order to determine the precise cause of a trip, a SOE recording capability is required. The DCS shall include a number of SOE capable digital I/O channels that shall be dedicated to detecting and logging a trip condition and critical parameters to a resolution of one millisecond. These shall be trips associated with the Generating Unit supervisory Equipment, Generating Unit protection, interconnecting relays, and all other critical protective systems.

All control systems involved in SOE recording functions shall be tied to a common Project clock to achieve the desired resolution. All SOE points must be collected within the DCS and recorded in chronological order on a common SOE log.

#### **18.4.18.4 Archives**

Sufficient archive equipment shall be provided to record and subsequently display alarms, events and process variables necessary to meet statutory requirements and support the

achievement of effective control, monitoring, and trouble-shooting of systems and equipment.

All standard, alarm, and event logs shall be recorded in the archive.

Data shall be stored on redundant hard drives (minimum RAID 1) and include sufficient storage to keep all Project data for a minimum of two years. The system shall include provisions for back-up and storage of data files to optical media. Equipment shall be provided to effectively search for, select, display, and print the data.

#### **18.4.19 Alarms**

The DCS shall be the primary means of alarm display and storage. Alarms shall be generated from analog signals whenever possible. Alarms shall include those generated from digital inputs, derived from analog signals, or produced from logic within the DCS. Provision shall be made for at least seven levels of alarm (High-High, High, deviation High, Low, Low-Low, deviation Low, and loss of input) and the inclusion of a dead band on the resetting of an alarm.

Displays on the operator workstations shall be used to bring alarms to the operator's attention, allowing for prioritization of alarms to three levels (e.g. High, Medium, and Low). Visual and audible segregation of alarms by priority shall be possible. The prioritization of an alarm shall be based on the consequences that the operator can prevent by responding appropriately to it. Alarms shall be displayed in chronological order. Initiation of an alarm shall result in both an audible and a visual warning. Acceptance of an alarm shall cancel these. An alarm is re-settable if it has been accepted and has returned to the normal state. Any messages remaining after alarms have cleared are then required to re-pack. Alarms shall not have more than one entry in a system/equipment area page. It shall be possible to bypass an alarm such that its action is inhibited. It shall be possible to apply limited logic to an alarm to suppress its display when required.

The DCS alarm system shall also be configured to include system status alarms to alert the operator of any general system alarms or abnormal operating.

An alarm management philosophy shall be established for areas such as alarm priority, alarm trip points, re-alarm dead-band, and significant change. Alarm management shall follow the guidelines established in ISA-18.2-2009, Alarm Management. The alarm management philosophy shall be consistent with existing generating Station systems and approved by the Owner.

#### **18.4.20 EMI/RFI Interference**

##### **18.4.20.1 Electromagnetic Compatibility - Susceptibility**

Equipment shall not mal-operate due to radio frequency interference including that generated by adjacent equipment (including fluorescent lamps) and portable radio communication transmitters being operated in close proximity, and signals from distant radio, television and radar transmitters.

While the metal enclosure housing of equipment may provide an effective screen to radio frequency interference, the equipment shall also function satisfactorily when the housing is opened for maintenance and testing purposes.

All proposed equipment shall be type RFI tested to U.S. standards including transducers/ initiating devices.

**18.4.20.2 Electromagnetic Compatibility - Generation**

Equipment shall not generate interference at a level which could be detrimental to its own performance or that of other equipment, or health of personnel. Special attention shall be paid to variable frequency drives which may require filtering.

Interference at radio frequencies shall be reduced to below the limits specified by the U.S. standards. The grounding and cabling arrangements shall be such that interference does not result when cabinet doors are closed.

**18.4.20.3 Immunity to Electrical Supply Variation**

Equipment shall be capable of operating continuously without malfunction under variations in voltage and frequency, including transient interruptions in supply and cable-borne interference that may be reasonably expected to occur.

**18.5 CONTROL ROOM COMPLEX**

This article describes the Central Control Room (CCR) and Network and Engineering room.

**18.5.1 Central Control Room****18.5.1.1 General**

All activities associated with the routine operation, control and monitoring of all Project systems and equipment shall be performed from the CCR.

The scope of supply shall include all control room furniture including consoles.

The CCR arrangement layout including all furniture and fixtures shall be coordinated with and approved by Owner.

The CCR shall be sized to accommodate all Contractor and Owner furnished equipment. All CCR control console furniture shall be of the same manufacturer and model.

The CCR shall include appropriate noise attenuation to allow normal voice conversation.

The CCR shall provide the functions defined herein.

Reference Appendix 03 – Project Data and Terminal Points for site specific requirements.

**18.5.1.2 CCR Equipment**

The equipment in the CCR shall include (as applicable to the Project), but not be limited to:

- DCS control consoles and other HMI hardware;

- Generating unit operator workstation;

- Hard wired pushbutton station including trip pushbuttons for each Generating Unit trip, fuel gas compressors trip), and Project fuel gas supply isolation;

- Physical security equipment, including security camera monitor and main security gate access controls;

- Fire protection system main annunciator panel;

The Generating Unit Operator Station and hard wired pushbutton station shall be integrated in the existing CCR control console. The arrangement and configuration of the pushbutton station shall be coordinated with and approved by the Owner.

### **18.5.1.3 Lighting Design**

Particular attention shall be given to lighting arrangements for the CCR such that there are no glare or reflection problems from LED monitor surfaces when viewed from any normal operating position.

It shall be possible to adjust the lighting level to suit operational requirements. For additional control room lighting requirements reference Section 18 – Electrical Systems.

### **18.5.1.4 Control Consoles**

The Contractor shall furnish and install a control console in the CCR. The console shall be sized to accommodate all computing equipment associated with the operation of the Project and have the following features:

- A frame design that allows for maintenance access and system upgrades for the lifecycle of the Project
- Space for housing all computers, monitors, keyboard, mice, and computing accessories
- Space for two (2) Owner furnished computers for general use.
- Ample workspace for the operators to perform the day to day functions for the operation of the Project
- Conformance to the latest ANSI/HFES 100 ergonomic standard for computer workstations
- Durable high pressure and aesthetic plastic work surface (Corin, Avonite or Owner approved equal) with the fewest possible seams
- Neatly routed power, monitor, keyboard and mouse cables
- A curved rubber edge

A control panel shall be integrated into the Contractor supplied control console in the CCR to house the hard wired pushbuttons for each Generating Unit trip, fuel gas compressors trip (if applicable), and fuel gas isolation. Control consoles shall be Tresco 3600, Winsted Prestige series, or Owner approved equal.

### **18.5.1.5 Telephone and Radio Communications**

Space shall be provided for telephones and radio systems on the control consoles and in other Owner designated Project areas as defined in Section 19 – Telecommunications and Security Systems. The Contractor shall be responsible for all necessary hardware and wiring necessary for the installation of the Project telephone system.

For EPC Projects where an existing Owner system exists, the Contractor furnished telephone system shall be connected to the existing system wide VOIP telephone system.

The radio communication system shall include a repeater and antenna installed on the highest point of the Station building structure. The antenna and the repeater will be provided by the Owner. The Contractor shall install and commission the system including furnishing and installing all necessary cables and associated raceway.

### **18.5.2 Network and Engineering Room**

A Network and Engineering Room shall be arranged adjacent to the CCR. The room shall include the following as a minimum:

- One (1) DCS operator/engineering workstation and associated printer
- One (1) Generating Unit operator/engineering workstation

PLC engineering workstation  
Historian  
Database servers  
DCS network cabinets  
Generating unit controls network cabinets

The Network and Engineering Room may also contain the following as applicable based on Project configuration:

DCS I/O cabinets  
SCADA/RTU cabinet  
Corporate LAN/VOIP Network Cabinet  
Spare telecommunication cabinet space as defined Section 19 – Telecommunications and Security Systems

The engineering equipment shall be integrated into Contractor supplied control consoles. Lighting requirements for this room shall be the same as the CCR requirements defined above.

## **18.6 GENERAL TECHNICAL REQUIREMENTS FOR I&C SYSTEMS**

Instrumentation manufacturers shall be in accordance with Exhibit G – Approved Subcontractors.

Any special tools or equipment required for maintenance or calibration of I&C equipment shall be provided.

### **18.6.1 Electrical Power Supply**

All instrumentation and control systems and equipment shall be operated from the Project batteries and the Uninterruptible Power Supplies (UPS). For additional information on the UPS system, reference Section 17 – Electrical Systems. Generating unit and DCS cabinets shall have two power feeds in accordance with the selected supplier requirements.

### **18.6.2 Instrumentation**

Instrumentation and control components furnished shall be in accordance with the requirements described herein and shall be constructed to withstand temperatures and pressures encountered in actual service. Hazardous area type construction components approved and marked for use in hazardous class locations shall be provided where required by applicable code or if specifically detailed in the Technical Specifications. Unless otherwise stated in the equipment technical specifications, nuclear source instruments are not to be used and alternative solutions provided.

Where available from the manufacturer, each instrument shall be provided with a factory calibration certificate. In general, all analyzers and process instruments where local indication is available as a standard option, except temperature (thermocouples), shall have local indication.

In general, Contractor shall strive to utilize only one Subcontractor instrument type throughout the Project (e.g., all transmitters shall be from one manufacturer); this shall apply where practical to major equipment OEM Subcontractor's as well although it is recognized that select instrumentation must be used in certain control loops and sub-systems.

### **18.6.2.1 Analyzers**

Where process analyzers are required, provide instructions to ensure that the sampling is representative of the process.

Owner approval for each specific analyzer shall be obtained before the equipment is used in the design.

Where in-line pH or conductivity probes are used, they shall be supplied with hardware to facilitate in-service removal.

Any analyzer that requires consumable reagents shall be provided with a six-month supply depending on shelf life.

Analyzer probes that are prone to damage shall not be shipped installed, but properly packaged for installation later.

Any analyzers with probes that require frequent flushing or cleaning shall be provided with automatic means to do so.

### **18.6.2.2 Process Measurement Switches**

In general, continuously reading transmitters are required in lieu of point-type process switches. Where required by code, or other specific application, pressure and differential pressure switches shall have 1/2 inch NPT port connections with Type 316 stainless steel wetted parts. Switches shall be field adjustable, vibration resistant, and shall have high repeatability with minimal temperature effect. Switches shall have DPDT snap-acting contacts rated for 5 amps at 120 VAC or 1/2 amp at 48 VDC.

Float type level switches shall be of the magnetically coupled float and body construction with flanged carbon steel cages and stainless steel floats and internals. Level cages shall be provided with one-inch socket welded (SW) side and bottom connections. Switches shall be snap-acting magnetically coupled to float. Switches shall have DPDT contacts rated for 5A at 120 VAC or 1/2 amp at 48 VDC.

Switches shall be provided with NEMA designated enclosures suitable for the environments and hazardous areas designated in the equipment Technical Specification. Switches located in non-hazardous areas shall be rated NEMA 4.

## **18.7 INSTRUMENT RACKS**

Instrument racks for multiple instrument installations shall be floor mounted type. For single instrument installations, wall or column mounting of instrument racks shall be allowed where approved by the Owner. The location of the instruments and racks shall be accessible for operations and maintenance.

Instrument racks with groupings of four or more instruments shall be constructed with two vertical upright members with horizontal cross members. These racks shall include a terminal box where all instruments on the rack shall be pre-wired to terminal strips. Wiring from the instruments to the terminal box shall be completed in accordance with Section 17 - Electrical Systems.

### **18.7.1.1 INSTRUMENT ENCLOSURES**

Instrument enclosures shall be corrosion resistant, weather-tight, and allow access to the instruments from every angle. Enclosures shall be designed to accommodate instrument, instrument manifold, 2-inch pipe mounting bracket, tubing, and fittings. Enclosure lids shall be hinged and jointed to allow hands-free access to the enclosed instruments. Instrument enclosures shall be easily accessible, without exception.

Provide each enclosure with an integral 120 VAC thermostatically controlled space heater for protection against freezing. The space heater shall be wired to terminal blocks in a mounted junction box outside the enclosure.

## **18.8 CONTROL SYSTEMS**

### **18.8.1 Programmable Logic Controllers (PLC)**

It is a design requirement that where possible, all Project controls shall be done in the main Project DCS or the Generating Unit control systems. PLC based control systems are only to be utilized for small package type systems that are impractical to be implemented in the DCS.

PLC control systems shall consist of a processor, power supply, I/O cards, and communication to meet the requirements set forth in the Technical Specifications.

Each PLC system shall be fed from 120 VAC UPS and be equipped with redundant rack and/or IO power supplies.

Redundant rack, power supplies, and processors shall be provided where loss of the control system would reduce the redundancy provisions of the main systems and equipment.

PLC processors shall not be more than 70 percent loaded for the processing of all I/O, control and monitoring functions. I/O shall be partitioned such that redundant Equipment I/O is placed on separate cards.

PLC programs shall be completely annotated. Descriptions of the intent for each rung in the ladder program shall be included in the ladder (or adjacent logic for other programming formats). The program shall utilize the Contractor's tag numbers.

PLC programs shall be submitted for review. A complete Input/Output (I/O) list shall be provided. The list, at a minimum, shall include module type, slot/point numbers, contact descriptions, calibration data, point description, and point tag number.

If required in the equipment technical specifications, each PLC system shall be provided with a LED-based human machine interface (HMI). The graphic screen layouts shall be the equipment supplier's standard and shall be submitted for review. Alarm summary screens shall be provided. Symbols for pumps, valves, and other automated equipment shall be dynamic. The following color scheme shall be used:

- Red – Running/Breaker Closed/Valve Open
- Green – Off/Breaker Open/Valve Closed
- Yellow - Alarm
- Magenta - Bad Quality
- Gray - Loss of Communications
- White - Equipment Tripped/Valve Travel Failure

Communication links shall utilize Ethernet unless otherwise approved by the Owner. Devices to convert the communication links from copper to fiber shall be provided as required. In addition to the I/O list submittal requirements described in this Technical Specification, equipment supplier shall provide a list of all points available over communication links. The equipment supplier's I/O list shall include, as a minimum, the following information:

- Register/Bit or PLC Tag (applicable to tag based systems)
- Description
- Range (including any scalers and offsets to convert to a valid process range)



Engineering Units  
Set Description (logic 1 description)  
Zero Description (logic 0 description)  
Owner's Tag (assigned by the Owner)

Each PLC system shall be equipped with an Ethernet access port for the purpose of local/remote programming.

Where other control systems are writing to PLC registers, the PLC program shall clear those respective registers following equipment status changes. Other control systems shall make use of momentary commands when writing to the PLC registers. For example, an operator initiated start command from another control system to the PLC shall cause the PLC to start equipment. As part of the PLC start logic, the register used by the other control system should be cleared.

Paper and electronic copies of the PLC program files and documentation shall be provided to the Owner following completion of initial system startup and also after any subsequent field adjustments. The equipment supplier shall provide as a part the control package, one copy of programming and graphics software, licensed in the Owner's name.

Testing of the system software and hardware shall be performed at the equipment supplier's facility. System testing can be witnessed by the Owner at the option of the Owner. Systems shall not be accepted until the Project specific software and hardware demonstration has been fully completed and all comments have been reconciled or incorporated. System testing shall consist of:

- Testing all hard-wired inputs and outputs
- Verifying graphics are linked to the correct I/O
- Verifying system program

Copper and fiber optic communications shall be furnished in accordance with the requirements of Section 17 – Electrical Systems and Section 19 – Telecommunications and Security Systems.

### **18.8.2 Control System Enclosures**

Control system equipment, including DCS equipment, shall be mounted in a NEMA designated enclosure suitable for the environments it is intended for. In general, indoor enclosures shall be NEMA 1 for space conditioned electrical/control equipment rooms, NEMA 12 for dry plant process areas and outdoor enclosures or enclosures mounted in process areas shall be NEMA 4. If required, to maintain the enclosure temperature within the equipment's operating range, the enclosure shall be provided with an integral thermostatically controlled space heater and/or air conditioner.

NEMA 12 or NEMA 4 enclosures in process areas that require regular entry for routine testing or maintenance shall be provided with internal lighting and the interior painted white.

All I/O cards shall be factory wired to interposing terminal strips. Discrete inputs and outputs shall be provided with fuses for circuit protection and isolation.

### **18.9 INSTRUMENT & CONTROL EQUIPMENT INSTALLATION DATA**

Contractor shall submit control and instrument equipment installation data.

After initial submittal and receipt of comments, Contractor shall make required revisions and seek final approval from the Owner prior to equipment procurement and installation. All

installations shall be completed in accordance with the requirements of these Technical Specifications. The control and instrument installation data shall include the following:

### **18.9.1 Instrument List**

The instrument list shall document equipment tag numbers, equipment parameters, manufacturer, model number, serial number, location, installation detail number, procurement responsibility, installation responsibility, calibrated ranges, setpoints, and other applicable special features, comments and remarks.

### **18.9.2 Typical Instrument Installation Detail Drawings**

Typical instrument installation detail drawings shall include a bill of material and schematically indicate the instrument installation requirements. Provide and install all components as required to complete the instrument installations in accordance with typical instrument installation detail drawings and as noted in these Technical Specifications.

The instrument list shall include a reference to the specific installation detail for each field installed instrument.

All instrument installations must strictly comply with the instrument installation detail requirements.

### **18.9.3 Typical Instrument Rack Detail Drawings**

Provide instrument racks to accommodate all field mounted instruments. Submit typical instrument rack detail drawings that indicate acceptable instrument rack arrangements.

### **18.9.4 Instrument Rack List**

Field mounted instruments shall be installed in logical groupings on instrument racks. These groupings shall be identified on the instrument location drawings noted below, and in the instrument rack list. For each rack noted in the instrument rack list design instrument racks to be consistent with the design requirements identified on the typical instrument rack detail drawings and the requirements identified in these Technical Specifications. Contractor shall submit drawings detailing the arrangement of each rack prior to proceeding with fabrication.

### **18.9.5 Instrument Location Drawings**

The instrument location drawings shall identify the locations of field mounted instruments and instrument racks. Install the instrumentation and instrument racks at the locations shown on these drawings.

## **18.10 INSTRUMENT INSTALLATION**

All instruments shall be installed in accordance with manufacturer's instructions in addition to the instructions described herein.

ISA/ANSI standards shall be used a general guide for instrument installation details and practices. However, these Technical Specifications shall govern in case of conflict.

### **18.10.1 Installation Accessibility**

Field instruments, other than line mounted local indicators and inline devices, shall be grouped together as practical to facilitate mounting on instrument racks or standpipes (indoor service), or enclosures (outdoor service).

All process connections, including root valves and inline devices, shall be located in areas of convenience for operation, inspection, and serviceability. Instrumentation installed six feet or more above grade shall be accessible by means of permanently installed platforms.

Generally, instruments shall be mounted on a rack or standpipe at an elevation of approximately 4 feet, 6 inches above equipment base or platform.

Instrumentation shall not be installed on handrails, process piping (other than inline instruments), ladders, maintenance access ways, or equipment subject to vibration.

Sensing elements shall be located with adequate clearance for removal or replacement.

Indicating devices shall be positioned to be easily read by an operator.

Where LCD meters are furnished for outdoor application, meter faces shall be positioned to be easily read from operating levels or platforms and to avoid direct exposure to sunlight.

### **18.10.2 Calibration and Testing**

Preoperational adjustments, materials, and equipment test shall be made as specified herein and as required by governing codes, applicable laws, manufacturer's recommendations, and Prudent Utility Practices.

Calibration and test procedures that involve personnel or Work being furnished by multiple entities shall be coordinated so that crews and work schedule are performed on each piece of equipment in one calibration operation.

Work shall be performed when and as necessary to meet construction schedules, without regard to normal shift schedules.

Personnel performing the adjustments and tests shall be qualified and experienced. Adjustments and tests shall be performed as many times as is necessary to assure proper operation of equipment.

Piping and tubing shall be tested as required by code requirements and local and state regulations, and as specified within Section 16 – BOP Mechanical Systems and Equipment of these Technical Specification.

All instrument air headers and instrument supply takeoffs shall be blown out with clean dry air using full receiver air pressure. Larger headers shall be blown first, using full size valves. Smaller headers and takeoff shall be blown last. All supply headers shall be blown before any instrument connected to the header system is turned on.

All control and instrument pneumatic tubing, including tubing installed in all panels, shall be pressure tested for leaks. Instruments shall be carefully protected against overpressure during pressure testing. Air used to blow out or pressurize instrument air lines or headers shall be clean, dry, and oil free.

Control drives shall be checked prior to operation by running the drives through their full operating ranges and checking for linkage binding, interference, or failure to stroke over the proper range. After linkage has been adjusted and limit stops set, the drive levers shall be pinned or welded as directed by the service representative.

Control valves shall be disassembled as required for inspection or cleaning of the valve interiors. Adjustment of the valve top works, positioners, and other accessories shall be checked by operating the valves through their fully operating ranges.

Pressure gages and thermometers shall be checked for correct operation and accurate indication. The Work shall include testing and adjustment of these devices in accordance with the manufacturer's recommendations. Pressure gages shall be tested and adjusted after final installation.

All transmitters, pressure switches, temperature switches, level switches, limit switches, solenoid valves, and temperature elements shall be adjusted, calibrated, and checked for

correct operation, prior to operation, in accordance with the manufacturer's recommendations. A list of set points shall be furnished to the Owner as well as calibration sheets.

Where available from the manufacturer, instruments shall be provided with factory calibration certificates. Field calibrations for instruments furnished with factory calibration certificates are not required. For these instruments, verify the factory calibration during the I/O loop check. Only instruments found to require calibration shall be calibrated. All factory calibration certificates shall be submitted.

### **18.10.3 Instrument Identification**

A labeling system for identification of instrumentation and control equipment shall be established and be subject to approval by Owner.

All instrumentation and control equipment supplied shall be provided with means to identify the item, type number, serial number, and calibration details.

In addition to the manufacturer's identification, inscriptions to indicate the function of all items of equipment shall be provided as detailed below.

Permanent 316SS engraved instrument tags shall be mechanically fixed by screws (self-tapping acceptable), rivets, or 316SS tie wire. Items of equipment mounted inside cubicles shall have labels mounted adjacent to them described as above.

All instrument tagging shall also comply with the requirements listed in Section 03 – Project Design Basis of the Technical Specifications.

## **18.11 TESTING AND COMMISSIONING**

### **18.11.1 General**

Contractor shall be responsible for installation, testing, commissioning and placing in service of all instrumentation and control equipment whether directly furnished or supplied with the Generating Unit Equipment packages. In addition, demonstrate compliance with the specified requirements and contractual guarantees. These tests shall normally be witnessed by Owner or his nominated representative.

The equipment used for testing and calibration shall have performance parameters such as accuracy, stability, resolution etc., which render it more than adequate for the test requirements. Certified documentation shall be provided concerning the test Equipment used and the frequency of calibration.

Reference Section 23 – Mechanical Completion, Start-up, and Commissioning for start-up and commissioning requirements; and Sections 25 through 28 for technology specific performance testing requirements.

### **18.11.2 Testing in Manufacturer's Factory**

Owner (or Owner's Representative) witnessed factory acceptance testing shall be performed as a minimum for the following instrumentation and control equipment:

Distributed Control System

For each of the above listed equipment items, Contractor shall prepare and submit to Owner, at least ten weeks before date of functional testing, a test plan that includes a schedule of tests to be performed, test procedures, and test equipment to be used.

### **18.11.3 DCS Factory Acceptance Testing (FAT)**

The DCS shall be submitted to a functional test at the manufacturers' factory as detailed below and shall be witnessed by Owner or Owner's Representative.

Prior to the Owner witnessed test, Contractor in coordination with the DCS supplier shall verify that all programs, graphics, and logic configurations are fully functional and in accordance with Contractor's requirements and the requirements of these Technical Specifications prior to the start of the FAT.

After completing all system debugging and functional checkouts, the Owner witnessed FAT shall be performed.

The FAT shall as a minimum demonstrate the following:

- Verify cabinet fabrication per approved Project drawings
- Hard-wired I/O functionality
- Implementation of the graphics and system logic
- Operator interface functions
- All trending, reporting, logs, etc.
- Hardware failure situations and fail over
- Communication links to other control systems (Verification of communication links may be performed independently prior to the DCS FAT)

The FAT shall start with powering up the DCS system. Communications between all devices shall be verified. Next all I/O functional tests shall be performed.

All test equipment and personnel to simulate every hard-wired I/O point in the DCS system shall be provided. Tag links to the system, partitioning, logic states, signal types and calibrations shall be checked for correctness against the I/O database.

Testing for foreign device interfaces shall include, as a minimum, communications, scaling, and point-to-point verification. Depending on foreign device system requirements and hardware availability testing may involve manipulation of processor data tables to do point-to-point verification.

Logic and graphic testing shall utilize a processor based closed loop simulation system. The simulator shall mimic equipment functionality based on DCS outputs and provide feedback via DCS inputs.

Every logic sheet and system description shall be checked to verify that implementation is correct. Every graphic shall be checked to verify proper linking between graphic objects and I/O tags.

During the FAT provide and maintain a controlled punch list for documenting and reconciling errors found during the FAT. All punch list open items shall be addressed and resolved prior to shipment.

Personnel to support logic, graphic, configuration, communication, and simulation changes required during the FAT shall be provided.

A test shall be performed at the FAT to demonstrate that there are no system limitations related to computer free time, network utilization time, program run time and memory utilization under worst case traffic handling conditions. Obtain from the DCS supplier published standards with regard to their internal guidelines for the allowable limits for each

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of these parameters. The as-shipped DCS system shall meet these internal guidelines with a 20 percent safety factor to accommodate field modifications or additions.

END OF SECTION

## **SECTION 19 – TELECOMMUNICATIONS AND SECURITY SYSTEMS**

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## **19 TELECOMMUNICATION AND SECURITY SYSTEMS**

This Section contains the requirements for the Project security and communications systems.

### **19.1 SECURITY MANAGEMENT SYSTEM**

Within the Contract there is an allowance for the security management system that includes the design, supply, and installation of the security management system.

Provide an integrated security management system to be installed by Convergent and the security software shall be provided by Genetec. The system shall consist of the following features or as designed by Convergent and approved by PNM:

- Manage access control into and within the Project
- Manage intrusion detection monitors
- Manage video surveillance of the Project
- Manage employee ID badging and visitor passes
- Incorporates night detection capabilities and smart lighting features

The security management system shall include a monitoring terminal in the central control room (CCR). A minimum 30-inch flat panel screen shall be provided for monitoring the Project cameras.

The system shall also include the capability to monitor the security management system at the Owner's Security Operations Center (SOC) via fiber optic connection installed by Others. Contractor shall coordinate with the Owner and provide all Project equipment as required to provide the remote monitoring capability.

The security management system shall be UPS powered. See Section 17 – Electrical Systems.

#### **19.1.1 Access Control**

The main Project access road gate shall be automated with access control provided with separate entry and exit portals. The main gate shall include the following:

- Entry and exit portal card readers
- Entry and exit portal intercom
- Entry portal fixed camera to view the driver of entering vehicles
- Entry portal fixed camera to view the license plate of entering vehicles
- Exit portal magnetic sensing loop for gate activation
- Motor operated gate opener

The main gate shall be automated for operation from the CCR or Security Operations Center (SOC) or from the local key card reader.

The following areas within the Project shall be provided with access control:

- All buildings which include personnel door exterior entrances shall have card readers
- All buildings vehicle roll-up doors shall have card readers and open/close indication on the security monitoring system
- Central Control Room (CCR)
- Network and Engineering Room
- Switchgear rooms
- Switchyard Control Enclosure



Access door card readers shall be based on proximity contactless smartcard technology and monitored in CCURE 9000. Access control cables shall be routed in dedicated conduit with no other cable from other services. Access control shall be capable of assigning levels of access control based on employee ID and alarm to the CCR and SOC upon security breach or if access has been held open or forced open.

### **19.1.2 Intrusion Detection**

Intrusion detection shall be provided by the video surveillance system as specified in Section 19.1.3 Video Surveillance. The intrusion detection shall monitor the entire Project perimeter and shall be capable of detecting persons climbing over the wall. Detection of persons tunneling under the wall is not required.

### **19.1.3 Video Surveillance**

Provide a video surveillance system for monitoring Project activities. The system shall include, but not be limited to, the following cameras:

Fixed Cameras:

- Main gate entry and exit portals
- All exterior personnel and vehicle access door card readers

Cameras:

- Quantity of 5 Pan, Tilt, Zoom Cameras
- Quantity of 5 Thermal Imaging Genetec Cameras with Smart LED Lighting or Owner approved equivalent

Cameras shall be installed on buildings and poles around the Project. Locations of the cameras shall be coordinated with Owner. The cameras shall cover no more than a 180° arc and shall be equipped with a minimum 23x magnification capability. The cameras shall be environmentally rated at 140 °F and shall use a nitrogen pressurized dome to keep out dust. There shall be no visible camera shake at 40 mph wind speed at normal camera zoom

Provide a multi-channel digital recorder (capable of recording all cameras) as part of the security management system. The digital recorder shall be mounted in a 19-inch rack in the telecommunications room. The recorder shall have sufficient memory to record 30 days of video.

The video surveillance system shall have built-in video motion detection for activation of recordings, and initiation of alarms and events with efficient video collection, reducing the amount of redundant and irrelevant video.

## **19.2 COMMUNICATIONS SYSTEMS**

This Article defines the requirements for the communications systems and supporting infrastructure to be installed to provide voice and data telecommunications for the Project.

### **19.2.1 Description**

Communication systems shall include the following:

- Corporate LAN
- Corporate WAN
- Business Telephone System
- Portable Radio System

### 19.2.2 Contractor / Owner Responsibilities

The following table delineates the division of work between Contractor and Owner for the telecommunications systems:

<b>Division of Work</b>	<b>Responsibility</b>
Provide Corporate LAN Equipment (servers, switches, wireless access points, etc)	Owner
Provide Corporate LAN cable and raceway system including terminal wall plates at end users	Contractor
Provide Corporate WAN Equipment (servers, switches, enclosures, wireless access points, etc)	Owner
Provide Corporate WAN cable and raceway system including terminal wall plates at end users	Contractor
Provide Business Telephone Server Equipment (servers, switches, control panels)	Owner
Provide Business telephone cable and raceway system including terminal wall plates, rugged handsets and acoustic hoods	Contractor
Portable Radio System	Owner

Contractor shall prepare the equipment space into which the telecommunication equipment shall be installed by Owner.

In all cases, the telephone, and LAN, and WAN cables shall be installed by Contractor from the end device or receptacle to the telecommunications equipment room in the administrative building.

Contractor shall provide patch panels for Contractor installed fiber and copper cabling. See Section 17 – Electrical Systems and Section 18 – Instrumentation and Control for additional requirements.

### 19.2.3 Telecommunications Equipment Room

The Project shall include a main telecommunications equipment room located in the Switchyard Control Enclosure. Additional secure telecommunications panels/enclosures as needed shall be provided within the Project to serve the telecommunication network needs.

The main telecommunications equipment room shall be the service entrance to the outside telecommunication network provider. Contractor shall provide all interconnection raceway and materials from the third party network provider's interface and the telecommunication equipment room.

The main telecommunications room should be designed to contain four open racks (19 or 23 inches by 15 inches) and six IT cabinets (24 inches by 36 inches).

Telecommunications rooms shall be sized to permit three feet of access space on all sides of equipment rack or cabinet rows. Communication rooms shall be at least nine feet in height and shall be equipped with overhead telecommunications style cable ladder for cable access to the equipment racks or cabinets. Walls shall be equipped with backboards for the mounting of cable termination blocks. Lighting shall be positioned over the aisle ways and optimized for illuminating the front and rear of equipment racks and cabinets, and the wall mounted termination blocks.

Contractor shall provide a 120 VAC UPS distribution circuit breaker panel served from the station battery. Raceway and power cable from the UPS distribution panel to Owner furnished telecommunications equipment shall be by Owner. Contractor shall coordinate the size of the power feed to the UPS distribution panel with the Owner and account for the Owners telecommunications equipment power requirements when sizing the station battery and UPS system.

#### **19.2.4 Corporate LAN**

The corporate LAN shall be extended to all offices and desks where corporate computer network access is required. The Project LAN/WAN shall be hubbed on Owner furnished IT routers, switches, and servers located in the main telecommunications equipment room. Provide LAN/WAN cabling to the following remote Project locations:

Switchyard Control Building

Owner provided enclosures, switches, and wireless routers will be located strategically throughout the Facility. Contractor shall provide space for and UPS power to each Owner furnished enclosure. Backbone and horizontal LAN/WAN cabling shall be installed as described in these specifications with final power and LAN/WAN terminations by the Owner.

Contractor, with input from the Owner, shall prepare a Project network plan prior to completing the above and below grade raceway design.

##### **19.2.4.1 Backbone Cabling**

Provide for conduit and duct bank raceway systems to route fiber optic and copper cables from the main telecommunications room to remote telecommunications closets, enclosures, or panels.

Each duct bank used for telecommunications routing shall be installed with at least two unused (future) inner-ducts equipped with pull strings and water tight removable duct plugs in addition to the current cable requirements. Ducts and inner ducts exposed to sunlight shall be UV resistant.

Provide fiber optic backbone cabling.

##### **19.2.4.2 Horizontal Cabling**

Each office and workstation in the Project shall be equipped with independent voice and data communication cables. The cables shall be routed from each wall, ceiling, or floor receptacle via conduit in the walls to ducts, or hangers in the ceiling, or floor for end runs to the termination blocks or jack field located in the telecommunications room serving each office area. Offices and conference rooms shall have telecommunications receptacles mounted in each wall, ceiling or floor location where current or future equipment may need access to telecommunications cabling. Building areas intended for office cubicles shall have multiple telecommunications receptacles installed in the walls, floor or ceiling at locations convenient for routing jumpers through the cubical partitions. Cables shall be rated for the areas installed. This includes cables that must leave finished areas and pass through the process areas or outdoor in pipe bridges or duct bank.

Provide Cat 6A horizontal network cables. The cables shall be coiled with slack at the termination locations.

##### **19.2.4.3 Copper and Fiber Cable Terminations**

Copper cables other than 10 Gigabit cables shall be terminated on 66 blocks. The 66 blocks will be equipped with Siemon Pico protectors selected for the signals to be carried on the conductors. The protectors shall be connected to the Project ground grid.

10 Gigabit conductors shall be terminated in rack mount jackfields rated for 10 Gigabit terminations and jacks. The Contractor shall engage an Owner approved and industry certified installation company to terminate the 10 Gigabit cable. Termination devices and connectors shall be certified for 10 Gigabit operation.

Fiber optic cables shall be terminated in rack mount or wall mount optical jackfields equipped with SC connectors unless a different connector is specifically called for by the terminating equipment. Where fiber cables need to be spliced the splices shall be fusion splices enclosed in an Owner approved splice protector contained in a splice enclosure with fiber management trays or guides and cable strain relief.

#### **19.2.4.4 Equipment Internet Telecommunications Connections**

Equipment control systems that require connection to the internet or telecommunication systems shall include the necessary cabling between the vendor equipment and Owners corporate LAN/WAN or telecommunications systems.

#### **19.2.5 Business Telephone System**

Install the IP-PBX business telephone system in the telecommunications room with handset phones at the following locations (if not already existing):

- Control Room (qty 2)
- Network and Engineering Room
- Each electrical room or PDC
- Switchyard Control Enclosure

The business telephone system cable network shall be independent from any other network and use Cat 6A cable.

#### **19.2.6 Portable Radio System**

Owner will provide a two-way radio system for their operators use. Contractor shall coordinate the Project design to mitigate any interference with the planned radio system.

#### **19.2.7 Security Lighting**

Outdoor lighting shall be provided at all entry and exit points to the Project. Security lighting along the wall line is not required. Lighting requirements are provided in Section 17 – Electrical Systems.

#### **19.2.8 Security Signage**

Video surveillance signs shall be posted on or adjacent to the perimeter wall at intervals where at least one sign is visible at any approach of the wall at a minimum distance of 50 yards. A video surveillance sign shall be posted on the main gate. Refer to Figure 1 for a picture of the video surveillance sign.

No trespassing signs shall be posted in the manner as the video surveillance signs. Refer to Figure 2 for a picture of the no trespassing sign.



Figure 1

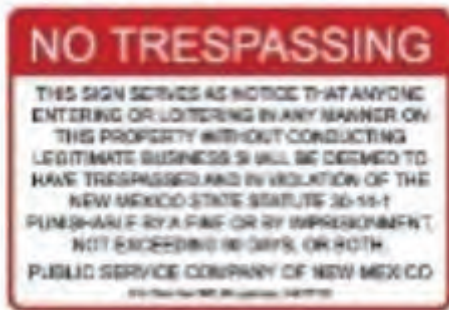


Figure 2

END OF SECTION

## **SECTION 20 – HIGH VOLTAGE SYSTEM**

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## **20 HIGH VOLTAGE SYSTEM**

### **20.1 GENERAL**

This Section provides basic technical details and guidance to minimum acceptable standards for the Project High Voltage (HV) system provided by the Contractor.

Owner will be performing all design, procurement, construction, and commissioning of the interconnection facilities beyond the Energy Delivery Point which is the Contractor furnished outgoing HV dead end structure.

All high voltage equipment shall be provided by Owner's approved manufacturers. Prior to the start of design, the Contractor shall meet with the Owner to review current standards and resolve any issues, make clarifications, etc.

Electrical design shall include the ground grid, which shall be developed as part of the entire Project ground grid.

The Contractor shall be responsible for all physical high voltage design, including all line voltage and current transformers, line trap, line tuners, etc. as required for metering and protective relaying.

The Contractor shall coordinate with the Owner during the design, installation, commissioning, and startup to provide overall coordinated protection and operational features described herein, and in Section 17 – Electrical Systems across the Contractor and Owner scope of supply.

Duct bank shall be used for distribution of power, relaying, and control circuits to the high voltage equipment. Use of underground cable trench/troughs is not acceptable.

Where necessary for electrical or personnel safety, protective fences shall be installed where appropriate around high voltage electrical equipment. Temporary fencing may be required in certain situations. At all times, the energized yard shall be secured from inadvertent entry.

Systems and equipment shall be designed to permit termination of the external cables suitable for the environment of the installation. Cable and conduit entrances into the control cabinets, or the primary enclosures of outdoor equipment, shall be bottom entry. Provisions shall be made to prevent water or condensation from entering the cabinet or enclosure. Cable and conduit entrances shall be rodent proof.

All electrical systems shall be designed to minimize the generation of harmonics and the effects of electrical interference between power and control/instrumentation circuits, and comply with U.S. standards, codes, and regulatory requirements governing electromagnetic compatibility. No equipment shall cause radio or television interference in excess of the limits specified in IEEE Std. 519, or any other U.S. Regulations or Standards.

### **20.2 SCOPE OF WORK**

The Contractor shall provide all major and minor equipment required for a complete high voltage equipment installation, unless specifically indicated herein as by Owner or Others.

Owner to organize and provide permanent telecommunication for the Project Switchyard Control Building are as further described in Appendix 03 – Project Data and Terminal Points.

Contractor's Scope is limited to providing a conduit from the Control Building to a specified demarcation point within the perimeter of the Facility.

If required, the Owner is to organize and provide permanent distribution power for the Substation Back Up Auxiliary Power to the Automatic Transfer Switch (ATS). Contractor's Scope is limited to providing a H-Frame including a disconnect and meter base located beside the Switchyard Control Building with a conduit to a specified demarcation point within the perimeter of the Facility.

### **20.2.1 Electrical Equipment**

The Contractor shall supply the following major electrical equipment associated with the high voltage system:

Each GSU shall be furnished with a Motor Operated Disconnect (MOD) with auxiliary contacts, 3 PHASE, Switches. MOD's shall be configured to allow local manual operation in the event of motor operator failure.

Each GSU transformer shall be supplied with surge arrestors adjacent to the high and low voltage bushings of the Transformer

Additional requirements for equipment supply are included in Section 17 – Electrical Systems.

All materials used must be same as or "equivalent to" present Owner approved high voltage equipment materials and from Owner approved vendors for high voltage equipment. Any "equivalent to" or variations must be approved by the Owner.

The basic insulation level (BIL) for all high voltage electrical equipment shall meet applicable IEEE standard and Owner requirements.

### **20.2.2 High Voltage Equipment Configuration**

The Contractor shall design, procure, and install a high voltage generator connection facilities, composed of the following elements:

High voltage equipment cable or aluminum pipe collector bus with all steel structures, foundations, and additional equipment required for Generator collector bus system.

High voltage air break MOD at each Generator Step-Up Transformer for termination of the Project-to-high voltage equipment connection to the Three Phase Generator Step-up Transformers.

Contractor shall also furnish an outgoing line breaker with the associated supporting structures

A high voltage line dead end termination structure shall be furnished at the Energy Delivery Point; the height of the conductor attachment points shall be confirmed with Owner and the structure shall have sufficient clearance and strength to handle single conductors with up to a 30 degree angle (for design flexibility), 10,000 pound phase tension, 5,000 pound groundwire tension.

Aluminum bus fittings shall be welded. Aluminum cable connections shall be welded. No bolted fittings shall be used.

The Contractor shall design all Project high voltage buses, jumpers, conductors, and connections for corona free operation.

All materials used must be same as or "equivalent to" present Owner approved high voltage equipment materials and from Owner approved vendors for high voltage equipment. Any "equivalent to" or variations must be approved by Owner.



The high voltage cable connections from the Station switchyard side of the Contractor furnished MOD including final termination of all transmission lines between the Contractor's first dead end structure and the Station switchyard components will be furnished and installed by the Owner. The Contractor shall coordinate with the Owner to provide the design for these cable connections.

### **20.2.3 High Voltage Equipment Features**

Control and Relay panels shall be built and wired by Owner approved panel vendors only. All Protective Relays to be used shall be coordinated with the Owner.

All below grade grounding connections shall be exothermic.

#### **20.2.3.1 Electrical Design**

The Contractor's Work shall be designed in accordance with the local codes and the directives of the local governmental agency that has jurisdiction, as well as, ANSI, IEEE, NESC, NERC/WECC, and Owner standards and practices, including, but not limited to, the following tasks:

Design electrical equipment plan and elevation drawings to accurately depict the high voltage Generator collector bus installation to the high voltage interconnection.

Design conduit and grounding installation.

Design one-line, three-line, Phasing, control schematics and wiring diagrams

Design all required relay/control panels for the entire high voltage equipment installation at the Generator collector bus. NOTE: Relay/control panels and material shall never be stored outdoors (even terminal blocks, etc.)

Provide detailed cable schedule, including a tabular list totaling cable by type and total anticipated length required for each item of high voltage equipment. Provide detailed cable schedule of fiber optic and other communication cables required for relaying and automation panels for each high voltage equipment. All control and communications cable shall be purchased, delivered, and installed by the Contractor. Control cable shall be shielded type. (NOTE: All control and communication cables shall meet or exceed Owner's specifications for control and communication cable.)

Design the required below-grade conduit for the Station switchyard interface. Coordinate electrical protection with the Owner for the high voltage interconnection circuit to the Station switchyard. Fiber optics links shall be used between the Project and the Station switchyard. See Section 19 - Telecommunications and Security Systems and Section 17 - Electrical Systems for fiber optics requirements.

Calculations shall be performed to support the electrical high voltage equipment design and shall include at a minimum:

Electrical clearance

Bus strength/ span length deflection

Insulator adequacy and/or recommendation (BIL ratings) and mechanical strength

Short circuit fault duty

Ground grid with step and touch potentials per IEEE 80

CT Saturation

AC and DC Voltage Drop and cable sizing

Auxiliary Power Requirements

Lightning Protection

Additional studies per Section 17 - Electrical Systems

### **20.2.3.2 Civil/Structural Design**

The Structural requirements for the high voltage equipment are found in Section 12 - Structural/Architectural. The specific requirements for the High Voltage equipment are listed below.

The Contractor's Work shall be designed in accordance with the local codes and the directives of the local governmental agency that has jurisdiction, as well as, ANSI, NESC, NERC/WECC, and IEEE standards and practices, including, but not limited to, the following tasks:

Design foundation details. Contractor shall verify the adequacy of the foundation design.

Design all high voltage equipment steel structures including bus and insulator elevations.

Provide calculations to verify the adequacy of Owner's Standard insulators and/or prepare specifications for new insulators to meet new high voltage equipment design criteria.

Design and prepare all civil grading plans for the Generator collector bus system

Develop new job Site Surfacing Plan which details limits of crushed stone material around Contractor furnished electrical equipment. Elevations of this material shall be at the design finished grades. The crushed stone shall be used throughout the high voltage equipment area, and in no area shall be any less than as determined by step and touch potential safety requirements. Beyond the limits of the crushed stone (at least three feet outside of the energized yard), Type II road base material shall be used.

### **20.2.4 Testing and Commissioning**

The Contractor shall provide testing and commissioning services for the installation of the Project high voltage equipment. The Owner shall witness all test and commissioning activities at the Generator collector bus system, and shall be provided a copy of the testing and commissioning reports. Test results shall be provided in the Owner's format and using Owner's approved procedures.

All end-to-end testing shall be performed by the Owner at the remote terminals in conjunction with the Contractor's testing at the Generator collector bus system.

All high voltage equipment protective relay calculations and settings shall be provided and installed/programmed by the Contractor at the Generator collector bus system.

Owner shall provide the relay settings for the transmission line relays protecting the transmission line leaving the Project collector bus. In support of establishing the relay settings, Contractor shall be expected to coordinate and exchange information with the Owner, as required.

For more information on the protective relay requirements, see Section 17 – Electrical Systems.

## **20.3 POWER SUPPLY SYSTEMS**

### **20.3.1 Ratings**

The voltage levels used shall be as indicated on the one-line diagram(s) included in Appendix 11 – Single Line Diagrams and as defined in Appendix 03 – Project Data and Terminal Points.

Insulation coordination shall be in accordance with U.S. Standards, with selection of the higher of the standard basic insulation levels for a specific operating voltage, unless through performance of an insulation coordination study the use of a lower BIL level is supported. Minimum BIL levels shall be maintained as specified.

Standard current ratings shall be used in accordance with U.S. Standards. Current ratings shall be continuous current ratings unless otherwise agreed with the Owner.

Circuits shall be adequately sized for their normal or maximum (including where necessary, harmonic contribution) currents, voltage regulation (steady state), and fault currents (including overloads) calculated during the design phase of the Work. Attention shall be given to maximum ambient temperatures, elevation, and the impact of solar heating on conductor ampacity. Conductors shall be selected from the Owner's list of standard conductors.

Circuit breakers shall be capable of making and breaking current under both normal continuous rated current and transient fault conditions. The suitability of circuit breakers for this duty shall be demonstrated by factory proof test evidence (manufacturer's proof of design) to be greater than the maximum calculated value of short-circuit current as determined by the system analysis studies. Design margin (minimum 10 percent) shall be added to calculated fault level when selecting equipment ratings.

Systems and equipment shall be capable of continuous operation at the highest service voltage for the system.

The voltage and frequency at the input terminals to electrical equipment shall not vary beyond the manufacturer's rated tolerances or limits during normal operation.

Electrical systems and equipment shall be designed to achieve and maintain satisfactory operation under such sudden input/output variations of load, voltage, and frequency, as may be met under service conditions, including those due to transients, surges, short-circuits, and other fault conditions.

### **20.3.2 Electrical Auxiliaries Systems**

The design of the electrical auxiliary systems, including the basic power distribution schemes, and the distribution and placement of feeder circuits, shall be reviewed and approved by the Owner during the design phase of the Work.

#### **20.3.2.1 D.C. Supplies**

125 Volt DC supplies shall be used for essential functions such as circuit protection, circuit breaker closing/tripping, SCADA, DCS control system cabinets, instrumentation, alarm, emergency lighting, and communication equipment.

See Section 17 – Electrical Systems for DC supply system requirements.

## **20.4 CONTROL AND PROTECTION**

### **20.4.1 Control**

Control and protection requirements shall be as defined in this section, and as further defined in Section 17 – Electrical Systems, and approved by the Owner.

### **20.4.2 Protection**

#### **20.4.2.1 Fault Protection**

The protection system shall be designed in accordance with the requirements of Section 17 – Electrical Systems.

#### **20.4.2.2 Surge Protection**

Surge protection, in the form of surge arrestors, shall be provided for all transmission line entries into the high voltage equipment.

#### **20.4.3 Revenue/Energy Metering**

Revenue metering shall be provided by the Contractor. Metering requirements can be found in Section 17- Electrical Systems.

### **20.5 BATTERIES**

Dedicated 125 VDC battery systems shall be provided by the Contractor for the HV system. 125 VDC battery systems shall be furnished in accordance with the requirements provided in Section 17 - Electrical Systems. Battery system shall be located in the switchyard control building and include spill containment, eye wash station, and exhaust ventilation system.

### **20.6 CABLING**

Cabling requirements are described in Section 17 - Electrical Systems.

### **20.7 GROUNDING AND LIGHTNING PROTECTION**

Grounding and lightning protection requirements are described in Section 17 - Electrical Systems.

For EPC Projects, the Contractor's dead end structure shall include provisions for termination of two shield wire ground conductors which will be furnished and installed by the Owner with the overhead lines connecting the Project to the Station switchyard.

Grounding and lightning protection of the Project HV interconnection facilities shall be provided by the Contractor.

### **20.8 CONTROL BUILDING**

A Project Switchyard Control Building shall be furnished by Contractor to house the control and protective relay panels, battery systems, and other components required to support the HV interconnection facilities. The control building shall be a NERC-CIP compliant prefabricated building and furnished in accordance with the requirements of Section 12 - Structural/Architectural. The control building shall include an emergency lighting system, emergency eye wash station, hydrogen and smoke detection, and have access control and video surveillance systems as defined in Section 19 - Telecommunications and Security Systems.

END OF SECTION

## **SECTION 21 – SITE MANAGEMENT**

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## **21 SITE MANAGEMENT**

### **21.1 GENERAL**

#### **21.1.1 Summary**

Contractor shall have control of the job Site and shall be responsible for the construction execution plan, management of job Site activities, coordination of contractors and subcontractors, and all works necessary for the construction, erection, testing, and commissioning of the Work. This includes provision of job Site facilities, job Site accommodations, job Site services, safety, environmental procedures, security, construction equipment, and cranes.

These requirements apply to the job Site and associated construction parking and lay-down areas.

#### **21.1.2 Construction Execution Plan**

The Contractor shall prepare and implement a Project specific execution plan, in narrative form with supporting drawings and graphics of sufficient detail to describe the plan for performance of the Work. To the extent that this information is provided in other scheduled documentation (i.e. Quality Manual), subsequent submittal of this information is not required. As a minimum, the plan shall describe:

- Source of craft labor and apprenticeships per Sections 11.8 and 11.9 of the Contract
- Field staff organization chart
- Material control plan including receipt, handling, and storage space requirements
- Sequence of construction
- Plan for shipping logistics
- Description of lift, heavy haul, and heavy rigging equipment and devices
- Plan for control of critical lifts
- Welding plan details and special process, if applicable
- List of independent inspection services

#### **21.1.3 Coordination**

The Contractor coordination responsibilities shall include:

- Coordination of Work of all contractors at the job Site
- Coordination with Owner for compliance and reporting requirements

### **21.2 JOB SITE RESTRICTIONS**

#### **21.2.1 Working Times**

Contractor's scheduling of on-Site activities shall comply with the Law during construction and commissioning of the Work. Contractor shall declare working times, and shall monitor the working hours and working conditions of all other contractors.

#### **21.2.2 Job Site Access**

Entry to the job Site shall be via a new gate off existing road(s). Any other temporary access shall be coordinated with Owner.

The Contractor shall prepare and implement a Traffic Control Plan for the Work and its associated facilities.

**21.2.3 Job Site Boundary**

Contractor, subcontractors, and its employees shall not trespass beyond the boundary of the job Site on to any adjoining property, and Contractor shall take any necessary action to prevent trespassing.

**21.3 CONSTRUCTION DOCUMENTATION****21.3.1 Scheduling of Work**

Schedules shall be developed and submitted as required in Section 04 – Project Management.

**21.3.2 Construction Progress Schedule**

Contractor shall describe its planned workweek schedule to meet the baseline Schedule. Construction progress Schedule reporting shall be in accordance with the requirements of Section 04 – Project Management.

If the Contractor anticipates working scheduled overtime, Contractor shall submit to the Owner a Schedule showing those plans in the monthly progress report. If the Contractor anticipates sporadic overtime, Contractor shall advise Owner via email with 48 hours minimum advanced notice.

**21.3.3 Construction Progress Reporting**

Contractor shall have a system to provide status of the construction activities. The system shall be based upon estimated installation quantities versus actual installed quantities. Progress reporting shall be in accordance with the requirements of Section 04 – Project Management. The results of this system shall be used to update the construction progress Schedule.

**21.3.4 Not Used****21.3.5 Photographic Documentation**

Contractor shall share with Owner its photographs of the Work with the submittal of its monthly reports. Contractor shall provide to the Owner any aerial and final Work photos taken if allowable by AHJ or Property Owner.

**21.4 JOB SITE SERVICES****21.4.1 Temporary Facilities and Controls**

Refer to Section 22 – Temporary Facilities and Controls for requirements.

**21.4.2 Job Site Clean Up**

Throughout the period of construction of the Work, the Contractor shall maintain the whole area of its operations, including those of its subcontractors, in a clean, neat and safe condition and shall arrange its materials in an orderly manner.

**21.4.3 Job Site Maintenance**

Contractor shall at all times ensure public roads adjacent to Site or any Project roads made available to give access to job Site are kept clean of any materials deposited by traffic from Contractor or its subcontractors.

Road surfaces cut by the Contractor for the installation of duct banks, etc., shall be promptly repaired. Roadbeds and drainage facilities damaged by the Contractor during installation of buried facilities shall be promptly repaired.



## **21.5 JOB SITE HEALTH, SAFETY AND ENVIRONMENTAL REQUIREMENTS**

### **21.5.1 Safety Requirements**

Contractor shall comply with health and safety plans in accordance with the Contract and Exhibit U throughout the duration of the Work. Contractor shall submit to the Owner a Project specific Site emergency action plan prior to Contractor mobilization to Site. Contractor shall comply with its Site emergency action plan throughout the duration of the Work.

### **21.5.2 Job Site Organization**

Prior to commencing the Work at the job Site, Contractor shall detail the job Site health, safety, and environmental responsibilities for all personnel and shall ensure each activity is covered by adequate levels of supervision.

Contractor shall appoint a full time job Site Safety Officer/Adviser to coordinate the health, safety, and environmental activities of all his personnel on job Site including his subcontractors. Contractor shall supply to Owner names and details of qualifications, certifications, competencies, experience, and training of persons so appointed.

### **21.5.3 Access and Egress**

Contractor shall afford Owner and any other subcontractors adequate and safe means of access to all parts of the Work to enable them to carry out their duties and responsibilities. Owner shall afford Contractor and any other subcontractors adequate and safe means of access to the Site to enable them to carry out their duties and responsibilities.

### **21.5.4 Permit to Work**

Permit to Work systems to be implemented shall include as a minimum, but are not limited to, the following:

- Confined Spaces Entry Permit
- Hot Work Permits
- Permit to Dig

Note: For areas controlled by Owner, the Owner's permit to Work shall be applied as the primary safety management tool.

Wherever potentially hazardous conditions exist as cited above and in accordance with Contractor's standard procedures, Contractor shall institute a 'permit to Work' system.

### **21.5.5 Road Work**

Contractor shall ensure suitable and sufficient traffic and pedestrian control measures in any area where the Work could cause a hazard to pedestrians and/or road traffic.

### **21.5.6 Lighting, Standby Equipment and Power Supplies**

Contractor shall provide suitable and sufficient temporary lighting and power supplies for all parts of the Work. Contractor shall also provide suitable and sufficient secondary temporary lighting in those areas where a failure of the primary artificial lighting would be of risk to the health and safety of any person.

### **21.5.7 Personal Protective Equipment and Fall Protection**

Contractor shall supply and maintain adequate personal protective equipment and fall protection equipment for the Work as required.

### **21.5.8 HS&E Training**

Prior to any person commencing Work on job Site, Contractor shall make provisions to ensure they receive appropriate and adequate induction/orientation training and information on health and safety hazards.

Contractor shall ensure that all personnel, including subcontractors required to operate systems or equipment for or on their behalf in connection with the Work, have received suitable and sufficient training to ensure their competence. Contractor shall maintain auditable records of such training for inspection by Owner.

Contractor shall provide suitable training to ensure all employees are trained and competent in worker environmental practices/procedures.

## **21.6 ENVIRONMENTAL PROCEDURES**

### **21.6.1 Environmental Compliance Manager**

Contractor shall provide an Environmental Compliance Manager dedicated to managing all Work permits and applicable regulations. The Environmental Compliance Manager shall be provided starting prior to job Site mobilization throughout the Work duration to Commercial Operation of the last Unit.

The Environmental Compliance Manager shall communicate to the Owner's Air Quality Construction Mitigation Manager as well as all other applicable regulatory requirements.

Contractor shall provide the resume of the proposed Environmental Compliance Manager to the Owner for review. Owner will have the right to request alternative personnel either upon review of the proposed resume or upon unsatisfactory performance of the Environmental Compliance Manager.

### **21.6.2 Environmental Reporting and Documentation**

Contractor shall be responsible for maintaining a thorough, complete, and organized record of all calculations, supporting documentation, and submittals required for regulatory agency compliance throughout the duration of the Contract.

Unless directed otherwise by the Owner, all submittals (i.e. reports, compliance plans, protocols, etc.) to the regulatory agencies will be submitted by the Owner.

### **21.6.3 Air Quality**

Contractor activities with potential to affect air quality shall conform to the Final Commission Decision.

### **21.6.4 Hazardous Materials**

Hazardous materials shall be controlled in accordance with the terms of the Contract.

### **21.6.5 Construction Noise**

Contractor shall comply with the local noise ordinance for the job Site. Contractor shall take commercially reasonable measures to minimize the noise level produced by its operations.

## **21.7 SECURITY PROCEDURES**

The Contractor shall implement the job Site security program and establish security rules. The Contractor's employees and subcontractors are required to abide by all security rules. Failure to abide by the Project security rules may warrant immediate discharge. Contractor shall cooperate with job Site security, including investigation of security issues by Owner or off-Site law enforcement.

The Contractor shall provide a fence at the perimeter of the job Site as an early activity and in accordance with regulatory requirements.

Contractor shall provide a temporary security gate at the job Site entrance. Maintenance of the boundary fence and Contractor's gate shall be the responsibility of Contractor. Any additional fencing within the construction job Site boundary shall be the responsibility of Contractor.

Contractor shall coordinate job Site security and access arrangements with Owner. Construction personnel shall enter and exit the job Site from these designated control points and are required to check in/out with the security officer. Vehicles, tool boxes, material deliveries, lunch boxes, bags, etc., may be inspected upon entrance/exit of the job Site.

The Contractor shall be responsible for all other security affecting storage of the materials, tools, and equipment over which it has care, custody, and control and the execution of its Work.

The Contractor and its subcontractors are responsible for an employee identification system that designates the employee with its firm.

At Substantial Completion of the Work, the Owner will assume all job Site security responsibilities.

## **21.8 COMBUSTIBLE AND FLAMMABLE MATERIALS**

### **21.8.1 General Requirements**

Contractor shall take precautions to protect the Work, Owner's property, and all personnel on the job Site from damage or injury due to fire.

Work procedures that minimize fire hazards to the extent practicable shall be used. Combustible debris and waste materials shall be collected and removed from the job Site each day.

Fuels, solvents, and other volatile or flammable materials shall be stored away from the construction and storage areas in well marked, safe containers. Good housekeeping is essential to fire prevention and shall be practiced by the Contractor throughout the construction period. The Contractor shall follow the recommendations of the AGC "Manual of Accident Prevention in Construction" regarding fire hazards and prevention.

Formwork, scaffolding, planking, and similar materials that are combustible but essential to execution of the Work shall be treated for fire resistance or otherwise protected against combustion resulting from welding sparks, cutting flames, and similar fire sources.

Temporary heating facilities shall not be left unattended.

The Contractor's supervisory personnel and a sufficient number of workmen shall be instructed in proper methods for extinguishing fires. When trained personnel leave the job, new personnel shall be trained in their duties. All workmen shall be instructed in the selection and the operation of each type of fire extinguisher for each type of fire that might be encountered.

### **21.8.2 Fire Protection Systems**

Prior to commissioning, Contractor shall establish the permanent fire protection systems that are necessary to comply with the Law, code of practice, relevant design Codes and Standards, and the requirements of the appropriate fire authority. Owner and Contractor shall agree on the appropriate time during construction that the fire protection systems must be operational.

### **21.8.3 Fire Fighting Equipment**

Contractor shall ensure that all fire-fighting equipment is inspected, tested, and maintained on a regular basis for the duration of the Work according to manufacturer's instructions, and ensure they are in satisfactory working order. Records of such inspections and tests shall be kept for reference and inspection by Owner.

Contractor shall provide fire extinguishers; and the type, number, and location shall be appropriate to the anticipated fire hazards. Water based fire protection devices shall be adequately protected from freezing.

The extinguishers shall be located prominently at appropriate locations that shall include:

- All switchgear and electrical control panels
- Each enclosed area
- Each area where direct and rapid access to fresh air is not available
- Flammable stores areas, particularly gas bottle stores, fuel tanks, or flammable materials
- Job Site offices
- Hot Work permit areas

The job Site HS&E Plan shall detail the fire fighting equipment Contractor proposes to provide.

## **21.9 MATERIALS DELIVERY STORAGE AND HANDLING**

### **21.9.1 Transport, Off Loading, Handling and Storage**

Contractor shall be responsible for the safe transport of equipment and materials to job Site, the cost of such transport, and for the offloading, handling, and temporary storage of any systems, equipment, or materials on job Site. Contractor shall be responsible for the offloading, handling, and temporary storage of any systems, equipment, or materials furnished by the Owner on the job Site.

Contractor shall store all materials and equipment in a safe and orderly manner at designated areas only, and transport only on an "as and when required" basis. Owner shall reserve the right to alter the location of material storage areas on job Site, if storage is not in compliance with manufacturer's recommendations.

Contractor shall repair and restore all areas allocated for temporary storage, at the end of the Contract, to as-found conditions, or to those indicated on the Plans if applicable.

Contractor shall arrange for the protection of all material against corrosion and mechanical damage during storage and erection.

Delivery to job Site or use on job Site of any dangerous material (as defined in the Transportation of Hazardous Materials (49CFR173) Regulations), shall conform to the Final Commission Decision.

### **21.9.2 Abnormal, Indivisible and Large Load Routes**

Where abnormal loads, for Contractor supplied equipment only, (i.e. loads outside the statutory limits for unrestricted movement over the highways and/or beyond the limits of carriage due to size or weight) require movement to the job Site, the following provisions shall also apply.

Contractor, in conjunction with Owner and the appropriate transport authorities, shall establish an acceptable route for delivery before manufacture commences, based on the

dimensions and weights of the systems and equipment supplied under the Contract. Contractor shall be responsible for verifying the load limits of all highways used.

Contractor shall be responsible for all permits associated with the movement of such loads, for Contractor purchased equipment only.

All costs associated with establishing abnormal load routes and any necessary repairs or upgrading of public or private infrastructure required to enable delivery of heavy and abnormal loads to the job Site shall be borne by Contractor, for Contractor purchased equipment only.

### **21.9.3 Damage to Public or Existing Job Site Roads**

Contractor shall repair any damage to roads, sidewalks, paved areas, boundary fences etc., and shall clean all roads and pavings etc., whether public or existing job Site, caused by or attributable to the transport of equipment or materials by Contractor or its subcontractors.

### **21.9.4 Storage Methods**

Except as otherwise specified, the storage method to be used for various materials and equipment shall be determined as follows:

Equipment and materials that would be damaged by outdoor exposure shall be stored indoors. When such storage would present an unreasonable building space or volume requirement, the equipment or materials may be stored for short term under weatherproof coverings on shoring or platforms. The coverings shall cover the top and sides of the equipment, shall be lapped to shed water, and shall be fastened securely around the base of the equipment.

Equipment and materials shall be stored in accordance with the original equipment manufacturer requirements and applicable recommendations related to maintaining Equipment Warranty

All small, loose items which could be easily lost, stolen, broken, or misused shall be stored in a lockable container.

All other equipment and materials shall be stored on open platforms or shoring

### **21.9.5 Specific Storage Requirements**

In addition to the general storage provisions listed herein, the Contractor shall maintain a master list of specific items of equipment and materials. The master list shall designate storage requirements for each class of item. Prior to use by Contractor, the master list shall be reviewed and approved by the Owner.

## **21.10 JOB SITE LIFTING EQUIPMENT**

### **21.10.1 General Requirements**

Lifting equipment shall not be used on the job Site unless a current annual inspection report has been supplied by Contractor. Contractor shall be responsible for ensuring that test certificates and annual inspections are valid and are maintained and renewed as required by Law to maintain validity.

All types of lifting equipment shall be suitably marked with embossed labels or other approved means to show clearly the safe working loads. As part of the Construction Execution Plan the Contractor shall provide a placement plan for lift cranes and heavy haul rigging equipment.

A lifting equipment register shall be provided and maintained by Contractor for all lifting equipment. This shall be available for inspection by Owner. Lifting equipment shall be subject to inspection, per Contractor's procedures, before and after use or on a daily basis. Lifting equipment shall be used or operated only by suitably trained and qualified personnel.

**21.10.2 Lift Plans**

The Contractor shall prepare a rigging and lift plan for all lifts in excess of 50 tons, lifts at or above 85 percent of cranes rated capacity, and all multiple crane lifts. At Owner's option, Contractor shall submit such plan to Owner not later than ten business days prior to the proposed date for the lift for review and comment by Owner.

**21.11 CONSTRUCTION EQUIPMENT**

Contractor shall ensure that all equipment and systems used in the execution of the Work are serviceable and safe and only used for the purposes for which designed. All equipment, systems, and machinery shall be serviced in accordance with the manufacturer's specification.

Systems and equipment with excessive hydraulic oil, fuel, or lubricating oil leaks shall be deemed unsafe and shall not be used until maintenance has been performed and leaks repaired.

Contractor shall be responsible for determining and satisfying applicable regulatory agencies that all operators of systems and equipment, or users of portable tools/equipment, are competent to use the equipment and are fully familiar with the equipment limitations, handling, and maintenance requirements.

END OF SECTION

## **SECTION 22 – TEMPORARY FACILITIES AND CONTROLS**

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## **22 TEMPORARY FACILITIES AND CONTROLS**

Contractor shall be responsible for all job Site works necessary for the construction, erection, testing and commissioning of the Work, including temporary construction facilities and temporary utilities.

### **22.1 ADMINISTRATIVE REQUIREMENTS**

All temporary facilities and controls provided by the Contractor shall remain the property of the Contractor and shall be maintained throughout the erection work. Any materials, equipment, or temporary structures installed or erected on the job Site or within permanent buildings by the Contractor shall be removed, on a mutually agreed upon timeframe, when so directed by the Owner to permit the execution of other work in connection with the Project or at the completion of the Contractor's work.

All Contractor temporary facilities and controls shall be in working, properly maintained condition and shall be of the proper type and size to perform the work. The facilities shall be regularly and systematically maintained throughout the work to ensure proper, efficient operation. Facilities and equipment which are inadequate or improperly maintained shall be promptly modified, repaired, or removed from the job Site and replaced at the Contractor's expense.

When the Contractor's Work is completed, all temporary facilities provided by the Contractor shall be removed from the job Site and the area shall be restored to a serviceable condition.

### **22.2 SUBMITTALS**

Prior to installation of any Contractor furnished temporary facilities on the job Site, Contractor shall provide a temporary facilities and lay-down drawing to the Owner for the record.

### **22.3 TEMPORARY UTILITIES**

#### **22.3.1 Temporary Power**

Contractor shall be responsible for the supply of temporary power and the installation and interconnection of all temporary electrical power equipment during construction. Use of portable engine driven generators shall be restricted and only used as needed. For the avoidance of doubt, this does not include grid emulation or similar technique for testing permanently installed equipment.

Owner will provide backfeed power upon electrical interconnection to the grid for commissioning and testing. Backfeed power shall not be used by the Contractor for construction purposes and shall be limited to an agreed quantity as identified in the Agreement.

Any tie-in to existing electrical supplies shall be performed by Contractor. Contractor shall be responsible for providing any and all transformers, breaker panels, and all other required electrical equipment.

The internal wiring of Contractor job Site trailers shall be terminated in unlocked fused disconnecting isolators mounted in a convenient location outside the building, so as to be accessible and completely weatherproof.

Temporary power facilities shall conform to the applicable safety and code requirements, shall be constructed to provide proper clearances and minimum interference with construction, and shall be acceptable to the Owner. All temporary wiring shall conform to



Article 305 – Temporary Wiring of the National Electrical Code, and comply with all Owner requirements and the Law.

Conductors shall be not less than 12 AWG copper and insulated for 600 volts. A fuse shall be provided for the protection of each circuit. All temporary supplies and temporary equipment shall be GFCI protected.

All temporary wiring in the yard, for primary temporary electrical distribution area shall be placed underground at a minimum depth of 3 feet 0 inches below grade with at least 4 inches of sand cover on all sides of grouped conductors. A continuous strip of yellow identifier tape shall be laid in the trench between the cable and grade. The trench shall be backfilled to grade level with all backfill compacted to a density of 85 percent. For field dimensional deviations exceeding 1 foot 0 inches, the Contractor shall submit as-built drawings to the Owner. Underground cable shall be NEC Type USE. Identifier tape shall be 6 inches wide and shall have the words "CAUTION – BURIED ELECTRICAL LINE" or similar wording in black letters on a yellow background. The tape shall be made of polyethylene or other materials impervious to typical solid constituents.

The Contractor shall remove at the end of the Work all temporary underground wiring, and yellow tape installed by them. If removal is not possible, the applicable as-built drawing shall clearly show remaining conductors. The Contractor shall ensure the remaining wiring is de-energized and terminated at each end via appropriate physical means.

### **22.3.2 Temporary Fire Protection**

Contractor shall be responsible for all temporary fire protection equipment required to perform their Work. All equipment shall meet the requirements of NFPA.

Contractor shall provide locations and any required enclosures for fire protection equipment as further described in Section 21 – Site Management.

### **22.3.3 Temporary Fuel Oil**

Contractor shall be responsible for furnishing all fuel oil for equipment and heating devices required to perform the Work. On-site storage of fuel oil shall be in compliance with Applicable Laws and OSHA Rules/Regulations.

### **22.3.4 Temporary Heating, Cooling, and Ventilating**

Contractor shall provide temporary heating, cooling, and ventilation to maintain the equipment and materials during the construction period prior to final heating, cooling, and ventilation systems being installed and operational, in accordance with equipment manufacturer requirements.

The Contractor shall provide all temporary enclosures and all heating facilities required for the efficient execution of the Work and to prevent freeze damage of equipment during construction.

Salamanders, open fires, or other methods which constitute a hazard to personnel or property shall not be used. All heating equipment shall be provided with adequate safeguards.

### **22.3.5 Temporary Lighting**

Contractor shall be responsible for all temporary lighting required to perform their Work.

**22.3.6 Temporary Propane Gas**

The Contractor shall provide any propane or other bottled gas required for his temporary facilities. Storage, pressure regulation, distribution, and use of propane shall be in accordance with the Law and jurisdictional codes.

**22.3.7 Temporary Telecommunications**

Contractor shall be responsible for coordinating the installation of any temporary telecommunications required to perform their Work. Contractor shall pay for all installation, removal, and demand & service charges related to telecommunication service.

Contractor shall obtain permission from the appropriate authorities before any radio or landline telephone system is used on the job Site. All Contractor supplied radio/radiotelephone systems shall be intrinsically safe. Contractor shall ensure that the proposed system will not cause interference to any instrumentation and control equipment installed for the permanent works during commissioning or operation.

**22.3.8 Construction Water**

During construction, Contractor shall provide and install such pipelines, valves, pumps and other equipment which it may require for its Work and may use such sections of the permanent distribution system as may be completed from time to time, subject to agreement with Owner. Once the Contractor has connected to the municipal system, the Owner will pay for the water but limited to an agreed quantity as identified in the Agreement.

Contractor shall take commercially reasonable precautions necessary to prevent contamination of the supply of water.

**22.3.9 Temporary Potable Water**

Contractor shall provide potable water distribution and any ice required for its Work.

Contractor shall maintain bottled potable water to fulfill daily and peak demands of its whole construction job Site at all times.

**22.3.10 Temporary Sanitation and Drainage**

Contractor shall be responsible and pay all charges for providing sewage treatment, surface water and contaminated drainage, and the disposal of all surface water and treated sewage during the construction period.

The provision and maintenance of all temporary and permanent drainage on job Site shall be the responsibility of Contractor, who shall ensure that the requirements of the regulating bodies are met in all respects, including all requirements for obtaining permits.

**22.3.11 Temporary Compressed Air**

If required for their Work, the Contractor shall provide all air compressors, fuels, lubricants, hoses, piping, and other apparatus required for supplying compressed air required for the completion of their Work.

**22.3.12 Initial Supplies**

With the exception of items identified as supplied by Owner in this Article 22.3, Contractor shall be responsible for the supply of all chemicals, gases, lubricants, and any other consumables required to support construction and commissioning of the Work. Additionally, all initial supplies, including the initial fill of Generating Unit lubricants and replacement of quantities consumed during checkout, startup, and testing shall be by the Contractor.

To the extent practicable, Contractor shall procure lubricants from Owner's preferred supplier, to be identified prior to commissioning activities.

## **22.4 CONSTRUCTION FACILITIES**

Contractor shall furnish and maintain all office accommodations, construction personnel/shop facilities, ground fabrication, and working areas as detailed in this section.

### **22.4.1 Contractor's Area**

Contractor shall prepare drawings showing the proposed locations of Contractor's and subcontractors' temporary ground fabrication and working areas, together with the positions and sizes of buildings, job Site vehicle parking, and storage areas, using the allocated land areas.

Any Contractor's office and shop facilities outside of the existing proposed construction and administration office building shall be leveled to a grade in accordance with the drawings and shall be surfaced with self-draining materials.

Contractor shall be responsible for the construction and maintenance of all temporary roads, security fencing, and lay-down areas required within the temporary and permanent Work areas, and for the permanent roads within the permanent job Site areas.

Contractor shall be responsible for obtaining any necessary permits for the temporary work areas.

Contractor's job Site facilities shall be properly maintained and suitably identified with Contractor's name and that of Owner.

Contractor shall reinstate temporary work areas, to the satisfaction of Owner, after removal of the temporary accommodations.

### **22.4.2 Field Offices and Sheds**

The Contractor shall provide any construction trailers or offices for the Contractor's field staff and technical representatives of generating unit supplier(s).

If required to perform their Work, Contractor shall provide change rooms and lunch rooms for staff and craft personnel. Contractor shall provide all sheds, storage vans, and fabrication buildings. Location of these facilities shall be as shown on an arrangement drawing provided to the Owner.

Contractor shall provide all required warehouse and indoor storage space as required for the Contractor and Owner furnished equipment and materials.

### **22.4.3 Construction Office Standards**

Contractor field office trailers shall comply with relevant standards and codes. Any office trailers or modular units that, in the opinion of Owner, are of substandard construction will not be allowed on job Site.

Construction office units shall be of flame resistant material recommended for a minimum fire protection of 30 minutes. All trailer units shall be fitted with smoke detectors, which shall be tested weekly. Contractor shall ensure that adequate and appropriate fire fighting appliances are available and accessible. Relevant fire appliance signage shall be easily visible.

There shall be no storage of flammable substances in any such unit that is solely for the occupancy of personnel. Compressed gas cylinders are not permitted inside construction trailers.

#### **22.4.4 Owner's Job Site Office**

The Contractor shall provide office facilities for use by Owner and Owner's Representatives. Provide two construction trailers or office space near the Work to house Owner's project manager, project engineer, and support personnel.

#### **22.4.5 First Aid / Medical Facility**

Contractor shall provide medical services and first aid for the entire workforce at the job Site during the construction and commissioning period.

Arrangements shall be made with suitably qualified emergency medical services to ensure that anyone requiring emergency treatment has access to these medical services that are on call to deal with such incidents.

A written medical contingency plan shall be established to be activated in case of serious incidents on job Site that may involve many casualties. Details in this plan shall include:

- Communication links with local management and local medical facilities who could provide medical support

- Arrangements for transportation of casualties to local medical facilities

The Contractor shall provide job Site-wide emergency medical response to all contractors working on job Site. These contractors will cooperate with the program established by the Contractor.

#### **22.4.6 Sanitary Facilities**

Contractor shall furnish, install, and maintain sufficient toilets and washrooms to accommodate all workers on job Site.

Contractor shall utilize third party contracted services to provide holding tanks and portable toilets for their own sanitary facilities.

Construction personnel will not be permitted to use permanent Project toilets and washroom facilities.

### **22.5 CONSTRUCTION AIDES**

Contractor shall be responsible for construction aides such as:

- Temporary Scaffolding and Platforms

- Temporary Hoists

- Temporary Cranes

### **22.6 VEHICULAR ACCESS AND PARKING**

Contractor shall be responsible for temporary access roads, haul routes, temporary parking areas, temporary roads, traffic control, staging areas, etc.

#### **22.6.1 Temporary Roads**

Any temporary road required by the Contractor to perform their Work shall be provided by the Contractor. Traffic along the existing job Site access road shall be coordinated with the Owner. Access to the job Site via the existing road must be maintained at all times throughout the Work. Traffic shall be restricted to designated areas. Unauthorized travel off designated roads is prohibited.

### **22.6.2 Temporary Parking Areas**

Contractor shall provide parking facilities in a compound outside the security fence of the construction job Site. Location and configuration of the parking facilities shall be subject to agreement with Owner.

### **22.6.3 Staging Areas**

The Contractor shall submit plans for lay-down space requirements. Contractor shall also identify any job Site assembly requirements and/or on-site ground fabrication areas. Staging area locations and configuration shall be subject to agreement with the Owner.

The supply and maintenance of the dunnage required to keep the materials in a level position, off the ground shall be the Contractor's responsibility. Clean up during and after the construction period shall be the Contractor's responsibility.

## **22.7 TEMPORARY BARRIERS AND ENCLOSURES**

When required, temporary barriers shall be designed, furnished, installed, and removed by Contractor. The barriers shall have satisfactory strength and properties to meet their intended use. Barriers may include:

- Barricades
- Fencing
- Protective walkways
- Security barriers
- Security enclosures
- Tree and plant protection

### **22.7.1 Temporary Fencing**

Contractor shall provide temporary construction fencing as required by any permits. Contractor shall also provide temporary fencing to control public access to the areas of the job Site where construction activities are being performed. Temporary fencing shall be suitable to inhibit access to the job Site.

## **22.8 TEMPORARY CONTROLS**

### **22.8.1 Erosion and Sediment Control**

The Contractor shall apply for any Erosion and Sediment Control permits for the overall Work required in addition to any Owner permits. The Contractor is not only required to follow the requirements of the permits; but, to perform their scope in full compliance with Applicable Laws.

### **22.8.2 Storm Water Pollution Prevention Plan (SWPPP)**

Contractor shall be responsible for implementing the SWPPP. Refer to Section 11 – Site Work for further technical details.

### **22.8.3 Spill Prevention Control and Countermeasure (SPCC) Plan**

Contractor shall be responsible to submit a SPCC plan to jurisdictional authorities for their activities prior to starting work. Contractor's SPCC plan shall coordinate and comply with the Owner's SPCC plan and environmental policies. The plan shall be submitted to the Owner for approval prior to submitting to jurisdictional authorities. The Contractor plan shall include plans to handle contaminated soil and water encountered.

#### **22.8.4 Pest Control**

Contractor shall be responsible for nuisance pest control.

#### **22.8.5 Construction Air Pollution Control**

Contractor activities with potential to affect air quality shall conform to the Final Commission Decision.

### **22.9 WORK IDENTIFICATION**

#### **22.9.1 Temporary Sign Boards**

The erection of signboards or posters shall conform to the Contractor standard in all respects including the size, shape, location, wording, and colors. Proofs for signage that is reasonably readable by the public shall be submitted to Owner for review. Owner may request alterations to signage or request that it not be installed if deemed inappropriate.

END OF SECTION

## SECTION 23 - MECHANICAL COMPLETION, START-UP, AND COMMISSIONING

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## **23 MECHANICAL COMPLETION, START-UP, AND COMMISSIONING**

### **23.1 SUMMARY**

This Section outlines the requirements for system checkout, system pressure verification, electrical continuity, and setting of initial set points, mechanical completion, fit for service, and Commissioning activities for the Work.

### **23.2 REFERENCES**

#### **23.2.1 Abbreviations and Acronyms**

ASME B&PV – ASME Boiler and Pressure Vessel Code

OEM - Original Equipment Manufacturer

#### **23.2.2 Reference Standards**

Not Used

### **23.3 SUBMITTALS**

The following general items:

- Field reports from Contractors Field Services Personnel

- Field reports from field services personnel for the Contractor and its subcontractors

- Trial operation reports

- Performance Test reports

- Project documentation records for system turnover packages

### **23.4 GENERAL REQUIREMENTS**

#### **23.4.1 Mechanical Completion and Craft Labor Support**

The Contractor shall be responsible for Mechanical Completion of the Work.

The Contractor shall render all services and do all Work in placing each item of equipment installed, including all auxiliaries and piping, in operating condition. Equipment shall be prepared for operation as recommended by the manufacturer or vendor and shall be operated in accordance with the recommendations of the manufacturer or vendor.

The Contractor shall be responsible for providing craft support for Mechanical Completion of its Work.

#### **23.4.2 Site Commissioning Manager**

Contractor will establish the position of Site commissioning manager. The Site commissioning manager shall manage commissioning of all systems including those within the Work of the Contractor, and, as described in Article 23.6, shall manage the system of operational control.

#### **23.4.3 Sequence and Duration**

Individual systems and items of equipment shall be completed in a sequence that will permit systematic checkout and trial operation of each such component.

The Owner and Contractor shall mutually agree on a date when Owner's operating personnel will be available to assist in the start-up activities. The Contractor shall provide all other workmen required to make adjustments and to correct deficiencies during the equipment and Project checkout and operation. It is anticipated that checkout and trial operation will be in progress continuously over extended periods of time. The workmen



required of the Contractor shall be on the job Site as required by the Site commissioning manager.

The Contractor shall provide temporary instrumentation and gauging devices and any electrical power supply required during start-up and trial operation of the equipment as required by Contractor for its own testing.

Electrical power supply equipment and systems, and control and instrumentation equipment furnished or installed under these Exhibit A - Statement of Work and Specifications shall be tested and placed in operation by the Contractor.

#### **23.4.4 OEM Commissioning Field Support**

Contractor shall furnish and coordinate OEM Field Services as required to perform start-up and commissioning activities of the furnished equipment and Generating Unit(s) prior to performance and emissions testing.

### **23.5 OPERATION CONTROL**

#### **23.5.1 System of Control**

The Site commissioning manager shall establish a system of control (lock out tag out) to protect personnel and equipment as the permanent Project equipment and systems are completed and capable of energization. The Site commissioning manager shall manage this system of control until Substantial Completion of the applicable Unit.

#### **23.5.2 Description**

As a minimum, the system shall consist of placing appropriate tags on all equipment and system components to indicate its status and requiring mandatory clearances from designated personnel to operate, energize, or remove from service the equipment or systems.

#### **23.5.3 Procedure**

Prior to Substantial Completion all notifications of status and requests for clearances or operation shall be made to the Site commissioning manager. Owner's operating personnel will participate and assist the Site commissioning manager on an as available basis. At Substantial Completion all notifications of status and requests for clearances or operation shall be made to the Owner and Owner's operating personnel will assume all control.

In order to protect the equipment or systems from damage and to ensure the safety of all personnel, the procedures established shall be followed strictly. Contractor shall verify consistency of their standard startup procedures, practices, and forms with existing operating and safety procedures, and submit to Owner for approval. Failure to comply with the system of control procedures and rules shall be considered just cause for discharge or removal of persons involved from the job Site.

### **23.6 FIT FOR SERVICE ACTIVITIES**

#### **23.6.1 Equipment Checks**

Preoperational checks and inspections shall be performed on all equipment as specified herein and in accordance with the Equipment Manufacturer's recommendations. Activities within this Section 23.6.1 are considered as the Construction Tests as defined in the Contract.

Construction Tests shall include as applicable to the system design and OEM practices, but not necessarily be limited to, the following as applicable to the Project:

Shaft Alignment: Before starting, all bearings, shafts, and other moving parts shall be checked for proper alignment

Safety Equipment: Coupling guards, belt guards, and other personnel safety items shall be installed

Motors shall be checked for proper rotation

Control valves shall be checked for correct valve action and seating and the controllers and positioners shall be given initial adjustment

Lubrication: Points requiring manual lubrication shall be greased or oiled as required.

Belts, Pulleys, and Sheaves: Belts, pulleys, and sheaves shall be checked for correct alignment and belt tension

Instrument calibration

Instrument loop checks

Equipment alignment/balancing

Equipment lubrication

Pipe flushing or high pressure water cleaning

Disposal of flushing and cleaning chemicals

Initial fill of chemicals including water treatment chemicals, and replenish to the extent necessary to achieve Substantial Completion

Electrical insulation verification and continuity checks

Checkout of control valves

Instrumentation and control equipment shall be subjected to tests to verify correct installation, connection, and calibration and to verify that they can perform the function for which they are intended. All intended operating and failure modes shall be checked.

Integration (Cold) Tests: With the Instrumentation and control equipment connected to the main systems and equipment, demonstrate that each measurement and control loop functions as specified and in a satisfactory manner as far as the system/equipment is concerned including equipment operating permissives and interlocks.

The Contractor shall verify in writing that all Work and checkouts have been completed, and when the services of equipment manufacturer's field service representatives are utilized, the Contractor shall include verification by such representatives that the equipment is ready for trial operation.

## **23.7 COMMISSIONING**

Contractor shall provide Commissioning and Performance Verification of the Work including management of activities, construction support, and coordination of testing.

### **23.7.1 Commissioning Activities**

Contractor's commissioning activities and performance verification shall include the following as a minimum as applicable to the Project:

Equipment initial operation and balancing

Systems initial operation and adjustments

Verification and calibration of circuit breakers within the Work

Checkout and calibration of protective relays within the Work

Phase rotation check of distribution equipment  
Relief valve calibrations and adjustments, as applicable  
Functional tests of equipment  
Demonstration tests as defined in Exhibit I – Acceptance Tests and Testing  
Performance tests as further defined in Exhibit I – Acceptance Tests and Testing

### **23.7.2 Trial Operation of Equipment**

After all preoperational checks and inspections have been completed, each piece of equipment shall be given a trial operation. Trial operation of equipment shall be conducted under the direct supervision of the Field Service Personnel, in strict accordance with the Contractor or manufacturer's recommendations.

Trial operation of all equipment and sub-loop systems shall extend over a period of time as required to reveal any equipment weaknesses or any performance deficiencies which may later handicap the operation of main systems and the complete Project.

Rotating equipment shall be checked for overheating, noise, vibration, and any other condition which would tend to shorten the life of the machinery.

Cooling water systems shall be adjusted to provide the proper flow of coolant to each item of equipment.

Each trial operation shall be summarized in a written report describing the observations and results of the operation and the specific deficiencies discovered which require additional work. The report shall indicate whether or not a retest is required and shall include reference operating data for subsequent use by the Owner's Representative in evaluating performance of equipment and systems. Decisions for retests shall be made by the Site commissioning manager with concurrence by Owner.

### **23.7.3 Systems Checkout**

Main systems shall be checked, operated, and tested after each individual piece of equipment and its accessories have been operated and declared ready for on-line operation.

Functional and operational testing of protective interlocking, automatic controls, instrumentation, alarm systems and all other field testing of the main systems shall be completed before the systems are started.

### **23.7.4 On-Line Operational Checks**

During on-line operation of the integrated systems, equipment shall be checked for overheating, noise, vibration, and any other checks recommended or required by the manufacturer of the specific piece of equipment.

### **23.7.5 Workplace Sound Survey**

Sound measurements, dB (A), shall be made during BESS rated discharge operation (i.e., after Substantial Completion of the Project).

A sound level meter conforming to the appropriate ANSI specifications shall be utilized. The measurement positions shall normally be at a height of five feet above grade, foundation, platform, or floor and at a minimum distance of three feet from the system/equipment surface. The number of measurement positions and their precise location shall be agreed by Contractor and Owner. The A-weighted rms sound level using the slow response of the sound level meter shall be recorded at each position. Alternatively, the direct measurement of the equivalent continuous A-weighted sound pressure level may be made at each

measurement position using an instrument complying with the appropriate ANSI specifications.

## **23.8 TURNOVER**

The Owner requires that the Project be commissioned by Project systems. These systems shall be identified prior to commissioning activities at the Site.

The turnover of a system from construction to the Site commissioning manager shall use a system turnover package containing appropriate documentation, similar to that listed in Article 23.8.4, assembled for each system. When the Site commissioning manager is satisfied that the turnover package is reasonably complete and acceptable, one copy shall be submitted to the Owner.

Included in the turnover package may be a list of minor defects and deficiencies of the Work, including documentation, not adversely affecting the safe operation of the Unit. Such minor defects or punch list items shall not have to be completed prior to Substantial Completion, but shall be corrected prior to Final Completion.

Turnover activities shall begin during commissioning and shall have all documentation accepted by Owner as a precedent to Substantial Completion.

### **23.8.1 Turnover Meetings**

Turnover meetings between Contractor's commissioning team and Owner's O&M team shall be held on a regularly scheduled basis to review the progress of scheduled system turnovers and to schedule walk downs as the systems become available.

### **23.8.2 Turnover Walkdown**

No more than three turnover walkdowns shall be scheduled in a single day without Owner approval. Submit the turnover package to Owner for review at least 3 business days prior to the scheduled walkdown. Owner will have 10 days after the walkdown to complete the review of the turnover package.

### **23.8.3 Contractor Turnover Package to Owner**

The system turnover package (TOP) defines the requirements that each system must meet in order to be turned over first to the commissioning team, and then upon completion of commissioning, startup and testing to the Owner.

The system TOP remains under the control of the Commissioning Manager until the TOP is accepted by Owner.

### **23.8.4 Turnover Package Documentation**

The final turnover packages shall contain all documentation related to the construction, commissioning, startup, and testing of the system. Depending on the status of the system (pre-commissioning or final turnover), the following typical documentation would be included as applicable:

#### General

- Table of contents
- System turnover forms
- System turnover punchlist
- Third party test and inspection records
- Verification that all ECN and FCN have been completed

List of all RFI's (construction/engineering/vendor)

Equipment

Receiving inspection records, OS&D reports  
Oil fill records, Oil analysis reports  
Equipment operation data sheets  
Preservation and preventative maintenance records  
Vendor inspection and test records  
Cleanliness or vessel closure records  
ASME pressure vessel code data reports

Instrumentation & Control

Instrument device field calibration records  
Instrument loop check records  
Instrument set point records  
Redline control logics/diagrams  
Redline DCS configuration diagram  
As-built set points, alarms, and trips  
Redline DCS input/output (I/O) list documented, to reflect verified I/O  
Control valve stroke sheets

Electrical

Redline electrical elementary drawings, and one-line diagrams delineating boundaries of electrical systems  
Redline wiring diagrams or cable schedule indicating completion of proper cable checkout  
Circuit breaker settings  
Protective relay calibration records  
Protective relay settings  
All SCADA device settings  
Megger data sheets  
Hi-Pot data sheets  
Bus bar torque data  
Electrical scheme test data sheet  
Termination/continuity record  
Cable test record  
Motor data sheets  
Motor-operated valve (MOV) data sheets

**Public Service Company of New Mexico**  
PNM 2026 to 2028 Generation Resources RFP

**Specification: 10345130-OZP-M0101**  
Issue: For Contract  
Section Revision: 1

Battery data sheets  
Switchgear test records  
Transformer test records  
MCC test record  
Earth loop impedance test records

Operation and Maintenance

Trial operation reports  
Maintenance records

END OF SECTION

## **SECTION 24 – TRAINING**

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## **24 TRAINING**

### **24.1 SUMMARY**

This Section describes the Contractor's responsibilities for training.

Contractor shall develop, implement, and present a training program covering all aspects of the operation and maintenance of the plant equipment and systems. The training program shall use major Equipment vendor's trainers and supplement with the Contractor's trainers for systems and BOP equipment to provide a coordinated all-inclusive course outline for operation of the Project.

Contractor shall utilize the O&M Owner's personnel during equipment and system start-up, commissioning, and initial operation to provide hands-on training for the operators during these activities.

### **24.2 SUBMITTALS**

Items in this section that require submittal to the Owner, shall comply with pertinent provisions of Section 05 - Submittals.

#### **24.2.1 Contract Submittals**

The following items shall be submitted to the Owner twelve weeks prior to the scheduled classroom training:

- Training course outline
- Detailed lesson plans
- Training manual
- Preliminary training schedule
- List of training aids

The following items shall be submitted to Owner two weeks prior to the scheduled classroom training:

- Final training manual
- Final training schedule

### **24.3 INSTRUCTORS**

The Contractor shall use qualified trained personnel as instructors, fluent in both oral and written English. Personnel shall be employees of the Contractor's firm and/or major Equipment manufacturer personnel with a minimum of five years experience with the equipment. Instructors shall have previous experience in classroom and field training. Contractor shall use qualified instructors from sub-suppliers when appropriate.

### **24.4 TRAINING FACILITIES**

Owner will provide training facilities, computer projectors and lunch accommodations for training. Contractor shall provide all other training aids, handouts, etc.

### **24.5 TRAINING CONTENT**

As a minimum, the following training shall be provided:

- On-Site classroom sessions for supervisory, operations, and maintenance personnel in overview of equipment and general information pertinent to the operation and maintenance of the equipment



On-Site walk-through for supervisory, operations, and maintenance personnel to provide overall familiarization with the location and function of all major components and systems

On-Site classroom and field sessions for specific groups of operations and maintenance personnel to cover group-specific aspects of the equipment

Training sessions may be videotaped by the Owner for use in follow-up and new hire training.

## **24.6 TRAINING DOCUMENTS**

The Contractor shall provide each participant in the training session a training manual. Use of PowerPoint presentations and with individual documentation handouts is expected. The training manual shall include operation and maintenance information for all equipment in the Contractor's Work. Training shall include quizzes following each session. Contractor shall provide the electronic files to the Owner to allow their use in future employee training sessions.

### **24.6.1 Training Manual**

The training manual content shall include but not be limited to:

- Introduction and Training objectives
- Basic theory of operation
- Equipment overview
- Major component description
- System description and operation
- Controls: including flow paths, instrumentation, controls, and interlocks
- Electrical: including flow paths, single line(s)
- Principal of operation including operating parameters, start-up, normal operation, shutdown, infrequent operations modes and maintenance
- Support systems needed for operation
- Visual aids of equipment and system design
- Safety systems, including fire protection loop
- Startup/shutdown
- General maintenance

### **24.6.2 Drawing Book**

The drawings shall include site plans, building and area general arrangement drawings, and other process flow diagrams, piping and instrumentation diagrams, one-line electrical diagrams, and selected equipment outline drawings.

### **24.6.3 Quizzes**

Test questions with answers shall be prepared. Test questions shall be in the form of multiple choice or true/false format. No essay questions shall be used. Should the training session be presented more than once, a separate set of questions shall be prepared for each session. The test results shall be turned over to the Owner at the completion of the training sessions.

#### **24.6.4 O&M Manual**

The Contractor shall make available to the instructor during the training sessions one copy of the equipment suppliers O&M manual to allow its use during the training session.

### **24.7 TRAINING SESSIONS**

#### **24.7.1 Schedule**

All or a part of the training shall be scheduled prior to initial startup as required to allow the operating personnel to participate in the startup of the systems.

#### **24.7.2 Program Review**

Contractor shall incorporate comments resulting from the Owner review of all training materials. Comments may be both editorial and technical.

#### **24.7.3 Class Size and Duration**

Operating and Maintenance personnel will be selected by the Owner to attend the training sessions. Determination of the exact number of personnel involved will be made following a review of the Contractor's training program.

The maximum class size for training at the job Site is approximately 20 students; typical attendance will be approximately 15-20 students.

Training sessions at job Site shall be planned for eight hours per day, not including a one hour lunch period.

END OF SECTION

## SECTION 37 – BATTERY ENERGY STORAGE SYSTEM

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## 37 BATTERY ENERGY STORAGE SYSTEM

### 37.1 SUMMARY

This Section specifies the requirements for a fully functioning Battery Energy Storage System (BESS) including Power Conversion System, control system, internal wiring, Battery Management System and balance of plant equipment.

Consistent with the Contractor's design, the BESS shall be factory built and preassembled to the greatest extent possible.

BESS shall be pre-assembled BESS enclosures specifically designed for installation outdoors per criteria stated in Appendix 03 – Project Data and Terminal Points.

### 37.2 REFERENCES

#### 37.2.1 Abbreviations and Acronyms

AGC	=	Automatic Generation Control
BESS	=	Battery Energy Storage Systems
BMS	=	Battery Management System
BOL	=	Beginning of Life
DOD	=	Depth of Discharge
DCS	=	Distributed Control System
RTU	=	Remote Terminal Unit
SCADA	=	Supervisory Control and Data Acquisition
SOC	=	State of Charge
UPS	=	Uninterruptable Power Supply

#### 37.2.2 Reference Standards

In addition to the codes and standards listed in Section 03 – Project Design Basis, the BESS shall be designed to all applicable codes, including the following specific codes and standards:

##### Institute of Electrical and Electronics Engineers (IEEE)

519	Recommended Practice and Requirements for Harmonic Control in Electronic Power Systems
1547	Standard for Interconnecting Distributed Resources with Electric Power Systems
2800	Standard for Interconnection and Interoperability of Inverter-Based Resources (IBRs) Interconnecting with Associated Transmission Electric Power Systems

##### National Fire Protection Association (NFPA)

855	Standard for the Installation of Stationary Energy Storage Systems (Latest Proposed)
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##### Underwriter Laboratory Laboratories (UL)

1741	Standard for Inverters, Converters, Controllers and Interconnection System Equipment for Use with Distributed Energy Resources
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1973 Standard for Batteries for Use in Stationary Vehicle and Light Electric Rail Applications

9540 Standard for Energy Storage Systems and Equipment

### 37.3 SUBMITTALS

Contractor shall provide submittals in accordance with Section 05 - Submittals. In addition, the Contractor shall provide:

A Siemens PTI Certified PSSE model for the BESS, Power Conversion System, and BESS Control System

A transient model for the BESS, Power Conversion System, and BESS Control System

### 37.4 QUALITY ASSURANCE AND SAFETY

#### 37.4.1 BESS Equipment Supplier Qualifications

BESS equipment supplier shall be ISO 9000 certified.

#### 37.4.2 Safety

The BESS and all scope of supply shall comply with the applicable federal OSHA regulations defined in 29 CFR 1910 and all relevant New Mexico Department of Labor & Industry's Safety and Health Bureau regulations.

Prior to the shipment of the BESS, the BESS equipment supplier shall ensure that all safety measures and protective devices function as intended.

### 37.5 DELIVERY, STORAGE, AND HANDLING

The BESS shall be capable of withstanding normal shipping and handling shocks and vibration when shipped. Equipment and materials shall be prepared for shipment and shall be crated in a manner to provide maximum protection during shipment.

Refer to Section 06 – Equipment, Material and Services Procurement for general requirements.

### 37.6 APPLICATION DATA

#### 37.6.1 General

The BESS shall be designed for a multi-use case scenario and Owner requires Contractor to present the following as a part of their offer:

Nameplate Rating	60 MW and 240 MWh Contractor shall design and construct a site plan which allows augmentation to maintain the nameplate rating for the full design life (20 years)
Full Power Discharge	4 hours, 1 time/day, 7 days/week
Shallow Discharge	70% Power for 2 minutes, 50 times/day
Renewable and Net Load Smoothing	Partial state of charge; multiple hours per day
Annual Full DoD equivalent cycle limit	365
AC Round Trip Efficiency (100% DoD cycle)	Refer to Exhibit I
Availability	95% annual availability
Battery /UPS Capacity	10 min UPS for BMS (Reference Section 17 – Electrical Systems)

Seismic

Reference Appendix 03 - Project Data and Terminal Points

1. AC round trip efficiency of the BESS is defined as the ratio of the delivered discharge energy to the delivered charge energy at the Energy Delivery Point.
2. Availability is defined as the percentage of time that the entire BESS is available for operational service (charging, discharging, or in storage mode) and not removed from service for maintenance or due to failure.

### 37.6.2 Battery Use Case

BESS Projects shall comply with the following requirements:

Be fully dispatchable by the Owner, including within-hour dispatch changes  
 Offer maximum operational flexibility, including a minimum total cycle-life equivalent to 365 annual equivalent full charge and discharge cycles multiplied by the resource life proposed and with the ability to meet varying annual cycling requirements over the resource life as a function of changes in storage use case and/or variation in the needs of PNM's Balancing Area ("BA")  
 Daily cycling restriction no less than two full charge/discharge cycles  
 Be dispatchable across the entire operating range  
 Have a system latency of 1 second or less, a ramp rate (in both charging and discharging) of full capacity (in MW) within the specified time of Section 37.16 of this Exhibit A  
 Be provided with grid-forming inverters  
 Have the control systems in place with the ability to respond to dispatch and disconnection signals that originate remotely from PNM operations centers  
 Have a minimum rate of charge equivalent to its rate of discharge

The BESS shall also have capabilities to support the following:

Be available for contingency reserve upon the occurrence of Owner generating unit outage.  
 Be ready and available for regulation-up and regulation-down. Response time in milliseconds.  
 Frequency response capability per Section 37.16.1.6.  
 Black start capability (if option is executed)  
 Charge/discharge to control renewable generation variability, be available for system peak, and to avoid curtailment of Owners system.  
 Discharge during system peaks to offset peak demand.

When required by Owner, the BESS shall be capable of operating beyond the scenarios defined above only limited by the BESS component ratings (includes PCS) themselves or the GSU MVA rating.

## 37.7 BATTERY ENERGY STORAGE

The BESS shall consist of multiple battery cells in series and parallel to store from and discharge to the power grid.

The BESS Project shall have a minimum 20 year lifespan given the stated duty cycle herein.

Sufficient SOC and limits on DOD must be maintained in order to meet the requirements of this specification. Contractor shall determine appropriate SOC and DOD to meet this requirement.

The BESS shall be capable of charge and discharge at a rate equal to the design nameplate rating of the Power Conversion System.

Battery management systems, individual cells, or cell modules shall be designed for isolation, testing, diagnostic monitoring, and removal without interruption of the availability of other BESS cells or cell modules and their availability to the grid excluding the specific Generating Unit(s) being maintained or tested.

The BESS shall also meet the following requirements:

Voltage and reactive/active power control performance for a Category B system as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Energy Delivery Point.

The normal and abnormal performance category as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Energy Delivery Point shall be Category II minimum.

Meets or exceeds the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance at the Energy Delivery Point.

### **37.7.1 Battery Enclosure**

BESS shall be pre-assembled BESS enclosures specifically designed for installation outdoors per criteria stated in Appendix 03 – Project Data and Terminal Points.

Reference Section 12 –Structural/Architectural for additional requirements.

BESS fire protection shall be in accordance with Section 16 – BOP Mechanical Systems and Equipment.

BESS enclosures shall be supplied with an HVAC or liquid heating/cooling system of adequate size for heating, cooling, or ventilating the BESS and maintaining the BESS within safe operating temperatures, and within the operating parameters of the battery modules. HVAC shall be in accordance with Section 16 – BOP Mechanical Systems and Equipment.

General electrical requirements beyond those described herein shall be in accordance with Section 17 – Electrical Systems. BESS auxiliary loads shall be supplied from an auxiliary power system, separately metered from charge/discharge energy using revenue grade metering.

As applicable, the BMS shall provide for thermal derating of the BESS to ensure battery life is not adversely affected by ambient temperature inside the individual battery enclosures.

### **37.7.2 Power Conversion System**

Provide a Power Conversion System for charging and discharging the BESS.

The Power Conversion System shall be capable of voltage control and reactive power control in accordance with Exhibit A - Statement of Work and Specifications.

The Power Conversion System must meet the requirements of the Interconnection Agreement.

Contractor may supply a single Power Conversion System (preferred) or multiple Power Conversion Systems to provide for charging and discharging of individual battery enclosures or groupings.

### 37.7.3 Power Conversion System Enclosure

The Power Conversion System shall be installed in a climate-controlled as applicable, weather-proof, corrosion-resistant enclosure.

Enclosure shall follow those as defined for the BESS Enclosure in Article 37.7.1.

### 37.7.4 End of Life

The BESS equipment supplier shall provide a decommissioning and recycling plan for the expended battery cells.

## 37.8 INSTRUMENTATION AND CONTROL

### 37.8.1 General

Instrumentation and control equipment for all systems shall be Contractor-furnished in accordance with the requirements defined herein. Refer to Section 18 – Instrumentation and Control for additional requirements.

### 37.8.2 Control System

The BESS control system shall be designed to provide for automatic, unattended, operation of the BESS. The control system design shall also provide for local manual operation, remote operation, or dispatch of the BESS from Owner's SCADA system or remote access point.

The BESS control system shall provide all modes of operation, and its operational set-point functionality shall have the ability to be prioritized and remotely configured through Owner's SCADA system:

- Peak Load Reduction

- Renewable Smoothing (feature included by Contractor for future use as applicable by others)Automatic Scheduling

- Voltage/VAR Regulation

The control system shall provide available energy forecasting to the SCADA system, including any thermal derate.

The ramp rate of charging and discharging of the BESS shall be programmable or set to a defined value by manually or remotely entering a value into the BESS operator station or by Owner's SCADA system communicating a ramp rate set point.

The SCADA system shall also be furnished in accordance with the requirements of the Appendix 13 – Instrumentation and Control for Electrical Power Generation.

### 37.8.3 Supervisory Monitoring

Supervisory instrumentation shall be included for data monitoring, alarming, and protective functions in the control system. The following shall be included as a minimum:

- Power factor

- AC voltage

- DC voltage

- AC current

- DC current

- Kilowatt



Kilovolt-amp

Kilovolt-amp reactive

Kilowatt-hour available

Battery state of charge

Depth of Discharge

Inverters, including capture of all diagnostic information including:

- Temperatures
- Alarms
- Status indicators
- Fault states

Historian function with up to 60 days of storage of all data points with a resolution of 1 second.

Sequence of Events (SOE) recorder for all protective functions with 1 mS resolution

#### **37.8.4 BESS Operator Workstations**

For each BESS equipment grouping the control system shall have an operator workstation located in its associated local electrical/control enclosure. A remote operator station shall be provided and located in the central control room (CCR) located in the Project Switchyard Control Building. The remote operator station shall be equipped with a 24-inch dual screen LED display. If the BESS control system utilizes the same hardware and software as the Project DCS, the additional remote display for placement in the CCR is not required, as the DCS operator stations will be utilized as specified in Section 18 – Instrumentation and Control.

#### **37.8.5 Engineering Workstation**

Provide a common engineering workstation (EWS) in the Project Switchyard Control Building to allow modification and creation of control logic, design and development of graphic displays, setting of alarm and control set points, and any other functions required for maintaining the BESS. The EWS shall include a minimum 24-inch dual screen LED display and a color laser printer. The EWS function can be provided in conjunction with the Operator Workstation, or as a separate workstation.

If the BESS control system utilizes the same hardware and software as the Project DCS, the additional EWS for placement in the CCR is not required, as the DCS EWS will be utilized as specified in Section 18 – Instrumentation and Control.

#### **37.8.6 DCS Interface**

The DCS interface shall support BESS control commands, BESS data and alarms, alarm acknowledgement, logical events, and sequence of events which are recorded.

The DCS communication interface shall be redundant and be Ethernet Modbus or Owner approved alternate.

Critical interface signals between the BESS and the DCS shall be hardwired. All hardwired signals shall be voltage free contacts or isolated analog signals. Hardwired signals shall include the following as a minimum:

Emergency trip pushbutton(s)

External trip requests

Electrical system faults

All clocks in the BESS shall automatically be synchronized to the Project primary system master clock.

### **37.9 ELECTRICAL**

Electrical systems shall be designed and constructed in accordance with Section 17 - Electrical Systems except as noted otherwise in this section.

#### **37.9.1 Essential Service**

Contractor shall provide an essential service system in accordance with Section 17 – Electrical Systems.

#### **37.9.2 Protection**

Intertie protection shall be provided by a SEL-700GT by Schweitzer Engineering Laboratories or Owner approved alternate. Any other protective relays shall be microprocessor-based digital type. Protective relays shall be time synchronized to the sequence of event recorders and digital fault recorders by the use of a dedicated system master clock. Refer to Section 18 - Instrumentation and Control.

#### **37.9.3 Revenue Energy Metering**

Charging and discharge energy exchanged between the BESS and the grid shall include dedicated bi-directional electrical revenue metering. Refer to Section 17 – Electrical Systems.

#### **37.9.4 Transformers**

In addition to the requirements of Section 17 - Electrical Systems, step-up transformers shall be pad-mounted, loop-fed, and designed to meet all requirements of the connected inverter including grounded electrostatic shield and pulse withstand.

#### **37.9.5 Switchgear**

Refer to Section 17 - Electrical Systems. Switchgear dedicated to the BESS shall be provided in accordance with Section 17 - Electrical Systems.

#### **37.9.6 Raceway**

Dedicated raceway systems shall be established for DC power in addition to the systems identified in Section 17 - Electrical Systems.

Communication cable shall be fiber optic unless installed in enclosed ferromagnetic cable trays excluding local connection at each BESS Generating Unit for distances less than 100 feet where a twisted and shielded cable configuration suitable for the application can be utilized.

#### **37.9.7 Cable**

Cables shall be in accordance with Section 17 - Electrical Systems.

#### **37.9.8 Grounding**

The DC and AC system shall be grounded in accordance with equipment manufacturer guidance. The Contractor shall install a system ground grid of bare copper or copper-clad conductor, in accordance with the grounding study. The grounding system shall encompass all equipment within the Project scope and shall connect to the grounding system at the Project switchyard.

**37.10 WARRANTY**

Contractor shall provide a transferable warranty from the BESS equipment supplier in accordance with the terms of the Contract.

**37.11 SPARE PARTS**

Reference Section 06 – Equipment, Material and Services Procurement for requirements.

**37.12 SPECIAL MAINTENANCE TOOLS**

One new set of special maintenance tools required for maintenance of the BESS shall be furnished, where applicable.

Provide all lifting provisions and hoists required for inspection, maintenance and overhaul.

**37.13 INSTALLATION**

Provide the services of technically competent field services representative(s), including representatives of BESS Equipment Supplier as needed, to advise and consult during field erection, pre-commissioning, start-up, commissioning, and tuning activities.

**37.14 TRAINING**

Provide training in accordance with Section 24 – Training.

Provide the following training courses as a minimum:

BESS Familiarization and Operation

BESS Preventative Maintenance

In addition, the Contractor and Owner shall coordinate a walk-thru, inspection, and training to the local fire marshal or similar government official responsible for fire fighting. This training shall include an introduction to the system, method of emergency shutdown, and procedures for safely combating fires within the BESS, Power Conversion System, and Control System.

**37.15 STARTUP & COMMISSIONING**

For general requirements refer to Section 23 – Mechanical Completion, Startup, and Commissioning.

Following the erection of the BESS and auxiliaries, a systematic, comprehensive commissioning program shall be completed by Contractor, with technical direction provided by the BESS equipment supplier. The BESS equipment supplier shall provide a commissioning manual which shall include all necessary commissioning procedures, instructions, drawings and test forms for their equipment.

**37.16 FUNCTIONAL REQUIREMENTS**

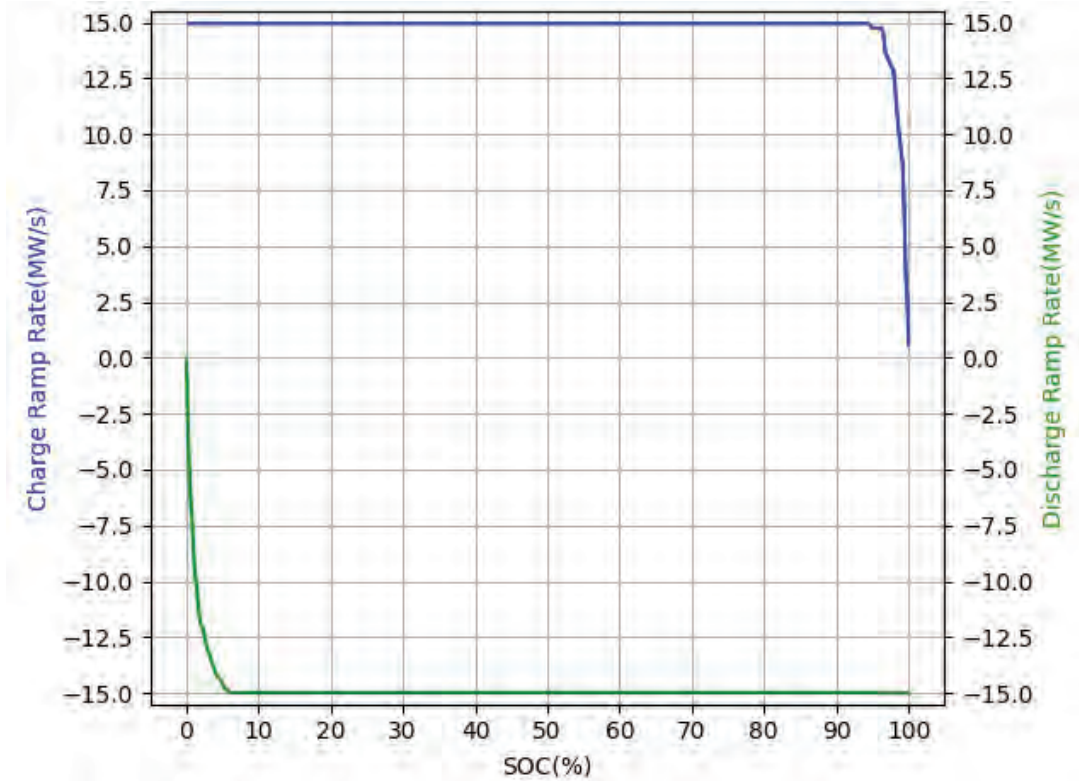
The BESS shall be designed to meet the functional requirements for the Project as set forth in the table below:

FUNCTIONAL REQUIREMENTS	
Parameter	Value
Self-Discharge Rate <sup>[1]</sup>	0.01%/hr
Charge Ramp Rate <sup>[2]</sup>	15MW/Sec
Discharge Ramp Rate <sup>[3]</sup>	15MW/Sec

Frequency Response Capability	Per Section 37.16.1.6
Power Factor Range	+/-0.95 @ Energy Delivery Point
System Latency	1 second

**Table Notes:**

1. Rate at which the BESS will lose SOC while being held at Max SOC, not including auxiliary load energy.
2. Rate at which the BESS can change its rate of charge between Min SOC to 94% SOC and expressed in MW/sec, not limited to the stated value during a frequency response event as defined in Section 37.16.1.6.
3. Rate at which BESS can change its rate of discharge between Max SOC to 6% SOC and expressed in MW/sec, not limited to the stated value during a frequency response event as defined in Section 37.16.1.6.
4. Below graph shows available ramp rates depending on SOC.



**37.16.1 Functional Requirement Definitions**

**37.16.1.1 Self-discharge Rate**

The rate at which the storage system loses charge, expressed as a function of the state of charge. All parasitic losses such as tare losses, control power, etc. which are internally fed from the Generating Unit equipment will be accounted for. Any auxiliary loads fed directly from the Project auxiliary power system shall be excluded.

**37.16.1.2 Charge Ramp Rate**

The achievable rate of change in the charge input power measured between Min SOC to Max SOC representing the maximum rate that the BESS can change its input power from the Energy Delivery Point.

### 37.16.1.3 Discharge Ramp Rate

The achievable rate of change in the discharge power measured between Max SOC to Min SOC representing the maximum rate that the BESS Project can change its output power at the Energy Delivery Point.

### 37.16.1.4 Grid Support

The manipulation or stabilization of the grid at the Energy Delivery Point as follows:

Low /High Voltage Ride-through: The BESS Project shall comply with low/high voltage ride-through (LVRT/HVRT) and low/high frequency ride-through specifications and settings. The specific requirements for LVRT/HVRT curve settings may be based on a codes and standards (e.g. IEEE 1547, UL 1741) or utility interconnection requirements.

Volt / VAR Regulation: The BESS Project shall functionally perform Volt-VAR regulation based on system voltage schedule, as agreed to between Contractor and Transmission Provider.

Power Factor: The ability of the system to control based on a fixed power factor set point and operate using autonomous power factor management based on inputs including voltage and watts. Refer to applicable Codes and standards IEEE 1547 and EPRI Technical document Common Functions for Smart Inverters, Version 3 December 2016, as appropriate.

### 37.16.1.5 System Latency

System latency is defined as when the Power Conversion System (PCS) is in active or ready mode and the system is at idle, the time measured between when the PCS control signal is sent and the BESS Project responds to the signal by changing the discharge or charge power value by more than 1% of the Rated Continuous Power measured at the Energy Delivery Point.

### 37.16.1.6 Frequency Response Capability

The BESS response time and capability of the system to a frequency event.

System to be capable of responding to frequency deviations within 2 seconds (including system latency) with a MW output accuracy level of +/- 2% including response capability of 60MW/0.1Hz, for the avoidance of doubt the system can provide 60MW response to a 0.1Hz deviation, but a deviation higher than 0.1Hz will still be the limit of the system at 60MW.

System to be capable of providing a variable Frequency Bias Setting that is equal to or more negative than its Frequency Response Obligation when Frequency varies from 60 Hz by more than +/- 0.036 Hz, per NERC standard BAL-003-2, R3.3.2.

### 37.16.1.7 Control Systems

The control system shall be capable of the following:

Ability to restore control systems from back-up site configurations.

Ability of the instrumentation and control systems to function as specified in a real operating environment.

Ability of the control system to automatically place each Generating Unit and the Project into service, remove it from service and to react to, control, and interface with the Energy Delivery Point.

Ability of Contractor's BESS system to deliver energy while satisfying the Power Quality Standards required for interconnection with the control system in automatic mode without operator intervention.

Satisfy all Interconnection Agreement test requirements.

### **37.16.1.7.1 System Back-up and Restoration**

The Project shall be capable of making a back-up of all system and program files and then restoring the system from the back-up medium. This shall include the DCS and all other auxiliary and proprietary equipment supplied by the Contractor.

The expectation is a successfully revived system from the back-up configuration.

### **37.16.1.7.2 Control System Start-up**

The Project control systems shall be capable of safely controlling the BESS during charging operations from Min SOC to Max SOC, and subsequently during discharge from Max SOC to Min SOC while all controllers are in automatic, all permissives are met, and redundant equipment are in a standby mode ready for service.

Control System Start-up shall begin with the BESS at Min SOC. An operator shall then manually initiate at the control system the charging process per standard operating procedures. Following this step, the BESS charging shall be automatically initiated from the Owner's remote control location and stop automatically at Max SOC. After charging and with the BESS at Max SOC, an operator shall then manually initiate at the control system the discharge process from Owner's remote control location per standard operating procedures. Following this step, the BESS discharge shall be automatically initiated and stop automatically at Min SOC.

END OF SECTION

## **APPENDICES**

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Appendix 02	Not Used
Appendix 03	Project Data and Terminal Points
Appendix 04	Not Used
Appendix 05	Not Used
Appendix 06	Not Used
Appendix 07	Soil Boring and Subsurface Data (Later)
Appendix 08	High Voltage Substation Concrete Construction Standards
Appendix 09	General Arrangements and Site Laydown Areas
Appendix 10	Not Used
Appendix 11	Single Line Diagrams
Appendix 12	Control System Communications Overview
Appendix 13	Instrumentation and Control for Electric Power Generation

## **APPENDIX 03 – PROJECT DATA AND TERMINAL POINTS**



## **APPENDIX 03 - PROJECT DATA AND TERMINAL POINTS**

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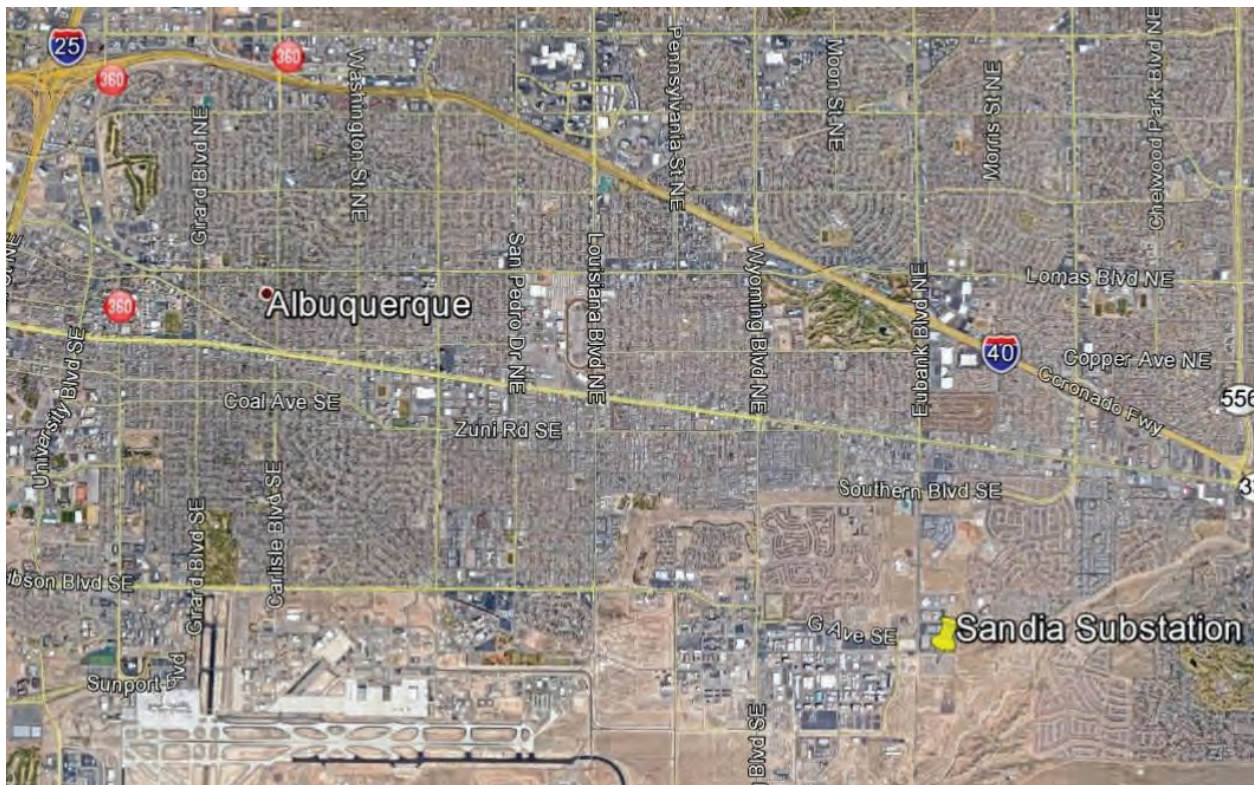
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# 1 PROJECT DATA

## 1.1 PROJECT DATA

Owner/Owner: Public Service Company of New Mexico (PNM)  
Project Name: Project (TBD)  
Project Location: Albuquerque, New Mexico  
Project Address: (TBD) Innovation Pkwy SE, Albuquerque, NM 87123

The Project will be located on a new site located in the Sandia Science and Technology Park in Albuquerque, New Mexico. The Project site will be near the Sandia Substation and is identified in the figures below.





## 1.2 PROJECT DESCRIPTION

The Site location is approximately 5.4 acres of area on a new greenfield site located in PNM service territory near the Sandia Substation in Albuquerque, New Mexico.

The Contractor shall determine the configuration of the new Project equipment which can be based on battery energy storage system (BESS) or other technologies.

The Project shall be configured by the Contractor for remote control and monitoring and shall not require any on-site operations staff. The Contractor based on the Project requirements shall coordinate with the Owner regarding the planned implementation of the building features outlined in Section 12 – Structural-Architectural and provide initial offering details in the proposal.

The Site is anticipated to have roadway access. The Site is not anticipated to have rail or barge access.

## 1.3 ENVIRONMENTAL PERMIT CONDITIONS

### 1.3.1 Sound Emissions

Sound levels at the Site property boundary shall be as defined in Exhibit I - Acceptance Tests and Testing.

Contractor shall be responsible for sound modeling of the entire Site, Project, and associated Project equipment to ensure compliance with the far field requirement. Contractor shall specify, procure, and install equipment and sound attenuation provisions to comply with this design criterion.

Contractor shall submit the noise model contour maps early in the design phase of the project.

### 1.3.2 Process Waste Water

Process waste water for the Project is anticipated to be limited to contact storm water from outdoor transformers. Contact storm water shall be collected in equipment containment, visually inspected, and pumped out by the Owner as required.

### 1.3.3 Sanitary Waste

The Project will not have access to the municipal sanitary sewer system.

### 1.3.4 Storm Water

Non-contact storm water shall be diverted from the Site using the natural drainage courses.

Storm water that contacts process equipment or secondary containments with potential oil contact shall be collected in equipment containment in accordance with Section 03 – Project Design Basis, visual inspected and pumped out by the Owner as required.

### 1.3.5 Solid Waste

The Project shall be designed for all solid waste to be disposed of off-site.

## 1.4 SITE CONDITIONS

### 1.4.1 Elevation

Site elevation shall be established at nominally 5,495 feet above mean sea level.

### 1.4.2 Precipitation

Annual Average Total*	9.45 inches
10 year, 24-hour**	1.96 inches
25 year, 24-hour**	2.33 inches
100 year, 24-hour**	2.90 inches
Average Snowfall Total*	9.6 inches

\* based on NOAA data for Albuquerque, NM station

\*\* based on NOAA Atlas 14 point precipitation frequency estimates (by coordinates at the site in Albuquerque, NM)

### 1.4.3 Dry Bulb Air Temperatures

50 Year Extreme High Temperature	105.8 °F
Annual Average Temperature	58.1 °F
50 Year Extreme Low Temperature	-5.3 °F

\* based on data for Albuquerque, NM from 2017 ASHRAE Handbook – Fundamentals

### 1.4.4 Project Performance Guarantee Requirements

Project performance guarantee requirements are provided in Exhibit I - Acceptance Tests and Testing.

## 1.5 FREEZE PROTECTION DESIGN CRITERIA

Equipment and systems that could be harmed by exposure to freezing conditions shall be protected with electrical heat tracing, insulation, and lagging. Freeze protection design calculations shall be based on the following conditions:

Dry bulb temperature	-6.0 °F
Wind Speed	10.0 mph

Freeze protection circuits shall be provided with tell tales that will provide indication to an operator that the freeze protection circuit is energized and functioning.

## **1.6 BASIC HVAC DESIGN CRITERIA**

Climatic conditions for the design of HVAC systems shall be based on the Albuquerque, NM weather station.

The climatic data set from the 2017 ASHRAE Handbook – Fundamentals shall be used for design calculations. For heating design, the 99.6% parameters shall be used. For ventilation design, the 0.4% design parameters shall be used. For air conditioning design, the 1.0% parameters shall be used.

## **1.7 BASIC STRUCTURAL DESIGN CRITERIA**

All structures shall comply with the New Mexico Building Code (NMBC) 2015 (or latest revision as applicable).

### **1.7.1 Occupancy Category**

The occupancy category shall be III in accordance with NMBC, Section 1604 and Chapter 1 of ASCE/SEI 7 (*Minimum Design Loads of Buildings and Other Structures*, or "ASCE 7").

### **1.7.2 Wind Loads**

Wind design shall be in accordance with the inputs below:

3 second ultimate gust = 120 mph (per ASCE 7-10)  
Exposure category = C  
Importance Factor,  $I_w$  = 1.00

### **1.7.3 Seismic Loads**

Seismic design shall be in accordance with the more stringent of NMBC 2015, Section 1613 and ASCE 7, utilizing the inputs below:

Job site (soil) class = D (default assumption until a geotechnical investigation is performed)  
Spectral acceleration for short periods,  $S_s$  = 0.458 g  
Spectral acceleration for a 1-second period,  $S_1$  = 0.137 g  
Importance factor,  $I_E$  = 1.25  
Seismic design criteria (job site soil class, SDS, SD1) may be adjusted with the agreement of the Owner based on future geotechnical investigation and report

### **1.7.4 Live Loads**

Live loads used in the design of buildings and structures shall be the maximum loads likely to be imposed by the intended use or occupancy, but not less than the following minimum uniform live loads:

Ground floor slabs = 250 psf  
Storage areas = Weight of stored material, but no less than 150 psf  
Other concrete floors = 100 psf  
Grated floors for equipment maintenance = 100 psf  
Stairs = 100 psf

### 1.7.5 Snow Loads

Snow loads applied to exposed equipment and buildings shall be in accordance with NMBC 2015, Section 1608 and ASCE 7, utilizing the inputs below:

Ground snow load,  $p_g = 5$  psf

Importance factor,  $I_s = 1.0$

### 1.7.6 Foundation Bearing and Frost Penetration

Except where otherwise protected from frost, foundation walls, piers, and other permanent supports of buildings and structures shall be protected from frost by extending not less than 36 inches (recommended) below finish grade, or via the use of non-frost susceptible fill beneath the foundation(s) in accordance with IBC 1809.5 and the foundation(s) bear on native soil or imported granular fill.

### 1.7.7 Ice Loads

Ice loads shall be in accordance with the NMBC 2015 and ASCE 7.

Equivalent uniform radial thickness,  $t = 0.25$  in

Importance factor,  $I_i = 1.25$

## 1.8 ELECTRICAL POWER DISTRIBUTION LEVELS

The following electrical power shall be used for Project design, exclusive of grid influence on voltage:

### 1.8.1 General

The design of the electrical systems shall be based on a three-phase contribution of 2,726 MVA at an X/R ratio of 6.033 and line to ground of 787 MVA at an X/R ratio of 4.546 available from the 115 kV transmission system.

Transformer basic insulation level (BIL) for windings shall be as follows:

Nominal System Voltage	BIL
115 kV	550 kV
34.5 kV	200 kV for GSU Transformer and 150 kV for others

### 1.8.2 Medium Voltage (34.5 kV)

34500 V AC, 3-phase, 3-wire, 60Hz, resistively grounded:

Voltage Variation	At the Switchgear	At the load
Normal	± 5%	+10%, -10%
Short-term	n/a	+10%, -10%
Emergency over voltage (up to 30 minutes)	n/a	+10%
Momentary voltage dip (up to 60 seconds)	n/a	-20%

### 1.8.3 Low Voltage (480 V)

480 V AC, 3-phase, 3-wire, 60Hz, solidly grounded:

Voltage Variation	At the Switchgear/MCC	At the load
Normal	+5%, -5%	+10%, -10%
Short-term	n/a	+10%, -10%
Emergency over voltage (up to 30 minutes)	n/a	+10%
Momentary voltage dip (up to 60 seconds)	n/a	-20%

**1.8.4 Lighting**

208Y/120 V AC, 3-phase, 4-wire, 60Hz, solidly grounded:

Voltage Variation	At the Panel board	At the load
Normal	! 10%	-10%
Short-term	n/a	+10%, -15%
Emergency over voltage (up to 30 minutes)	n/a	+15%
Momentary voltage dip (up to 60 seconds)	n/a	-20%

**1.8.5 Essential AC (UPS)**

120 V AC, 1-phase, 2-wire, 60Hz, solidly grounded:

Voltage Variation	At the Panel board	At the load
Normal	! 2%	+2%, -5%
Short-term	n/a	+10%, -15%

**1.8.6 DC Motors (from Project Battery)**

125 V DC, 2-wire, ungrounded:

Voltage Variation	At the Switchboard	At the load
Normal / Emergency	+12%, -15%	+12%, -20%

**1.8.7 DC Controls (from Project Battery)**

125 V DC, 2-wire, ungrounded:

Voltage Variation	At the Switchboard
Normal / Emergency at the switchboard	+10%, -15%
Normal / Emergency at the load (except as listed below)	+5%, -20%
Normal / Emergency at the load for breaker close coils, solenoid valves, motor starter coils	+10%, -25%
Normal / Emergency at the load for breaker trip coils	+5%, -30%

**1.9 TERMINAL POINTS**

Contractor shall interface utilities and services at the terminal points as listed in the following sub-sections.

**1.9.1 Project Site**

Contractor shall interface utilities and services at the following terminal points. All Work by the Contractor shall be performed on the Site property unless specifically described in the terminal point as occurring off-site.

Number	Type	Location
TP-1	Raw Water Supply (if required)	Municipal water supply off-site near site boundary.
TP-2	Potable Water Supply (if required)	Municipal water supply off-site near site boundary.
TP-3	Sanitary Waste Discharge (if required)	Municipal sanitary sewer connection off-site near the site boundary.
TP-4	Process Waste Water Discharge (if required)	Process waste water discharge is not anticipated for the proposed Project. If required, Contractor shall state quantity and quality of Wastewater in the proposal.
TP-5	Fire Water Supply (if required)	Municipal water supply off-site near site boundary. The amount of fire water required

Number	Type	Location
		by the Project shall be provided in the Contractor's proposal.
TP-6	Storm Water Discharge	Non-contact storm water diverted from site by natural drainage course. Contact storm water held in equipment containment, visual inspected, and pumped offsite by Owner as required.
TP-7	115 kV Transmission	Contractor furnished dead end structure located on the high side of the new Project step-up transformer.
TP-8	Construction Power	To be coordinated by Contractor.
TP-9	Voice/Data Telecommunications	Main telecommunications equipment room located in the Switchyard Control Enclosure. Contractor shall coordinate with the Owner and the communications supplier and install the required communications raceway from the site boundary to the telecommunications equipment room.
TP-10	Construction Facilities	Contractor is responsible for all construction facilities. To be coordinated with Owner.

#### 1.9.1.1 Raw Water Supply (TP-1)

Potable water is the anticipated water supply to the Project service water needs if required by the Contractor's design. It is anticipated that a connection to feed the new equipment will be made from the local municipal water supply off-site near the site boundary. The Contractor shall coordinate the tie in, submit drawings and details for approval, and furnish all materials and labor for the connection. Owner will obtain any water service agreements and pay any connection fees.

#### 1.9.1.2 Potable Water Supply (TP-2)

If required, the potable water supply shall be provided via connection to the municipal water supply off-site near the site boundary. The Contractor shall coordinate the tie in, submit drawings and details for approval, and furnish all materials and labor for the connection. Owner will obtain any water service agreements and pay any connection fees.

#### 1.9.1.3 Sanitary Waste Discharge (TP-3)

If required, sanitary Waste shall be discharge to a municipal sewer connection off-site near the Project site boundary. The Contractor shall coordinate the tie in, submit drawings and details for approval, and furnish all materials and labor for the connection. Owner will obtain any sanitary service agreements and pay any connection fees.

#### 1.9.1.4 Process Waste Water Discharge (TP-4)

Process waste water discharge is not anticipated for the Project. If the Contractor will require a process waste water discharge the quantity and quality of the waste water shall be provided in the proposal.

#### 1.9.1.5 Fire Water Supply (TP-5)

If required, a connection for the fire water supply shall be derived from the municipal water system. The Contractor shall coordinate the tie in, submit drawings and details for approval, and furnish all materials and labor for the connection. Owner will obtain any service agreements and pay any connection fees.

#### 1.9.1.6 Storm Water Discharge & Diversion (TP-6)

Non-contact storm water shall be diverted from the Site using the natural drainage courses. Storm water that contacts process equipment or secondary containments with potential oil



contact shall be maintained in the equipment containment, visually inspected, and pumped for off-site removal by Owner as required.

#### **1.9.1.7 115 kV Transmission (TP-7)**

The Project shall connect to the 115kV transmission system at Sandia Substation. Terminal point shall be the Contractor furnished dead end structure located on the high side of the new Project step-up transformers. The Contractor shall install 115 kV connection facilities including 115 kV MOD and dead end termination structure in the Project Switchyard. The Contractor shall be responsible for all physical high voltage design to the Energy Delivery Point which is located at the Contractor furnished dead end structure. The Owner will furnish and install the 115 kV cable connections from the Contractor furnished dead end termination structure to the Sandia Substation. Additional details can be found in Section 20 – High Voltage System.

#### **1.9.1.8 Construction Power (TP-8)**

Contractor shall furnish and install any required temporary construction power required to perform the Work. If required, Contractor shall coordinate the connection, obtain any service agreements, and pay any connection fees. Contractor shall provide all construction power distribution.

#### **1.9.1.9 Voice and Data Telecommunications (TP-9)**

Voice and data telecommunications terminal points shall be located within the main telecommunications equipment room located in the Switchyard Control Enclosure. Contractor shall coordinate with the Owner and the communications supplier and install the required communications raceway from the site boundary to the telecommunications equipment room. Owner will obtain any service agreements and pay any connection fees.

#### **1.9.1.10 Construction Facilities (TP-10)**

Contractor is responsible for all construction facilities as described in Section 22 – Temporary Facilities and Controls. The location of construction facilities shall be coordinated with the Owner. The Contractor shall coordinate the location and configuration of construction facilities and submit drawings and details for Owner approval.

END OF SECTION

**Public Service Company of New Mexico**  
PNM 2026 to 2028 Generation Resources RFP

**Specification: 10345130-OZP-M0101**  
Issue: For Contract  
Section Revision: 1

## **APPENDIX 07 – SOIL BORING AND SUBSURFACE DATA (LATER)**

**Public Service Company of New Mexico**  
PNM 2026 to 2028 Generation Resources RFP

**Specification: 10345130-OZP-M0101**  
Issue: For Contract  
Section Revision: 1

## **APPENDIX 08 – HIGH VOLTAGE SUBSTATION CONCRETE CONSTRUCTION STANDARDS**

**PNM STATION STANDARDS COMMITTEE MANUAL**

DOC. DATE: 02/13/06

DOCUMENT NAME: Reinforced Concrete Foundations Construction  
Standards

DOC. NO: SSS-403

WRITTEN BY: Blake Forbes

FOR INFO. CONTACT: Substation Design Supervisor

AUTH. SIGNATURE:

REPLACES: 05/13/03

**SSS-403: Reinforced Concrete Foundation Construction Standards****1.0 GENERAL INFORMATION**

The work required for constructing the concrete foundations includes furnishing all materials for constructing the concrete foundations and forms. The Contractor shall furnish all labor, tools, equipment, and materials, except anchor bolts and conduits, necessary for installing all foundation as shown on the Company drawings and specified in the following. The Company Engineer shall be notified prior to placement of any concrete. No deviations from Company drawings and/or specifications shall be allowed without approval of the Engineer.

**2.0 STANDARDS****2.1 Materials**

The concrete shall conform to ASTM C94, and be composed of cement, fly ash, fine aggregate, coarse aggregate, and water, all well mixed and brought to the proper consistency. Cement shall be ASTM C150 Type II Portland cement. Water shall be clear, less than 2,000 ppm of total dissolved solids, and free of any substance that will adversely affect the setting time, strength, volume, consistency of concrete, or corrode reinforcement. Aggregates for concrete shall conform to the latest revision of ASTM C-33, C-290, and C-291. The Contractor shall use ¾" coarse aggregate unless otherwise specified by the Engineer.

The concrete shall develop the minimum compressive strength as specified on the foundation drawings. Concrete shall be homogeneous, readily placeable, and uniformly workable. Any miscellaneous, unclassified concrete placed on the project shall have a minimum compressive strength of 4,000 psi at 28 days.

4% to 6% air entrainment shall be accomplished by the use of an air entrainment admixture, which meets the requirements of ASTM C-260. No other admixtures shall be added without approval of the Engineer.

The following slump requirement shall be used:

Slabs	4" ± 1"
Drilled Piers	5" ± 1"
Unclassified	5" ± 1"

**PNM STATION STANDARDS COMMITTEE MANUAL**

DOC. DATE: 02/13/06

DOCUMENT NAME: Reinforced Concrete Foundations Construction  
Standards

DOC. NO: SSS-403

WRITTEN BY: Blake Forbes

FOR INFO. CONTACT:

Substation Design Supervisor

AUTH. SIGNATURE:

REPLACES: 05/13/03

All steel reinforcement shall be deformed billet steel conforming to ASTM A 615 Grade 60, unless otherwise noted on the foundation drawings.

Fly ash shall meet the requirements of ASTM C-618 Type F.

The Contractor shall submit mix designs, which demonstrate the proposed mix will satisfy the requirements of these standards. The Engineer prior to placement of any concrete will approve the mix design in writing.

Concrete shall be obtained from a plant approved by the Engineer.

## 2.2 Forms

Contractor shall provide all material for forms. The portions of the forms coming in contact with concrete surfaces, which will be above grade level, shall be free from loose knots, warp, or other defects, which may cause irregularities in the surface. All forms must be adequately constructed and installed plumb and true and thoroughly braced.

Form oil shall be used and shall be light colored paraffin oil or other acceptable nonstaining material.

## 2.3 Mixing

Mixing shall be in accordance with ASTM C-94. Ready-mixed concrete shall be delivered and discharged within one and one-half hours after introduction of water to cement and aggregates, or the cement to the aggregates. Under hot weather conditions, this time shall not exceed 45 minutes. If these time limits have been exceeded and the plasticity of the mix is questionable, the Engineer may refuse the concrete.

A delivery ticket shall be prepared for each load of ready-mixed concrete delivered. The truck operator shall hand a copy of each ticket to the company Engineer at the time of delivery. Tickets shall show the number of yards delivered, the quantities of each material in the batch, the outdoor temperature in the shade, the time at which the cement was added, the numerical sequence of the delivery, and the vehicle number. All admixtures shall be shown on the ticket.

## 2.4 Concrete Placement

No concrete shall be placed for a foundation until the excavation dimensions, rebar cage, and embedments have been checked and approved by the Engineer.

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Where a concrete slab is placed against dry or porous surfaces, such surfaces shall be covered with polyethylene film to protect the concrete from loss of water. Joints in the film shall be sealed with waterproof sealing tape. Unless otherwise accepted by the Engineer, all concrete slabs in contact with earth or granular fill shall be placed against polyethylene film. In lieu of placement of polyethylene film the surfaces can be wet down as approved by the Engineer. Any excess free water shall be removed, shall be removed before placement of concrete.

The concrete shall be thoroughly vibrated to ensure absence of voids and proper bonding to steel rebar. Contractor shall provide vibrator of sufficient size to ensure vibration in minimum time. Time shall not exceed 15 seconds at any one location.

There is no limitation of the height of free fall concrete provided the free flowing stream of concrete drops directly to the bottom of the excavation without coming in contact with any soil on the sides of the excavation. Rebar contact by the flowing concrete is permissible, so long as the concrete stream does not then strike the side of the excavation.

A tremie, pump, or other suitable conveyance, approved by the Engineer, shall be used when ever the free fall conditions can not be met.

If concrete is to be placed under water, a suitable tremie or pump shall be used of sufficient length to reach the bottom of the excavation. Such device must be completely filled with concrete before submersion and shall be kept full of concrete during the entire placing operation. The discharge end must not be lifted out of the freshly placed mass of concrete until placement has been completed.

The concrete shall be poured continuously with no more than 45 minutes between pours.

## 2.5 Reinforcement

Before reinforcement is placed, surfaces shall be cleaned of heavy, flaky rust, loose mill scale, dirt, grease, or other foreign substances.

Reinforcement shall be accurately placed and secured in position so that it will not be displaced during the placing of concrete. Welding of rebar is not permitted. Rebar placing diagrams, material lists, and bending diagrams will be furnished by the Company. Reinforcement steel shall be supported a minimum of three inches above the bottom of any subgrade to ensure proper concrete coverage.

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**2.6 Installation**

Forms - Forms shall be designed to produce hardened concrete having the shape, lines, and dimensions indicated on the drawings. Forms shall be substantial and sufficiently

tight to prevent leakage. Forms shall be thoroughly cleaned and oiled before concrete is placed. They shall not be removed until the concrete is hardened sufficiently to support all loads without damage.

Extra care shall be taken to protect the anchor bolts, above the top of the forms, from fresh concrete being poured on them and physical abuse.

**2.7 Placing Concrete Under Cold Weather Conditions**

Cold weather conditions shall be considered to be in effect whenever the dry-bulb temperature is at or below 40°F and can be expected to fall lower within 24 hours after placement. Where concrete is to be placed under cold weather conditions, special provision shall be made in the handling and placing methods and in protection during curing conditions to ensure that concrete will be of full strength and free from damage.

No concrete shall be placed during cold weather conditions until satisfactory provisions have been made for protection and to maintain the ambient temperature at minimum of 45°F and maximum of 65°F for at least 10 days after placing.

During cold weather conditions, the concrete mixture shall have a temperature, when leaving the mixer, of 65°F plus or minus 5°F.

Standard practices of the American Concrete Institute (ACI) Manual of Concrete Practice, Section 306, will be employed to heat the mix water and/or aggregates as necessary.

Frozen or frost covered surfaces, against which concrete is to be placed, shall be covered and heated before start of placement to remove all frost and raise the temperature of the surfaces above freezing.

Contractor shall protect all concrete against injury until final acceptance by the Engineer. Where artificial heat is employed, special care shall be taken to keep the concrete from excessive dehydration. The concrete shall be cured with an approved curing compound.

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**2.8 Placing Concrete Under Hot Weather Conditions**

Hot weather conditions shall be considered to be in effect whenever the dry-bulb temperature is at or above 80°F and can be expected to rise higher within 24 hours after placement. Where concrete is to be placed under hot weather conditions, special provision shall be made in handling and placing methods and in protection during curing conditions to ensure that concrete will be of full strength and free from damage.

During hot weather conditions, the concrete mixture shall be a temperature, when leaving the mixer, of 75°F plus or minus 5°F.

Standard practices of the PCA will be employed to cool the mix.

Before concrete is placed, forms, reinforcing steel and subgrade shall be “wet down” with cool water. This process shall be done just prior to placement of concrete; however, there shall be no standing water or puddles on the subgrade.

Contractor shall protect all concrete against damage until final acceptance by the Engineer. The concrete shall be kept moist for at least 48 hours after it is placed. This shall be done within the procedure specified by the PCA, that is, wet burlap, curing paper, etc. However, retarding admixtures shall only be used with prior approval of the Engineer.

**2.9 Adverse Weather Conditions**

No concrete shall be poured under adverse weather conditions or when such conditions are expected. The Engineer shall determine this.

**2.10 Testing**

All testing will be the responsibility of PNM. PNM shall furnish test equipment and trained personnel to perform all required field tests and make the required test cylinders.

Concrete sampling for tests and cylinder making shall be done in accordance with ASTM C-172.

Test cylinders shall be made and cured for the first 24 hours in accordance with ASTM C-31. The Engineer shall be responsible for delivery of the cylinders to the laboratory and to obtain cylinder molds from the laboratory.



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All tests and inspections will be conducted so as not to unnecessarily interfere with the work.

**2.10.1 Compression**

One set of cylinders (6) shall be made for each 50 cubic yards of concrete or fraction thereof, place per day. Cylinders shall be prepared by the Engineer and tested by a testing laboratory. This will be a PNM's expense.

**2.10.2 Slump Test**

Shall be performed according to ASTM C-143.

**2.10.3 Air Entrainment**

Concrete shall be tested according to ASTM C-231.

The contractor shall afford the Engineer all reasonable facilities without charge for securing samples to determine whether material is being furnished in accordance with these specifications.

**2.10.4 Rejection**

No material, which has been rejected for nonconformance with these specifications, shall be used. Freshly mixed concrete, which has been rejected for nonconformance with these specifications shall be wasted or otherwise disposed of as directed by the Engineer.

Hardened concrete, which has been rejected for nonconformance with these specifications, shall be removed and wasted by the contractor at his sole expense.

At its sole discretion; PNM may elect to obtain core samples of non-conforming hardened concrete for further acceptance tests.

Should the concrete be proven not to conform to this specification the Contractor shall:

1. Perform corrective measures agreed upon the Company Engineer and the Contractor.
2. Reimburse the Company for all testing associated with the non-conforming concrete.

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**2.11 Finish of Concrete**

Forms shall be removed within 24 hours of the placement of concrete, but no sooner than 12 hours.

Immediately upon removal of forms, all exposed sides shall be rubbed with a wooden float, using a dampened sand and cement grout mixture to produce a uniform surface, free from voids or projections.

The top surface of all floor slabs and foundations shall receive a smooth steel trowel finish. Special care shall be used to assure that the concrete surfaces are finished true and level with no deviation and they shall be contoured to shed water. Transformer, switchgear, and reactor slabs shall have a light broom finish.

The top surface of all foundations other than slabs shall be rubbed with a wooden or other suitable float, using a dampened sand and cement mixture to produce a uniform surface, free from voids or projections. Templates shall be removed no sooner than 12 hours after placement of concrete.

**2.12 Repairing Defective Concrete**

Defects in formed concrete surfaces shall be repaired to the satisfaction of the Company within 24 hours, and defective concrete shall be replaced within 48 hours after the adjacent forms have been removed. All concrete, which is porous, honeycombed, and otherwise defective to a depth in excess of one inch shall be cut out and removed.

Concrete repair work shall be performed in a manner that will not interfere with thorough curing of surrounding concrete. Concrete used in repair work shall be adequately cured.

**2.13 Excavation and Backfill**

Excavations shall conform to the size and depth specified on the Company drawings. Where excavations are made to depths greater than required, earth backfill will not be permitted. In such cases, the existing voids shall be brought to the proper grade by a concrete fill. All loose dirt shall be removed from the bottom of the excavation. The bottom of shallow excavations for slab floors and wall footings shall be compacted to 95 percent of maximum density at optimum moisture content, as determined by ASTM D-698.

Contractor shall backfill and tamp around all foundations and footings after removal of forms, and excess excavated dirt shall be hauled away or spread on site, as directed by Company inspector. All backfill shall be compacted to a minimum of 95 percent density

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REPLACES: 05/13/03

at optimum moisture content, as determined by ASTM D-698. The method of compaction shall be by either mechanical means utilizing equipment designed for the purpose of compaction or by water settlement if mechanical compaction is impractical.

2.14 Drilled Pier Foundations

All drilled pier excavations shall have level bottoms. Covering, casting, shoring, or any method or material necessary to prevent cave-in shall be furnished at the expense of the

Contractor. Pier excavations shall not remain open for more than 24 hours and shall be covered, barricaded, or guarded until such time that concrete is poured. The Contractor at the Contractor's expense shall dispose of excess excavation material. The concrete shall be placed in continuous pour for each drilled pier foundation; cold joints shall not be permitted.

2.15 Foundations Located in Rock

If solid rock, which could not be ascertained by site inspection or soil test borings, is encountered during the process of excavation before the final depth of the foundation has been reached, the Contractor shall promptly notify the Engineer in writing. The Engineer shall then design final depth and design of the footing. The Contractor shall be paid for rock removal per provision in contract.

2.16 Workmanship

The Company will expect the Contractor to rectify all errors that arise due to his miscalculation of dimensions, poor construction of forms, or poor workmanship in the placing and finishing of the concrete. If, in the judgment of the Engineer, the error cannot be tolerated, the Contractor shall remove the defective parts and replace them as originally intended.

2.17 TolerancesRebar Placement:

Placement of reinforcement shall be within the tolerances given in ACI 318 unless otherwise noted on the placement drawing. Contractor shall not order a concrete placement until the PNM site representative has inspected steel installation and notified the Contractor to proceed.

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FOR INFO. CONTACT:

Substation Design Supervisor

AUTH. SIGNATURE:

REPLACES: 05/13/03

Anchor Bolt Placement:

Anchor bolts shall be placed within a tolerance of  $\pm 1/16$  inch as shown on the placement diagram.

Anchor Bolt Projection:

Projection of anchor bolts above the top of finished concrete shall be within a tolerance of  $\pm 1/8$  inch and shall be plumb within a tolerance of  $\pm 1/16$  inch.

Baselines and Centerlines:

All baselines and centerlines shall be within a tolerance of  $\pm 1/4$  inch from indicated references. Foundation locations shall be within a tolerance of  $\pm 1/8$  inch from centerlines.

Elevations:

All top of concrete (T.O.C.) elevations shall be within a tolerance of  $\pm 1/8$  inch from indicated references. The tops of all foundations shall be level with deviations within a tolerance of  $\pm 1/8$  inch.

Plumbness:

All vertical sides of foundations, above grade, shall be plumb within a tolerance of  $\pm 1/8$  inch, up to a maximum of 24 inches of projection above grade.

END

## **APPENDIX 09 – GENERAL ARRANGEMENTS AND SITE LAYDOWN AREAS**



## **APPENDIX 11 – SINGLE LINE DIAGRAMS**



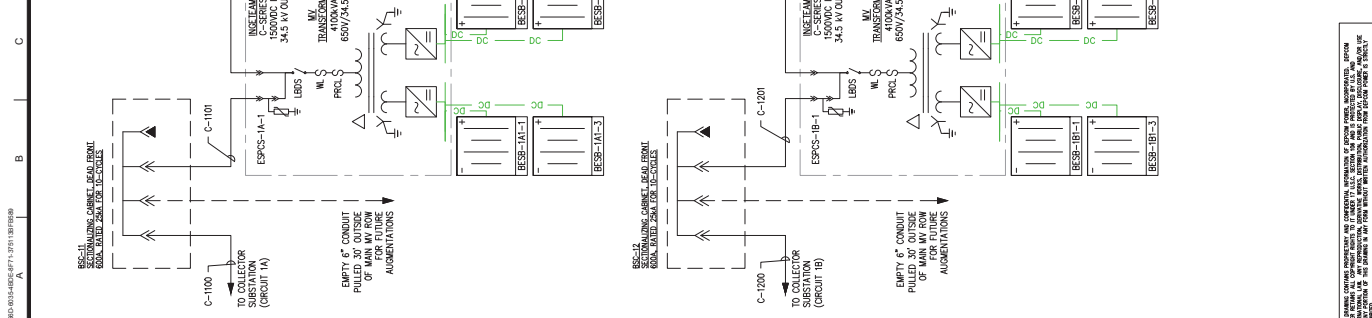
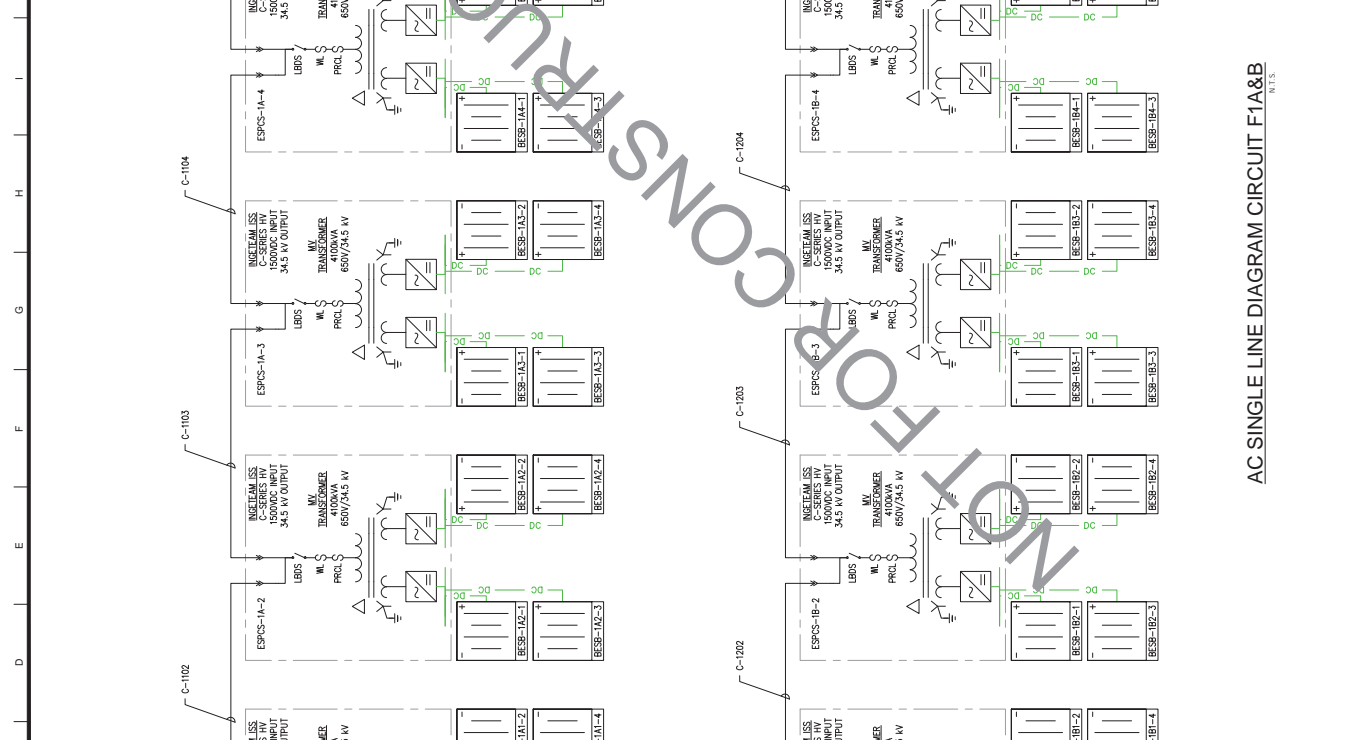
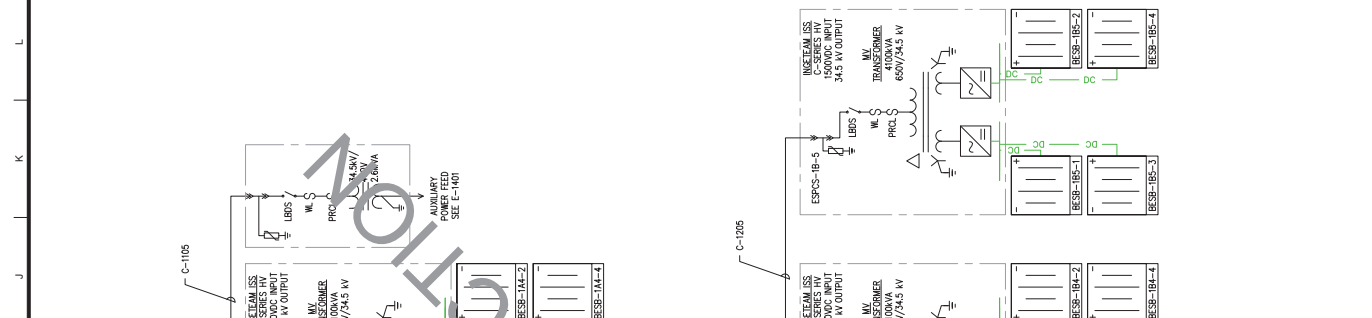


**DEPCOM POWER**  
 1400 PINEHURST DRIVE, SUITE 100  
 SCOTTSDALE, AZ 85259  
 PHONE: (480) 270-0918  
 WWW.DPCPOWER.COM

**SANDIA BESS**  
 (60MW/240MWH)  
 ALBUQUERQUE,  
 BERNALILLO COUNTY,  
 NEW MEXICO, USA

**NOTES:**

1. MARK THE DRAWING WITH PRELIMINARY SITE PLAN FROM DEPCOM POWER.
2. EGS COLLECTION, VENTING AND CONTROLS SHALL BE INSTALLED IN ACCORDANCE WITH PROJECTS EXECUTED IGA REQUIREMENTS.
3. ALL DISCONNECTS SHALL BE LOAD BREAK RATED.
4. SURGE ARRESTERS SHALL BE ON THE FEED AND LAST FEED OR MAIN TRANSFORMER OF EACH COLLECTION RUN.
5. ALL DC CABLES SHALL BE 35KV RATED, 100% INSULATION LEVEL.
6. DC SYSTEM VOLTAGE & ALL ITS COMPONENTS SHALL BE RATED & LISTED FOR USE AT 2000Vdc.
7. ENERGY MANAGEMENT SYSTEM CONTROLLER SHALL MAINTAIN MAXIMUM ALLOWABLE CAPACITY OF 60MW AT THE POINT OF INTERCONNECT.
8. ALL UNUSED CTS SHALL BE SHORTED AND GROUNDING.



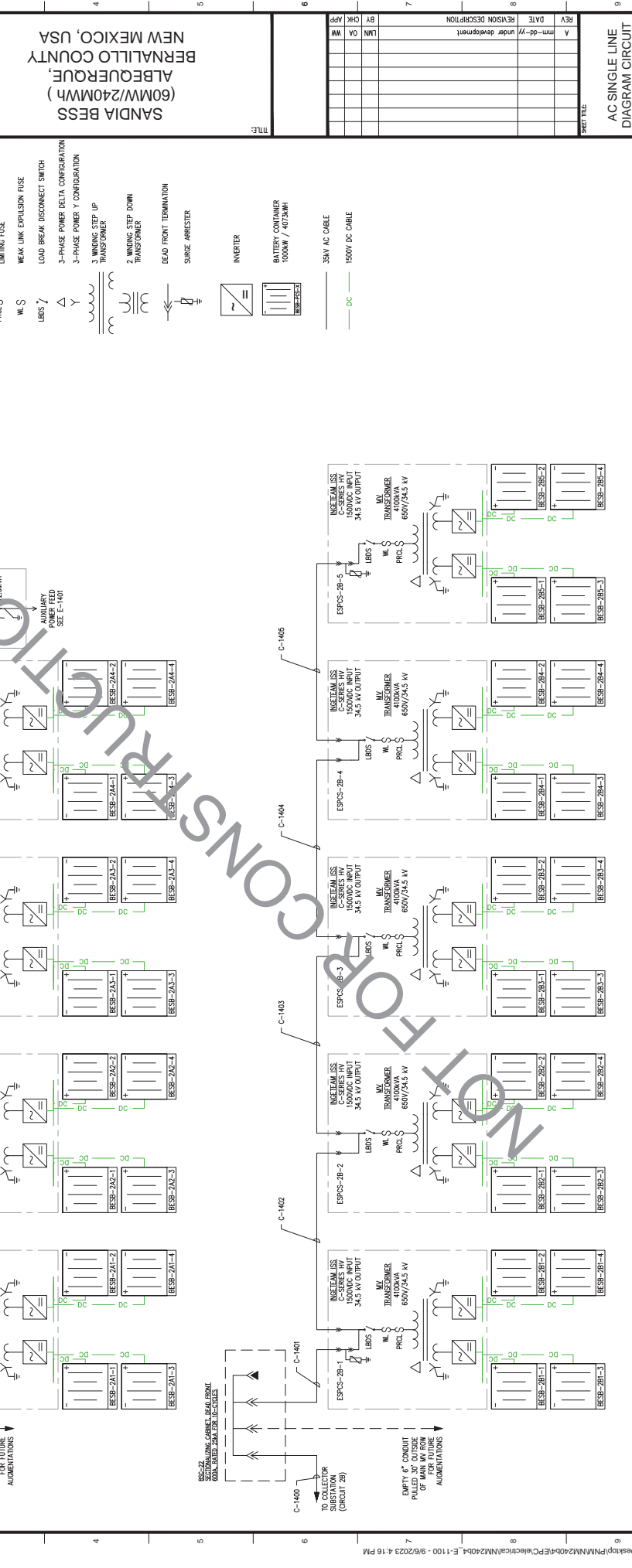
AC SINGLE LINE DIAGRAM CIRCUIT F1A&B  
 N.T.S.

NOTES: 1. MARK THE DRAWING WITH PRELIMINARY SITE PLAN FROM DEPCOM POWER. 2. EGS COLLECTION SYSTEMS AND CONTROLS SHALL BE INSTALLED IN ACCORDANCE WITH PROJECTS EXECUTED IGA REQUIREMENTS. 3. ALL DISCONNECTS SHALL BE LOAD BREAK RATED. 4. SURGE ARRESTERS SHALL BE ON THE FEED AND LAST FEED OR A/D TRANSFORMER OF EACH COLLECTION RUN. 5. ALL UG CABLES SHALL BE 35KV RATED, 100% INSULATION LEVEL. 6. DC SYSTEM VOLTAGE & ALL ITS COMPONENTS SHALL BE RATED & LISTED FOR USE AT 2000Vdc. 7. ENERGY MANAGEMENT SYSTEM CONTROLLER SHALL MAINTAIN MAXIMUM ALLOWABLE CAPACITY OF 60MW AT THE POINT OF INTERCONNECT. 8. ALL UNUSED CTS SHALL BE SHORTED AND GROUNDING.

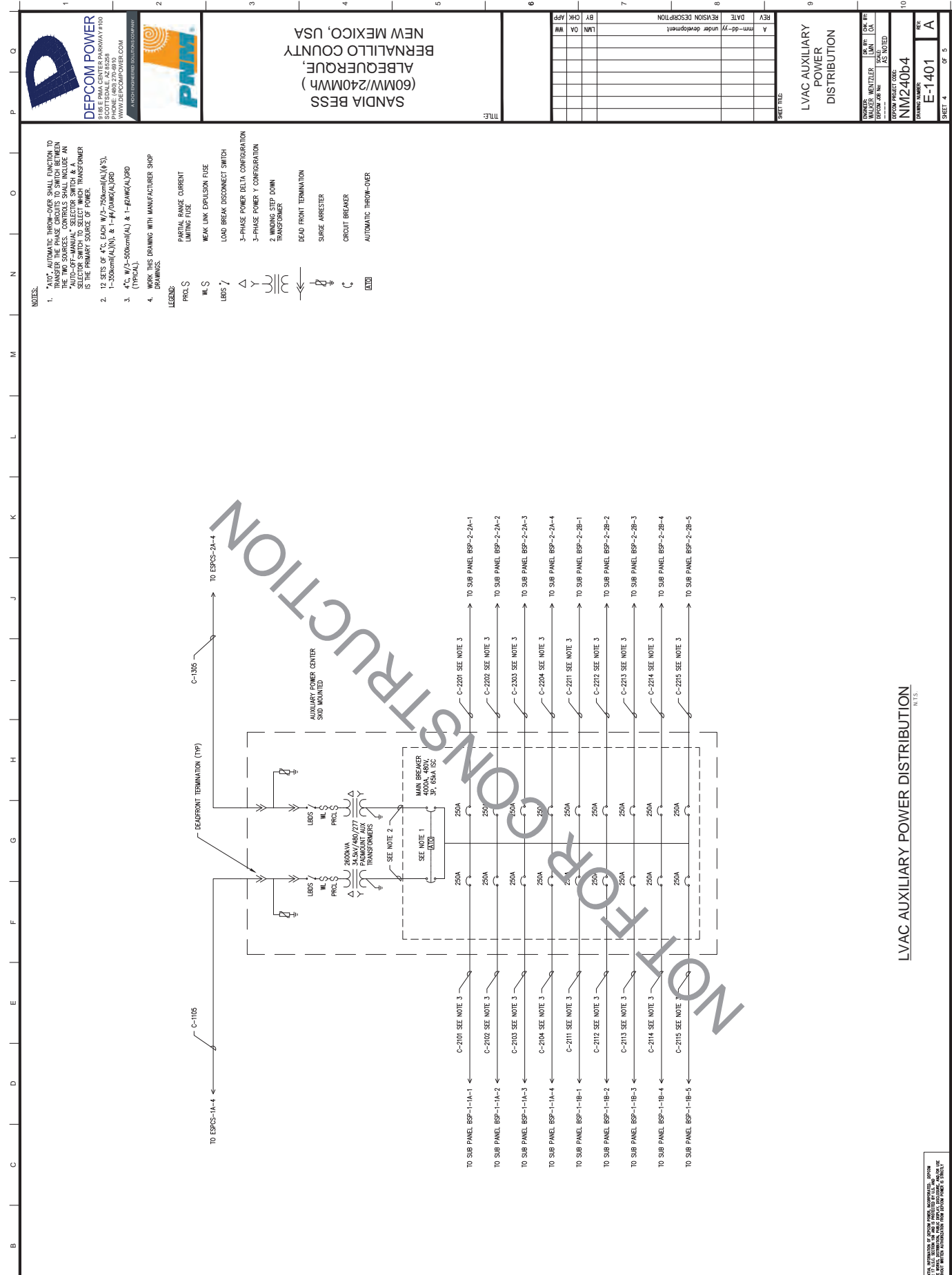
DEPCOM POWER logo and contact information: PHONE: (800) 270-0918, SCOTTSDALE, AZ 85269, WWW.DEPCOMPOWER.COM

PNM logo and SANDIA BESS (60MW/240MWH) ALBUQUERQUE, BERNALILLO COUNTY, NEW MEXICO, USA

LEGEND: PRC.S PARTIAL RANGE CURRENT LIMITING FUSE, W.S WEAK LINK EXPULSION FUSE, LBS.7 LOAD BREAK DISCONNECT SWITCH, Y 3-PHASE POWER DELTA CONFIGURATION, WINDING STEP UP TRANSFORMER, WINDING STEP DOWN TRANSFORMER, DEAD FRONT TERMINATION, SURGE ARRESTER, INVERTER, BATTERY CONTAINER 1000WH / 4072MWH, 35KV AC CABLE, 1500V DC CABLE



AC SINGLE LINE DIAGRAM CIRCUIT F2A&B N1.5. Includes drawing number NIM240b-4, revision E-1102, and sheet information SHEET 3 OF 5. Copyright (c) 2023 DEP COM POWER, ALL RIGHTS RESERVED.



- NOTES:**
- "AUTO" AUTOMATIC THROW-OVER SHALL FUNCTION TO TRANSFER THE LOAD CIRCUITS TO SWITCH BETWEEN THE TWO SOURCES OF POWER. THE "MANUAL" SELECTOR SWITCH & A "AUTO-OFF-MANUAL" SELECTOR SWITCH & A SELECTOR SWITCH TO SELECT WHICH TRANSFORMER IS THE PRIMARY SOURCE OF POWER.
  - 12 SETS OF 4°C, EACH W/A-750kcmil(A)/W/S), 1-350kcmil(A)/N), & 1-#2W/G(A)/RD (TYPICAL).
  - 4°C, W/A-500kcmil(A)/J & 1-#2W/G(A)/RD (TYPICAL).
  - WORK THIS DRAWING WITH MANUFACTURER SHOP DRAWINGS.

- LEGEND:**
- PRT S PARTIAL RANGE CURRENT LIMITING FUSE
  - M S WEAK LINK EXPULSION FUSE
  - LBSP ? LOAD BREAK DISCONNECT SWITCH
  - Δ 3-PHASE POWER DELTA CONFIGURATION
  - Y 3-PHASE POWER Y CONFIGURATION
  - W T WINDING STEP DOWN TRANSFORMER
  - ↔ DEAD FRONT TERMINATION
  - ⚡ SURGE ARRESTER
  - C CIRCUIT BREAKER
  - EXTD AUTOMATIC THROW-OVER

SANDIA BESS  
(60MW/240MWH)  
ALBUQUERQUE,  
BERNALILLO COUNTY,  
NEW MEXICO, USA



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PNM  
PUBLIC SERVICE COMPANY OF NEW MEXICO

REV	DATE	REVISION DESCRIPTION
A	mm-dd-yy	under development

BY	CHK	APP
LMK	OK	
WM		

SHEET TITLE	
LVAC AUXILIARY POWER DISTRIBUTION	

DRAWING NUMBER: NIM240b-4  
REV: E-1401  
SHEET 4 OF 5

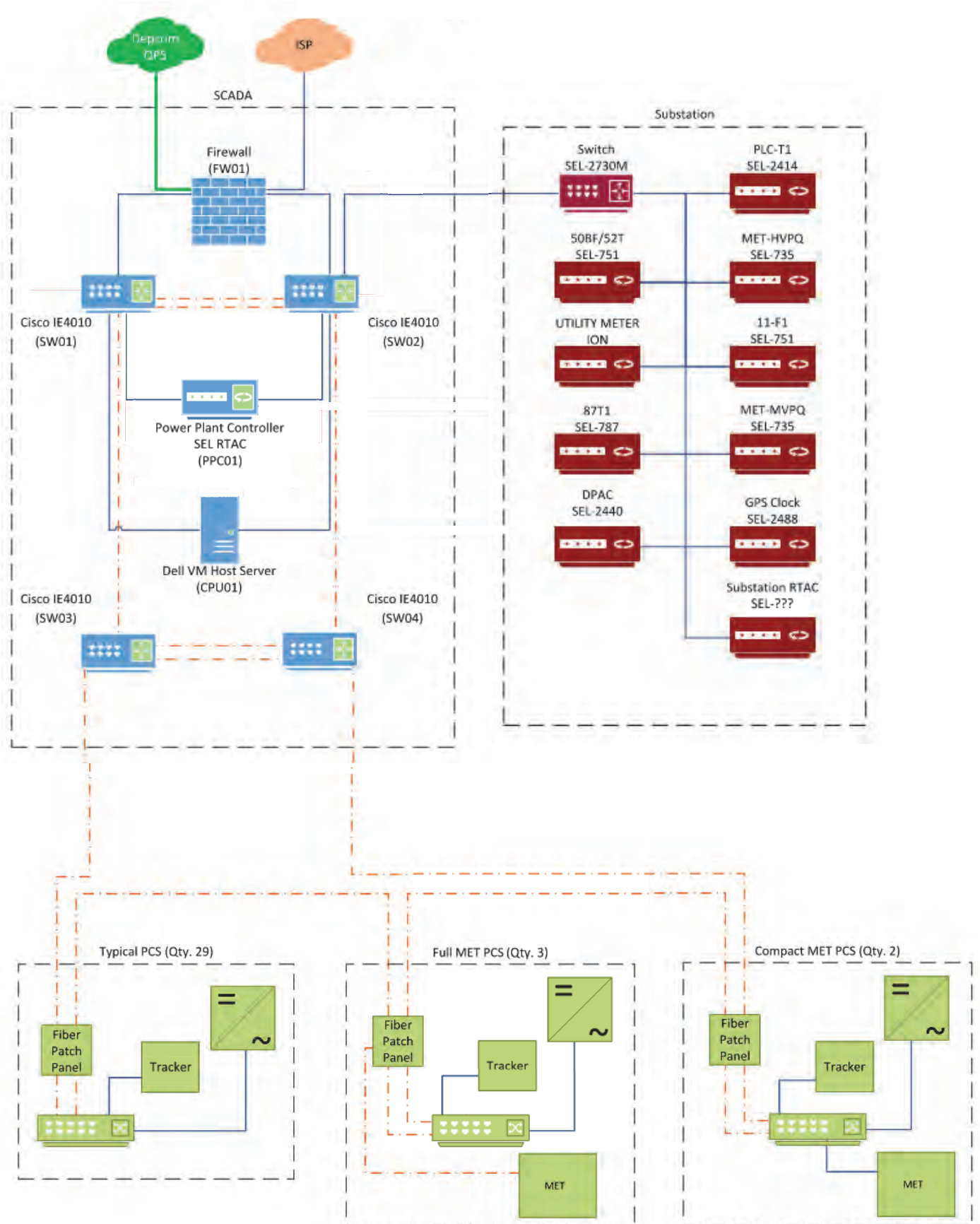
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16/13

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## **APPENDIX 12 – CONTROL SYSTEM COMMUNICATIONS OVERVIEW**



**Public Service Company of New Mexico**  
PNM 2026 to 2028 Generation Resources RFP

**Specification: 10345130-OZP-M0101**  
Issue: For Contract  
Section Revision: 1

## **APPENDIX 13 – INSTRUMENTATION AND CONTROL FOR ELECTRIC POWER GENERATION**

SECTION 48 09 00 – INSTRUMENTATION AND CONTROL FOR ELECTRICAL POWER GENERATION

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- R) ,7;3>P>153>28Ä6>:56>13DÄE/  
) ,(ÄZ\*^X\*\$#ÄI(Ä +5:7;:>;Ä96>Ä935ÄW796>F:5167Ä"34076<6L@ÄÄB375ÄÄ935@  
I :>5Ä#ÄÄ%373>:<Ä!3C=1>3F3752)
- ) A+ÄÄ%>6=8/  
) A+ÄÄÄÄ[A+ÄÄÄATT)TÄ'6)ÄZ\*^X\*\$#ÄÄ96>F:5167Ä"34076<6L@ÄÄ8C75ÄÄF935@  
I :>5Ä#ÄÄ6373>:4ÄC=1>3F3752)
- Ä) B' ÄÄ88<14:5167Ä53ÄÄT\*# \$\*##  
) B' QÄ >691<9ÄÄ6FF=714:51672ÄP150ÄB125>16753LÄÄ26=>432ÄDB&!2E

## SECTION 48 09 00 – INSTRUMENTATION AND CONTROL FOR ELECTRICAL POWER GENERATION: continued

- #)\*Q +;N-W""Ä(+/  
Ä) Ä953>ÄÄP:;>/  
#) +=88<13>S2Ä4:5:1716ÄF:5167Ä;14:5175Ä3Ä@88ÄÄÄÄBÄ[! ",ÄP150ÄÄ%ÄÄ  
4675>6<Ä2@253FMÄ46791Ä695B:1677ÄP6>KÄ46791L-67Ä;:P17LMÄÄ-WÄ  
2@253F)  
T) A675>:456>Ä20:<<Ä2=GF15Ä503Ä8>68623;Ä -WÄL>:801Ä2Ä2Ä4185167Ä69Ä503Ä  
L>:80142)Ä"03Ä2=GFÄ5<<Ä4<=>;3ÄF8<32Ä9Ä503Ä5@832Ä680Ä42Ä317LÄ  
6993>3;)  
Q) ÄÄ;324>185167Ä69Ä>FÄ7;Ä5>37;17LÄ8:G1<15162Ä03ÄÄÄBÄÄ@253F)  
Y) N1<<69Ä:53>1:<69Ä503Ä68623;Ä3C=18F375)  
X) +068ÄB>:P17LÄÄ<=>;17L/  
) &C=18F375ÄF3721672)  
G) &C=18F375Ä1L052)  
4) "3<346FF=714:5167Ä; Ä3<3F35>@ÄÄKÄ1:L>F[ 3P 6>KÄÄ>4015345=>3)  
) J1>17LÄ;1:L>:F2)  
3) &<345>14:<Ä>3C=1>3F3752)  
9) 6P3>Ä4672=F85167  
Z) J:>>:75@Ä25:53F375)  
R) W725:<<:5167Ä>=451672ÄF:7=:<)  
) A675>:456>S2Ä9:456>@Ä:7;Ä46FF123167Ä714Ä;=>32Ä9668623;Ä3C=18F375)  
) A675>:456>S2Ä683>:5:76ÄFÄ17537:743Ä:7=:<)  
#\*) A675>:456>S2Ä>346FF37;3;Ä28>:5ÄÄ125)  
##) +ÄÄBÄÄ@253FÄ;35:1<3;Ä9=745167:<Ä4034K6=5Ä8>643;=Ä46F2BÄÄ671ÄM  
46FF12216717LÄ86>5Ä:7;Ä4:<1G>:4167Ä914:532)
- #)\*Y a,Ä(W".Ä Ä++;!Ä'A&/  
Ä) A675>:45620<<Ä8>6?193456>@[91532Ä17LÄ2403;56ÄÄ73>)]Ä25Ä<:7Ä0:<<Ä63Ä?1;3;ÄÄ  
\P73>ÄQ\*Ä:;(82Ä>Ä56Ä9:4503@;Ä2517LÄ2Ä6>Ä?BP)  
N) U:456>@Ä53252Ä20:<<ÄG3Ä83>96>F3;Ä:446>;17LÄ56Ä;Ä8846F37Ä25672Ä56Ä372=>3Ä  
8>683>Ä745167ÄÄ683>:5167)  
A) U:456>@Ä5325Ä>386>62Ä20<<Ä3Ä867Ä>3C=325)  
B) "03ÄP73>Ä>323>?32Ä503Ä>1L05Ä56ÄP157322Ä:<<Ä5Ä262>ÄÄ867ÄP756ÄP150Ä  
5P6ÄP33KÄÄ17F=FÄ765143Ä16>Ä5Ä6>@Ä:44385:743Ä17L)
- #)\*X B&(Wb&!Ä+""!Ä%&Ä Ä'BÄ Ä'B(W%/  
Ä) &C=18F375Ä<<Ä3Ä201883;ÄÄ46F8<353<@23FG<3;ÄÄ86221GÄÄ15017Ä0188179Ä41<15132Ä  
<1F15:51672ÄP15017Ä6725>=45167Ä15:51672ÄP73>V225:167Ä153)Ä-35066Ä018F375Ä  
;324>1G17LÄ503Ä7=FG3>Ä6901883ÄÄ7;Ä31L052)  
N) >16>Ä6Ä<1?3>@Ä6Ä675>:45620<<Ä6?1;3Ä7@28341:<Ä6>:L3Ä3C=1>3F375ÄÄÄ:53>1:<Ä  
:7;Ä3C=18F375ÄÄ503Ä46725>=45167Ä  
A) Ä<<Ä28:>3Ä8>:52Ä:7;Ä28341:<Ä566<2Ä20:<<ÄG3Ä5:LÄ2Ä87;Ä8846F37ÄÄW;7519@Ä67ÄN1<<Ä69Ä  
(;:17LÄ:2ÄP73>V2Ä8:>3Ä :>52)c
- #)\*Z JÄ!!Ä"/  
Ä) "03ÄÄ675>:45620<<Ä6?1;3MÄÄF171F=FMÄP6ÄDTEÄ3>:PÄ >>:75@ÄÄ503ÄÄÄBÄÄ@253FÄ  
:7;Ä3C=18F375)



SECTION 48 09 00 – INSTRUMENTATION AND CONTROL FOR ELECTRICAL POWER GENERATION: continued

Ä!"Ä TÄ\$B,A"+

T)\*# -Ä"&!WÄ(+/

- Ä) Ä<<Ä-:53>1:<2Ä87;Ä2Ä46F8>121503ÄÄÄBÄ["!,"ÄÄ%ÄÄ4675>0>6FÄ503ÄÄL67: <Ä ">:72F122167Ä>L:71]:5167ÄD!"\EÄ2@263FÄÄG3ÄM6ÄÄ=>>3Ä:7=9:45=>3MÄÄ20:<7Ä5Ä 0:73ÄG337ÄÄ8>16>Ä23>3HÄH5ÄÄ>3C=1>3;Ä17LÄ53252)
- N) ,23Ä:53>1:<2Ä2=15:063Ä031>88<14:5167MÄ96>503Ä340:714:<Ä:7;Ä-345>14:<Ä25>32232Ä56Ä P0140Ä503ÄÄÄGÄÄ2=GO3453;)
- A) U=>7120Ä:2Ä>3C=1>36Ä863Ä31Ä25:<<:5167Ä>3;:(68965Ä67)

T)\*T &a,W -&'"/

- Ä) \=5;66>ÄC=18F375Ä:<Ä3;Ä21L73;Ä96>Ä0345Ä37?1>67F375)
- N) ,23ÄÄ675>:456>V2Ä25:7;:;>Ä;32Ä07ÄÄ14672125375Ä50Ä507Ä5375ÄÄ0323Ä8341914:51672)
- A) U=>7120ÄP150Ä:<<Ä734322:>@Ä:Ä=H1<1:>@Ä153F2Ä>8C353ÄP69K:Ä-ÄÄF-345>14:<Ä2@253FÄ 46796>F17LÄP150ÄÄ75375ÄÄ50323Ä8341914:51672)
- B) U=>7120ÄP150ÄÄ734322:F@Ä1:<Ä:23C=1>36Ä46F8<353Ä13<;Ä23FG<@Ä:7;Ä25:<<:5167)
- &) >6?1;3Ä<:F17:53;Ä8<:2514Ä7:F38<:532MÄP0153ÄP150ÄÄ75375ÄÄ503ÄÄC=18F375Ä:7;Ä3:40Ä 1725>=F376ÄÄ4675>6?Ä43Ä6=753;Ä7Ä503ÄÄC=18F375ÄÄ50ÄÄ13Ä7;Ä37L>:717LÄ:2Ä:88>6?3;Ä G@ÄÄ675>:456>)
- U) +018ÄC=18F375ÄÄ46F8<353<@Ä:223FG<86Ä22G<3MÄ4675Ä150ÄÄ0188179Ä41<15132Ä:7;Ä 46725>=45167Ä>3C=1>35ÄP52ÄV2Ä153)

T)\*Q UÄN!WÄÄ"WV/

- Ä) U:456>@Ä1725:46Ä867Ä75ÄC=18F375Ä28341914Ä6ÄG7Ä5<3;1ÄÄ86P36ÄÄ675>6<Ä :223FG<132)
- N) '6Ä&C=18F375Ä:<Ä3201883;Ä322Ä:7@Ä46F867678ÄC=1>1ÄD13<;Ä>3PÄ1K06=2Ä8341914Ä :88>6?<Ä@Ä73>)
- A) A6F8<353<725:<<Ä175Ä>7:<Ä4675Ä16Ä17LÄ503ÄÄ456>@
- B) "3>F17:53Ä<861752ÄC=1>17LÄ3H53>7:<Ä4675Ä16Ä725ÄÄ7=FG3>38Ä1752ÄÄ3>F17:<Ä G<64K2ÄÄ467?371315<@Ä88;Ä6Ä3431?3Ä4:G<32)
- &) W725:<<Ä753Ä7:<ÄP1>17LÄP12806Ä53Ä)
- U) >6?1;3ÄH5>Ä9<3H1G<3Ä017L3ÄP1>3Ä17Ä:>3:2Ä2ÄG0240ÄÄ50Ä07ÄÄ017L3;ÄG>:4K352Ä6>Ä 2P17LÄ>:4K2MÄ19Ä=23;)

T)\*Y +ÄÄBÄÄÄ+"&-Ä!&a,W!&-&'"/

- Ä) "03ÄÄÄBÄÄÄ@253ÄÄ:<Ä67156>Ä:7Ä75>6503ÄÄF:06>Ä3C=18F375Ä03ÄÄN&+HÄÄ=;17LMÄ G=5765Ä1F15356Ä0396<<6P17L/
- #) N&++ÄW7?3>53>
- T) -bÄ933;3>D2EÄ23>?17LÄ503Ä-bÄ21;3Ä69Ä503Ä%+;Ä5>:7296>F3>D2E
- Q) -bÄ">:7296>F3>2
- Y) -3536>6<6L14:<Ä+5:5167D2E
- X) &503>735Ä'35P6>KÄ -:;PÄ3Ä15403EMÄÄÄ467?3>53>2MÄ0Ä:73<2E
- Z) N&++ÄN:553>@Ä:-7:L3F376Ä53ÄÄN+E
- R) >60345Ä+P1540@>;Ä&C=18F375ÄD8>653451?3Ä>3<:@2MÄÄÄÄG>3:K3>2M G>3:K3>2MÄ25585729Ä>F3>3MÄ7=3ÄF353>218ÄN:7KMÄÄÄ \ B2MÄÄE
- N) Ä<<ÄF67156>17;ÄÄ675>6<Ä:G1<151B1ÄÄÄG325>1455;Ä03ÄÄ73>S2Ä64:<7Ä5P6>KÄÄ4322Ä

SECTION 48 09 00 – INSTRUMENTATION AND CONTROL FOR ELECTRICAL POWER GENERATION: continued

- A) "03Ä+AÄBÄÄ2@253FÄ20:<<Ä8>6?1;3Ä>3;=7;:75ÄD>1F:>@Ä:Ä@Ä+3246773;EÄ&-+Ä<3?3<ÄF67156>17LÄ:7;Ä4675>6<Ä69Ä503ÄN&+HÄÄ755Ä>@Ä3FÄDN+E)
- B) "03Ä+AÄBÄÄ2@253FÄ;3117Ä20:<17Ä<=3Ä>1F>@Ä:7;Ä467;:>@Ä5F35>@Ä500<<Ä886>5ÄG650ÄB' QÄ :7;Ä-6;G=2Ä6?3>Ä" A )
- &) B' Ä Ä88<14:5167Ä'658Ä\*# \$\*#\*Ä20:<<Ä96Ä<6P39>Ä<ÄB' QÄ6FF=714:51672)
- U) "03Ä46FF=714:51672Ä753>9:4BÄ50Ä50BÄ3>Ä735P6>KÄ:;<<Ä4385ÄB' QÄ9>6B03ÄP73>S2Ä4375>:<1J3;Ä46752@2Ä3F)
- %) "03Ä2@253FÄ20:<<Ä:<<6PÄ>3:<Ä51F3ÄF67156>17LÄ89Ä70882953Ä2743Ä:7;Ä:<<6PÄ43>5:17Ä4675>6<2Ä5167:<1282Ä1913;Ä03>317)
- \_ ) "03Ä1753>9:430Ä<<Ä3Ä>:802Ä:7;ÄG<316Ä:<<6P0Ä23>ÄÄ3:21<103Ä2@253FÄ1796>F:5167)
- W) "03Ä2@253FÄ20:<<ÄF67156>Ä503Ä:<:>FÄ25:5=2Ä69Ä30353Ä3BÄ<ÄÄ13372Ä:7;Ä8>6?1;3Ä;1:L762514Ä1796>F:5167)
- e) "03Ä2@253FÄ20:<<Ä174<=;3Ä83>96>F:743Ä:7:<@212Ä69Ä561Ä7Ä:75SLÄ73>:53Ä3F:1<Ä<3>5P037Ä508Ä:75Ä17583>96>F17LÄ3PÄ83453;))ÄÄ2Ä:88<BÄMÄ83>96>F:743Ä:7:<@212Ä20:<<Ä46721;315ÄÄ37?1>67F37683Ä57LÄ467;151672)
- f ) "03Ä2@253FÄ20:<<Ä8>6?1;3Ä:<:>FÄ7651914:5167Ä17Ä53?376Ä59ÄMÄ5>:4K3>Ä<622MÄF3536>6<6L142@253FÄ:Ä<622MÄ373>L@Ä53>Ä<622)
- ( ) "03Ä2@253FÄ:Ä<Ä?3Ä5039=745167:<156ÄÄP7<6;:Ä1256>14Ä;:5:17ÄÄ25:7;:>Ä;:5:Ä6>F:5Ä50:5Ä7ÄG3Ä1F86>53;Ä1650ÄÄ46F8=53>Ä8>6L>:F2)
- ) "03Ä2@253FÄ:Ä<Ä?3ÄL373>:<Ä:7;Ä4=256F1J;G386<ÄÄ73>:57LÄ4:8:G1<15132)
- ' ) "03Ä2@253FÄ:Ä<Ä174<=;3Ä;:5:Ä:>401?P7ÄÄFÄ71F=FÄ69Ä5P0ÄTEÄ@3:>2Ä69ÄF:57Ä6>ÄÄ>3C=1>3;Ä53ÄÄ64:<W+MÄ!&!A0ÄÄ6503>Ä>3C=1>3F3752)
- \ ) W9Ä>3C=1>3;ÄG@ÄP73>MÄ6743ÄN&+Ä;321L7Ä12Ä8>61562MÄÄ503Ä3Ä20:<<ÄG3Ä;:5:Ä256>:L3Ä:5Ä3:40Ä17?3>53>Ä2K1;Ä96>Ä:ÄF171F=FÄ69Ä50>B3ÄÄQEA;46FF=714:51672Ä753>>=851672P337Ä503Ä3>53KÄ;Ä;Ä46FF =714:51672Ä4<62=>3)
- ) Ä<<Ä1;3751913;Ä4>151451Ä683;5:Ä861752Ä:2Ä:L>335ÄÄ60PÄP7320MÄG3Ä01256>1J3Ä1753>?:<2Ä462Ä467;Ä6<Ä22)
- a ) A675>:456>Ä20:<<Ä8>6?1;3Ä:ÄF171F=FÄ69Ä`\$06=>Ä, +ÄG:ÄK5-8Ä96>ÄÄAÄBÄÄ3C=18F375)
- !) Ä<<Ä+AÄBÄÄ;20Ä<ÄG3ÄÄ?:1<:G<396>ÄÄÄ753>9:43Ä Ä6503>Ä501>Ä8:2Ä130Ä=1>3;Ä96>Ä>3F653Ä:44F67M56>17LÄMÄ:5:Ä4C=1215167)

T)\*X

- A.N&!Ä+&A,!W".Ä!&a,W!&-&'"+
- Ä) A@G234=>15@Ä>3C=1>308752Ä<=;3Ä:7;:>:2Ä23596>5ÄG60ÄÄ>50ÄÄF3>14:Ä<345>14Ä!3<1:G1<1Ä6>Ä86>:516DÄ&!AE)
- N) "03Ä+AÄBÄÄ@253FÄ20:<<Ä675Ä6<<3;Ä4@G234=>15@Ä2Ä2=991413758-562Ä75Ä=7:=506>1J3;Ä:44321Ä503>Ä>3F653<@Ä6>Ä<64:<<@)
- A) W7Ä503Ä75Ä63Ä=18F375Ä8<:43F375ÄM@G234=>15@Ä4679516720:<<ÄÄF8<3F3753;Ä;Ä:64=F3753;Ä17Ä40Ä:ÄP:60Ä503Ä6791L=>:5167D2EÄÄÄ7Ä38453;Ä6>Ä>3\$:88<13;)
- B) A@G3>Ä234=>15@Ä20:<<ÄG3Ä:88>6?3;ÄG@Ä503ÄP73>Ä:7;ÄL58<B3353ÄG@Ä503ÄA675>:456>)

T)\*Z

- A\--,'WAÄ"W\'+Ä N,W(BW%/'
- Ä) "03ÄÄ675>:456>82Ä75\$<3?3ÄÄBÄÄ@253FÄ?3>2MÄ46FF=714720>;P:>3MÄ:7;Ä:443226>1P1Ä-G374<623;Ä50ÄÄ675>456>2ÄP1540@>;Ä675>6NÄ=1<;17L
- N) "03Ä4675>6<ÄG=1<;17LÄP1<<Ä23>?3Ä:2Ä503Ä467734376Ä508Ä1756G345P3+AÄBÄÄ2@253FÄ

SECTION 48 09 00 – INSTRUMENTATION AND CONTROL FOR ELECTRICAL POWER GENERATION: continued

- :7;\P73>S2Ä<64:<Ä735P6>K)
- A) ÄÄ1G3>ÄA62>?43Ä173ÄP133Ä6?1;3;Ä56Ä3ÄP1540@:>ÄA675>6<Ä<;17LÄ903ÄA675>;456>S2Ä46773456Ä503Ä\P73>Ä735P6>K)
- B) A675>;456>Ä20:<<Ä8>6?1;3Ä86P3>Ä56Ä503ÄA6FF=714:51672Ä3C=18F37
- T)\*R +;"&-Ä +\U"JÄ!&/
- Ä) "03ÄA675>;45620<<Ä8>6?1;3Ä695P:>350:5ÄF335ÄÄ=74567:<Ä>3C=1>3F3752Ä2830B9B3;ÄN) +695P:>320:<<Ä3F8<6@F653F67156>17LÄ:4675>6<MÄ:7ÄÄ751?1>=2Ä23>?3>)
- A) +AÄBÄÄ7;Ä3C=13;Ä3<346FÄ96>ÄF353>17LÄ:7;ÄÄ%ÄÄ::5:Ä20:<@Ä83653453C807Ä:ÄÄ91>3P:<<)
- B) A675>;45620<<Ä8>6?1;3ÄÄÄBÄ[01256>1:7Ä437217LÄ503Ä60345)695P:>3Ä1437217LÄ20:<<Ä8>6?1;3ÄÄÄ50360345321L7Ä193)
- T)\*' +;"&-Ä Ä!BJÄ!&/
- Ä) A675>;456>ÄP1<<Ä8>6?1;3Ä91G3>Ä>17LÄG35P337ÄA6FF<;17LÄ16;7ÄÄ73>153>Ä2K1;2dÄA675>;45620<<Ä8>6?1;3ÄÄ734322:>@Ä91G3>[&503>735Ä734062Ä1523>532Ä1;2Ä:[6>Ä17Ä6FF=714:51672ÄN=1<;17D6>Ä685141G3>Ä46773451672)
- N) "03ÄA675>;45620<<Ä8>6?1;3Ä;Ä1725:<<ÄÄ>;P:>3Ä46F8673752Ä734322:>@Ä56Ä9=<91<<Ä503Ä745167:>Ä3C=1>3F3728Ä19130Ä>317)
- #) "03ÄA675>;456>Ä20:<<Ä8>6?1;3Ä0:>;P:>3Ä56ÄG3Ä1750Ä1723;Ä53ÄÄ2K1;Ä96>Ä::5:Ä4C=1215167Ä2@253FÄDBÄ+EÄ1753>9:43ÄP150Ä17Ä35>5322MÄÄ35288Ä8F3536>6<6L1425Ä51672Ä17Ä)
- T) "03ÄA675>;456>Ä20:<<Ä8>6?1;3Ä0:>;P:>3Ä56ÄG3Ä17256FF3;Ä475Ä1503ÄN=1<;17LÄ56Ä35Ä503Ä@253FÄ>3C=1>3F372Ä1753>9:4BÄ503ÄP73>Ä3C=18F375Ä:7;Ä5P6>K)
- T)\*^ !&B;'BÄ'A./
- Ä) "03>3Ä0:<<ÄG3Ä>3;=7::74@Ä906Ä503Ä746F8673752/
- #) +P154032Ä17Ä503Ä+P1540@:>;ÄA675>6<ÄN=1<;17LÄD>3C=7::74@Ä96765Ä>2P154032Ä:7Ä>53>Ä2K1;2E)
- T) , +2)
- Q) 6P3>Ä=88<1326>Ä (A2)
- Y) +AÄBÄÄ[";ÄÄ%ÄÄ2@253F2Ä:7;Ä"3<3F35>@Ä56Ä\P73>S2Ä43755>61Ä2Ä4053F
- X) Ä7Ä:<53>7:51?3Ä53<346FF=714:5167Ä;3?143Ä56Ä174<=;ÄPÄ:7Ä;Ä51?380673Ä:7;[6>Ä::5:Ä<173D2EÄ6>Ä26F3Ä46FG17:5167Ä503>369Ä4:8:G<3Ä69Ä5>372F515F3Ä9Ä508F17=53Ä1753>?:<Ä::5:Ä9>6FÄ >1F:>@Ä:7;Ä+3467;:>@Ä>3?37=3ÄC7Ä15@ÄF353>1
- T)#\* +AÄBÄÄÄÄNW'&'"/
- Ä) Ä<<Ä6=5;66>Ä374<62=>32Ä20:<<ÄG3Ä'&-ÄÄYMA0:??Ä8::8;<64K3MÄ0:7Ä63Ä;321L73;Ä96>Ä503Ä153Ä467;151672)
- N) Ä<<Ä17;66>Ä374<62=>32ÄD1721;3Ä+P1540@:>;ÄA675>6<<ÄNG3Ä;Ä7ÄBÄÄ20>Ä#TÄ:7;Ä0:??Ä::8;<64K3;Ä017L366>2)
- A) &74<62=>3Ä2G3ÄÄX\* ÄÄ:53;)
- T)## \J&!Ä (Ä"ÄÄ"!)((&!Ä D AE/
- Ä) "03Ä+AÄBÄÄ2@25320Ä<Ä4385Ä46FF:7;2Ä>6FÄ03ÄP73>S2Ä4375>1]3;46FF:7;Ä43753>Ä:7;Ä;125>160323Ä6FF:7;2Ä56Ä<3C=18F375ÄÄ153ÄÄ34322:>@)
- N) Ä5ÄÄ71F=FÄ50396<<6P17LÄ75>6<2Ä4:8:G1<20132ÄÄ:1<:G<3/



SECTION 48 09 00 – INSTRUMENTATION AND CONTROL FOR ELECTRICAL POWER GENERATION: continued

- 4) !:17ÄL:=L3)
- ; ) J17;Ä2833;)
- 3) J17;Ä;1>345167)
- U) N:553>@Ä&73>L@Ä+56<213PÄN&++E/  
 #) Ä5ÄÄÄ71F=FM50396<<6P17E67156>17LÄ:G1<15130Ä<ÄG3Ä:G<3/  
 :) &-+Ä<3?3-Ä7156>17L9Ä503Ä53>@ÄL3F375Ä+@253FÄDN+  
 T) Ä5ÄÄÄ71F=FM50396<<6P17E67156>17LÄ:G1<15130Ä<ÄG3Ä:1<:G<3/  
 :) +6<:373>L@Ä2019517L  
 G) U>3C=374@Ä>3L=<:5167  
 4) 6P3>Ä23586175  
 ; ) b6<5:L3Ä23586175  
 3) %>1;Ä2=886>5  
 9) b:>1:G<3ÄF8Ä4675>6<  
 %) +=G25:5167/  
 #) !3?37=3Ä&73>L@Ä-353>17L/  
 :) 6P3>MÄ373>L@MÄ496<3151MÄC=374@MÄ25:5=2)  
 T) A"2Ä:7;Ä"2)  
 Q) ÄÄÄN>3:K3>Ä25:5=2D32E)  
 Y) !3<:@Ä:<:>F2)  
 \_) A6FF=714:5167ÄN=1<;17L[&74<62=>3/  
 #) &7?1>67F375:4Ä7;151672)  
 T) bÄÄÄ:<:>F2)  
 Q) N=1<;17L66>Ä6215162Ä1540)
- T)#Q -&"&!(\%WÄÄ(ÄD-&"EÄ +Ä"W'W/  
 Ä) D#EÄ536>6<6L14:<Ä25:5167Ä;17LÄÄÄ71F=FM50396<<6P17E67156>17LÄ3726>2/  
 #) ÄFG1375Ä:53Ä83>:5=>3/  
 :) !:7L3/ÄSXThÄÄÄiZ\*hÄÄÄ3553>)  
 G) Ä44=>:4@j[ÄÄ\*)QhÄÄT\*hÄÄ>ÄG3553>)  
 T) !3<:51?30Ä=F1;15@/  
 :) !:7L3/Ä\*\$#\*\*gÄi[ÄÄQÄ6>ÄG3553>)  
 Q) !:17ÄL:=L3/  
 :) !:7L3/Ä\*Ä6Ä\*\*ÄFF[0>6ÄÄ3553>)  
 G) Ä44=>:4@j[ÄÄ#Ä740Ä>Ä3553>)  
 Y) J17;Ä2833;/  
 :) !:7L3/Ä\*\$Z\*Ä[2Ä>ÄG3553>)  
 G) Ä44=>:4@/Ä2833;Ä:44=>:4@Ä56ÄG35ÄPÄQÄÄG3553>)  
 X) J17;Ä;1>345167/  
 :) Ä44=>:4@j[ÄÄXhÄÄ63Ä53>)  
 Z) N:>6F35>14Ä8>322=>3)  
 R) N:4K=8Ä86P3>Ä9>6FÄ:Ä;3;14:53;ÄG:553>@ÄP150Ä;3;14:53;Ä0Ä-Ä;340:>L17LÄ=8Ä56ÄYÄ  
 06=>2)  
 `) -3536>6<6L14:<Ä:5167Ä"6P3>)

Ä!"ÄQÄSÄ&Ä,"W'

- Q)\*# "!"ÄW'W'0%/
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SECTION 48 09 00 – INSTRUMENTATION AND CONTROL FOR ELECTRICAL POWER GENERATION: continued

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END OF SECTION 48 09 00

**EXHIBIT B**  
**MILESTONE PAYMENT SCHEDULE**

Item #	Estimated Completion Month	Milestone	Associated Schedule Task	Milestone Value w/o Taxes (\$)	Cumulative Amount w/o Taxes (\$)	Milestone Value (\$)	Cumulative (\$)	Milestone %	Cumulative %
1	10/1/2023	LNTF- Execution Date/Initial HV Design	Limited Notice to Proceed	468,922	468,922	500,000	500,000	0.4%	0.4%
2	11/1/2023	LNTF- Project Layout Submitted	Site Plan Generation: Preliminary Site Plan Generation	46,892	515,814	500,000	500,000	0.04%	0.5%
3	12/1/2023	LNTF- Low Lead Equipment Procurement	Substation Major Equipment PO Issuance: GSU PO Issuance	1,406,766	1,922,580	1,500,000	2,050,000	1.27%	1.7%
4	12/1/2023	LNTF- Site Studies (Geotech, Topo) Submitted	Geotech Report	93,784	2,016,364	100,000	2,150,000	0.08%	1.8%
5	11/2/2024	LNTF- Sound Study Submitted	Site Plan Generation & Engineering Handoff	234,461	2,250,825	250,000	2,500,000	0.21%	2.1%
6	2/1/2024	LNTF- 30% Electrical Package Submitted	Engineering Electrical - 30% Package	2,449,609	4,700,434	2,500,000	5,000,000	0.21%	2.3%
7	2/1/2024	LNTF- 30% Civil Package Submitted	Site Studies: Corrosion Testing	562,706	5,263,140	600,000	5,350,000	0.51%	2.8%
8	6/1/2024	LNTF- Remaining Site Studies (Critical Issues Assessment, Corrosion Analysis) Submitted	Engineering Electrical - 60% Package	3,141,776	8,404,916	225,000	5,575,000	0.19%	3.0%
9	6/1/2024	LNTF- 60% Electrical Package Submitted	Engineering Civil - 60% Package	3,152,591	11,557,507	225,000	5,800,000	0.19%	3.2%
10	6/1/2024	LNTF- 60% Civil Package Submitted	Final Notice to Proceed	2,110,151	13,667,658	225,000	6,025,000	0.19%	3.4%
11	7/1/2024	PCS Equipment PO Issuance	PCS Equipment PO Issuance: Inverters PO Issuance	4,235,521	17,903,179	803,551	6,828,551	3.99%	0.8%
12	7/1/2024	PCS Equipment PO Issuance	PCS Equipment PO Issuance: Inverters PO Issuance	2,972,259	20,875,438	4,235,521	11,064,072	2.29%	1.1%
13	7/1/2024	PCS Equipment PO Issuance	PCS Equipment PO Issuance: Inverters PO Issuance	2,972,259	23,847,697	4,235,521	15,300,000	2.29%	1.4%
14	7/1/2024	AC System PO Placed	MV-AC PO Issuance	145,312	24,000,009	148,850	15,448,850	0.41%	1.8%
15	7/1/2024	DC System PO Placed	DC Cable PO Issuance	316,182	24,316,191	337,137	15,786,000	0.29%	2.1%
16	7/1/2024	BESS PO Placed	BESS Containers PO Issuance	67,315	24,383,506	71,776	15,857,776	0.29%	2.4%
17	7/1/2024	Substation Equipment PO Placed	BESS Containers PO Issuance	7,098,746	31,482,252	7,569,317	23,427,093	6.41%	16.4%
18	2/1/2025	Construction Mobilization (DEPCOM Onsite Office Trailer Installed)	Substation Major Equipment PO Issuance: Control Enclosure PO Issuance	1,962,500	33,444,752	1,962,500	25,389,593	1.66%	18.1%
19	3/1/2025	Substation Site Preparation Start (Clearing and Grub)	Construction Start Date	22,314,922	55,759,674	2,404,027	27,793,620	2.04%	20.1%
20	3/1/2025	BESS Site Preparation Start (Clearing and Grub)	Substation Pad Grading	23,787,327	79,547,001	1,570,000	29,363,620	1.33%	21.5%
21	3/1/2025	45% Fence Installed	BESS Pad Grading	2,652,978	82,199,979	2,839,467	32,203,087	2.40%	23.9%
22	4/1/2025	AC System Delivery Complete	Fence Install	27,101,255	109,301,234	28,897,397	61,100,484	0.59%	24.5%
23	4/1/2025	DC System Delivery Complete	MV-AC Deliveries	27,839,013	137,140,247	786,653	68,887,137	0.67%	25.1%
24	4/1/2025	BESS Material Factory Acceptance Testing - 50% of total enclosures pass FAT)	DC Cable Deliveries	27,096,081	164,236,328	167,477	85,554,614	0.14%	25.3%
25	4/1/2025	90% Fence Installed	BESS Material Factory Acceptance Testing	44,332,625	208,568,953	17,419,252	103,000,000	14.75%	40.0%
26	5/1/2025	BESS Material Factory Acceptance Testing Complete (100% of total enclosures pass FAT)	Fence Install	532,596	209,101,549	567,893	103,567,893	0.48%	40.5%
27	5/1/2025	Substation Start of Steel Delivery (1st delivery onsite of rebar)	BESS Material Factory Acceptance Testing	16,336,544	225,438,093	17,419,252	121,000,000	14.75%	55.3%
28	6/1/2025	45% Trenching Excavated	Substation Major Equipment Deliveries: Steel Package	1,251,553	226,689,646	62,453,318	134,500,000	1.13%	56.4%
29	6/1/2025	EMS Delivered	Underground Trenching	665,744	227,355,390	709,867	135,209,867	0.60%	57.0%
30	6/1/2025	90% Trenching Excavated	SCADA & EMS Deliveries	458,371	227,813,761	488,750	135,698,617	0.41%	57.4%
31	8/1/2025	Substation Foundations Complete (Poured)	Underground Trenching	813,688	228,627,449	867,615	136,566,232	0.73%	58.1%
32	8/1/2025	BESS/PCS Foundations - 50% (Poured)	Substation Foundations	736,208	229,363,657	785,000	137,351,232	0.66%	58.8%
33	8/1/2025	45% AC Cable Pulled	Foundations	610,266	229,973,923	650,711	138,001,943	0.55%	59.3%
34	8/1/2025	BESS/PCS Foundations Complete (Poured)	Cable Install: AC Cable Pull	691,635	230,665,558	664,292,230	144,694,174	0.62%	60.0%
35	9/1/2025	BESS Material Delivery - 60% Complete	Cable Install: DC Cable Pull	732,319	231,397,877	737,473	145,431,647	0.62%	60.6%
36	9/1/2025	BESS/PCS Foundations Complete (Poured)	BESS Material Deliveries	9,986,849	241,384,726	780,554	146,212,199	0.66%	61.3%
37	9/1/2025	90% DC Cable Pulled	Foundations	429,808	241,814,534	771,448,398	147,000,000	0.45%	61.8%
38	9/1/2025	90% DC Cable Pulled	Cable Install: AC Cable Pull	78,817,259	320,631,793	77,841,306	147,771,306	0.54%	62.3%
39	10/1/2025	Inverter Delivery Complete to Site	Cable Install: DC Cable Pull	2,034,120	322,665,913	638,889	148,410,195	0.54%	62.8%
40	10/1/2025	Substation Equipment Deliveries Complete	BESS Equipment Deliveries: Inverters Deliveries	6,400,589	329,066,502	2,169,038	150,579,233	1.84%	63.6%
41	10/1/2025	BESS Material Delivery - 100% Complete	BESS Equipment Deliveries	93,905,467	422,971,969	6,824,790	157,404,023	5.78%	64.4%
42	10/1/2025	Substation Equipment Deliveries Complete (GSU and Circuit Breaker)	BESS Equipment Deliveries	1,177,932	424,149,901	7,099,153	164,503,176	6.01%	65.2%
43	10/1/2025	BESS/PCS Equipment Finish Set Complete	Substation Major Equipment Deliveries: GSU	1,664,361	425,814,262	1,256,000	165,759,176	1.06%	66.0%
44	10/1/2025	BESS/PCS Test and Term Complete	Equipment Set	98,227,192	524,041,454	1,577,467	167,336,643	1.50%	66.8%
45	11/1/2025	Substation Mechanically Complete	Equipment Test and Term	515,345	524,556,799	98,742,537	168,324,180	1.34%	67.6%
46	12/1/2025	SCADA/EMS Install Complete	Substation Above Grade Install	591,773	525,148,572	630,993	169,000,000	0.47%	68.1%
47	12/1/2025	Substation Substantially Complete	SCADA & EMS Install	368,104	525,516,676	99,702,414	169,997,414	0.53%	68.7%
48	3/1/2026	Substantial Completion	Substation Testing	11,078,046	536,594,722	110,780,460	180,777,874	0.33%	69.0%
		Expected Substantial Completion	Expected Substantial Completion	11,078,046	547,672,768	110,780,460	181,888,334	100.00%	100.0%
		<b>Total</b>		<b>110,780,460</b>	<b>110,780,460</b>	<b>110,780,460</b>	<b>110,780,460</b>	<b>100.00%</b>	<b>100.00%</b>

\*The forecasted milestone payments above are for purposes of planning only. Invoices will be based on actual work performed during the invoice period.  
 \*Contractor will not request payment for any milestones more than 2 months in advance of this schedule unless agreed to by Owner



## EXHIBIT C

### Owner and Contractor Acquired Permits

The following contains a list of the Owner Acquired Permits and Contractor Acquired Permits that are anticipated for this project. If a permit that is not listed as an Owner Acquired Permit or a Contractor Acquired Permit is subsequently identified as being required and the permit is of the type customarily obtained by an Owner or Developer of projects similar to the Project and not by an Engineering, Procurement and Construction Contractor (and is not the same type of permit already allocated to Contractor as a Contractor-Acquired Permit), then such permit shall be deemed an Owner Acquired Permit and Owner shall obtain such permit. Similarly, if a permit that is not listed as an Owner Acquired Permit or a Contractor Acquired Permit is subsequently identified as being required and the permit is of the type customarily obtained by an Engineering, Procurement and Construction Contractor and not by an Owner or Developer of projects similar to the Project (and is not the same type of permit already allocated to Owner as an Owner-Acquired Permit), then such permit shall be deemed a Contractor Acquired Permit and Contractor shall obtain such permit.

Each Party shall provide reasonable engineering and permitting support to assist the other Party in obtaining the permits for which such other Party is responsible for acquiring. Each Party shall be responsible for any review times, AHJ approvals, fees, or modifications of any permits for which it is responsible for acquiring.

#### Owner Acquired Permits (if applicable)

- New Mexico Environment Department or Albuquerque Bernalillo County Air Quality Control Board
  - Acid Rain Permit
  - Authority to Construct Air Permit
  - Title V Operating Permit
- EPA Region 6
  - NPDES Construction General Permit of Storm Water Permit Discharge
  - Groundwater Discharge Permit
  - Spill Prevention & Countermeasure Control Plan
- City of Albuquerque
  - Site Development Plan, Land use, Planning, Zoning, Variance requests, CUP/SUP related permits
  - Development Agreements
- Other
  - Utility Encroachment agreements
  - Road Use Agreements

#### Contractor Acquired Permits (if applicable)

- New Mexico Environmental Department or Albuquerque Bernalillo County Air Quality Control Board
  - Fugitive Dust Permit
- EPA Region 6
  - NPDES Construction General Permit of Storm Water Permit Discharge
- City of Albuquerque
  - Building Permit (not required, PNM exempt)
  - Wall / Fence Permit

- Electrical Permit (not required, PNM exempt)
- Temporary construction permits including but not limited to:
  - Grading permits
  - Access permits
  - Trailer permits, and associated drinking water and wastewater permit (if necessary)
  - Generator permit
  - Fuel storage tank permit
- Driveway Permits
- Haul route coordination
- New Mexico Contractor's license number
- OSHA Compliance

**EXHIBIT D**

**CONTRACTOR RATE SCHEDULE**

**DEPCOM – Contractor Rate Schedule**

Proprietary &amp; Confidential

**September 2023****Position:****\*Hourly Rate:**

Executive (VP and above)	\$300
Director	\$225
Discipline Engineer	\$200
Project Engineering Manager	\$225
Discipline Engineer	\$200
Procurement/Buyer	\$125
Accounting / Administration	\$110

**Position: Field****\*Hourly Rate:**

Project Manager	\$215
Construction Manager	\$210
Superintendent	\$210
Safety Manager	\$150
Quality Control Manager	\$150
Logistics Manager	\$150
Field Engineer	\$125
Security Personnel	\$110
Qualified Equipment Operator	\$110
Journeyman Electrician	\$150
Electrical Labor	\$100
General Labor	\$80
Commissioning & Testing Engineer	\$200
Commissioning & Testing Specialist	\$150

\*Hourly Rates are inclusive of wages, burden, overhead and fee only.

# DEPCOM – Contractor Rate Schedule

Proprietary & Confidential

## September 2023

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### Travel:

Per Diem

\*\*\$230/day

Based on U.S. General Service Administration data ([www.gsa.gov](http://www.gsa.gov)) [FY 2024 Per Diem Rates for Albuquerque, New Mexico | GSA](#)

**\*Covers lodging, meals, and incidentals when “Positions” filled by out of town employees are required to travel to the site to complete the work necessary under the T&M scope, or if the current stay for said “Position” is extended due to the work.**

**\*\*Rates will be required to be adjusted beginning October 1, 2024 as data beyond September 2024 is not available.**

# DEPCOM – Contractor Rate Schedule

Proprietary &amp; Confidential

## September 2023

LABOR:		
Foreman	Standard	\$ 120
	Over Time	\$ 146
	Double Time	\$ 188
Operator	Standard	\$ 110
	Over Time	\$ 125
	Double Time	\$ 160
Laborer	Standard	\$ 80
	Over Time	\$ 110
	Double Time	\$ 140
EQUIPMENT:		
CAT 563 VIBRO-SHEEPSFOOT	Std. Hourly	\$ 135
	Stand-By / Idle	\$ 119
	Mobilization	\$ 1,430
CAT 815 COMPACTOR	Std. Hourly	\$ 179
	Stand-By / Idle	\$ 130
	Mobilization	\$ 1,760
CAT 825 COMPACTOR	Std. Hourly	\$ 200
	Stand-By / Idle	\$ 141
	Mobilization	\$ 3,190
CAT 563 SMOOTH DRUM ROLLER	Std. Hourly	\$ 136
	Stand-By / Idle	\$ 121
	Mobilization	\$ 1,430
SMALL VIB ROLLER 4-6 TON	Std. Hourly	\$ 72
	Stand-By / Idle	\$ 61
	Mobilization	\$ 550
WALK BEHIND ROLLER	Std. Daily	\$ 48
	Mobilization	N/A
CAT D-4 / JD 550 DOZER	Std. Hourly	\$ 87
	Stand-By / Idle	\$ 76
	Mobilization	\$ 1,430
CAT D-5/ JD 650 DOZER W/ GPS	Std. Hourly	\$ 129
	Stand-By / Idle	\$ 110
	Mobilization	\$ 1,430
CAT D-6 LGP DOZER W/ GPS	Std. Hourly	\$ 179
	Stand-By / Idle	\$ 151
	Mobilization	\$ 3,190
CAT D-7 DOZER	Std. Hourly	\$ 175
	Stand-By / Idle	\$ 146
	Mobilization	\$ 3,190
CAT 143 GRADER W/GPS	Std. Hourly	\$ 178
	Stand-By / Idle	\$ 143
	Mobilization	\$ 1,760
DISK PULL TYPE	Std. Daily	\$ 108
	Mobilization	\$ 1,430
LAND LEVELER / DRAG	Std. Daily	\$ 108
	Mobilization	\$ 1,430
FIAT SMALL GRADER	Std. Hourly	\$ 72
	Stand-By / Idle	\$ 64
	Mobilization	\$ 1,430
SKID STEER INCL ATTACHMENTS	Std. Hourly	\$ 99
	Stand-By / Idle	\$ 88
	Mobilization	\$ 1,430

# DEPCOM – Contractor Rate Schedule

Proprietary &amp; Confidential

## September 2023

CAT 936 LOADER	<i>Std. Hourly</i>	\$ 78
	<i>Stand-By / Idle</i>	\$ 67
	<i>Mobilization</i>	\$ 1,430
CAT 938 LOADER	<i>Std. Hourly</i>	\$ 78
	<i>Stand-By / Idle</i>	\$ 67
	<i>Mobilization</i>	\$ 1,760
CAT 950 LOADER	<i>Std. Hourly</i>	\$ 100
	<i>Stand-By / Idle</i>	\$ 87
	<i>Mobilization</i>	\$ 1,760
CAT 966 LOADER	<i>Std. Hourly</i>	\$ 128
	<i>Stand-By / Idle</i>	\$ 109
	<i>Mobilization</i>	\$ 1,760
JD W/KTEC PULL SCRAPER(MBC)	<i>Std. Hourly</i>	\$ 275
	<i>Stand-By / Idle</i>	\$ 231
	<i>Mobilization</i>	\$ 3,190
CAT CHAL W/KTEC PULL SCRAPER(SUB) GPS	<i>Std. Hourly</i>	\$ 387
	<i>Stand-By / Idle</i>	\$ 330
	<i>Mobilization</i>	\$ 3,190
CAT 613 SCRAPER	<i>Std. Hourly</i>	\$ 178
	<i>Stand-By / Idle</i>	\$ 155
	<i>Mobilization</i>	\$ 1,430
CAT 621 SCRAPER	<i>Std. Hourly</i>	\$ 316
	<i>Stand-By / Idle</i>	\$ 265
	<i>Mobilization</i>	\$ 1,430
CAT 627 SCRAPER	<i>Std. Hourly</i>	\$ 292
	<i>Stand-By / Idle</i>	\$ 219
	<i>Mobilization</i>	\$ 1,760
CAT OFF-ROAD WATER TRUCK	<i>Std. Hourly</i>	\$ 220
	<i>Stand-By / Idle</i>	\$ 172
	<i>Mobilization</i>	\$ 1,760
LARGE FUEL TANK	<i>Std. Daily</i>	\$ 2
	<i>Mobilization</i>	\$ 550
FIELD OFFICE MBC TRAILER	<i>Std. Daily</i>	\$ 48
	<i>Mobilization</i>	\$ 550
4" GAS/DIESEL WATER PUMP	<i>Std. Daily</i>	\$ 102
	<i>Mobilization</i>	N/A
6" DIESEL WATER PUMP	<i>Std. Daily</i>	\$ 110
	<i>Mobilization</i>	\$ 330
LIGHT PLANT	<i>Std. Daily</i>	\$ 48
	<i>Mobilization</i>	\$ 330
TRACTOR WITH BROOM	<i>Std. Hourly</i>	\$ 123
	<i>Stand-By / Idle</i>	\$ 112
	<i>Mobilization</i>	\$ 1,430
FUEL BUGGY	<i>Std. Daily</i>	\$ 13
	<i>Mobilization</i>	\$ 330
MEDIUM GENSET 10KW-100KW	<i>Std. Daily</i>	\$ 149
	<i>Mobilization</i>	\$ 330
JD 4WD RUBBER TIRE TRACTOR	<i>Std. Hourly</i>	\$ 144
	<i>Stand-By / Idle</i>	\$ 114
	<i>Mobilization</i>	\$ 1,430
JOY AIR COMPRESSOR	<i>Std. Daily</i>	\$ 63
	<i>Mobilization</i>	\$ 330
PICKUP TRUCK	<i>Std. Hourly</i>	\$ 21
	<i>Mobilization</i>	N/A
MECHANICS TRUCK	<i>Std. Hourly</i>	\$ 83
	<i>Mobilization</i>	N/A

# DEPCOM – Contractor Rate Schedule

Proprietary &amp; Confidential

## September 2023

FLAT BED / BOOM TRUCK	<i>Std. Hourly</i>	\$ 44
	<i>Mobilization</i>	N/A
VAN TRAILERS	<i>Std. Daily</i>	\$ 48
	<i>Mobilization</i>	\$ 550
SINGLE AXLE DUMP TRUCK	<i>Std. Daily</i>	\$ 207
	<i>Mobilization</i>	\$ 1,430
NON-PLATED WATER TRUCK	<i>Std. Hourly</i>	\$ 182
	<i>Stand-By / Idle</i>	\$ 150
	<i>Mobilization</i>	\$ 1,430
FUEL TRUCK	<i>Std. Daily</i>	\$ 59
	<i>Mobilization</i>	\$ 1,430
LOWBOY TRACTOR W/ TRAILER	<i>Std. Hourly</i>	\$ 213
	<i>Mobilization</i>	\$ 1,430
6 WHEEL TRUCK 35 TON	<i>Std. Hourly</i>	\$ 223
	<i>Stand-By / Idle</i>	\$ 180
	<i>Mobilization</i>	\$ 1,760
6 WHEEL TRUCK 40 TON	<i>Std. Hourly</i>	\$ 223
	<i>Stand-By / Idle</i>	\$ 180
	<i>Mobilization</i>	\$ 1,760
GATOR / ATV	<i>Std. Daily</i>	\$ 83
	<i>Mobilization</i>	\$ 550
CAT 312 EXCAVATOR	<i>Std. Hourly</i>	\$ 99
	<i>Stand-By / Idle</i>	\$ 90
	<i>Mobilization</i>	\$ 1,430
RT-EXCAVATOR (CAT 318)	<i>Std. Hourly</i>	\$ 198
	<i>Stand-By / Idle</i>	\$ 182
	<i>Mobilization</i>	\$ 1,430
CAT 320 EXCAVATOR	<i>Std. Hourly</i>	\$ 120
	<i>Stand-By / Idle</i>	\$ 106
	<i>Mobilization</i>	\$ 1,760
CAT 330/336 EXCAVATOR	<i>Std. Hourly</i>	\$ 186
	<i>Stand-By / Idle</i>	\$ 152
	<i>Mobilization</i>	\$ 1,760
CAT 345/350 EXCAVATOR	<i>Std. Hourly</i>	\$ 238
	<i>Stand-By / Idle</i>	\$ 189
	<i>Mobilization</i>	\$ 3,190
CASE 580 BACKHOE	<i>Std. Hourly</i>	\$ 92
	<i>Stand-By / Idle</i>	\$ 79
	<i>Mobilization</i>	\$ 1,430
MINI EXCAVATORS	<i>Std. Hourly</i>	\$ 85
	<i>Stand-By / Idle</i>	\$ 72
	<i>Mobilization</i>	\$ 1,430
KOMATSU PC 750	<i>Std. Hourly</i>	\$ 320
	<i>Stand-By / Idle</i>	\$ 253
	<i>Mobilization</i>	\$ 3,190

\* Rates are based on current market data and interest rates, and will need to be updated 01/01/2025.



**EXHIBIT E**  
**CHANGE IN WORK FORM**

AGREEMENT NUMBER	EFFECTIVE DATE OF AGREEMENT	
CHANGE ORDER NO.	EFFECTIVE DATE OF CHANGE ORDER	
PROJECT/SUBJECT		
CONTRACTOR		

In accordance with **Section 5** of that certain Construction Agreement dated \_\_\_\_\_ (the "**Agreement**"), between \_\_\_\_\_ ("**Contractor**") and Public Service Company of New Mexico ("**PNM**"), Contractor and PNM agree as follows:

The description of change(s) shall include:

- a detailed narrative describing the factual basis of the request including references to the applicable Contract documents or other contractual basis, and
- a detailed build-up of the proposed change in the Contract Price, if any, including labor hours, labor rates, Equipment and Materials, subcontractor proposals, other Direct Costs, and markups together with supporting documentation (including Subcontractor supporting documentation, if applicable), and written justification showing the impact, if any, on the Project Schedule.

Description of Change:

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**CHANGE ORDER REQUEST COST SUMMARY** (Attach details as requested above)

Direct Labor	\$ _____	Hours: _____
Equipment / Materials	\$ _____	
Subcontractor Proposals	\$ _____	
Other Direct Costs	\$ _____	
Markup ([ ]%)	\$ _____	
Applicable Taxes	\$ _____	
Total Change Order Costs	\$ _____	

Total number of workhours associated with this COR:

Original Contract Sum	\$ _____
Previous Change Orders	\$ _____
Amount of this Change Order	\$ _____
New Contract Sum	\$ _____

This Change Order will modify the Required Substantial Completion Date as follows:

\_\_\_\_\_ Increase \_\_\_\_\_ Decrease \_\_\_\_\_ No Effect \_\_\_\_\_ Days

This Change Order will modify the Required Final Completion Date as follows:

\_\_\_\_\_ Increase \_\_\_\_\_ Decrease \_\_\_\_\_ No Effect \_\_\_\_\_ Days

Upon execution of this Change Order by Owner and Contractor, the above-referenced change shall become a valid and binding part of the Contract without exception or qualification, unless noted in this Change Order. Except as modified by this and any previously issued Change Orders, all other terms and conditions of the Agreement shall remain in full force and effect. This Change Order is executed by each of the Parties' duly authorized representatives.

**ACCEPTED BY  
CONTRACTOR**

**ACCEPTED BY  
PUBLIC SERVICE COMPANY OF NEW MEXICO**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed name: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT F**

**FORM OF CONTRACTOR'S INVOICE**

[Date]

[Name of Contractor]

[Address]

Attention:

Gentlemen:

[\_\_\_\_], a [\_\_\_\_] [\_\_\_\_] ("Contractor"), submits this application for payment ("Certificate") pursuant to Article 7 of the Engineering, Procurement, and Construction Contract (as amended, supplemented or modified from time to time, the "Contract") by and between Contractor and Public Service Company of New Mexico, a New Mexico corporation ("Owner"), dated as of [\_\_\_\_], 201[ ] ("Contract").

Unless otherwise defined herein, all capitalized terms used in this Certificate shall have the meanings specified for such terms in the Contract.

1. The undersigned is a duly authorized representative of Contractor, authorized to execute and deliver this Certificate on behalf of Contractor.

2. The following is a summary of the current status of the Contract account:

Original Contract Price:	\$ _____
Adjustments to Contract Price:	\$ _____
Contract Price to Date:	\$ _____
Amount of Payments that Contractor Has Received to Date:	\$ _____

3. The information in all material documents and supporting papers prepared or signed by Contractor or any of its officers or employees and submitted to Owner and in direct support of this Certificate and in connection with the Work, taken as a whole, is in all material respects, true, correct, and complete.

4. To the extent required under and for purposes of Section 7.1.2(a) of the Contract, the Work is being performed in accordance with the Contract, except \_\_\_\_\_.

5. To the extent required under and for purposes of Article 7 of the Contract: (a) that portion of the Work, as particularly set forth in Exhibit F-5 hereto [**Exhibit F-5 shall include all necessary documentary evidence**], was completed through the end of the month of \_\_\_\_\_,

20\_\_; (b) the aggregate amount of the Milestone Payments for such Work is \$\_\_\_\_; (c) the aggregate amount of the Milestone Payments for which Contractor has previously received payments is \$\_\_\_\_; and (d) the aggregate amount of Milestone Payments for which Contractor is entitled to be paid is \$\_\_\_\_\_.

6. The amount of this Contractor's Invoice set forth above, is not (in part or otherwise) attributable to Work which Contractor is not entitled to invoice for pursuant to Article 7 of the Contract or which otherwise constitutes or relates to a Subcontractor's application for payment, billings or invoices which Contractor disputes or for any other reason does not intend to pay, each to the extent Contractor is not entitled to invoice for the same pursuant to Article 7 of the Contract.

7. There are no known mechanics' or materialmen's liens outstanding at the date of this Contractor's Invoice, all undisputed due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application, and, except for such bills not paid but so included, there is no known basis for the filing of any mechanics' or materialmen's liens on the Project or the Work except as described below or, if any such lien has been filed or may be filed, Contractor shall fulfill its obligations under Article 30 of the Contract, and all required releases required to be obtained pursuant to the terms of the Contract have been obtained in such form as required under Article 7 of the Contract (copies of which are attached hereto and incorporated herein by this reference). Contractor, or a Subcontractor, has actually performed and Contractor has not been paid for the Work covered by this Contractor's Invoice, each to the extent required under the Contract and except as- set forth as an exception hereto. Exceptions:

\_\_\_\_\_.

8. To the extent required under Article 7 of the Contract, Contractor has paid all sales and use taxes due and owing to any Governmental Authority related to all Equipment and Materials incorporated into the Project.

9. Attached as Exhibit F-1 through F-4 hereto are all applicable Conditional Waivers and Releases Upon Progress Payment and/or Unconditional Waivers and Releases Upon Progress Payment prepared by Contractor and all applicable Unconditional Waivers and Releases Upon Progress Payment and/or all Conditional Waivers and Releases Upon Progress Payment from each Subcontractor in accordance with Sections 7.1-7.4, as applicable. [OR] Pursuant to Owner's direction pursuant to Section 7.1.2(c)(ii), 7.2(a) or 7.3(a) of the Contract, as applicable, Contractor has included a bond naming Owner as obligee thereof equal in amount of the outstanding payment of \_\_\_\_\_ to such Subcontractor.

10. Work uncertified from the Contractor's Invoice dated \_\_\_\_\_, 20\_\_ has been completed (except as set forth in the last sentence of this paragraph), and any disputes concerning less than full certification have been resolved to the extent required under the Contract and, if applicable, such written agreement among Owner and Contractor is attached as Exhibit F-6 hereto, and Contractor is entitled to a payment which includes: \_\_\_\_\_

\_\_\_\_\_

11. Contractor has delivered or shall deliver the Monthly Progress Report pursuant to Section 8.6 of the Contract, provided, however such delivery is not required as a condition to payment under Article 7 of the Contract.

IN WITNESS WHEREOF, the undersigned has executed this Certificate on the date first above written.

By: \_\_\_\_\_  
Project Manager

**EXHIBIT F-1**

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

**Conditional Waiver and Release Upon Milestone Payment**

WHEREAS, Public Service Company of New Mexico (“Owner”) and \_\_\_\_\_ (“Contractor”) have entered into that certain Engineering, Procurement and Construction Contract, dated as of [ ], 20[ ] (the “Contract”);

WHEREAS, the undersigned is required to provide this Conditional Waiver and Release Upon Milestone Payment pursuant to the terms of Article 7 of the Contract.

Capitalized terms used but not defined herein shall have the meanings given to them in the Contract.

By executing and submitting its interim payment application and the lien waiver below, in consideration for the payment described in the lien waiver below, and for the purpose of inducing the Owner to make this interim payment, the undersigned, for itself, its employees, subcontractors, sub-subcontractors, mechanics, materialmen and laborers, does hereby represent and warrant as follows:

1. All Parties Paid. The undersigned has been paid all amounts owed for all labor, Equipment and Materials, and services furnished to the Project through the effective date of \_\_\_\_\_ (the date of the undersigned’s previous application for payment), and that all parties supplying labor, services, Equipment and Materials, to it in connection with the Project have been paid, or will be paid in accordance with the terms of the applicable subcontracts and/or purchase orders, and Applicable Law, including the New Mexico Prompt Payment Act, for all labor, services, Equipment and Materials furnished with relation to the Project.
2. No Pending Liens. The undersigned represents and warrants that no mechanic’s and materialmen’s liens, or any other type of lien claim, has been filed against the Project, the Work, the Property, the Site or the improvements thereon by it or any of its Subcontractors or Vendors, or by those supplying labor, Equipment and Materials, or services through such Subcontractors and Vendors or, if any such lien has been filed, Contractor shall fulfill its obligations under Article 30 of the Contract. The undersigned acknowledges that this representation is material to the Owner’s decision to fund the interim milestone payment described herein, that it will take prompt and full action to cancel and discharge any such lien now unknown to it and filed, or to be filed, against the Property or the improvements thereon, each of the foregoing to the extent required under and in accordance with Article 30 of the Contract.
3. Conditional Waiver Of Lien Rights. The undersigned has provided labor, Equipment and Materials, or services (permitting, engineering, procurement and construction) in connection with

the permitting, engineering, procurement, construction, and the installation of the Equipment and Materials for the [insert facility name] in \_\_\_\_\_ County, New Mexico, and more particularly described as follows:

\_\_\_\_\_ (the "Property")  
(Add property legal description or street address)

Conditionally only upon the receipt of the sum of \$ \_\_\_\_\_, the undersigned waives and releases any and all rights of retention, mortgages, pledges, assessments, security interests, leases, advance claims, levies, claims, liens, charges, or encumbrances through the date of \_\_\_\_\_ (the date of the undersigned's application for payment) upon the foregoing described Property on account of any labor, materials, Equipment and Materials, or services (permitting, engineering, procurement and construction) furnished by the undersigned, or furnished to or at the request of the undersigned, in connection with the improvement of the Property or the performance of the Work described herein or in the Contract for the Work through the date of \_\_\_\_\_ (the date of the undersigned's application for payment).

Given under hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Contractor, Subcontractor, or Vendor

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**EXHIBIT F-2**

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

**Unconditional Waiver and Release Upon Milestone Payment**

WHEREAS, Public Service Company of New Mexico (“Owner”) and \_\_\_\_\_ (“Contractor”) have entered into that certain Engineering, Procurement and Construction Contract, dated as of [ ], 20[ ] (the “Contract”);

WHEREAS, the undersigned is required to provide this Unconditional Waiver and Release Upon Milestone Payment pursuant to the terms of Article 7 of the Contract.

Capitalized terms used but not defined herein shall have the meanings given to them in the Contract.

By executing and submitting its interim payment application and the waiver below, in consideration for the payment described in the lien waiver below, and for the purpose of inducing Owner to make this interim payment, the undersigned, for itself, its employees, subcontractors, sub-subcontractors, mechanics, materialmen and laborers, does hereby represent and warrant as follows:

1. All Parties Paid. The undersigned has been paid all amounts owed for all labor, Equipment and Materials, and services furnished to the Project through the effective date of \_\_\_\_\_ (the date of the undersigned’s previous application for payment), and that all parties supplying labor, services, Equipment and Materials to it in connection with the Project have been paid, or will be paid in accordance with the terms of the applicable subcontracts and/or purchase orders, and Applicable Law, including the New Mexico Prompt Payment Act, for all labor, services, Equipment and Materials furnished with respect to the Project.

2. No Pending Liens. The undersigned represents and warrants that no mechanic’s and materialmen’s lien, or any other type of lien claim, has been filed against the Project, the Work, the Site or the improvements thereon by it or any of its Subcontractors or Vendors, or by those supplying labor, Equipment and Materials, or services through such Subcontractors and Vendors or, if any such lien has been filed, Contractor shall fulfill its obligations under Article 30 of the Contract. The undersigned acknowledges that this representation is material to the Owner’s decision to fund the interim milestone payment described herein, that it will take prompt and full action to cancel and discharge any such lien now unknown to it and filed, or to be filed, against the Property or the improvements thereon, and that it will continue to hold harmless the Owner on account of any Losses, expenses or reasonable attorneys’ fees incurred as a result of its failure to do so, each of the foregoing to the extent required under and in accordance with Article 30 of the Contract.



3. Unconditional Waiver Of Lien Rights. The undersigned has provided labor, Equipment and Materials, or services (permitting, engineering, procurement and construction) in connection with the permitting, engineering, procurement, construction, and the installation of the Equipment and Materials for the [insert facility name] in , \_\_\_\_\_ County, New Mexico, and more particularly described as follows:

\_\_\_\_\_ (the "Property")  
(Add property legal description or street address)

The undersigned waives and releases any and all rights of retention, mortgages, pledges, assessments, security interests, leases, advance claims, levies, claims, liens, charges, or encumbrances through the date of \_\_\_\_\_ (the date of the undersigned's previous application for payment) upon the foregoing described Property and Project on account of any labor, Equipment and Materials or services (engineering, procurement and construction) furnished by the undersigned, or furnished to or at the request of the undersigned, in connection with the improvement of the Property or the performance of the Work described herein or in the Contract for the Work through the date of \_\_\_\_\_ (the date of the undersigned's previous application for payment).

Given under hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Contractor, Subcontractor, or Vendor

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_  
day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**EXHIBIT F-3**

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

**Conditional Waiver and Release Upon Final Payment**

WHEREAS, Public Service Company of New Mexico (“Owner”) and \_\_\_\_\_ (“Contractor”) have entered into that certain Engineering, Procurement and Construction Contract, dated as of [ ], 20[ ] (the “Contract”);

WHEREAS, the undersigned is required to provide this Conditional Waiver and Release Upon Final Payment pursuant to the terms of Article 7 of the Contract.

Capitalized terms used but not defined herein shall have the meanings given to them in the Contract.

In consideration for the final payment described in the lien waiver below, and with the knowledge that the representations herein will be relied on by Owner to make final payment, the undersigned, for itself, its employees, subcontractors, sub-subcontractors, mechanics, materialmen and laborers, does hereby represent and warrant as follows:

1. All Parties Paid. The undersigned has been paid all amounts owed for all Equipment and Materials, services or labor furnished to the Project through the effective date of \_\_\_\_\_ (the date of the undersigned’s previous application for payment), and that all parties supplying labor, Equipment and Materials, services to it in connection with the Project have been paid, or will be paid in accordance with the terms of the applicable subcontracts and/or purchase orders and Applicable Law, including the New Mexico Prompt Payment Act, for all labor, services, Equipment and Materials furnished with respect to the Project.

2. No Pending Lien Claims. The undersigned represents that it has not filed or allowed to be filed, or that it has fully and effectively cancelled of record, rights of retention, mortgages, pledges, assessments, security interests, leases, advance claims, levies, claims, liens, charges, or encumbrances against the Site, the Project, or the Property identified below, each of the foregoing to the extent required under and in accordance with Article 30 of the Contract. The undersigned waives and releases any and all rights of retention, mortgages, pledges, assessments, security interests, leases, advance claims, levies, claims, liens, charges, or encumbrances filed against the Site, the Project, or the Property identified below, and authorizes the Owner to file and pursue, in the undersigned’s name, any and all documents or actions necessary to discharge and cancel any such lien of record, each of the foregoing to the extent required or permitted under and in accordance with Article 30 of the Contract. To the extent that the Owner takes any reasonable action in order to cancel or discharge any lien filed by the undersigned, the undersigned agrees that it shall be fully responsible for all Losses, reasonable attorneys’ fees and other costs incurred

in so doing, each of the foregoing to the extent permitted under and in accordance with Article 30 of the Contract.

3. Conditional Waiver And Release Of Lien Rights. The undersigned has provided labor, Equipment and Materials, or services (permitting, engineering, procurement and construction) in connection with the permitting, engineering, procurement, construction, and the installation of the Equipment and Materials for the [insert facility name] in , \_\_\_\_\_ County, New Mexico, and more particularly described as follows:

\_\_\_\_\_ (the "Property")  
(Add property legal description or street address)

Conditionally only upon the receipt of the sum of \$ \_\_\_\_\_, the undersigned waives and releases any and all rights of retention, mortgages, pledges, assessments, security interests, leases, advance claims, levies, claims, liens, charges, or encumbrances upon the foregoing described Property and Project on account of any labor, Equipment and Materials, or services (permitting, engineering, procurement and construction) furnished by the undersigned, or furnished to or at the request of the undersigned, in connection with the improvement of the Property or the performance of the Work described herein or in the Contract for the Work.

Given under hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Contractor, Subcontractor, or Vendor

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**EXHIBIT F-4**

STATE OF NEW MEXICO

COUNTY OF \_\_\_\_\_

**Unconditional Waiver and Release Upon Final Payment**

WHEREAS, Public Service Company of New Mexico (“Owner”) and \_\_\_\_\_ (“Contractor”) have entered into that certain Engineering, Procurement and Construction Contract, dated as of [ ], 20[ ] (the “Contract”);

WHEREAS, the undersigned is required to provide this Unconditional Waiver and Release Upon Final Payment pursuant to the terms of Article 7 of the Contract.

Capitalized terms used but not defined herein shall have the meanings given to them in the Contract.

By executing and submitting its payment application and the waiver below, in consideration for the payment described in the lien waiver below, and for the purpose of inducing Owner to make final payment, the undersigned, for itself, its employees, subcontractors, sub-subcontractors, mechanics, materialmen and laborers, does hereby represent and warrant as follows:

1. All Parties Paid. The undersigned has been paid all amounts owed for all labor, Equipment and Materials, and services furnished to the Project through the effective date of \_\_\_\_\_ (the date of the undersigned’s previous application for payment), and that all parties supplying labor, services, Equipment and Materials to it in connection with the Project have been paid, or will be paid in accordance with the terms of the applicable subcontracts and/or purchase order and Applicable Law, including the New Mexico Prompt Payment Act, for all labor, services, Equipment and Materials furnished with respect to the Project.

2. No Pending Lien Claims. The undersigned represents that it has not filed or allowed to be filed, or that it has fully and effectively cancelled of record, rights of retention, mortgages, pledges, assessments, security interests, leases, advance claims, levies, claims, liens, charges, or encumbrances against the Site or the Property identified below, each of the foregoing to the extent required under and in accordance with Article 30 of the Contract. The undersigned waives and releases any and all rights of retention, mortgages, pledges, assessments, security interests, leases, advance claims, levies, claims, liens, charges, or encumbrances filed against the Site or the Property identified below, and authorizes the Owner to file and pursue, in the undersigned’s name, any and all documents or actions necessary to discharge and cancel of record any such lien, each of the foregoing to the extent required or permitted under and in accordance with Article 30 of the Contract. To the extent that the Owner takes any reasonable action in order to cancel or discharge any lien filed by the undersigned, the undersigned agrees that it shall be fully responsible for all Losses, reasonable attorneys’ fees and other costs incurred by the Owner in so doing, each of the foregoing to the extent permitted under and in accordance with Article 30 of the Contract.

3. Waiver And Release Of Lien Rights. The undersigned has provided labor, Equipment and Materials, or services (permitting, engineering, procurement and construction) in connection with the permitting, engineering, procurement, construction, and the installation of the Equipment and Materials for the [insert facility name] in, \_\_\_\_\_ County, New Mexico, and more particularly described as follows:

\_\_\_\_\_ (the "Property")  
(Add property legal description or street address)

The undersigned waives and releases any and all rights of retention, mortgages, pledges, assessments, security interests, leases, advance claims, levies, claims, liens, charges, or encumbrances through the date of \_\_\_\_\_ (the date of the undersigned's previous application for payment) upon the foregoing described Property and the Project on account of any labor, Equipment and Materials, or services (permitting, engineering, procurement and construction) furnished by the undersigned, or furnished to or at the request of the undersigned, in connection with the improvement of the Property or the performance of the Work described herein or in the Contract for the Work through the date of \_\_\_\_\_ (the date of the undersigned's previous application for payment).

Given under hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Contractor, Subcontractor, or Vendor

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Its: \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_  
day of \_\_\_\_\_, 201\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires:



**EXHIBIT F-6**

**DOCUMENTARY RESOLUTION OF PREVIOUSLY UNCERTIFIED WORK**

Attached hereto are resolutions of disputes (if any) regarding previous Contractor's invoices.

**EXHIBIT G**  
**APPROVED SUBCONTRACTORS**

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**INVERTERS**

- Ingeteam
- EPC Power
- Sungrow
- SMA

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**INVERTER STEP-UP TRANSFORMERS (<5000 KVA)**

- ABB
- Celme
- Eaglerise
- Eaton/Cooper Power
- Eltas
- General Electric / Prolec
- JSHP
- Magnetron
- Rex Power Magnetics
- Sunil
- Virginia Transformer
- Westrafo
- WEG

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**MAIN GENERATION STEP UP TRANSFORMERS (>10 MVA) - GSU**

- ABB
- General Electric / Prolec
- Hitachi Power Systems
- Pennsylvania Transformer Technology, Inc.
- Fortune Electric
- Siemens



- SPX Waukesha
- Virginia Transformer
- WEG Electric / CG Power

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## BATTERY CELLS / BATTERY MANAGEMENT SYSTEM (BMS)

- BYD
- CATL
- EVE
- Envision
- Samsung

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## BATTERY ENCLOSURE

- Canadian Solar
- Sungrow
- CATL
- Wartsila

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## ENERGY MANAGEMENT SYSTEM (EMS)

- DEPCOM/Vertech

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## POWER CABLES (600V THRU 35KV)

- ADC
- AWG
- General Cable
- Kerite
- LS Cable
- Okonite
- Prysmian
- Service Wire Co.
- Southwire

- WTEC

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#### COAXIAL AND TRIAXIAL CABLE

- Belden (P)
- Brand Rex
- Rockbestos

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#### 600V CONTROL CABLE

- Belden
- Brand Rex
- Continental
- Houston Wire & Cable (P)
- Okonite
- Pirelli
- Rockbestos
- Tefzel Insulation
- Draka USA Tamaqua
- General Cable
- Southwire
- Dekoron

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#### MEDIUM VOLTAGE CABLE TERMINATIONS AND ACCESSORIES

- 3M (P)
- Raychem
- T&B
- Richards (34.5kV elbows only)

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#### CABLE TRAY SYSTEM

- GS Metals Corp.
- B-Line Systems
- Chalfant Products

- Husky Products (Burndy)
- P-W Industries (P)
- T.J. Cope
- US Gypsum Globe Div.

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## ALUMINUM CONDUIT

- Alflex
- Breeze-Illinois
- Condux International
- New Jersey Aluminum Easco
- Reynolds Metal Company
- VAW of America, Inc.

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## STEEL CONDUIT

- Allied Tube and Conduit
- Clifton Conduit Corp.
- Republic Steel
- The Steelduct Co.
- Torrance Turbine Div.
- Triangle Conduit/Cable
- Westmoreland Conduit
- Wheatland Tube Col
- Youngstown Sheet and Tube
- Conduit (PVC) Coated (prefer not to use above ground PVC)
- Rob Roy
- Stahl
- Ocal Inc.

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## DISTRIBUTION PANELBOARDS-120V AC/125V DC

- Allen Bradley

- General Electric
- ITE/ Siemens
- Powell
- Square D
- Westinghouse/ Cutler-Hammer

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## DISTRIBUTION, TRANSFORMERS AND POWER PANELS

- Cutler-Hammer
- General Electric
- Siemens
- Square D

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## EMERGENCY POWER SUPPLY BATTERIES

- EnerSys
- Exide Technologies: GNB Battery (P)
- Saft

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## EMERGENCY POWER SUPPLY BATTERY CHARGERS AND UNINTERRUPTIBLE POWER SUPPLY (UPS)

- Ametec/SCI (P)
- C&D Power
- Cyberex Inc
- Emerson: Chloride Industrial Systems
- Gutor
- LaMARCHE
- SENS
- Solid State Controls
- UPS Systems furnished by BESS OEM for their Battery Enclosures

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## HIGH VOLTAGE CIRCUIT BREAKERS

- ABB, Inc
- Areva
- Hitachi
- Mitsubishi
- Siemens

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## HIGH VOLTAGE EQUIPMENT PACKAGERS

- American Modular Power Solutions (AMPS) (for fabrication and installation only)
- DIS-TRAN
- GE
- Hamby Young
- MD Henry
- Peak Power
- Crown Technical Systems

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## HIGH VOLTAGE TUBULAR STEEL DEAD END STRUCTURES

- Falcon Steel
- FL Meyer
- JEM Engineering and Manufacturing
- Nucor Corp
- V S Shuler
- Valmont Industries
- Whitlow Electric

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## RELAYS AUXILIARY CONTROL

- Allen Bradley (P)
- Diversified Electronics
- General Electric
- Square D
- Potter Brumfield

- ABB

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## RELAY TIMING

- Eagle
- Adalake
- Potter Brumfield
- Diversified Electronics
- Allen Bradley (P)

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## RELAY PROTECTIVE

- Schweitzer (P, SEL)
- Basler

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## SWITCHBOARDS – AC AND DC

- ABB
- EPEC Solutions
- General Electric
- Square D

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## SWITCHGEAR

- Powell Electrical
- Eaton / Cutler Hammer
- G&W
- S&C (Vista class switchgear)
- Siemens Industrial Automation
- Square D

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## LOW VOLTAGE DRY TYPE TRANSFORMERS

- General Electric
- Hevi-Duty

- ABB
- Square D

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## POWER AND LOADCENTER TRANSFORMERS

- ABB
- Siemens
- Square D
- General Electric
- EPEC Solutions (as integrator only)

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## STATION AUXILIARY TRANSFORMERS

- ABB
- Siemens
- Square D
- General Electric
- JSHP Transformer (JiangSu HuaPeng Transformer Co., Ltd.)
- WEG

## ENGINEERING SUBCONTRACTOR

- ASSET Engineering, Inc.
- AZTEC Engineering Group, Inc.
- Buehler Engineering, Inc.
- Kimley-Horn & Associates, Inc.
- NEI Electric Power Engineering, Inc.
- Terracon Consultants, Inc.
- Timmons Group, Inc.
- TRC Companies, Inc.
- Westwood Professional Services, Inc.

## CIVIL SUBCONTRACTOR

- Achen-Gardner Construction, LLC
- Emery Sapp & Sons, Inc.
- Jones Power, LLC
- Papich Construction Co., Inc.
- Patriot Dozer Service, LLC
- Rummel Construction, Inc.
- Soil-Tech, Inc.
- Tindol Construction, LLC

## SECURITY WALL SUBCONTRACTOR

- 3B Protection

## SECURITY SYSTEMS SUBCONTRACTOR

- Convergent

## ELECTRICAL SUBCONTRACTOR

- Axium Solar, Inc.
- Baker Electric, Inc.
- Conti Corp.
- Directional Services, Inc.
- Gardner Zemke Co.
- Sentry Electrical Group, Inc.
- Southern Tradesmen Service Group, LLC

## SUBSTATION / SWITCHYARD SUBCONTRACTOR

- American Modular Power Solutions, Inc.
- Aubrey Silvey Enterprises, Inc.
- Directional Services, Inc.
- Gardner Zemke Co.



- Henkels & McCoy, Inc.
- Power Technology, Inc.
- Sentry Electrical Group, Inc.

#### LABOR PROVIDER

- Executed Payroll
- HCS
- PeopleReady
- Ridgeline Renewables
- Talent Corporation, LLC

## EXHIBIT H

### DETERMINATION OF BUY-DOWN AMOUNT

1. If Contractor has run the Performance Tests pursuant to the Performance Test Procedures and otherwise in accordance with Exhibit I and the results of such Performance Tests fully satisfy the Minimum Performance Criteria for Substantial Completion but fail to satisfy all of the Performance Guarantees, the Buy-Down Amount to be determined pursuant to Section 16.2 of the Contract shall be calculated as follows:
  - a. If the BESS Available Energy Capacity is equal to or greater than the Guaranteed BESS Available Energy Capacity, then the Buy-Down Amount related to the BESS Available Energy Capacity shall be zero. If the BESS Available Energy Capacity is less than the Guaranteed BESS Available Energy Capacity and is equal or greater than 95% of the Guaranteed BESS Available Energy Capacity as determined by the Minimum Performance Criteria, then the Buy-Down Amount related to the BESS Available Energy Capacity shall be equal to one percent (1%) of the Contract Price per one percent (1%) shortfall from the Guaranteed BESS Available Energy Capacity, on a pro-rata basis.
  - b. If the BESS Roundtrip Efficiency is equal to or greater than the Guaranteed BESS AC Roundtrip Efficiency, then the Buy-Down Amount related to the BESS AC Roundtrip Efficiency shall be zero. If the BESS AC Roundtrip Efficiency is less than the Guaranteed BESS AC Roundtrip Efficiency and is equal or greater than 95% of the Guaranteed BESS AC Roundtrip Efficiency as determined by the Minimum Performance Criteria, then the Buy-Down Amount related to the BESS AC Roundtrip Efficiency shall be equal to five hundred thousand dollars (\$500,000) per one percent (1%) of round trip efficiency deficiency, on a pro-rata basis.
  - c. If the Project Charging Auxiliary Load is less than or equal to the Guaranteed Project Charging Auxiliary Load, then the Buy-Down Amount related to the Project Charging Auxiliary Load shall be zero. If the Project Charging Auxiliary Load is greater than the Guaranteed Project Charging Auxiliary Load and is less than or equal to 105% of the Guaranteed Project Charging Auxiliary Load as determined by the Minimum Performance Criteria, then the Buy-Down Amount related to the Project Charging Auxiliary Load shall be equal to nine hundred dollars (\$900) per kW of Project Charging Auxiliary Load exceedance, on a pro-rata basis.
  - d. If the Project Discharging Auxiliary Load is less than or equal to the Guaranteed Project Discharging Auxiliary Load, then the Buy-Down Amount related to the Project Discharging Auxiliary Load shall be zero. If the Project Discharging Auxiliary Load is greater than the Guaranteed Project Discharging Auxiliary Load and is less than or equal to 105% of the Guaranteed Project Discharging Auxiliary Load as determined by the Minimum Performance Criteria, then the Buy-Down

Amount related to the Project Discharging Auxiliary Load shall be equal to one thousand and eight hundred dollars (\$1,800) per kW of Project Discharging Auxiliary Load exceedance, on a pro-rata basis.

# EXHIBIT I

## ACCEPTANCE TESTS AND TESTING

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## EXHIBIT I

### PERFORMANCE REQUIREMENTS

#### I.1 SUMMARY

This Section describes the performance and functional requirements for the Work as well as Contractor's responsibilities for performing the Acceptance Tests.

Performance requirements are applicable to the Contractor's work at the Project.

#### I.2 REFERENCES

##### I.2.1 Abbreviations and Acronyms

BESS	=	Battery Energy Storage System
BMS	=	Battery Management System
BOP	=	Balance of Plant
DCS	=	Distributed Control System
PCS	=	Power Conversion System
SOC	=	State of Charge

##### I.2.2 Definitions

"Acceptance Tests" means the tests described in Section I.4

"Available Energy Capacity" is the amount of usable energy in MWh that the BESS can supply to the Energy Delivery Point when discharging from Max SOC to Min SOC.

"Charge Duration" means the time required for each BESS Generating Unit to reach its Max SOC starting from its Min SOC.

"Emissions Guarantees" shall mean each of the guaranteed emissions requirements as set forth in Section I.3.3.

"Functional Tests" shall mean the tests as set forth in Section I.4.13.

"Guaranteed Availability Factor" shall mean each of the guaranteed parameters set forth in Section I.3.4.

"Maximum State of Charge (Max SOC)" means, for the purposes of this Exhibit I, the relative SOC that will allow for delivery of the Guaranteed Available Energy Capacity (240 MWh) to the Energy Delivery Point when the BESS is discharged from the Max SOC to the Min SOC.

"Minimum Performance Requirement" for each Performance Guarantee identified in Section I.3.1, the validity range in which the Buy-Down Amounts may be used to satisfy the Performance Guarantee is indicated as Minimum Performance Requirement.

"Minimum State of Charge (Min SOC)" means the relative SOC below which the battery manufacturer recommends that the BESS system not be drawn, expressed in percent of Nameplate Energy Capacity.

"Nameplate Energy Capacity" is the maximum amount of energy in MWh, less auxiliary loads, that the BESS can store at 100% SOC.

"Noise Emissions Guarantees" shall mean the guarantees as set forth in Section I.3.3.

“Performance Guarantee” shall mean each of the guaranteed performance requirements as set forth in Section I.3.1.

“Performance Test” are tests conducted to validate Contractor’s Performance Guarantees.

“Project Auxiliary Load Guarantee” means the guarantee for Project auxiliary load, which includes all Project electrical loads and losses which shall not be higher than the value listed in Section I.3 - Guarantees (kilowatts).

“Rated Continuous Power” means the maximum specified power in MW, sustained continuously for the quoted time duration while transfer of electric energy is performed.

“Reference Conditions” means the ambient and operating conditions to which the Performance Guarantee Test results will be corrected as set forth in Section I.3.2.

“State of charge (SOC)” means the degree to which the BESS is charged relative to the Nameplate Energy Capacity expressed as a percentage of Nameplate Energy Capacity.

### **I.2.3 Reference Standards**

Codes, standards, and publications of the following organizations shall apply to the Work. The latest version including all addenda, revisions, or supplements as of the date of the Contract shall be used. The publications shall include but not be limited to the following:

#### Acoustical Society of America (ASA)

- S1.14 Specification for Sound Level Meters
- S1.11-1 Electroacoustics-Octave-band and Fractional-octave-band Filters – Part 1: Specifications
- S1.13 Measurement of Sound Pressure Levels in Air
- S12.9/Part 3 Quantities and Procedures for Description and Measurement of Environmental Sound — Part 3: Short-term Measurements with an Observer Present
- S12.18 Procedures for Outdoor Measurement of Sound Pressure Level

#### Electric Power Research Institute (EPRI)

- 3002011739 Energy Storage Test Manual

#### Institute of Electrical and Electronics Engineers (IEEE)

- C57.13 Standard Requirements for Instrument Transformers
- 120 Master Test Guide for Electrical Measurements in Power Circuits
- 762 Standard Definitions for Use in Reporting Electric Generating Unit reliability, Availability, and Productivity
- 1547 Standard for Interconnecting Distributed Resources with Electric Power Systems

#### International Electrotechnical Commission (IEC)

- 62933 Energy Storage Systems designed for grid-connected indoor or outdoor installation and operation
- Guide 98 Uncertainty of Measurement

#### NCSL International (NCSL)

- ISO 17025 Requirements for the Calibration of Measuring and Test Equipment

#### Underwriter Laboratory Laboratories (UL)

1741 Standard for Inverters, Converters, Controllers and Interconnection  
System Equipment for Use with Distributed Energy Resources

### I.3 GUARANTEES

#### I.3.1 Performance Guarantees

Contractor shall guarantee performance requirements for the Project as set forth in the table below.

PERFORMANCE GUARANTEES <sup>[1]</sup>		
Parameter	Guarantee Value	Minimum Performance Requirement <sup>[2]</sup>
BESS Available Energy Capacity <sup>[3]</sup>	240MWh from Max SOC to Min SOC	No less than 95% of guarantee value
BESS Charge Duration <sup>[4]</sup>	5.1 hours	100% of guarantee value
BESS Rated Continuous Power	60 MW	100% of guarantee value
Project Charging Auxiliary Load <sup>[5]</sup>	3,000 kW	No more than 105% of guarantee value
Project Discharging Auxiliary Load <sup>[5]</sup>	3,000 kW	No more than 105% of guarantee value
AC Roundtrip Efficiency <sup>[6]</sup>	86.7 %	No less than 95% of guarantee value

Table Notes:

- Guarantees are valid at the Reference Conditions outlined in Article I.3.2.
- Performance Guarantees are aligned with a Buy-Down Amount for shortfalls in performance. For each Performance Guarantee, the validity range in which the Buy-Down Amount may be used to satisfy the Performance Guarantee is indicated as the Minimum Performance Requirement. Outside of the Buy-Down Amount validity range the Performance Guarantee is "make right."
- BESS Available Energy Capacity shall be determined as delivered at the Energy Delivery Point.
- Charge Duration means the time required for charging the equivalent energy required to store and dispatch 240MWh back to the Energy Delivery Point.
- Project Auxiliary Load Guarantee includes loads for the auxiliary cooling/heating, control, and fire protection systems of the BESS containers and their associated controllers only. For clarity, this shall be measured at a revenue grade meter on the main incoming 480v bus of the auxiliary power center shown in Appendix 11. For the avoidance of doubt, this does not include any site lighting, security system loads, transformer no load losses (NLL) or loads captured within the Roundtrip Efficiency Guarantee including but not limited to PCS auxiliary loads, or MV collection system losses. Testing for the Project Auxiliary Load Guarantee is performed during both charging and discharging between the Max SOC and Min SOC at the maximum Charge and Discharge Rates and as further identified in Article I.4.12.1.
- BESS shall be charged from Min SOC to Max SOC, then discharged from the Max SOC to Min SOC, and charging and discharging energy shall be measured at the Energy Delivery Point.

#### I.3.2 Reference Conditions

Test data measured or calculated during the Performance Tests shall be corrected where applicable to the following Reference Conditions:

REFERENCE CONDITIONS <sup>[1]</sup>	
Parameter	Value
Ambient Dry-Bulb Temperature	[104] °F
Minimum State of Charge (Min SOC)	0 %
Maximum State of Charge (Max SOC)	100 %

BESS Power Factor at the Energy Delivery Point	0.95
Frequency at Energy Delivery Point	60 Hz

REFERENCE CONDITIONS	
Parameter	Value
Table Notes:	
1. Only items listed in this table are valid to be used as correction factors for the performance test measurements.	

### I.3.3 Emissions Guarantees

Contractor shall guarantee the emissions requirements for the Project as set forth in the tables below.

NOISE EMISSIONS	
Parameter	Emission Guarantee
Near-Field Noise Emissions <sup>[1]</sup>	≤ 85 dBA
Far-Field Noise Emissions <sup>[2]</sup>	
Residential	≤ 55 dBA and 60 dBC over the full length of the residential site boundary
Commercial	≤ 60 dBA and 65 dBC over the full length of the commercial site boundary
Table Notes:	
1. Contractor supplied equipment only measured at a horizontal distance of 3 feet from equipment envelope, and 5 feet above floor level.,	
2. See the Site Noise Boundary Map in Exhibit R for the location of the site boundaries along which the far-field noise measurements shall be verified.	

### I.3.4 Availability Guarantee

Contractor shall guarantee parameters set forth in table below.

Guaranteed Availability Factor	
Parameter	Value
Guaranteed Availability Factor	≥ 97% must be demonstrated over a 240-hour period.
Notes:	
1. Availability Factor shall be as defined in IEEE 762, Standard Definitions for Use in Reporting Electric Generating Unit Reliability, Availability, and Productivity	
2. Guaranteed Availability Factor shall be demonstrated for the Project	

### I.3.5 Guarantee Completion Milestones

Either (i) all guarantee values for the Performance Guarantees and Emissions Guarantees shall be required to be successfully demonstrated by Contractor or (ii) the Minimum Performance Requirements for all of the Performance Guarantees and Emissions Guarantees shall be required to be successfully demonstrated by Contractor with Contractor having paid any applicable Buy-Down Amounts in order to achieve Substantial Completion.

The Availability Test will take place after Substantial Completion and before Final Completion. Demonstration of the Guaranteed Availability Factor is a requirement of Final



Completion.

#### **I.4 ACCEPTANCE TESTS**

The Acceptance Tests shall consist of the following subgroups of tests:

- Performance Tests
- Emissions Tests
- Functional Tests
- Availability Test

All Acceptance Tests shall be completed by Contractor or a third party testing subcontractor under Contractor's control.

Contractor shall be responsible for the supply of all test subcontractors, test procedures, test personnel, test equipment, testing instrumentation, and consumables.

With the exception of the Availability Test which will occur after Substantial Completion, Contractor shall be responsible for operational control and the safe operation of the Project during all Acceptance Tests.

At all times during the Acceptance Tests, the Project shall comply with the Emissions Guarantees and Applicable Laws to be considered a successful Acceptance Test. Contractor shall evaluate and remedy the cause of such failure before attempting the same Acceptance Test again.

The Acceptance Tests must be conducted in the presence of Owner and in accordance with the requirements of this section and the Acceptance Test Procedures. Owner's inability to attend Acceptance Tests shall give contractor day for day relief on schedule unless Owner agrees to allow Contractor to proceed with the testing without Owner's presence. Owner will be entitled to have representatives present at the Site to observe any Acceptance Tests and monitor the taking of measurements. Owner's costs to observe any Acceptance Test will be at Owner's sole expense.

##### **I.4.1 Acceptance Test Notification**

Contractor shall give Owner not less than thirty (30) business days prior notice of the date Contractor anticipates that the Project will be ready for an initial Acceptance Test. If the date is anticipated to move after the initial 30 day notice, Contractor shall provide follow up notice to Owner within twenty-four (24) hours of awareness of the new date, but no later than five (5) business days prior to the date of the Test. If the Project fails to satisfy the Minimum Performance Requirements in an Acceptance Test, Contractor shall rectify the cause(s) thereof, and shall conduct a repeat Acceptance Test thereafter. For any repeat Acceptance Test, Contractor shall provide Owner notice at least three (3) business days prior to the date of the anticipated repeat Acceptance Test; provided, however, at least a 2 hour notice shall be required if the repeat Acceptance Test is to be commenced within twenty- four (24) hours of the conclusion of the immediately preceding Acceptance Test.

##### **I.4.2 Acceptance Test Procedures**

Contractor shall prepare the Project specific Acceptance Test procedures.

Test procedures shall be prepared in strict accordance with the requirements in the Procurement Contract and in general accordance with the standards identified in Article 26.2.3. Mutually agreed upon procedures and deviations from the test codes and standards shall be incorporated in the Project specific test procedures. In the event of a conflict, the order of precedence shall be:

1. The Procurement Contract
2. The Project specific test procedure
3. The applicable test code or standard

Submittal date of the draft Acceptance Test procedures shall be 3 months prior to the Acceptance Test.

Each Acceptance Test procedure shall include as a minimum:

- The purpose of the test
- Location, timing, and notification procedures of the test
- Test boundaries, system alignment or isolation
- Codes and standards to be utilized with any agreed upon clarifications or exceptions
- Selection of instruments: number, location, type
- Selection of both permanent and temporary test instrumentation to be utilized
- Instrument accuracy requirements and calibration records
- Method of calibration of instruments
- Confidentiality of test results
- Number of copies of original data required
- Data to be recorded, method of recording and archiving data, sample data log sheets
- Frequency of observations
- Duration and number of test runs
- Values of measurement uncertainty and method of determining overall test uncertainty
- Method of operating equipment under test, including that of auxiliary equipment (ie. equipment status)
- Methods of establishing operating conditions as near as possible to the Reference Conditions
- Notification procedures
- Test responsibilities of the parties
- Pre-test inspections and access
- Prerequisites for testing
- Applicable performance corrections and correction curves in accordance with the Procurement Contract with sample correction calculations
- Allowable variation in measured parameters (steady-state deviation limits) and conditions for rejection of outlier data or runs
- Methods of computing results
- Method of comparing test results with specified guarantees
- Acceptance criteria for the test results
- Test report format and content

Contractor shall submit a set of correction curves or formulas for inclusion in the test procedures. Each of the correction curves or formulas shall have a range to suit the

specified conditions. Each curve shall be provided in both graphical and numerical format.

### **I.4.3 Acceptance Test Instrumentation**

Test data shall be recorded by permanent instrumentation to the greatest extent possible. The use of temporary precision grade test instruments in lieu of permanent instrumentation shall be used only if the pre-test uncertainty analysis calculation precludes the use of permanent instrumentation or if permanent instrumentation is not installed at a location that requires test data collection.

Calibration of all test instrumentation shall meet the ISO 17025 standard, and be performed by a calibration laboratory accredited to ISO 17025. Test instrumentation shall be calibrated within 12 months of the Acceptance Test and if the calibration was performed prior to 6 months before the Acceptance Test, such instrument accuracy shall be verified on-site via a mutually agreed upon method between the Parties. Calibration certificates shall be submitted to Owner prior to the Acceptance Test.

Contractor and Owner shall mutually walk down the test instrumentation installation and review the calibration documentation prior to the Acceptance Test. All parties shall sign the test instrumentation checklist. The checklist and all calibration documentation shall be included with Contractor's written test report.

Electrical measurements shall follow the guidelines of IEEE 120. Power meters shall be class 0.2 accuracy or better in accordance with ANSI/NEMA C12.20. Current and potential transformers shall be class 0.2 accuracy or better in accordance with IEEE C57.13.

### **I.4.4 Acceptance Test Conditions**

During all Acceptance Tests, the Project systems and equipment shall be operated wholly within its operating, design, and safety limits. In particular, none of the following shall occur:

- Overheating of components
- Operation of tripping or limiting devices, except where the test is intended to demonstrate such operation
- Rubbing, chaffing or other mechanism of accelerated wear
- Equipment operation outside of specified vibration limits
- Dangerous occurrences due to Project operation or malfunction

No temporary or standby equipment or machinery may be used in place of the permanent Project equipment during the execution of an Acceptance Test unless otherwise approved by Owner.

Redundant components shall not be operated together to obtain acceptable Acceptance Test results unless such use is defined in the Contract documents. Acceptance Tests shall be executed with the Project in automatic control with manual adjustment or manual control of equipment operation only as approved by Owner.

### **I.4.5 Acceptance Test Adjustments**

Repair or adjustments to the Project prior to, or during the Acceptance Tests shall meet the following requirements:

- Contractor shall make no adjustments or modifications prior to or during any Acceptance Test intended to temporarily improve the performance for the Acceptance Test.
- During the stabilization period prior to an Acceptance Test, or between test runs, adjustments or repairs can occur when Contractor and Owner mutually agree. If

mutual Contract cannot be obtained, the Acceptance Test shall be postponed.

- Permissible adjustments during an Acceptance Test are only those required to maintain equipment in safe operation, to maintain Project stability, or those that Contractor and Owner mutually agree.
- Non-permissible adjustments during an Acceptance Test are any adjustments that would result in equipment being operated beyond manufacturer's operating, design, or safety limits and/or specified operating limits. Adjustments or recalibrations that affect the primary test instrumentation data are prohibited.

#### **1.4.6 Acceptance Test Interruptions**

Any test interruption experienced during an Acceptance Test shall require re-testing. Test data gathered from the Acceptance Test prior to the interruption shall be discarded. Upon the occurrence of an Acceptance Test interruption, Contractor shall notify Owner in accordance with the approved Acceptance Test Procedure. Upon notification of an interruption, Contractor, shall identify the cause and establish the procedure for re-conducting the Acceptance Test. Test interruptions not due to the fault or failure of Contractor, shall entitle Contractor to schedule relief to the extent of an Actual Delay.

#### **1.4.7 Acceptance Test Data**

Contractor shall provide Owner a copy of all raw test measurement data after the test has been completed and as soon as the raw test data is available.

#### **1.4.8 Acceptance Test Corrections**

Contractor shall make every effort to run the Acceptance Tests at a condition as close to the Reference Conditions as feasibly possible to minimize the application of Acceptance Test corrections. For conditions that vary from the Reference Conditions, Contractor shall analytically adjust Acceptance Test results through the application of corrections to as-measured test results in accordance with approved Test Procedures. Contractor shall conduct Acceptance Tests to demonstrate that the guaranteed items meet the Performance Guarantees over the range of operating conditions as appropriate for the Guarantee and as corrected back to the Reference Conditions.

All correction curves including those for Subcontractor's equipment that will be used in the determination of the corrected test results shall be included in the Acceptance Test Procedures. These curves shall be certified to give the corrections to the performance of the Work for variations from the specified design/test conditions. Each of the correction curves shall have a range to suit the specified conditions. Each curve shall be provided in both graphical and numerical format.

The draft Acceptance Test Procedure shall include the methodology by which it proposes to calculate the results based on the measured data along with sample calculations. Prior to the calculation of the test results, Owner's agreement within 2 days shall be required that the test data was collected in accordance with the test procedures. Preliminary corrected performance figures shall be calculated at the completion of each Acceptance Test to allow the Parties involved to judge if the Acceptance Test completed was satisfactory or whether it should be repeated.

The test instrumentation data values used in result calculations shall be the arithmetical average of the observations made and recorded during the Acceptance Tests.

The corrected measurement variables shall than be used to calculate the test results with the following exceptions:

- No test tolerance or margin shall be allowed in determining conformance to guaranteed values.

- Test uncertainties shall not be used to correct the test results or be used as a tolerance in determining achievement of Performance Guarantee values.

#### **I.4.9 Acceptance Test Preliminary Test Runs**

At Contractors election, preliminary test runs, with records, shall be performed to determine if equipment is in suitable condition to be tested, to check instruments and methods of measurement, to check adequacy of organization and procedures, and to train personnel. Observations during the preliminary test runs shall be carried through to the calculation of results as an overall check of procedure, layout and organization.

#### **I.4.10 Acceptance Test Report**

Contractor shall submit raw data from the Acceptance Test upon completion of the test and a preliminary test report of each Acceptance Test shall be produced and issued to Owner within 5 days of the completion of each Acceptance Test. The preliminary report shall include all calculations and diagrams for each Acceptance Test confirming guarantees were achieved under the specific test conditions.

Contractor shall prepare and submit to Owner for approval within 14 days of the completion of each Acceptance Test, a full and complete final test report that shall include, as a minimum, the following details:

- Executive Summary
- Date and time of the test
- Inclusion of the approved Acceptance Test Procedure
- Instrumentation details and calibration data including signed and approved instrument calibration forms
- The Project operating conditions prior to and during the test
- Variations from Reference Conditions
- Summary of test instrumentation readings, results and conclusions
- Pre-test uncertainty calculations
- Post-test uncertainty calculations
- Copies of test data sheets or other raw data
- Notes on any unusual observations, data or conclusions
- Attendance
- Results, confirming that the applicable Guarantee has been achieved

#### **I.4.11 Performance Tests**

The objectives of the Performance Tests are to validate Contractor's Performance Guarantees.

The performance test procedure shall be based in general accordance with IEC 62933, EPRI report 3002011739.

##### **I.4.12.1 Capability Test**

The capability test shall demonstrate the Nameplate Energy Capacity, Available Energy Capacity, Charge Duration, Project Auxiliary Load, and Rated Continuous Power Guarantees.

The test for determining energy capacity, charge duration, and rated continuous power of the BESS shall incorporate all components including, the storage medium, auxiliary loads, power conversion equipment, HVAC equipment, and the transformer. Thus, system capacity

is determined for the entire utility-integrated BESS. The test results reported will provide information useful for validating the energy delivery capability of the BESS tested. Auxiliary Loads shall be measured during the tests run.

Rated Continuous Power shall be measured for the Project using the power revenue meters with measurements corrected to the Energy Delivery Point.

To conduct the Project Auxiliary Load Guarantee test, data is to be collected during the charge and discharge cycles, if at all possible coincident with other applicable Guarantee tests. The BESS Generating Unit shall be operated at Equipment Supplier recommended conditions and when the BESS temperature has stabilized. Check that all auxiliary load voltage, current, and power quality monitoring systems are properly installed, calibrated, enabled, and configured for measuring loads and losses and that data acquisition and storage is functional. With the BESS charging at the BESS Rated Continuous Power from Min SOC to Max SOC, Auxiliary Loads shall be recorded continuously and data points shall be averaged for validating the Project Charging Auxiliary Load Guarantee. Similarly, with the BESS discharging at the BESS Rated Continuous Power from Max SOC to Min SOC, record Auxiliary Loads continuously and data points shall be averaged for validating the Project Discharging Auxiliary Load Guarantee. When one cycle of charge and discharge is complete and, Project Charge and Discharging Auxiliary Load is determined, it is considered as one Test run.

A minimum of two test runs are to be performed for all Performance Guarantees. No more than one test run shall be performed in a 24 hour period. Tests are to be performed over multiple days of BESS cycling and rest periods are required between power cycles for thermal stabilization. Test runs shall independently pass the guarantee requirements for a successful performance test.

If one of the test runs fails with the other test run passing, the test runs shall be averaged and compared to the guarantee value to determine compliance, or to establish a Buy-Down Amount.

#### **I.4.12.2 Roundtrip Efficiency Test**

Contractor shall conduct tests to demonstrate the performance of the Project and document the AC Roundtrip Efficiency. The Guaranteed AC Roundtrip Efficiency Test, consisting of multiple test cycles, each which shall be performed for one complete charge and discharge cycle. During charging, the charge rate shall be equal to the Rated Continuous Power between Min SOC and Max SOC, except for a tapering period at the ends of charging and discharging where continuous power may drop and equipment shall be commanded to operate at their maximum capability. During discharge, the discharge rate shall be equal to the Rated Continuous Power between Max SOC and Min SOC.

The sequence of testing begins with the charge and discharge cycle being performed on 2 consecutive days to verify the repeatability of the test results. Each cycle is performed over a 24-hour period which is intended to provide adequate rest time for the BESS to stabilize and temperatures to equilibrate. A minimum of 8 hours rest period isolated from the PCS is maintained between the end of charge and beginning of the next discharge.

A minimum of two tests are to be performed. All test runs shall independently pass the guarantee requirements for a successful performance test. If one of the test runs fails with the other test run passing, the tests runs shall be averaged and compared to the guarantee value to determine compliance, or to establish a Buy-Down Amount.

#### **I.4.13 Emissions Tests**

##### **I.4.13.1 Near-Field Noise Test**

The objective of the near Field Noise Test is to validate the equipment Near-Field Noise

Guarantees.

Acoustical noise testing shall be in general accordance with ASME PTC-36.

No tolerance or margin in measurement instrumentation will be allowed in determining conformance to guarantees. Only measurement uncertainty will be allowed.

The near field noise test will validate that the near-field A-weighted sound pressure levels at a distance of three feet in the horizontal plane from the outermost surface of equipment, including piping, conduit, framework, barriers, mitigation measures, personnel protection devices, curbs, and fluid retainer basins, and five feet above grade shall be limited to sound emissions set forth in the Functional Guarantees.

Corrections for background noise, building effects, and free-field conditions may be applied in determining the sound pressure level. Near field levels shall be measured while equipment is operating at base load, steady-state conditions, exclusive of transient events (including but not limited to startup and shutdown) and off-normal operating conditions (including but not limited to safety and relief valve operations). Contractor shall define the envelope(s) wherein the near-field noise guarantee will be exceeded and this will form the boundary for noise measurements.

#### **I.4.13.2 Far-Field Noise Emission Test**

The objective of the Far-Field Noise Emission Test is to validate Contractor's Far-Field Noise Emission Guarantees.

The Project shall be at a steady state full load condition during the test. The minimum duration for each measurement shall be 10 continuous minutes.

Sound level measurement equipment, procedures and calibration shall conform to ANSI/ASA S12.9/Part 3 and shall utilize instrumentation with Type 1 precision as described therein. Measurements shall be performed with a microphone height of 5 feet from the ground surface and a distance of at least 25 feet from any reflecting surface.

Sound level test data that is collected during Project abnormal operations (such as plant trips, and un-silenced pressure relief valve discharges) shall be rejected from the collected test data. Measurements shall not be performed during periods with precipitation or average microphone-height wind speeds exceeding 11 miles per hour and shall conform to all other environmental restrictions described in the governing standard.

No tolerance or margin shall be considered in determining test result conformance to guaranteed values. Test uncertainty shall not be converted to a tolerance.

#### **I.4.13 Functional Tests**

##### **I.4.13.1 Fire Protection System Functional Test**

Contractor shall perform a full "functional test" of the fire protection equipment prior to start up. This test will be witnessed by the insurance carrier and Owner.

##### **I.4.14 Availability Test**

The objective of the Availability Test is to validate the Guaranteed Availability Factor.

The test period shall consist of a 10-day (240 hours) duration during which the Project shall be operated based on grid dispatch demands.

The following definitions shall apply to the Availability Test:

- "Available" means the Project is in a state that is capable of providing service at the Rated Continuous Power as adjusted for environmental conditions, regardless of whether it is actually In-Service.

- “In-Service” means the Project is in a state that is electrically connected to the grid and capable of performing generation commercial dispatch at the Rated Continuous Power as adjusted for environmental conditions, or connected to the grid and performing non-generating functions (e.g. charging).
- “Reserve Shutdown” means the Project is in a state that is Available but is not In-Service. It is fully capable of being In-Service; however, by administrative action it has not been. Sometimes this is referred to as economic shutdown.
- “Unavailable” means a state where the Project is not capable of commercial dispatch because of operational or equipment failures, external restrictions, testing, work being performed, or an adverse condition. The Unavailable state persists until the Project is made Available by either being placed In-Service or by being placed into Reserve Shutdown.
- “Availability Factor” means the fraction of a given operating period in which the Project is Available.

In accordance with IEEE 762, the Availability Factor shall be determined by the following formula:

$$AF = \frac{AH}{PH} \times 100$$

$$AH = SH + RSH$$

Where:

AF	Availability Factor
AH	Available Hours, means the number of hours the Project is Available
PH	Period Hours, means the number of hours in the test period
SH	Service Hours, means the number of hours the Project is In-Service
RSH	Reserve Shutdown Hours, means the number of hours the Project is in Reserve Shutdown

If the cause of the Project being Unavailable is due to the external restrictions listed below that are not in any party's control; these hours shall be considered as a test interruption and excluded from both the Period Hours and the Available Hours for the duration of the test interruption:

- Grid connection failure
- Transmission operating/repair errors
- Acts of terrorism or war
- Acts of nature; such as tornados, lightning strikes, etc.

If the cause of the Project being Unavailable is due to equipment or system failures outside of the Contractor's Work (e.g. caused by others), these hours shall be considered as a test interruption for the Contractor and excluded from both the Period Hours and the Available Hours for the duration of the test interruption. If the total number of test interruption hours due to outages caused by others exceeds 60 hours, then the test be ceased and re-started at another time as coordinated with the Owner. This limitation of test interruption hours caused by others does not apply to the test interruption hours caused by external restrictions not in any party's control.

Time measurements taken during the test are to be recorded with a precision of  $\pm$  one minute and an accuracy of at least  $\pm$  five minutes. A journal log shall be kept with the times



and event descriptions.

Equipment failure, or continued operation that would cause equipment damage, or operation that exceeds the manufacturer's operational restrictions shall be taken out of operation. If redundant equipment is present, it may be brought into operation and the test may continue with the Project In-Service. If redundant equipment is not present, or the redundant equipment fails to operate, the Project shall be placed into a forced outage, and the state of the Project shall change from In-Service to Unavailable once the project is disconnected from the grid.

System, equipment, instrumentation, or other failures during the test duration shall be classified as to their severity. All parties to the test shall mutually agree as to the severity of the failure and the running time that the Project may continue before being removed from an In-Service status. Failures that require the Project to be taken out of In-Service status prior to the completion of the test period shall be classified as forced outages. Any forced outage of the Project shall require a root cause analysis of the reason for the forced outage. The Project may not be brought back into In-Service status until the root cause has been identified and the problem has been corrected.

Contractor with Owner approval shall be allowed reasonable access to the equipment during the duration of the test to make minor adjustments that may be necessary; provided that such adjustments do not interfere with or prevent the commercial use of the Project or in any way result in a reduction in output, a decrease of efficiency, or exceeding permit limitations. All adjustments made shall be recorded in the test journal log.

In the event the Project fails to demonstrate the Guaranteed Availability Factor during the initial 240 hour test period, Contractor may elect to continue the test run until a period of 240 continuous hours is achieved that demonstrates the Guaranteed Availability Factor. The 240 hour test period may not be cut up into segments less than 240 hours to meet the guarantee unless Parties mutually agree to do so.

END OF SECTION

**EXHIBIT J**

**KEY PERSONNEL**

**Individual**

**Title and Duties**

To be Identified

Contractor Project Manager:  
Single-point-of-contact for all engineering  
and constructions issues.

Contractor and Owner to agree on additional Key Personnel to identify for Contractor no later than thirty (30) Days after the issuance of the NTP.

**EXHIBIT K**

**[RESERVED]**

## **EXHIBIT L**

### **FORM OF MONTHLY PROGRESS REPORT**

Each Monthly Progress Report shall be a written statement of Project status prepared by Contractor for review by Owner. The following items shall be included in monthly reports to be submitted by Contractor.

#### **TABLE OF CONTENTS FOR MONTHLY PROGRESS REPORT**

##### **1.0 EXECUTIVE SUMMARY – (CURRENT MONTH)**

The executive summary shall provide a brief and general overview of the projects progress during the previous month. Summary shall give overview of permitting, engineering, procurement, construction, and start-up, with graphical data support in the body of the Report.

##### **2.0 SUMMARY OF PROGRESS AND STATUS OF PERMITTING, ENGINEERING, PROCUREMENT AND CONSTRUCTION**

###### **2.1 Current Month**

###### **2.1.1 Engineering work activities:**

Include a listing of work activities completed during the previous month and those planned for the next month sorted by engineering discipline. Include an overall summary of the engineering progress, including efforts to obtain necessary project permits.

###### **2.1.2 Procurement work activities:**

Include a listing of work activities completed during the previous month and those planned for the next month sorted by equipment, bulk materials, and subcontracts. Include an overall summary of the procurement progress, including issuance of Major Equipment purchase orders and shipment of major materials and Major Equipment to the Site.

###### **2.1.3 Construction work activities:**

Include a listing of work activities completed during the previous month and those planned for the next month. Tables and graphs will demonstrate progress sorted by major work activity. Include an overall summary of the construction progress.

###### **2.1.4 Startup & Commissioning work activities:**

Include a listing of work activities completed during the previous month and those planned for the next month sorted by turnover package. Include an overall summary of the startup & commissioning progress, including class scheduling status and progress on training of Owner's personnel.

## 2.2 Next Month

The expected progress for the Project in the next thirty (30) Days shall be provided in table format based on permitting, construction, engineering, procurement, shipment, and start-up. If any factory acceptance tests are scheduled for the following month, these tests will be included in this section.

## 3.0 PRIORITIES / ISSUES / CONCERNS

Identification and evaluation of problem areas that are anticipated to have a material effect on either Project Schedule or that may, in the opinion of Contractor, require a modification of Exhibit A to the Contract. Issues identified would include, but not be limited to, risks to satisfactory completion of the Contract, possible change orders, QA/QC concerns, potential sub-contractor performance problems, etc. The monthly report will provide a narrative description of the resolution plans for the key issues when applicable. A summary of major meetings for the current month and for the next month, including a one or two sentence summary of the discussion topics and decisions shall be included in the monthly report.

## 4.0 SAFETY

Provide a statement concerning the safety aspects of the work including a report of Recordable incidents, near misses & OSHA incident rate. The report shall include a summary of all written incident reports for lost time incidents that occur at the Site during such month, prepared in accordance with the safety and security assurance program.

## 5.0 SCHEDULE UPDATE

Report important items and events, such as date of arrival of major equipment components, and completion of Project Milestones and Critical Path Items in the Project Schedule.

The reports shall be presented in PDF format with content reasonably acceptable to Owner. An updated copy of the Level 1 working schedule shall be attached to the Monthly Progress Report with a written analysis of schedule status, including actual versus planned progress, with reference to the Critical Path Items, Project Milestones and Project Schedule. The Project Schedule shall indicate early, late, and actual curves. S-Curves will be provided for major activities. A functional version of the Level 1 schedule shall be submitted with the Monthly Progress Report.

The schedule update shall include a listing of milestones which display the baseline milestones, milestones completed and forecasted completion of the milestones still to complete. The analysis shall include a written definition of the Critical Path Items with reasons for them being on the critical path plus anticipated work around and actions to keep them from becoming more critical and impacting the project completion. Any secondary float paths that are within 35 days of the critical path shall also be identified.

## 6.0 CHANGE IN WORK

This Section shall describe each event including events of Force Majeure that provides the basis on which Contractor can claim that the Contract Price should be increased or that either of the Project Guaranteed Dates should be extended and with respect to each such event, specifies the amount of such proposed increase in the Contract Price and the duration of each such proposed extension. A detailed change order log listing all agreed and potential change orders shall be maintained and included.

## 7.0 PERMIT STATUS

Provide listing of all Contractor Acquired Permits and Contractor Acquired Operating Permits including current status and the date the permit is to be obtained.

## 8.0 DRAWING AND PROCUREMENT STATUS

Provide the updated engineering drawing list, engineering and procurement schedule, and current status as compared to overall schedule.

## 9.0 PROJECT FINANCIAL STATUS

The Section shall include the billing breakdown for the current month, a comparison of the Milestone Payment Schedule with the actual Milestone Payments to date, and financial review of the Project to date.

The Section shall also include a forecast of all milestone payments in the month it is expected to occur. Each month, the milestone achieved and actual payment amount shall be recorded and included in the progress report. A copy of the current month's invoice may be included to demonstrate the information required for this section.

## 10.0 PROGRESS PHOTOGRAPHS

Contractor shall supply color photographs to document progress and to record significant completed elements of work. Electronic format is acceptable.

Also provide photographs of fabrication of major equipment and Site progress. Photographs should be chosen carefully to illustrate progress.

**EXHIBIT M-1**

**FORM OF PERFORMANCE AND PAYMENT BOND**

The Performance Bond to be provided to Owner by Contractor pursuant to Section 4.24 under the Contract shall be a performance and payment bond prepared by an Eligible Issuer based on the form of AIA Document A312-2010-Performance Bond format without modification.

**EXHIBIT M-2**  
**FORM OF WARRANTY BOND**



**WARRANTY  
BOND**

**Travelers Casualty and Surety Company of America  
Hartford, CT 06183**

Bond No.:

KNOWN ALL BY THESE PRESENTS: That we \_\_\_\_\_,  
as Principal, and Travelers Casualty and Surety Company of America, a corporation  
organized and existing under the Laws of the State of Connecticut, as Surety, are held  
and firmly bound unto \_\_\_\_\_, as Obligee, in the  
total sum of \_\_\_\_\_  
U.S. Dollars (\_\_\_\_\_) for the payment whereof said Principal and Surety bind  
themselves, jointly and severally, as provided herein.

WHEREAS, the Principal entered into a contract with the Obligee dated \_\_\_\_\_ for  
\_\_\_\_\_  
\_\_\_\_\_ ("Work").

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal  
shall maintain and remedy said Work free from defects in materials and workmanship for a  
period of \_\_\_\_\_ year(s) commencing on \_\_\_\_\_ (the  
"Warranty Period" ), then this obligation shall be void; otherwise it shall remain in full force  
and effect.

PROVIDED, HOWEVER, that any suit under this bond shall be commenced no later than one  
(1) year from the expiration date of the Warranty Period; provided, however, that if this  
limitation is prohibited by any law controlling the construction hereof, such limitation shall be  
deemed to be amended so as to be equal to the minimum period of limitation permitted by  
such law, and said period of limitation shall be deemed to have accrued and shall commence  
to run on the expiration date of the Warranty Period.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(Principal)

By: \_\_\_\_\_

**Travelers Casualty and Surety Company of America**

By: \_\_\_\_\_, Attorney-in-Fact

**EXHIBIT N****MAJOR EQUIPMENT WARRANTIES**

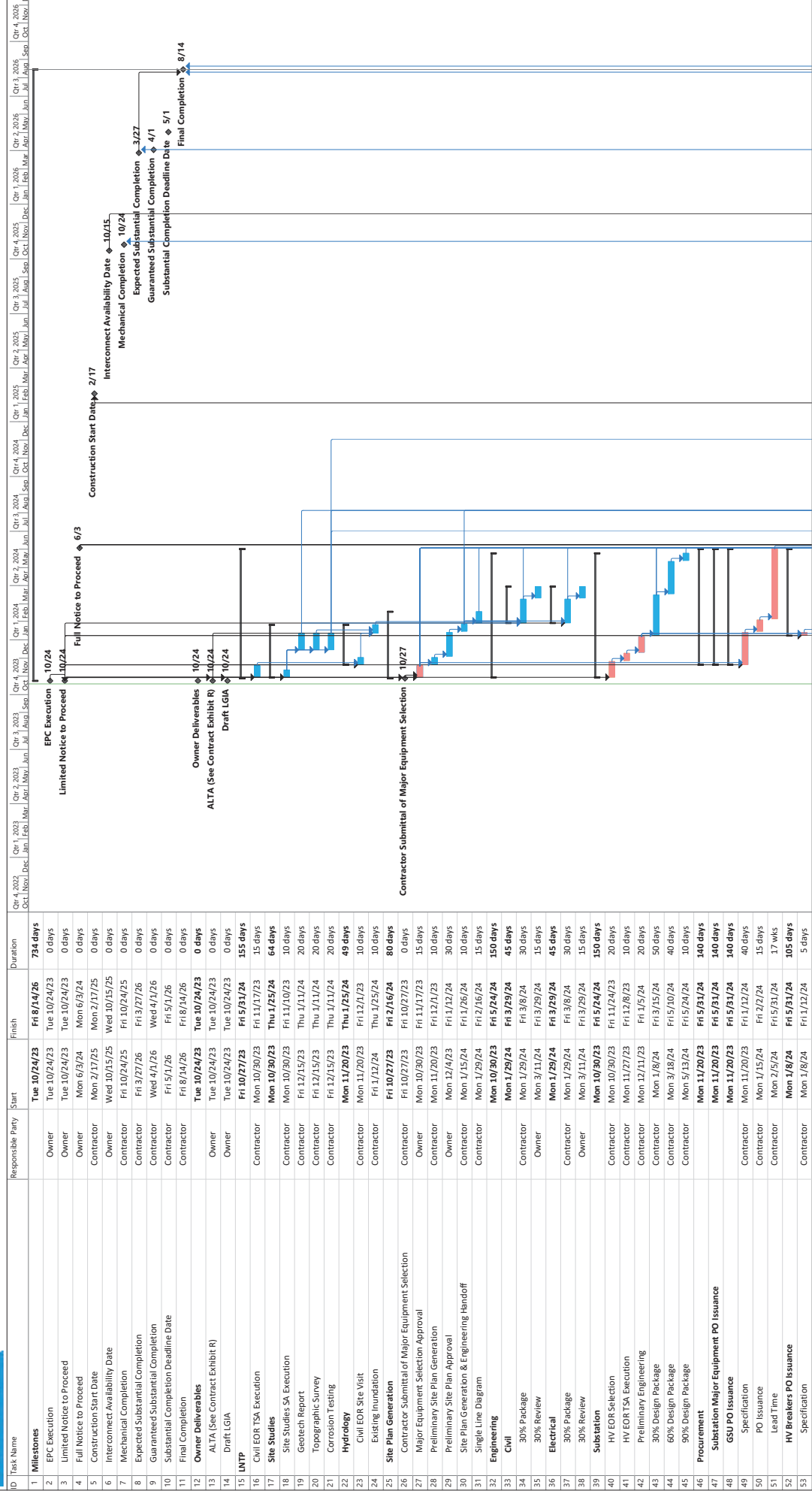
<b>Equipment / Description</b>	<b>Warranty Start</b>	<b>Warranty Duration</b>
Inverters and Step-Up Transformers	Earlier of Substantial Completion or six (6) months from delivery	60 Months
Transformers	Earlier of completion of site acceptance testing or six (6) months from delivery	60 Months
Battery Container (Including Batteries, Racks & BMS)	Earlier of Substantial Completion or six (6) months from the date of shipment (provided, however, for any delay solely as a result of a DEPCOM delay, DEPCOM shall provide at least a 35-month warranty commencing at Substantial Completion).	36 Months

**EXHIBIT O**  
**INITIAL PROJECT SCHEDULE**



NM24004-Sandia Sub-Schedule

7.0  
Date: 10/19/23



Project Summary: Milestone, Engineering, Procurement, Construction, Commissioning, Critical

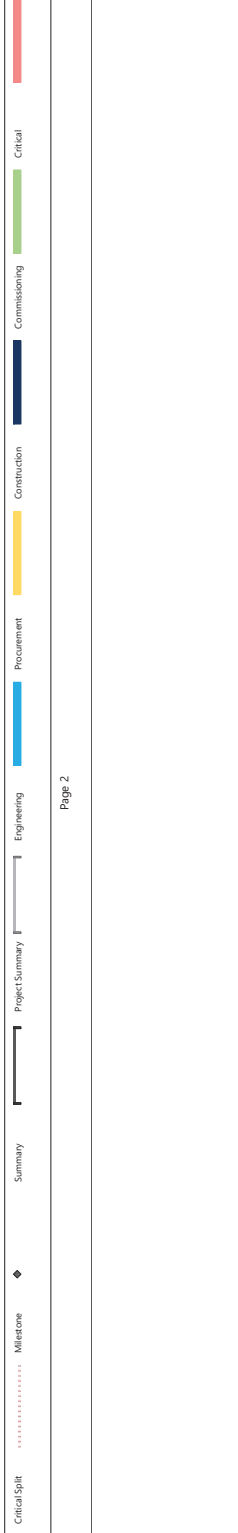
Critical Split: Milestone, Engineering, Procurement, Construction, Commissioning, Critical



NM24004-Sandria Sub-Schedule

v7.0  
Date: 10/19/23

ID	Task Name	Responsible Party	Start	Finish	Duration	Qtr 4, 2022	Qtr 1, 2023	Qtr 2, 2023	Qtr 3, 2023	Qtr 4, 2023	Qtr 1, 2024	Qtr 2, 2024	Qtr 3, 2024	Qtr 4, 2024	Qtr 1, 2025	Qtr 2, 2025	Qtr 3, 2025	Qtr 4, 2025	Qtr 1, 2026	Qtr 2, 2026	Qtr 3, 2026	Qtr 4, 2026	
54	PO Issuance	Contractor	Mon 1/15/24	Fri 1/19/24	5 days																		
55	Lead Time	Contractor	Mon 1/22/24	Fri 5/31/24	19 wks																		
56	SST PO Issuance	Contractor	Mon 1/8/24	Fri 5/31/24	105 days																		
57	Specification	Contractor	Mon 1/8/24	Fri 1/12/24	5 days																		
58	PO Issuance	Contractor	Mon 1/15/24	Fri 1/19/24	5 days																		
59	Lead Time	Contractor	Mon 1/22/24	Fri 5/31/24	19 wks																		
60	FMTP		Mon 6/3/24	Fri 8/4/26	575 days																		
61	Site Studies		Mon 7/22/24	Fri 8/2/24	10 days																		
62	Hydrology		Mon 7/22/24	Fri 8/2/24	10 days																		
63	Post-Installation	Contractor	Mon 7/22/24	Fri 8/2/24	10 days																		
64	Engineering	Contractor	Mon 6/3/24	Fri 2/7/25	180 days																		
65	Structural EOR TSA Execution	Contractor	Mon 6/3/24	Fri 6/21/24	15 days																		
66	Civil	Contractor	Mon 6/3/24	Fri 11/8/24	115 days																		
67	60% Package	Contractor	Mon 6/3/24	Fri 6/21/24	15 days																		
68	60% Review	Owner	Mon 6/24/24	Fri 7/12/24	15 days																		
69	IFP Package	Contractor	Mon 7/1/24	Fri 7/19/24	15 days																		
70	IFP Review	Owner	Mon 7/22/24	Fri 8/30/24	30 days																		
71	Design Update	Contractor	Mon 9/2/24	Fri 9/13/24	10 days																		
72	AHJ Permit Review and Approval	AHJ	Mon 9/16/24	Fri 10/25/24	30 days																		
73	IFC Package	Contractor	Mon 10/28/24	Fri 11/8/24	10 days																		
74	Electrical	Contractor	Mon 6/3/24	Fri 11/8/24	115 days																		
75	60% Package	Contractor	Mon 6/3/24	Fri 6/21/24	15 days																		
76	60% Review	Owner	Mon 6/24/24	Fri 7/12/24	15 days																		
77	IFP Package	Contractor	Mon 6/24/24	Fri 7/19/24	20 days																		
78	IFP Review	Owner	Mon 7/22/24	Fri 8/30/24	30 days																		
79	Design Update	Contractor	Mon 9/2/24	Fri 9/13/24	10 days																		
80	AHJ Permit Review and Approval	AHJ	Mon 9/16/24	Fri 10/25/24	30 days																		
81	IFC Package	Contractor	Mon 10/28/24	Fri 11/8/24	10 days																		
82	Substation	Contractor	Mon 6/3/24	Fri 11/1/24	110 days																		
83	90% Design Package	Contractor	Mon 6/3/24	Fri 7/12/24	30 days																		
84	AHJ Permit Review and Approval	Contractor	Mon 7/15/24	Fri 10/4/24	60 days																		
85	IFC	Contractor	Mon 10/7/24	Fri 11/1/24	20 days																		
86	Structural	Contractor	Mon 8/5/24	Fri 2/7/25	135 days																		
87	30% Package	Contractor	Mon 8/5/24	Fri 8/23/24	15 days																		
88	30% Review	Owner	Mon 8/26/24	Fri 9/13/24	15 days																		
89	60% Package	Contractor	Mon 9/2/24	Fri 9/20/24	15 days																		
90	60% Review	Owner	Mon 9/23/24	Fri 10/11/24	15 days																		
91	IFP Package	Contractor	Mon 9/30/24	Fri 10/18/24	15 days																		
92	IFP Review	Owner	Mon 10/21/24	Fri 11/29/24	30 days																		
93	Design Update	Contractor	Mon 12/2/24	Fri 12/13/24	10 days																		
94	AHJ Permit Review and Approval	AHJ	Mon 12/16/24	Fri 1/24/25	30 days																		
95	IFC Package	Contractor	Mon 1/27/25	Fri 2/7/25	10 days																		
96	Procurement	Contractor	Mon 6/3/24	Fri 1/9/26	420 days																		
97	Substation Major Equipment PO Issuance	Contractor	Mon 6/3/24	Fri 1/9/26	420 days																		
98	GSU PO Issuance	Contractor	Mon 6/3/24	Fri 10/17/25	360 days																		
99	Lead Time	Contractor	Mon 6/3/24	Fri 10/17/25	72 wks																		
100	HV Breakers PO Issuance	Contractor	Mon 6/3/24	Fri 10/24/25	365 days																		
101	Lead Time	Contractor	Mon 6/3/24	Fri 10/24/25	73 wks																		
102	SST PO Issuance	Contractor	Mon 6/3/24	Fri 1/9/26	420 days																		
103	Lead Time	Contractor	Mon 6/3/24	Fri 1/9/26	84 wks																		
104	Control Enclosure	Contractor	Mon 6/3/24	Fri 5/30/25	260 days																		
105	Specification	Contractor	Mon 6/3/24	Fri 6/28/24	20 days																		
106	PO Issuance	Contractor	Mon 7/1/24	Fri 7/5/24	5 days																		



Project Summary: Milestone, Critical Split, Summary

Project: NM24004-Sandria  
Date: Thu 10/19/23



MM2404-Sandia Sub-Schedule

v7.0  
Date: 10/19/23

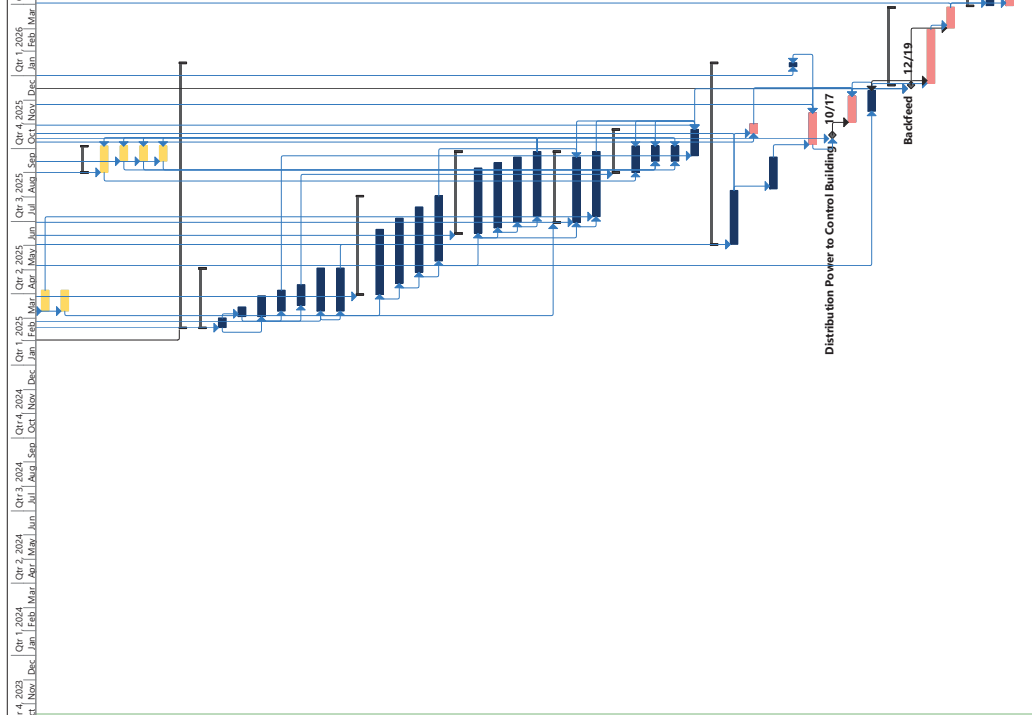
ID	Task Name	Responsible Party	Start	Finish	Duration	Qtr 4, 2023	Qtr 1, 2023	Qtr 2, 2023	Qtr 3, 2023	Qtr 4, 2023	Qtr 1, 2024	Qtr 2, 2024	Qtr 3, 2024	Qtr 4, 2024	Qtr 1, 2025	Qtr 2, 2025	Qtr 3, 2025	Qtr 4, 2025	Qtr 1, 2026	Qtr 2, 2026	Qtr 3, 2026	Qtr 4, 2026	
107	Lead Time	Contractor	Mon 7/8/24	Fri 5/30/25	47 wks																		
108	Steel Package Specification	Contractor	Mon 11/4/24	Fri 5/9/25	135 days																		
109	PO Issuance	Contractor	Mon 11/4/24	Fri 11/29/24	20 days																		
110	PO Issuance	Contractor	Mon 12/2/24	Fri 12/6/24	5 days																		
111	Lead Time	Contractor	Mon 12/9/24	Fri 5/9/25	22 wks																		
112	Disconnects	Contractor	Mon 6/3/24	Fri 6/6/25	265 days																		
113	Specification	Contractor	Mon 6/3/24	Fri 6/28/24	20 days																		
114	PO Issuance	Contractor	Mon 7/1/24	Fri 7/5/24	5 days																		
115	Lead Time	Contractor	Mon 7/8/24	Fri 6/6/25	48 wks																		
116	SCADA & EMS	Contractor	Mon 6/3/24	Fri 5/9/25	245 days																		
117	Specification	Contractor	Mon 6/3/24	Fri 6/28/24	20 days																		
118	PO Issuance	Contractor	Mon 7/1/24	Fri 7/13/24	10 days																		
119	Lead Time	Contractor	Mon 7/15/24	Fri 5/9/25	43 wks																		
120	BESS Equipment PO Issuance	Contractor	Mon 6/3/24	Fri 5/16/25	250 days																		
121	BESS Containers PO Issuance	Contractor	Mon 6/3/24	Fri 5/9/25	245 days																		
122	Specification	Contractor	Mon 6/3/24	Fri 6/28/24	20 days																		
123	PO Issuance	Contractor	Mon 7/1/24	Fri 7/5/24	5 days																		
124	Lead Time	Contractor	Mon 7/8/24	Fri 5/9/25	44 wks																		
125	Transformers PO Issuance	Contractor	Mon 6/3/24	Fri 5/16/25	250 days																		
126	Specification	Contractor	Mon 6/3/24	Fri 6/28/24	20 days																		
127	PO Issuance	Contractor	Mon 7/1/24	Fri 7/5/24	5 days																		
128	Lead Time	Contractor	Mon 7/8/24	Fri 5/16/25	45 wks																		
129	Inverters PO Issuance	Contractor	Mon 6/3/24	Fri 5/16/25	250 days																		
130	Specification	Contractor	Mon 6/3/24	Fri 6/28/24	20 days																		
131	PO Issuance	Contractor	Mon 7/1/24	Fri 7/5/24	5 days																		
132	Lead Time	Contractor	Mon 7/8/24	Fri 5/16/25	45 wks																		
133	BESS Material Factory Acceptance Testing	Contractor	Mon 3/24/25	Fri 5/16/25	40 days																		
134	Auxiliary Transformers PO Issuance	Contractor	Mon 6/3/24	Fri 5/16/25	250 days																		
135	Specification	Contractor	Mon 6/3/24	Fri 6/28/24	20 days																		
136	PO Issuance	Contractor	Mon 7/1/24	Fri 7/5/24	5 days																		
137	Lead Time	Contractor	Mon 7/8/24	Fri 5/16/25	45 wks																		
138	MV-AC	Contractor	Mon 6/3/24	Fri 3/28/25	215 days																		
139	Specification	Contractor	Mon 6/3/24	Fri 6/28/24	20 days																		
140	PO Issuance	Contractor	Mon 7/1/24	Fri 7/5/24	5 days																		
141	Lead Time	Contractor	Mon 7/8/24	Fri 3/28/25	38 wks																		
142	DC Cable	Contractor	Mon 6/3/24	Fri 12/20/24	145 days																		
143	Specification	Contractor	Mon 6/3/24	Fri 6/28/24	20 days																		
144	PO Issuance	Contractor	Mon 7/1/24	Fri 7/5/24	5 days																		
145	Lead Time	Contractor	Mon 7/8/24	Fri 5/16/25	24 wks																		
146	LV/Communication Cable/Fiber	Contractor	Mon 6/3/24	Fri 1/17/25	165 days																		
147	Specification	Contractor	Mon 6/3/24	Fri 6/28/24	20 days																		
148	PO Issuance	Contractor	Mon 7/1/24	Fri 7/5/24	5 days																		
149	Lead Time	Contractor	Mon 7/8/24	Fri 1/17/25	28 wks																		
150	Logistics	Contractor	Mon 3/10/25	Fri 1/16/26	225 days																		
151	Substation Major Equipment Deliveries	Contractor	Mon 5/12/25	Fri 1/16/26	180 days																		
152	GSU	Contractor	Mon 10/20/25	1 day																			
153	HV Breakers Deliveries	Contractor	Mon 10/27/25	Fri 10/31/25	5 days																		
154	SST Deliveries	Contractor	Mon 1/12/26	Fri 1/16/26	5 days																		
155	Control Enclosure	Contractor	Mon 6/2/25	Fri 6/6/25	5 days																		
156	Steel Package	Contractor	Mon 5/12/25	Fri 5/16/25	5 days																		
157	Disconnects	Contractor	Mon 6/9/25	Fri 6/13/25	5 days																		
158	SCADA & EMS Deliveries	Contractor	Mon 5/12/25	Fri 6/6/25	20 days																		
159	MV-AC Deliveries	Contractor	Mon 3/31/25	Fri 4/25/25	20 days																		

Project Summary: Milestone, Engineering, Procurement, Construction, Commissioning, Critical



MM24004-Sandia Sub-Schedule

ID	Task Name	Responsible Party	Start	Finish	Duration	Qtr 4, 2023 Oct. Nov. Dec.	Qtr 1, 2023 Jan. Feb. Mar.	Qtr 2, 2023 Apr. May. Jun.	Qtr 3, 2023 Jul. Aug. Sep.	Qtr 4, 2023 Oct. Nov. Dec.	Qtr 1, 2024 Jan. Feb. Mar.	Qtr 2, 2024 Apr. May. Jun.	Qtr 3, 2024 Jul. Aug. Sep.	Qtr 4, 2024 Oct. Nov. Dec.	Qtr 1, 2025 Jan. Feb. Mar.	Qtr 2, 2025 Apr. May. Jun.	Qtr 3, 2025 Jul. Aug. Sep.	Qtr 4, 2025 Oct. Nov. Dec.	Qtr 1, 2026 Jan. Feb. Mar.	Qtr 2, 2026 Apr. May. Jun.	Qtr 3, 2026 Jul. Aug. Sep.	Qtr 4, 2026 Oct. Nov. Dec.	
160	DC Cable Deliveries	Contractor	Mon 3/10/25	Fri 4/4/25	20 days																		
161	LV/Communication Cable Fiber Deliveries	Contractor	Mon 3/10/25	Fri 4/4/25	20 days																		
162	BESS Equipment Deliveries	Contractor	Mon 9/1/25	Fri 10/3/25	25 days																		
163	BESS Container Deliveries	Contractor	Mon 9/1/25	Fri 10/3/25	25 days																		
164	Transformer Deliveries	Contractor	Mon 9/15/25	Fri 10/9/25	15 days																		
165	Inverter Deliveries	Contractor	Mon 9/15/25	Fri 10/9/25	15 days																		
166	Auxiliary Transformer Deliveries	Contractor	Mon 9/15/25	Fri 10/9/25	15 days																		
167	Construction	Contractor	Mon 2/17/25	Fri 1/16/26	240 days																		
168	Civil	Contractor	Mon 2/17/25	Fri 5/2/25	55 days																		
169	Entrance Install	Contractor	Mon 2/17/25	Fri 2/28/25	10 days																		
170	Mobilization Pad & Facilities	Contractor	Mon 3/3/25	Fri 3/14/25	10 days																		
171	Site Prep	Contractor	Mon 3/3/25	Fri 3/28/25	20 days																		
172	Fence Install	Contractor	Mon 3/10/25	Fri 4/4/25	20 days																		
173	Access Road Installation	Contractor	Mon 3/17/25	Fri 4/11/25	20 days																		
174	BESS Pad Grading	Contractor	Mon 3/10/25	Fri 5/2/25	40 days																		
175	Substation Pad Grading	Contractor	Mon 3/10/25	Fri 5/2/25	40 days																		
176	Underground	Contractor	Mon 3/31/25	Fri 8/1/25	90 days																		
177	Trenching	Contractor	Mon 4/14/25	Fri 7/4/25	60 days																		
178	Ground Grid	Contractor	Mon 4/28/25	Fri 7/18/25	60 days																		
179	Conduit	Contractor	Mon 5/12/25	Fri 8/1/25	60 days																		
180	Backfill	Contractor	Mon 6/16/25	Fri 9/26/25	75 days																		
181	Foundations	Contractor	Mon 6/16/25	Fri 9/5/25	60 days																		
182	Excavate	Contractor	Mon 6/23/25	Fri 9/12/25	60 days																		
183	Form	Contractor	Mon 6/30/25	Fri 9/19/25	60 days																		
184	Install Rebar	Contractor	Mon 7/7/25	Fri 9/26/25	60 days																		
185	Pour and Cure	Contractor	Mon 6/30/25	Fri 9/26/25	60 days																		
186	Cable Install	Contractor	Mon 6/30/25	Fri 9/26/25	65 days																		
187	AC Cable Pull	Contractor	Mon 6/30/25	Fri 9/19/25	60 days																		
188	DC Cable Pull	Contractor	Mon 7/7/25	Fri 9/26/25	60 days																		
189	Equipment Set	Contractor	Mon 9/1/25	Fri 10/24/25	40 days																		
190	Set Containers	Contractor	Mon 9/1/25	Fri 10/9/25	25 days																		
191	Set PCS	Contractor	Mon 9/15/25	Fri 10/9/25	15 days																		
192	Set Auxiliary Transformer	Contractor	Mon 9/15/25	Fri 10/9/25	15 days																		
193	Test and Term	Contractor	Mon 9/22/25	Fri 10/24/25	25 days																		
194	Substation	Contractor	Mon 6/2/25	Fri 1/16/26	165 days																		
195	Foundations	Contractor	Mon 6/2/25	Fri 8/8/25	50 days																		
196	GSU Set and Dressout	Contractor	Mon 10/20/25	Fri 10/31/25	10 days																		
197	Below Grade Install	Contractor	Mon 8/11/25	Fri 9/19/25	30 days																		
198	SST Install	Contractor	Mon 1/12/26	Fri 1/16/26	5 days																		
199	Above Grade Install	Contractor	Mon 10/6/25	Fri 11/14/25	30 days																		
200	Distribution Power to Control Building	Contractor	Fri 10/17/25	Fri 10/17/25	0 days																		
201	Testing	Contractor	Mon 11/3/25	Fri 12/5/25	25 days																		
202	SCADA & EMS Install	Contractor	Mon 11/17/25	Fri 12/12/25	20 days																		
203	Cx	Contractor	Fri 12/19/25	Fri 3/27/26	70 days																		
204	Backfeed	Owner	Fri 12/19/25	Fri 12/19/25	0 days																		
205	Functional Testing	Contractor	Mon 12/22/25	Fri 2/27/26	50 days																		
206	Operational and Performance Testing	Contractor	Mon 3/2/26	Fri 3/27/26	20 days																		
207	Project Closeout	Contractor	Mon 3/30/26	Fri 8/14/26	100 days																		
208	Demobilization	Contractor	Mon 3/30/26	Fri 5/22/26	40 days																		
209	Punchlist and Permit Closeout	Contractor	Mon 3/30/26	Fri 8/14/26	100 days																		



Project Summary: Milestone, Summary, Engineering, Procurement, Construction, Commissioning, Critical

## EXHIBIT P

### Essential Contractor Deliverables

Essential Contractor Deliverables submitted as a requirement for Substantial Completion shall be complete and of a minimum development status as defined below. The Essential Contractor Deliverables submitted for Substantial Completion shall be sufficient to provide for Owner's continuous efficient, effective, and safe operation and reliability of the Project, and any portion thereof, for the delivery of power through the Point of Interconnection to Owner's customers.

Construction Documentation (Specifications, Drawings, Diagrams, Lists, Plans, Studies, Reports) – Issued for Construction (or equivalent)

Vendor Documentation – Issued for Fabrication (or equivalent)

Operations Documentation (Manuals, System Descriptions) – Complete and suitable to inform Owner's operation and maintenance of the Project in accordance with Project and Equipment Warranty provisions and OEM recommendations.

Site Plan with survey and coordinate system
Discipline and vendor general arrangement drawings
Switchyard Control Enclosure layout drawings, including CCR
Vendor submittals
Recommended spare parts lists
Equipment warranties
Building architectural plans and elevations
Site grading and drainage drawings
Wall layout drawing / wall vendor submittals (in civil package)
Foundation drawings
Embedment Details
Equipment mounting details (included on foundation drawings)
Civil and structural specifications (to be provided on the drawings)
Hazard Mitigation Analysis
Vendor Thermal Management System equipment layout plan, elevations, and details



System descriptions
Electrical one-line
Electrical three-line diagrams (Protective relaying only)
Electrical equipment list
Cable and raceway list
Electrical panels layout and details
Electrical schematic/block diagrams
Electrical termination drawings
Relay (breaker coordination) study
Cable tray layout (if applicable)
Underground ductbank and conduit drawings including elevations
Embedded conduit plans, elevation, and details
Conduit and raceway schedule
Fire alarm and annunciator system drawings
Project lighting drawings
Lightning protection drawings
Project grounding drawings and details
Electrical equipment and component data sheets
Electrical specifications
Electrical hazardous area classification drawings
Control architecture drawings (DCS block diagram)
Communication Plan
Project control logic diagrams
Digital Logic/Functional Block diagrams
DCS I/O list

Contractor O&M and Project Manuals
Training manuals
Performance Test Reports

**EXHIBIT Q**

**LIMITED NOTICE TO PROCEED (SERVICES)**

## LIMITED NOTICE TO PROCEED (SERVICES)

[Sandia Substation Storage Project]

This Limited Notice to Proceed (this “LNTP”) is entered into and is effective as of the 24<sup>th</sup> day of October, 2023 (the “Effective Date”), by and between PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (“Owner”) and DEPCOM Power, Inc., a Delaware corporation (“Contractor”). Each of Owner and Contractor may be referred to as a “Party” and collectively as the “Parties.” Terms used herein and not otherwise defined shall have the meaning set forth in the EPC Contract (as defined below).

### RECITALS

A. Owner is developing a sixty (60) MW, two-hundred forty (240) MWh stand-alone battery energy storage project, known as the Sandia Substation Storage Project (the “Project”).

B. Owner and Contractor, contemporaneously herewith, have executed, on the Effective Date, an engineering, procurement, and construction agreement (the “EPC Contract”), for the engineering, procurement and construction services in connection with the Project.

C. In connection with such Project, Owner desires to obtain and Contractor desires to provide certain Preliminary Work for the Project, as further set forth herein, in exchange for the Price (as defined herein).

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Services and Responsibilities. The recitals above are incorporated herein by reference as if fully set forth herein. Owner hereby releases and authorizes Contractor to proceed with the services to be performed as set forth in Exhibit A hereto (the “Services”), which shall constitute Preliminary Work as set forth in Section 8.1.2 of the EPC Contract, the terms of which EPC Contract are incorporated herein by reference and applied mutatis mutandis, to the extent applicable to the Services in accordance with Section 8.1.2 in the EPC Contract, except to the extent of a conflict in which case the terms of this LNTP shall control (e.g. termination and limitation of liability concepts are set forth in this LNTP), provided, however for clarity that Contractor shall not be deemed to take risk of loss of the Project at the Project Site and be required to provide insurance pursuant to the EPC Contract until Owner issues Notice to Proceed (as defined in the EPC Contract).

2. EPC Contract. Owner and Contractor entered, as of the Effective Date, the EPC Contract for the development of the Project pursuant to which this LNTP is hereby issued in accordance with Section 8.1.2. The Services provided by Contractor pursuant to the terms of this LNTP shall include taxes as provided in Section 7.1.1 of the EPC Contract.

3. Price and Payment. Owner shall pay Contractor, for the Services, the amounts specified in Exhibit B (collectively, the “Price”) through invoices submitted by Contractor during the completion of the Services. Owner shall pay such invoice in accordance with Article 7 of the EPC Contract (treating the items in Table 1 of Exhibit B like Milestones for purposes of Article 7 of the EPC Contract), provided, however, in the event of a conflict between payment terms, the payment terms set forth in this LNTP shall control.

4. Limitation of Liability and Waiver of Consequential Damages. During the performance of their obligations under this LNTP (i) neither Party shall be liable to the other for consequential, incidental, indirect, punitive or special damages (including loss of profits, data, business or goodwill), regardless of the legal theory advanced or of any notice given as to the likelihood of such damages, (ii) the Parties' recourse with respect to any liability or obligation of the other Party hereunder shall be limited to the assets of such Party, and Owner shall have no recourse against, and expressly waives its right to bring any claim against, any other indemnified party or any of their assets, (iii) Contractor's total aggregate liability arising out of or relating to this LNTP, from any and all causes, whether based on contract, tort (including negligence), strict liability or any other cause of action, shall in no event exceed the Price (the "Liability Cap") and (iv) Owner's total aggregate liability arising out of or relating to this LNTP, from any and all causes, whether based on contract, tort (including negligence), strict liability or any other cause of action, shall in no event exceed the Liability Cap, provided that, payments made by Owner with respect to the Price shall not reduce the Liability Cap. This limitation of liability shall not apply to any claim in connection with Owner's or Contractor's gross negligence, willful misconduct or fraud.

5. Term and Termination.

a. Except as otherwise set forth herein, this LNTP shall be effective for a term commencing on the Effective Date and ending upon the earlier of (i) Owner's issuance of a Notice to Proceed under the EPC Contract and (ii) termination by either Party as provided herein ("Term"). This LNTP may be terminated by Owner through written Notice to Contractor (a "Termination for Convenience"). In such event, Owner shall be obligated to pay Contractor for all reasonable, actual and documented costs connected to the performance of the Services and subcontracted Services performed up to the date of termination, including, if any, actual and documented cancellation, demobilization and termination costs reasonably incurred by Contractor plus Contractor's overhead at ten percent (10%) of such costs. In the event of a Termination for Convenience hereunder prior to issuance of Notice to Proceed, Contractor shall have no recourse against Owner except as stated in the preceding sentence. Contractor shall submit an invoice to Owner for the amount of reimbursement claimed by Contractor with all supporting information and requisite documents required hereunder. Owner shall pay all undisputed amounts in such invoices within twenty-one (21) Days after Owner's receipt thereof and otherwise in accordance with Article 7 of the EPC Contract.

b. Either Party may terminate this LNTP for a material default of the other Party with such termination to be effective thirty (30) Days of written Notice in the event of material default (other than a default for Owner's failure to perform any provision of this LNTP providing for the payment of money, in which case the ten (10) Day period below controls), specifying such material default unless the breaching Party corrects such material default or presents a mutually agreeable plan to cure such material default within such time; provided, however, that Contractor may (i) terminate this LNTP and the EPC Agreement if Owner fails to cure within ten (10) Days of written Notice, Owner's failure to perform any provision of this LNTP providing for the payment of money or (ii) suspend its performance of the Services if Owner fails to perform any provision of this LNTP providing for the payment of money where such failure continues for a period of ten (10) Days after the date on which such payment was due hereunder. If this LNTP is terminated by Contractor due to Owner's failure to pay amounts when due or other material defaults, Contractor shall be compensated by Owner as if such termination were a Termination for Convenience by Owner. In the event Contractor elects to suspend its performance of the Services due to Owner's failure to pay amounts when due and such suspension causes a change in Contractor's cost or time required for the performance of the Services, Contractor shall have the right to seek relief in a manner specified in Section 22.3 (Extension of Time and Compensation Rights) of the EPC Contract.

c. In the event of a termination, Sections 21.1.2 (Assumption of Contractor Contracts) and 21.1.3 (Completion of Work) of the EPC Contract shall apply.

6. Other Activities. Owner agrees that Contractor and its affiliates are not required to restrict their activities as a result of this engagement, and may undertake any business activity (including, without limitation, performing the same or similar engagements for other clients in Owner's industry) without further consultation with or notification to Owner, and Owner shall not have any right in or to any such activities or the income or profits derived therefrom. Furthermore, Owner agrees that Contractor shall not have a duty to disclose to Owner or use on behalf of Owner any information relating to or derived from those activities.

7. Independent Contractor. Contractor shall, for all purposes herein, be an independent contractor with respect to the Owner.

8. Successors. This LNTP shall be binding upon and inure to the benefit of the Parties, and each indemnified party and the successors and permitted assigns of each of them, and no other person or entity (except as otherwise provided herein) shall have any right or obligation under this LNTP.

9. Notices. All Notices or other communications to be given hereunder to a Party shall be in writing and shall be deemed effective as follows: (a) delivered personally, upon delivery; (b) sent by certified mail, return receipt requested, upon certified receipt; (c) sent by a recognized overnight mail or courier service, with delivery receipt requested, upon receipt; or (d) sent by confirmed facsimile transmission or electronic mail, when acknowledged by recipient as having been received in full, to the following addresses:

If to Owner:

Public Service Company of New Mexico  
2401 Aztec Rd, NE  
Albuquerque, NM 87107  
Attn: Attn: Jason Jones, Director of  
Generation Engineering  
[jason.jones@pnm.com](mailto:jason.jones@pnm.com)

With a copy to:

Christopher Atencio, Corporate Counsel  
PNM Resources, Inc.  
Alvarado Square, MS 0805  
Albuquerque, NM 87158  
[christopher.atencio@pnmresources.com](mailto:christopher.atencio@pnmresources.com)  
(505) 241-4929

If to Contractor:

DEPCOM Power, Inc.  
9185 E. Pima Center Pkwy, Ste 100  
Scottsdale, AZ 85258  
Attn: Justin Bloch, President  
[j.bloch@depcompower.com](mailto:j.bloch@depcompower.com)

With copy to: Charlotte Scaglione, General  
Counsel  
DEPCOM Power, Inc.  
9185 E. Pima Center Pkwy, Ste 100  
Scottsdale, Arizona 85258  
[cscaglione@depcompower.com](mailto:cscaglione@depcompower.com)  
(314) 276-6003

10. Survival. The provisions of this LNTP shall survive the termination of this LNTP with respect to any events occurring or matters arising while this LNTP was in effect; provided that, upon Owner's issuance of a Notice to Proceed under the EPC Contract, this LNTP shall become a part of the EPC Contract and the terms of the EPC Contract shall supersede the terms of this LNTP as more fully described in Section 2 above.

11. No Waiver. No failure or delay on the part of any party hereto in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver of any provision of this LNTP shall be effective unless the same shall be made in writing and signed by the party against whom such waiver is sought to be enforced.

12. Dispute Resolution. Article 33 of the EPC Contract shall govern and control in the event of a

dispute.

13. Severability. If it is finally determined that any term or provision of this LNTP is invalid or unenforceable, the Parties agree that the arbitrator making the determination of invalidity or unenforceability shall reduce the scope, duration, or area of the term or provision, delete specific words or phrases, or replace any invalid or unenforceable term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this LNTP shall be enforceable as so modified after the expiration of the time within which the judgment may be appealed.

14. Complete Agreement. Except as otherwise provided herein, this LNTP and the EPC Contract constitute the entire agreement among the Parties with respect to the matters referred to herein, and no other agreement, verbal or otherwise, shall be binding upon the Parties hereto.

15. Counterparts. This LNTP may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one original instrument.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the undersigned have duly executed this LNTP, or have caused this LNTP to be duly executed on their behalf, as of the Effective Date hereof.

**OWNER**  
PUBLIC SERVICE COMPANY OF NEW MEXICO

**CONTRACTOR**  
DEPCOM POWER, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



## **EXHIBIT A SCOPE OF WORK**

The purpose of this LNTP is to commence work activities, including the below, in exchange for payment under the terms of the LNTP and the EPC Contract.

### **1. Contractor's Services.**

- a. Site Geotech Analysis. Contractor is responsible to inspect the job Site, obtain all necessary job Site data, and perform all required geotechnical and/or survey investigations for the engineering, design, and construction of the Project. The Contractor shall be responsible for obtaining any required topographical surveying outside of the job Site boundary.
- b. A permanent Project benchmark shall be established on the job Site by the Contractor based upon USGS vertical datum.
- c. Preliminary Engineering. Contractor will perform preliminary engineering and development activities for permitting and interconnection-related items.. Preliminary Engineering shall include 30% design of BESS / PCS and site layout including delivery of the 30% design deliverables outlined in Section 5 of Exhibit A to the EPC Contract. Preliminary engineering shall also include a detailed submittal of the site wall and gate as outlined in Section 11.5.2 of Exhibit A to the EPC Contract, including the security provisions outlined in Section 19 of Exhibit A to the EPC Contract. As it relates to Section 05 – Submittals to the EPC Contract, Contractor shall plan to deliver the documents included in the following subsections of Table 5-1:
  - (1) Site Studies (including noise study)
  - (2) Project Layout
  - (3) Procurement Documents (as it relates to the items procured under this LNTP)
  - (4) Civil/Structural
  - (5) Electrical
  - (6) Instrumentation & Controls
  - (7) Site Wall (per Section 11.5.2 of Exhibit A to the EPC Contract)
  - (8) Security (per Section 19 of Exhibit A to the EPC Contract)
- d. Permitting Diligence. Contractor will review (and subsequently pursue after Notice to Proceed) the permit requirements with local Governmental Authorities, pay applicable filing fees and submit applications for applicable permits for the Project, as per Exhibit C of the EPC Contract. Contractor shall coordinate with the local Governmental Authority and, if required, the local Fire Department to review the Site Plan and determine the Site fire protection requirements.. Contractor shall also support Owner in its pursuit of Owner Acquired Permits, in accordance with Exhibit C of the EPC Contract and Section 3.4 of the EPC Contract.
- e. Long Lead Procurement. Contractor will issue purchase order deposits for the following long lead-time equipment:
  - 51, 68, 85 MVA / 34.5 kV to 115kV GSU

[Exhibit A to Limited Notice to Proceed]

- 115kV breaker
  - station service transformer
- f. Coordination of Metering / Protection / AGC Control / Communications with Owner and Transmission Provider.
- g. Noise Pollution Study. Including a predictive noise model of the site to determine compliance of the constructed project with the noise requirements included in Exhibit I. Contractor shall submit the noise model contour maps and noise study to the Owner under the LNTP phase of the Project. In the event the noise study determines additional mitigation beyond what is described in Section 11 – Site Work of Exhibit A to the EPC Contract is required to comply with the Emissions Guarantees within Exhibit I – Acceptance Tests and Testing, Contractor shall submit a change order request to the Owner during the LNTP phase of the Project. Noise criteria and compliance shall apply to steady state operation as well as startup and shutdown.
- h. Labor and Apprenticeship Study. Contractor shall collaborate with Owner in Owner's preparation of a conformance request as set forth in and provided under Section 11.9.2 of the EPC Contract.
- i. Meetings. Support periodic meetings, either virtual or in-person, on a mutually agreed upon recurrence, to coordinate and provide status on the Project with Owner and Owner's representative.
- j. Perimeter Wall & Security System Coordination. Contractor shall coordinate with Owner, the local Governmental Authority, and approved Subcontractors (in accordance with Exhibit G of the EPC Contract), during the period of this LNTP, to align on the final requirements for the ballistic wall specifications identified in Section 11 of Exhibit A of the EPC Contract, and the security specifications identified in Section 19 of Exhibit A of the EPC Contract.

**EXHIBIT B**  
**LNTP SCHEDULE OF VALUES**

Owner agrees to make payment to Contractor as set forth in the payment schedule below. The Contractor shall issue to Owner one or more invoices for payment of the amounts set forth below after completion and submittal of the applicable Items in Table 1. Full payment for each such invoice is due per the terms identified in Table 1 after such invoice is submitted to Owner.

Table 1

<b>Item</b>	<b>Amount</b>	<b>Expected Deliverable Date</b>
LNTP Effective Date	\$500,000	10/24/2023
Project Layout	\$50,000	10/31/2023
Long Lead Equipment Procurement	\$1,500,000	12/1/2023
Site Studies (Geotech, Topo)	\$100,000	12/10/2023
Sound Study	\$100,000	1/19/2024
30% Electrical	\$250,000	2/09/2024
30% Civil	\$250,000	2/09/2024
Remaining Site Studies (Critical Issues Assessment, Corrosion Analysis)	\$600,000	3/15/2024
60% Electrical	\$225,000	6/1/2024
60% Civil	\$225,000	6/1/2024

\*Note – this LNTP is intended to cover the Work to be performed as identified in Exhibit A of this LNTP, through June 1st, 2024 .

For Work to be performed beyond June 1st, 2024, Contractor and Owner agree to negotiate in good faith to execute an amended and restated LNTP, to maintain the project schedule and GSCD, as noted herein.

\*\*END\*\*

**EXHIBIT R**  
**OWNER SUPPLIED INFORMATION**

**SITE WARRANTY DEED**

Old Republic Title Company 1902253 GB

SPECIAL WARRANTY DEED

**FOR VALUABLE CONSIDERATION**, SANDIA TECH PARK, LLC, a Nevada limited liability company, herein the "Grantor," hereby grants and conveys to PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation, herein the "Grantee," whose notice address is 2401 Aztec Road NE, MS Z140, Albuquerque, New Mexico 87107, the following described real property located (the "Property") in Bernalillo County, New Mexico, and more particularly described as follows:

Tract "F-2A" of the Plat of Tracts F-2A and F-2B Sandia Science & Technology Park (a Replat of Tract F-2, Sandia Science and Technology Park), as the same is shown and designated on the plat thereof, filed in the Office of the County Clerk of Bernalillo County, New Mexico on September 18, 2017, in Plat Book 2017C, Folio 100.

**SUBJECT TO:**

1. Ad valorem taxes for the year 2019 and thereafter.
2. Reservations contained in the Patent from the State of New Mexico, recorded May 13, 1987 in Book Misc. 486-A, Page 466 as Document No. 08749678, records of Bernalillo County, New Mexico.
3. Permit for Right-of-Way and Easement, and rights incident thereto, in favor of the Public Service Company of New Mexico, recorded April 17, 1968 in Book Misc. 100, Page 539 as Document No. 90072, records of Bernalillo County, New Mexico.
4. Easements and notes as shown, noted and provided for on the Annexation Plat recorded August 24, 1982 in Volume C20, folio 24; amended by Easement Encroachment Agreement recorded October 21, 1992 in Book BCR 92-24, Page 8867 as Document No. 92105770 and in Book BCR 92-24, Page 8871 as Document No. 92105771, records of Bernalillo County, New Mexico.
5. Underground Easement, and rights incident thereto, in favor of Public Service Company of New Mexico and The Mountain States Telephone and Telegraph Company, recorded May 11, 1990 in Book BCR 90-8, Page 2421 as Document No. 9036970, records of Bernalillo County, New Mexico.

6. Permanent Easement, and rights incident thereto, in favor of the City of Albuquerque, a New Mexico municipal corporation, recorded April 20, 1991 in Book BCR 91-7, Page 4414 as Document No. 91033359, records of Bernalillo County, New Mexico.

7. Permanent Easement, and rights incident thereto, in favor of the City of Albuquerque, a New Mexico municipal corporation, recorded October 26, 1992 in Book BCR 92-25, Page 2002 as Document No. 92107130, records of Bernalillo County, New Mexico.

8. Easements, restrictions and notes as shown, noted and provided for on the Plats recorded January 22, 1999 in Plat Book 99C, Page 14; recorded November 27, 2001 in Plat Book 2001C, Page 304; recorded December 13, 2001 in Plat Book 2001C, Page 324; recorded March 14, 2005 in Plat Book 2005C, Page 98 and recorded September 18, 2017 in Plat Book 2017C, Page 100, records of Bernalillo County, New Mexico.

9. Notices of Subdivision Plat Conditions recorded January 22, 1999 in Book 9901, Page 8756 as Document No. 1998008791; recorded November 27, 2001 in Book A27, Page 8324 as Document No. 2001140118; recorded December 13, 2001 in Book A28, Page 6958 as Document No. 2001148774 and on the Plats recorded January 22, 1999 in Plat Book 99C, Page 14; recorded November 27, 2001 in Plat Book 2001C, Page 304 and recorded December 13, 2001 in Plat Book 2001C, Page 324, records of Bernalillo County, New Mexico.

10. Reservations contained in the Special Warranty Deed recorded March 16, 2001 in Book A16, Page 8439 as Document No. 2001029953, records of Bernalillo County, New Mexico.

11. Permanent Easement, and rights incident thereto, in favor of the City of Albuquerque, a New Mexico municipal corporation, recorded December 13, 2001 in Book A28, Page 6875 as Document No. 2001148691, records of Bernalillo County, New Mexico.

12. Permanent Easement, and rights incident thereto, in favor of the City of Albuquerque, a New Mexico municipal corporation, recorded December 13, 2001 in Book A28, Page 6876 as Document No. 2001148692, records of Bernalillo County, New Mexico.

13. Declaration of Covenants for Sandia Science & Technology Park recorded April 7, 2005 in Book A94, Page 7423 as Document No. 2005047568, records of Bernalillo County, New Mexico.

14. Conditions, matters and notes that would be shown on an accurate ALTA Survey of the Property herein conveyed.

With special warranty covenants.

WITNESS the hands and seal of the undersigned this 19 day of June, 2019.

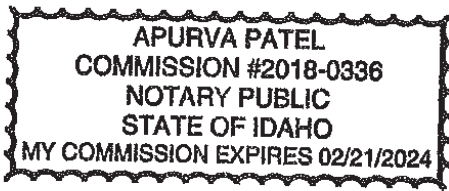
SANDIA TECH PARK, LLC,  
a Nevada limited liability company

By [Signature]

Its: Scott H. Hegass Manager

STATE OF IDAHO )  
 )ss  
COUNTY OF ADA )

THIS SPECIAL WARRANTY DEED was acknowledged this 19 day of June, 2019, before me, the undersigned notary public, by Scott Michael Hegass, as manager of SANDIA TECH PARK, LLC, a Nevada limited liability company, on behalf of said company.



[Signature]  
Notary Public



**GRANT OF ACCESS EASEMENTS**

**GRANT OF ACCESS EASEMENTS**

This Grant of Access Easement ("Grant") is made as of this 29<sup>th</sup> day of August, 2019, by and between Cooperative Educational Services (CES) and the Public Service Company of New Mexico (PNM)

**RECITALS**

A. CES is the owner of the following property located in Bernalillo County, New Mexico:

Tract F-2B and tract F-1 as shown on the certain plat of survey entitled plat of Tracts F-2A and F-2B Sandia Science and Technology Park filed of record in the office of the Bernalillo County, New Mexico Clerk on September 18, 2017 book 2017C Folio 0100 Doc. number 2017089832 (the "Plat")  
(hereinafter "CES Property")

B. PNM is the owner of the Tract F-2A adjacent to and to the north of the CES Property as shown on the Plat (hereinafter "PNM Property")

C. The Parties desire to establish easements for ingress and egress along the common boundary between the CES Property and the PNM property and to establish the terms of such easements across their respective properties for the mutual benefit of their respective properties as shown on Exhibit A attached hereto and on the terms and conditions set forth herein.

NOW, THEREFORE, it is granted and agreed as follows:

1. Grant of PNM Easement In consideration of the covenants and agreements contained herein, PNM hereby establishes and grants a fourteen and one half foot wide (14.5) foot wide easement ("PNM Easement") over and across PNM Property, the southern boundary of which is the southern boundary of the PNM Property for a distance of 253 feet, as shown on Exhibit A, for ingress and egress to benefit the CES Property.

2. Grant of CES Easement In consideration of the covenants and agreements contained herein, CES hereby establishes and grants a twelve and one half foot wide (12.5) foot wide easement ("CES Easement") over and across CES Property, the northern

boundary of which is the northern boundary of the CES Property for a distance of 266.53 feet, as shown on Exhibit A, for ingress and egress to benefit the PNM Property.

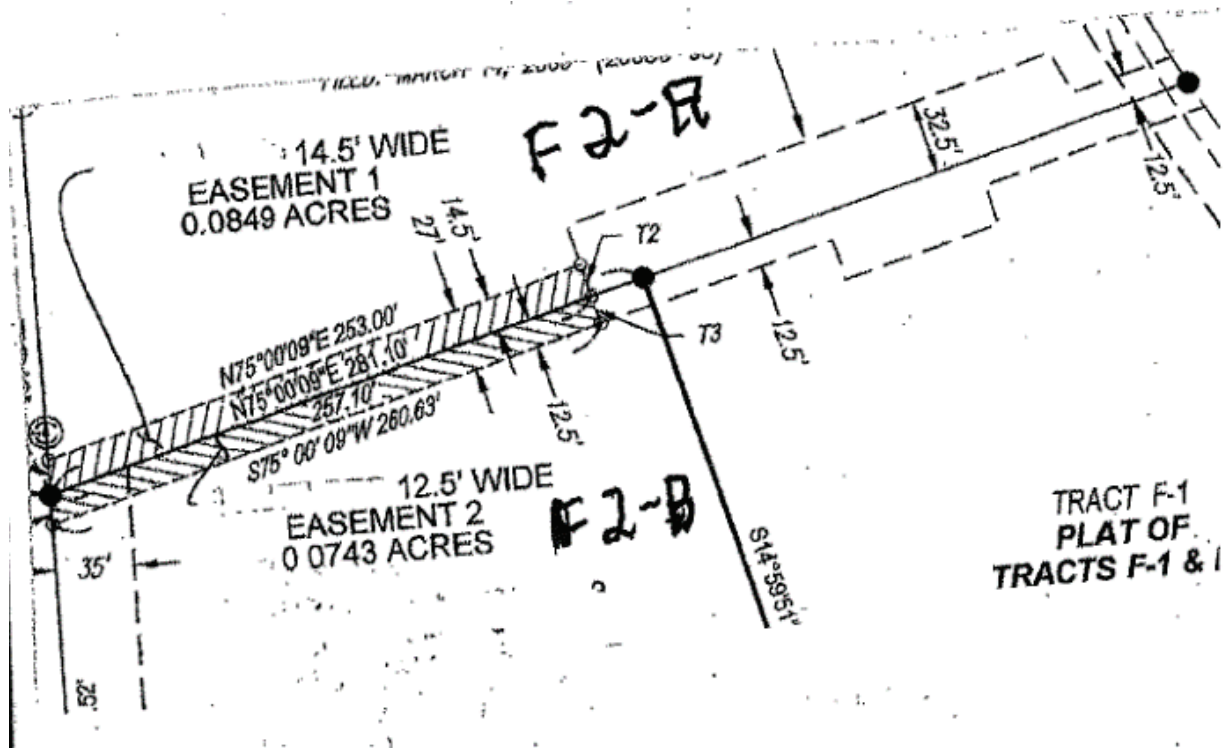
2. Use. The Easements established herein are non-exclusive, appurtenant Easements for the benefit of the benefited properties and any subsequent owners of all or any part of the benefited properties, its guests and invitees.

3. Road Construction and Maintenance. CES and PNM shall in good faith negotiate terms and conditions for sharing in the construction, improvement and maintenance of the combined easements.

4. Grantors' Use of the Easements. Each grantor has the right to use the easements so long as the easements are not impeded and permit the free flow of access. No parking or obstructions of any kind shall be allowed on either of the easements.

6. Indemnification. To the extent permitted under New Mexico law, each party agrees to indemnify the other party, and the other party's successors, from any liability, claim, costs, expenses or fees, arising out of the use of the easements by a party and that party's successors and/or its guests, licensees and invitees.

7. Binding Effect. The Easements are intended to run with the properties described herein, shall burden the properties across which the easement runs and shall benefit the properties which are adjacent to the easements. The rights and obligations hereunder also are binding upon and inure to the benefit of the successors and assigns of the parties.



Cooperative Educational Services

By: David Chavez  
David Chavez, Executive Director

Public Service Company of New Mexico

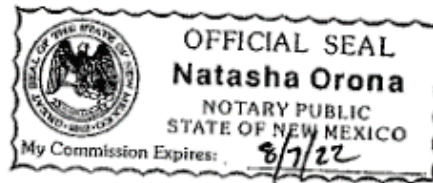
By: Fernando Vigil  
Fernando Vigil, Manager  
PNM Land Management Department

STATE OF NEW MEXICO )  
COUNTY OF Bernalillo ) ss:

The foregoing was acknowledged before me on this 29<sup>th</sup> day of August, 2019, by David Chavez, Executive Director, Cooperative Educational Services.

[Signature]  
Notary Public

My Commission Expires:  
8/7/22

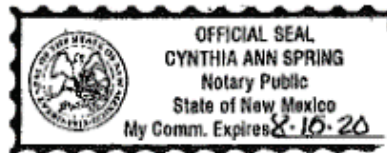


STATE OF NEW MEXICO )  
COUNTY OF Bernalillo ) ss:

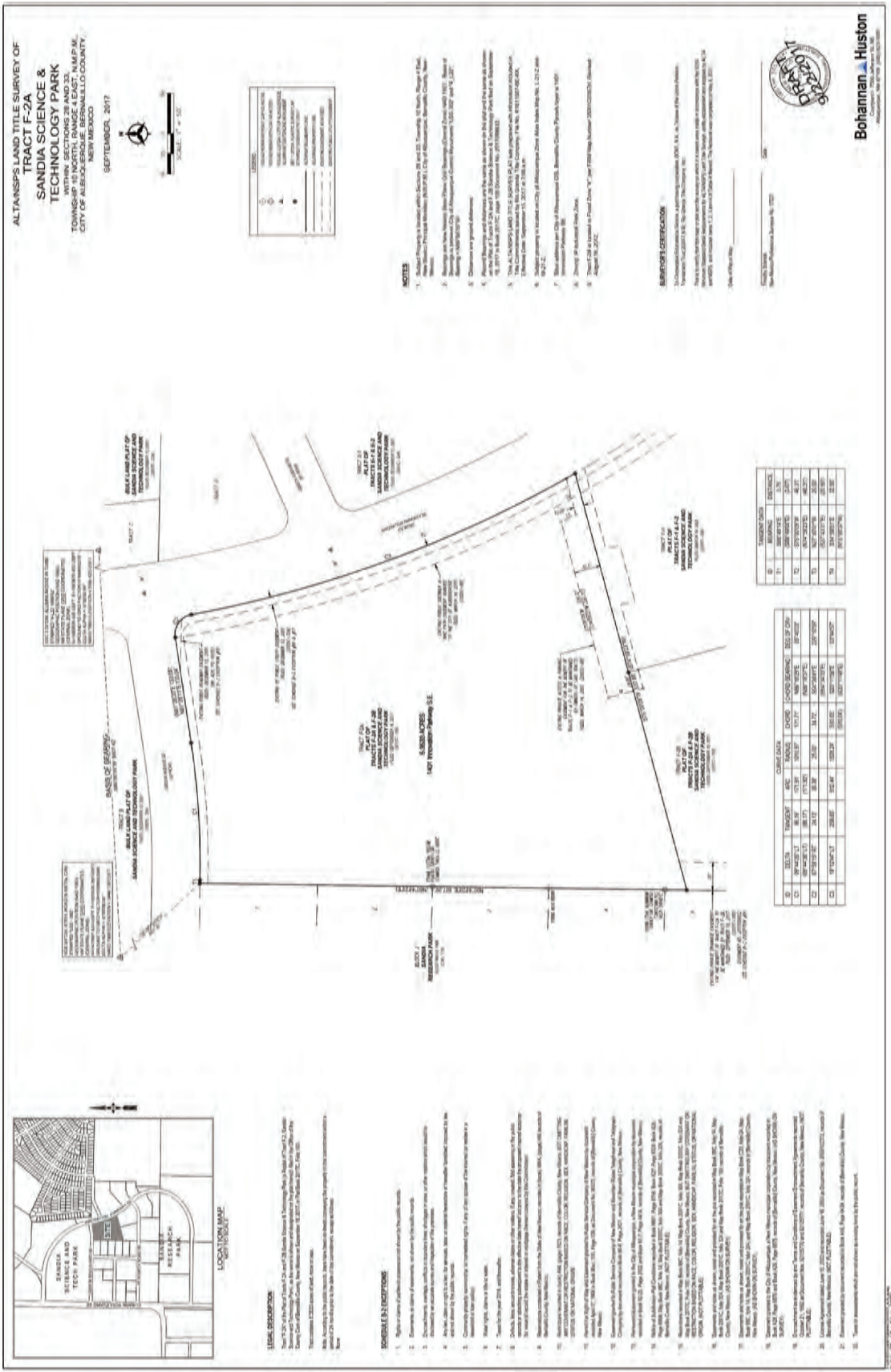
The foregoing was acknowledged before me on this 28<sup>th</sup> day of August, 2019, by Fernando Vigil, Manager, PNM Land Management Department, Public Service Company of New Mexico.

Cynthia Ann Spring  
Notary Public

My Commission Expires:  
8/15/2020



**ALTA SURVEY**



ALTAIRSPS LAND TITLE SURVEY OF  
**TRACT F-2A**  
**SANDIA SCIENCE & TECHNOLOGY PARK**  
 TOWNSHIP 19 NORTH, RANGE 4 EAST, N.M.P.M.  
 COUNTY OF ALBUQUERQUE, BERNILLO COUNTY,  
 NEW MEXICO  
 SEPTEMBER, 2017



SYMBOL	DESCRIPTION
(Symbol)	BOUNDARY
(Symbol)	CONVEYANCE
(Symbol)	ENCUMBRANCE
(Symbol)	ADVERSE CLAIM
(Symbol)	ADVERSE CLAIM
(Symbol)	ADVERSE CLAIM

- NOTES**
1. Subject property is located within Block 40 and 41, Township 19 North, Range 4 East, N.M.P.M., County of Albuquerque, Bernillo County, New Mexico.
  2. Reference is made to the Survey of Tract F-2A, Sandia Science & Technology Park, located in the same Township, Range and Meridian as this Survey.
  3. The ALTAIRSPS LAND TITLE SURVEY OF TRACT F-2A, Sandia Science & Technology Park, located in the same Township, Range and Meridian as this Survey, is recorded in Public Records Book 10, Page 1,237, County of Albuquerque, Bernillo County, New Mexico.
  4. Claims are granted as shown.
  5. All other surveys and surveys of the north-south line of Block 40 and the north-south line of Block 41, Township 19 North, Range 4 East, N.M.P.M., County of Albuquerque, Bernillo County, New Mexico, are hereby acknowledged.
  6. The ALTAIRSPS LAND TITLE SURVEY OF TRACT F-2A, Sandia Science & Technology Park, located in the same Township, Range and Meridian as this Survey, is recorded in Public Records Book 10, Page 1,237, County of Albuquerque, Bernillo County, New Mexico.
  7. Subject property is located within City of Albuquerque Zone Area Index Map No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100.
  8. Survey is located in Zone Area.
  9. Survey is located in Zone Area.
  10. Survey is located in Zone Area.

**EMPLOYEE CERTIFICATION**

I, the undersigned, certify that I am the duly authorized representative of the City of Albuquerque, New Mexico, and that I am qualified to execute this Survey. I am a resident of the City of Albuquerque, New Mexico, and I am a resident of the County of Albuquerque, Bernillo County, New Mexico.

Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Bohannon & Huston**  
 Surveyors  
 10000 North Central Avenue, Suite 100  
 Albuquerque, New Mexico 87113  
 Phone: (505) 263-1111  
 Fax: (505) 263-1112  
 Website: www.bohannon-huston.com



**LEGAL DESCRIPTION**

That 1/2 of the 1/2 of Block 40 and 1/2 of Block 41, Township 19 North, Range 4 East, N.M.P.M., County of Albuquerque, Bernillo County, New Mexico, as shown on the Survey of Tract F-2A, Sandia Science & Technology Park, located in the same Township, Range and Meridian as this Survey, is recorded in Public Records Book 10, Page 1,237, County of Albuquerque, Bernillo County, New Mexico.

- GENERAL DESCRIPTIONS**
1. Right of way of public convenience and utility.
  2. Easements in favor of easements, including easements for utility lines, and other easements.
  3. Easements in favor of easements, including easements for utility lines, and other easements.
  4. Any lot, other than the lot shown, that is subject to an easement for utility lines, and other easements.
  5. Easements in favor of easements, including easements for utility lines, and other easements.
  6. Easements in favor of easements, including easements for utility lines, and other easements.
  7. Easements in favor of easements, including easements for utility lines, and other easements.
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11. Easements in favor of easements, including easements for utility lines, and other easements.
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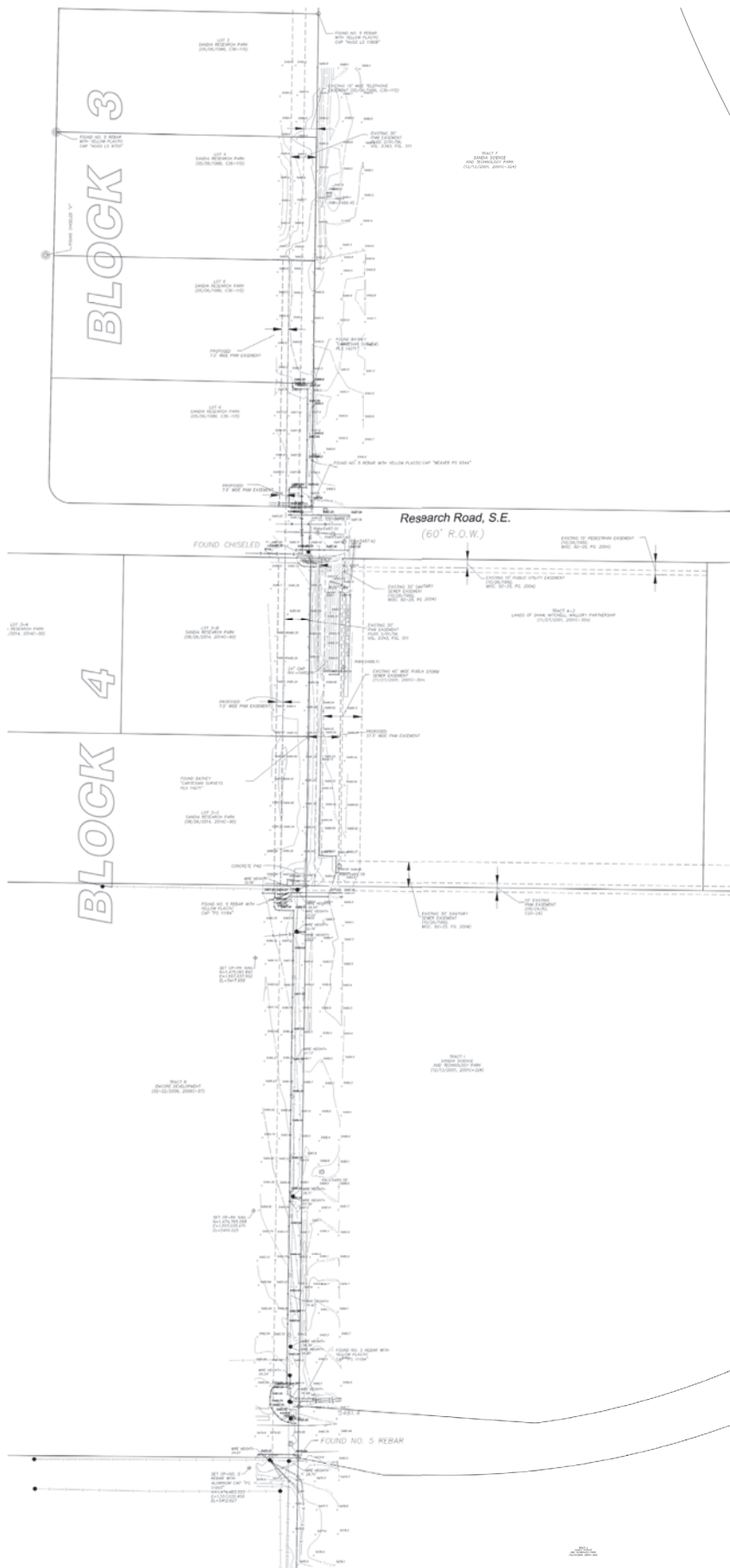
21. Easements in favor of easements, including easements for utility lines, and other easements.
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23. Easements in favor of easements, including easements for utility lines, and other easements.
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25. Easements in favor of easements, including easements for utility lines, and other easements.
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28. Easements in favor of easements, including easements for utility lines, and other easements.
29. Easements in favor of easements, including easements for utility lines, and other easements.
30. Easements in favor of easements, including easements for utility lines, and other easements.

LOT	AREA	PERCENTAGE
1	1.11	4.58
2	1.11	4.58
3	1.11	4.58
4	1.11	4.58
5	1.11	4.58
6	1.11	4.58
7	1.11	4.58
8	1.11	4.58
9	1.11	4.58
10	1.11	4.58
11	1.11	4.58
12	1.11	4.58
13	1.11	4.58
14	1.11	4.58
15	1.11	4.58
16	1.11	4.58
17	1.11	4.58
18	1.11	4.58
19	1.11	4.58
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21	1.11	4.58
22	1.11	4.58
23	1.11	4.58
24	1.11	4.58

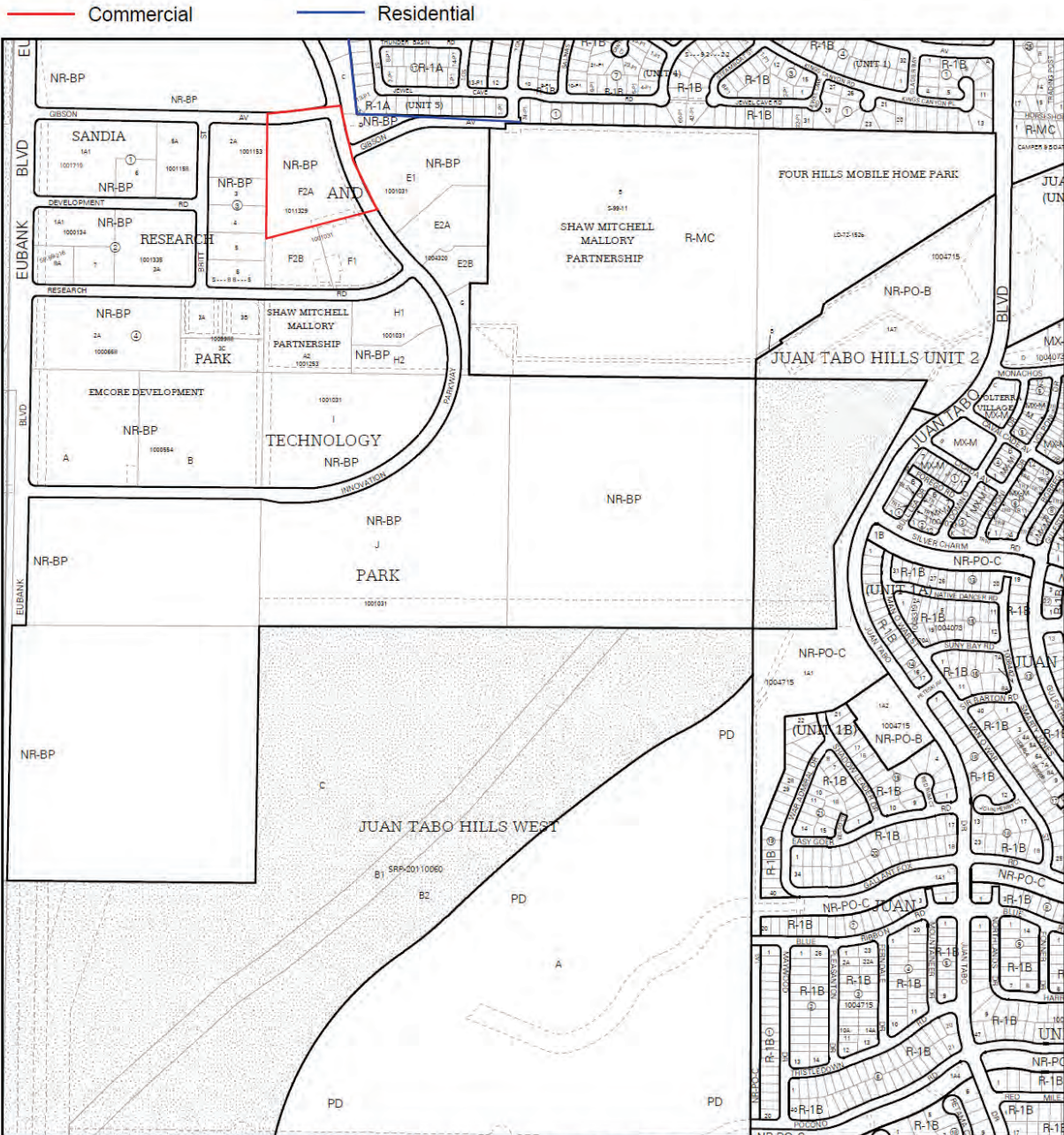
LOT	AREA	PERCENTAGE
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3	1.11	4.58
4	1.11	4.58
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6	1.11	4.58
7	1.11	4.58
8	1.11	4.58
9	1.11	4.58
10	1.11	4.58
11	1.11	4.58
12	1.11	4.58
13	1.11	4.58
14	1.11	4.58
15	1.11	4.58
16	1.11	4.58
17	1.11	4.58
18	1.11	4.58
19	1.11	4.58
20	1.11	4.58
21	1.11	4.58
22	1.11	4.58
23	1.11	4.58
24	1.11	4.58

**204047T-2-MODEL (1) EASEMENTS**



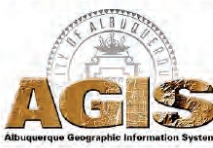


**SITE NOISE BOUNDARY MAP**











For more details about the Integrated Development Ordinance visit: <http://www.cabq.gov/planning/codes-policies-regulations/integrated-development-ordinance>

## IDO Zone Atlas May 2018

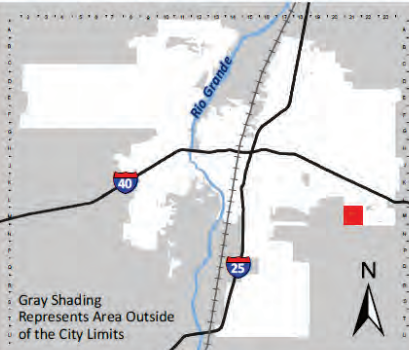


IDO Zoning information as of May 17, 2018  
The Zone Districts and Overlay Zones  
are established by the  
Integrated Development Ordinance (IDO).

Zone Atlas Page:  
**M-21-Z**

-  Easement
-  Escarpment
-  Petroglyph National Monument
-  Areas Outside of City Limits
-  Airport Protection Overlay (APO) Zone
-  Character Protection Overlay (CPO) Zone
-  Historic Protection Overlay (HPO) Zone
-  View Protection Overlay (VPO) Zone









Gray Shading  
Represents Area Outside  
of the City Limits



N

0 250 500 1,000 Feet

Zone Atlas Page:  
**M-21-Z**

-  Easement
-  Escarpment
-  Petroglyph National Monument
-  Areas Outside of City Limits
-  Airport Protection Overlay (APO) Zone
-  Character Protection Overlay (CPO) Zone
-  Historic Protection Overlay (HPO) Zone
-  View Protection Overlay (VPO) Zone

0 250 500 1,000 Feet

**CITY OF ALBUQUERQUE NOISE CONTROL ORDINANCE**

## ARTICLE 9: NOISE CONTROL

### Section

[9-9-1](#) Short title and declaration of intent

[9-9-2](#) Definitions

[9-9-3](#) Decibel measurement criteria

[9-9-4](#) General noise

[9-9-5](#) Temporary permits for amplified sound or construction noise

[9-9-6](#) Variances

[9-9-7](#) Machinery, equipment fans, and air conditioners

[9-9-8](#) Exceptions and exclusions

[9-9-9](#) Administration

[9-9-10](#) Noise mitigation plans

[9-9-11](#) Making violations of the noise ordinance civil violations; providing a hearing; additional remedies; injunctions

[9-9-12](#) Article not to effect provisions of other city ordinances

### 📖 § 9-9-1 SHORT TITLE AND DECLARATION OF INTENT.

(A) This article may be cited as the "Noise Control Ordinance."

(B) A substantial body of scientific research has shown that exposure to excessive sound and vibration is a serious hazard to the public health, welfare, safety and quality of life. It is the express intent of the City Council to control the level of excessive sound as noise in a manner that promotes the use, value and enjoyment of property, conduct of business, sleep and repose and an environment free from unnecessary and excessive sound.

('74 Code, § 6-22-1) (Ord. 21- 1975; Am. Ord. 9-2001; Am. Ord. 2017-002)

### 📖 § 9-9-2 DEFINITIONS.

For the purpose of this article, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

**APPROVED SOUND-LEVEL METER.** An instrument sensitive to pressure fluctuations and meeting the American National Standards Institute (ANSI) S1.4-1983 Type 1 or Type 2 or those of IEC Publication 651 or those of the latest respective revisions thereof.

**A-WEIGHTED SOUND PRESSURE LEVEL.** The sound pressure level as measured on an approved sound-level meter using the A-weighting network. The unit of measurement is dB(A). Sounds measured with the "A" weighting network approximate the response of human hearing when measuring sounds of low to moderate intensity.

**C-WEIGHTED SOUND PRESSURE LEVEL.** The sound pressure level as measured on an approved sound-level meter using the C-weighting network. The unit of measurement is dB(C). The "C" weighting network is more sensitive to low frequencies than is the "A" weighting network.

**DAYTIME.** From 7:00 a.m. (0700 hours) to 10:00 p.m. (2200 hours).

**DOWNTOWN ARTS AND ENTERTAINMENT FOCUS AREA.** The area designated as the Downtown Arts and Entertainment Focus Area in the Integrated Development Ordinance.

**EMERGENCY WORK.** Work made necessary to restore property to a safe condition following a public calamity, work to restore public utilities or work required to protect persons or property from an imminent exposure to danger.

**EPA.** U.S. Environmental Protection Agency.

**EXCESSIVE SOUND.** Any sound that exceeds the applicable sound level limits set forth in § [9-9-4](#).

**HOLIDAYS.** Those days established by the federal government as official holidays.

**MAYOR.** The Mayor or his designated representative.

**MECHANICAL VENTILATION.** A forced-air system with supply fan and ductwork; the air which is supplied may or may not be heated or cooled. This may include, but is not limited to: air conditioning, furnace, or swamp cooler.

**NIGHTTIME.** From 10:00 p.m. (2200 hours) to 7:00 a.m. (0700 hours).

**NOISE.** Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans, including excessive sound as defined and regulated by this article.

**NOISE-SENSITIVE PROPERTY.** Property containing an occupied: dwelling unit or units, school, hospital, religious institution, child-care facility, or adult-care facility or other facility similar in nature.

**PERSISTENTLY OR CONTINUOUSLY.** A 10-minute period during which any sound is discerned and that sound exceeds the applicable sound limits in each of the ten one-minute intervals of such period. In the case of animal noise, it means a 10-minute period during which animal noise is discerned in each of the ten one-minute intervals therein.

**PERSON.** A person, firm, association, copartnership, joint venture, corporation, or any other entity, public or private in nature.

**PUBLIC PREMISES.** All real property, including appurtenances thereon, owned or controlled by any governmental entity and includes, without limitation, rights-of-way, streets, highways, sidewalks, alleys, parks, and waterways.

**RECEPTOR PREMISES.** The premises (residential, commercial, downtown arts and entertainment focus area, industrial/manufacturing, or public) as listed in Table 1 receiving noise emitted from the source premises after crossing one or more property lines.

**REFERENCE PRESSURE.** The reference pressure for all sound level measurements shall be 20 micropascals (20 $\mu$ Pa). This shall be further defined as 0 dB(A).

**RESIDENTIAL, OFFICE/COMMERCIAL, INDUSTRIAL/MANUFACTURING.** These terms shall be as used in the [Integrated Development Ordinance](#) (Chapter 14, Article 16), and when used to describe a receptor or source premises, the terms refer to the particular zoning classification of the receptor or source premises and not the actual use of such premises.

**SOUND.** Sound is anything perceptible by human beings through the sense of hearing. The description of sound may include any characteristic of such sound, including duration, intensity, and frequency.

**SOUND AMPLIFYING EQUIPMENT.** Any machine or device for the sound amplification of the human voice, music, or any other sound. "Sound amplifying equipment" shall not include warning devices on authorized emergency vehicles or horns or other warning devices on any motor vehicles used only for traffic safety purposes.

**SOUND LEVEL.** A logarithmic measure called the decibel. It may make use of various frequency weighting networks, such as A or C-weighted, as specified by ANSI. When sound level is used without further description, A-weighting of sound level may be assumed.

**SOURCE PREMISES.** The premises (residential, commercial, downtown arts and entertainment focus area, industrial/manufacturing, or public) as listed in Table 1 that is emitting noise that is crossing one or more property lines and impacting the receptor premises.

**STRUCTURE.** For the purposes of the Noise Control Ordinance, structure shall mean the outer shell of a building, typically consisting of exterior walls covered by a roof.

('74 Code, § 6-22-2) (Ord. 21- 1975; Am. Ord. 30-1981; Am. Ord. 9-2001; Am. Ord. 5-2002; Am. Ord. 2017-002; Am. Ord. 2017-025)

### § 9-9-3 DECIBEL MEASUREMENT CRITERIA.

Unless otherwise indicated, any decibel (dB) measurement made pursuant to the provisions of this article shall be based on the reference sound pressure and measured with an approved sound-level meter. Reference sound pressure will be measured as LAeq for A-Weighted and LCEq for C-Weighted.

(A) Except as provided in division (C) below, Residential, Commercial, Downtown Arts and Entertainment Focus Area, and Industrial/Manufacturing properties are to be measured from inside the Structure located on the receptor premises. Any indoor noise measurements for compliance purposes should be taken in a location which could be reasonably assumed to affect one or more persons. For residential receptor premises, inside noise level measurements are performed in sleeping or living areas with windows opened to approximately 25% of their maximum in residences without mechanical ventilation and with windows closed for residences with mechanical ventilation.

(B) Public premises are to be measured at a reasonable distance from walls or similar large reflecting surfaces and with the approved sound-level meter protected from the effects of wind and other extraneous sounds by the use of screens when appropriate.

(C) In the case where the receptor premises is located in a residential zoning district and the source premises is located in a commercial or industrial/ manufacturing zoning district, measurements shall be measured outside within 25 feet from any side of the residential structure which is nearest to the source premises.

('74 Code, § 6-22-3) (Ord. 21- 1975; Am. Ord. 9-2001; Am. Ord. 2017-002)

**§ 9-9-4 GENERAL NOISE.**

(A) Except as otherwise provided in this article, no person shall make or continue, cause to be made or continued, or allow to be made or continued, any sound that persistently or continuously results in an exceedance of the following sound level limits using an approved sound-level meter measuring decibels on the A-Weighted scale.

Table 1 (A-Weighted measurements in decibels (dB))

	<i>Receptor Premises</i>					
<i>Numbers indicate decibel (dB) levels</i>	<i>Residential</i>		<i>Commercial and Downtown Arts and Entertainment Focus Area</i>		<i>Industrial/ Manufacturing and Public Premises</i>	
<i>Source Premises</i>	<i>Daytime</i>	<i>Nighttime</i>	<i>Daytime</i>	<i>Nighttime</i>	<i>Daytime</i>	<i>Nighttime</i>
Residential	55	50	65	60	75	70
Commercial and Downtown Arts and Entertainment Focus Area	55 (indoor ) 60 (outdoor)	50 (indoor ) 55 (outdoor)	65	60	75	70
Industrial/Manufacturing and Public Premises	55 (indoor ) 60 (outdoor)	50 (indoor ) 55 (outdoor)	65	60	75	70

(B) Except as otherwise provided in this article, no person shall make or continue, cause to be made or continued, or allow to be made or continued, any sound that persistently or continuously results in an exceedance of the following sound level limits using an approved sound-level meter measuring decibels on the C-Weighted scale.

Table 2 (C-Weighted measurements in decibels (dB))

	<i>Receptor Premises</i>
--	--------------------------



<i>Numbers indicate decibel (dB) levels</i>	<i>Residential</i>		<i>Commercial and Downtown Arts and Entertainment Focus Area</i>		<i>Industrial/ Manufacturing and Public Premises</i>	
	<i>Daytime</i>	<i>Nighttime</i>	<i>Daytime</i>	<i>Nighttime</i>	<i>Daytime</i>	<i>Nighttime</i>
Residential	60	55	70	65	80	75
Commercial and Downtown Arts and Entertainment Focus Area	60 (indoor) 65 (outdoor)	55 (indoor) 60 (outdoor)	70	65	80	75
Industrial/Manufacturing and Public Premises	60 (indoor) 65 (outdoor)	55 (indoor) 60 (outdoor)	70	65	80	75

(C) No person shall allow an animal in his possession or control to persistently or continuously bark, howl or make noise common to its species, or otherwise to disturb the peace and quiet of the inhabitants of the city, or otherwise endanger the health and welfare of the inhabitants of the city. This provision shall not apply to public zoos and approved and properly zoned animal shelters as defined in the Humane and Ethical Animal Rules and Treatment Ordinance.

(D) Except for work authorized by a governmental body or agency, no person shall, on or within 500 feet of any noise-sensitive property, operate or cause to be operated any equipment used in construction, repair, alteration, excavation, grading or demolition work on buildings, structures, streets, alleys or appurtenances thereto:

(1) With sound-control devices less effective than those provided on the original equipment; and without using noise mitigation measures.

(2) On Sundays or holidays or between 10:00 p.m. and 6:00 a.m., without first obtaining a Temporary Construction Noise Permit as described in § [9-9-5](#).

('74 Code, § 6-22-14) (Ord. 21- 1975; Am. Ord. 30-1981; Am. Ord. 9-2001; Am. Ord. 2017-002)

#### **§ 9-9-5 TEMPORARY PERMITS FOR AMPLIFIED SOUND OR CONSTRUCTION NOISE.**

(A) The Mayor may grant a temporary permit which allows non-compliance with the limitations prescribed in this article for the purpose of amplified sound or construction noise activities of short duration.

(B) Permits shall be granted upon application, at no cost to applicant, provided an initial evaluation indicates that the permit will not result in a condition injurious to health or safety.

(C) The following factors shall be considered in the initial evaluation to determine whether granting the permit will result in a condition injurious to health or safety:

(1) Temporary Permits for use of sound amplifying equipment:

- (a) Distance of proposed activities from noise-sensitive property;
- (b) Number of amplification devices to be used in the proposed activities;
- (c) Anticipated direction of amplification devices;
- (d) Anticipated length of proposed activities;
- (e) Whether the activity will be held within or without a structure; and
- (f) Other circumstances or conditions that may be impacted or aggravated by the proposed activities.

(2) Temporary Construction Noise Permits:

- (a) Distance from noise-sensitive property;
- (b) Type of activity and equipment;
- (c) Estimated noise level and duration;
- (d) Noise mitigation measures to be used;
- (e) Health and safety benefits to be realized as a result of the completed project; and
- (f) Other circumstances or conditions that may be impacted or aggravated by the proposed activities.

(D) Upon a determination that the granting of a permit will not result in a condition injurious to health or safety, the permit shall be issued specifying place, duration, and any requirements appropriate to the proposed activity site, which may include maximum sound level limits.

(E) Unless other dates and times are explicitly addressed in the permit, permitted noise shall not continue past 10:00 p.m. on Sunday, Monday, Tuesday, Wednesday, and Thursday. On Friday and Saturday, permitted noise shall not continue past 12:00 a.m.

(F) Issued permits become void and shall be surrendered to any city police officer or any representative of the Mayor authorized to enforce this article upon request when it is determined that any requirement contained in the permit has been violated. Upon revocation of the permit, permitted activities must either immediately cease or must be in compliance with the limitations prescribed in this article.

(G) A subsequent permit application by the same applicant or another applicant may be denied upon substantiated complaint(s) by resident(s) in the locality of the previously permitted activity or if an applicant has in the past been required to surrender a permit as described in division (F).

(H) This section shall not apply to any person who has been granted a variance as prescribed by § [9-9-6](#).

(I) Any person aggrieved by the disposition of an application for a temporary permit may appeal such disposition by filing a written petition with the Mayor within 30 days of the disposition.

('74 Code, § 6-22-5) (Ord. 30-1981; Am. Ord. 9-2001; Am. Ord. 2017-002)

**§ 9-9-6 VARIANCES.**

(A) The Mayor may grant an individual variance from the limitations prescribed in this article whenever it is found, after a public hearing before a Hearing Officer and upon presentation of adequate proof, that compliance with any part of this article will impose an undue economic burden upon any lawful business, occupation or activity, and that the granting of the variance will not result in a condition injurious to health or safety.

(B) Any variance, or renewal thereof, shall be granted within the requirements of division (A) of this section and for time periods and under conditions consistent with the reasons therefore, and within the following limitations:

(1) If the variance is granted on the grounds that compliance with the particular requirement or requirements will necessitate the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the Mayor, is requisite for taking of the necessary measures. A variance granted on the ground specified in this division shall contain a timetable for taking of action in an expeditious manner and shall be conditioned on adherence to the timetable; or

(2) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in division (1) of this division (B), it shall be for not more than one year.

(C) Any person seeking a variance shall file a petition for variance and a \$50 filing fee with the Mayor. The Mayor shall submit the petition to the Hearing Officer to conduct a public hearing after notice has been provided in accordance with this section and to make the final decision regarding the granting of the variance. The Hearing Officer shall conduct the hearing and accept documentary and testimonial evidence in accordance with accepted administrative hearing procedures.

(D) Written notice of the public hearing shall be mailed by the Hearing Officer at least 10 days prior to the hearing to:

(1) the petitioner;

(2) the petitioner's agent;

(3) the owners as shown by the records of the County Assessor of lots comprising the site of the variance and lots within 100 feet, excluding public right-of-way, of the site of the variance;

(4) any neighborhood association or homeowner association that has notified the City Office of Neighborhood Coordination of two persons' addresses where it wishes notice to be sent if the site of the variance is within the neighborhood or homeowner association's boundaries or within 100 feet of the neighborhood or homeowner association's boundaries, excluding public right-of-way.

(5) any other person or entity that has filed with the Mayor a request to receive a notice of the variance proceeding.

(E) The notice of hearing shall set forth the name and address of the petitioner, the location of the site of the variance, that the petitioner has requested a variance from this ordinance, the nature of the requested variance, and that part of the ordinance that would be waived if approved.

(F) Following the hearing, the Hearing Officer shall render a written final decision including findings of fact and conclusions of law. The Hearing Officer shall mail the decision to all parties of record. The exclusive remedy for any parties to the administrative proceedings described in this paragraph shall be a petition for writ of certiorari to the State District Court. The petition for review shall be limited to the record made at the public hearing described herein.

(\*74 Code, § 6-22-4) (Ord. 21- 1975; Am. Ord. 30-1981; Am. Ord. 9-2001; Am. Ord. 42-2007; Am. Ord. 2017-002)

### § 9-9-7 MACHINERY, EQUIPMENT FANS, AND AIR CONDITIONERS.

(A) Except for emergency work as defined in this article, no person shall operate or allow the operation of any stationary machinery, equipment, fan, air- conditioning apparatus, or similar permanently installed mechanical device in any manner so as to create noise which results in exceedance of the sound level limits specified in § [9-9-4](#).

(B) No person shall operate or allow to be operated outdoors, any power equipment, including, but not limited to, sweepers, power mowers, leaf blowers, rototillers, power saws or other power equipment used to sweep parking areas or other surfaces or perform gardening, property repair or other functions, within 500 feet of any noise-sensitive property:

(1) during the nighttime; or

(2) between the hours of 7:00 a.m. and 9:00 a.m. on a Sunday or holiday. Power mowers at golf courses are exempt from the requirements of this subsection.

(C) No person shall install or allow the installation of any mechanical equipment, such as, but not limited to, air conditioning or freezer compressors, evaporative coolers, exhaust fans or other noise-producing machines, on commercial property with such equipment on a side adjacent to noise-sensitive property or a side separated from noise-sensitive property only by an alley. Roof locations may be used when the mechanical equipment is installed and maintained so as to not result in an exceedance of the sound-level limits in § [9-9-4](#). Mechanical equipment legally installed or for which official final approval for installation was received before the effective date of this article is specifically exempt from this location requirement.

(D) No person shall place or allow the placement of any garage door used for entry or exit of vehicles from an automotive repair facility on a side of any building adjacent to noise-sensitive property or a side separated from noise-sensitive property only by an alley. Garage doors legally installed or for which an official final approval for installation was received before the effective date of this article are specifically exempt from this location requirement.

(E) Public Utilities. Public utility generation, transmission or distribution sites, facilities or substations shall be deemed compliant with this section if operated so as not to exceed the noise

limits of any applicable City of Albuquerque/Bernalillo County Facility Plan: Electric Service Transmission and Subtransmission Facilities. In the absence of applicable Facility Plan noise limits, the sound level limits corresponding to the zoning district designation of the receiving property at the time of the equipment installation as set forth in § [9-9-4](#) shall govern. If a subsequent zoning district designation is less restrictive, the limits for that zoning district shall apply.

(‘74 Code, § 6-22-9) (Ord. 21- 1975; Am. Ord. 30-1981; Am. Ord. 9-2001; Am. Ord. 2017-002)

### § 9-9-8 EXCEPTIONS AND EXCLUSIONS.

Aircraft and airports. The limits set forth in this article do not apply to sounds or vibrations generated by any aircraft or generated in connection with the operation of any airport or approved helipad used in support of law enforcement, public utility restoration, emergency medical transport or search and rescue.

Earthshaking vibrations. The limits set forth in this article do not apply to vibrations caused by construction, demolition or repair work.

Emergency or civic construction, demolition, or repair work. The limits set forth in this article do not apply to sounds generated in construction, demolition or repair work of an emergency nature or in work on public improvements authorized by a governmental body or agency.

Entertainment events. The limits set forth in this article shall not apply to those reasonable sounds emanating from authorized school bands, school athletic, and school entertainment events. Furthermore, the limits set forth in this article shall not apply to those reasonable sounds emanating from occasional outdoor or indoor gatherings, public dances, shows, and band performances conducted during the daytime.

Human voices. The limits set forth in this article do not apply to noise created by unamplified human voices.

Fireworks displays. The limits set forth in this article do not apply to any public or private legally permitted fireworks displays.

Mass transit. The limits set forth in this article do not apply to sounds or vibrations generated in the operation of any mass transit system.

Parades and protests. The limits set forth in this article do not apply to legally permitted parades or to protests.

Mosquito control. Equipment for the use of mosquito control and prevention by the City of Albuquerque or other governmental agency.

Pre-existing mechanical equipment. The limits set forth in this article do not apply to legally installed mechanical equipment for which official final approval for installation was received before the effective date of this article.

Refuse collection. The limits set forth in this article do not apply to municipal refuse collection activities taking place during the daytime.

Stadiums. The limits set forth in this article do not apply to sounds generated at any stadium.

Total preemption. The limits set forth in this article do not apply to sounds otherwise governed by federal, state, or municipal laws or regulations.

(Ord. 2017-002)

**§ 9-9-9 ADMINISTRATION.**

The Mayor shall be responsible for the administration of this article. Rules, policies, regulations, and test and compliance procedures to carry out the intent and purpose of this article shall be promulgated by the Mayor.

('74 Code, § 6-22-15) (Ord. 21- 1975; Am. Ord. 30-1981; Am. Ord. 9-2001; Am. Ord. 2017-002)

**§ 9-9-10 NOISE MITIGATION PLANS.**

In addition to the other powers set forth in this article, the Mayor may request an acoustical review of a proposed facility as part of the building permit review process. Such acoustical review shall be performed by an acoustical/sound professional and may require the submission and acceptance of a noise mitigation plan to ensure that the facility's noise activities fall within the dB limitations specified in this article prior to building permit approval. Failure to comply with a noise mitigation plan will result in enforcement actions as provided in this article.

(Ord. 2017-002)

**§ 9-9-11 MAKING VIOLATIONS OF THE NOISE ORDINANCE CIVIL VIOLATIONS; PROVIDING A HEARING; ADDITIONAL REMEDIES; INJUNCTIONS.**

(A) Each act in violation of this article shall constitute a public nuisance and a separate civil violation. Civil violations of this article shall subject the owner of the offending property to the following penalties for offenses during any 36-consecutive-month period:

- (1) a civil fine of \$250 for the first offense;
- (2) a civil fine of \$500 for the second offense;
- (3) a civil fine of \$1,000 for the third and subsequent offenses.

Each calendar day during which the civil violation occurs shall constitute a separate and distinct offense.

(B) Upon determination by the Mayor that a violation of this article has occurred, the Mayor will cause to be sent a Notice of Violation, which notice will be mailed postage pre-paid return-receipt-requested to the lawfully registered owner of the property as determined by the records of the Bernalillo County Clerk. The notice shall contain the following information:

- (1) The address where the violation occurred;
- (2) The approximate time the violation occurred;
- (3) A brief narrative of the circumstances surrounding the violation;

(4) A statement regarding whether this is the first, second, or third or subsequent offense within a consecutive 36-month period;

(5) A name and phone number or title of municipal employee from whom the owner can obtain further information;

(6) The address where payment for the violation may be made;

(7) A statement that the owner has the right to contest the validity of the civil violation by requesting a hearing in writing within ten days of the date of mailing of the Notice of Violation; and

(8) A copy of this article.

(C) Any person who is issued a Notice of Violation may request that a hearing be scheduled by the city hearing officer by submitting a timely hearing request and paying a \$50 hearing fee to the Independent Office of Hearings. The hearing shall be conducted by a City Hearing Officer, as defined by the Independent Office of Hearings Ordinance (§§ [2-7-8-1](#) et seq. ROA 1994). The hearing shall be held within 20 working days (excluding weekends and holidays) of receipt of the request unless the hearing is continued with the agreement of the parties. The hearing shall be informal and not bound by the technical rules of evidence. The City Hearing Officer shall determine whether a violation of this article occurred. The Hearing Officer shall mail a written notice of decision to the owner within five working days of the hearing. If the Hearing Officer finds that there was no violation of this article, then the Hearing Officer shall (i) refund hearing fee and (ii) issue and date a Certificate of Compliance. If the Hearing Officer determines that a violation of this article did occur, then the Hearing Officer shall impose a fine as above prescribed.

(D) Failure to pay a fine imposed by this article—whether the fine is uncontested or unsuccessfully contested—shall subject the property owner to the penalty provisions set forth in § [9-9-11](#) of this code of ordinances. Each failure is considered a separate offense.

(E) As an additional remedy to the civil fines set forth in this section, the Mayor may seek a restraining order or injunction issued by a court of competent jurisdiction to prohibit ongoing violations of any provision of this article.

('74 Code, § 6-22-17) (Ord. 21- 1975; Am. Ord. 30-1981; Am. Ord. 9-2001; Am. Ord. 2017-002)

## **§ 9-9-12 ARTICLE NOT TO EFFECT PROVISIONS OF OTHER CITY ORDINANCES.**

The enactment of this article shall not be construed to supersede or effect the following provisions of the Albuquerque Code of Ordinances:

(A) Section [9-2-4-7](#) "animal noise";

(B) [Chapter 9, Article 3](#) "alarm systems";

(C) Section [8-6-14](#) "use of horn";

(D) Section [8-6-13](#) "muffler required"; and

(E) Section [12-2-4](#) "unreasonable noise".  
(Ord. 2017-002)



**EXHIBIT S-1****Prevailing Wage and Apprentice Assumptions****Locality:** Bernalillo County, New Mexico**Construction Type:** Heavy**Wage Determination:** Davis-Bacon Act Wage Determination #NM20230038**Last Revised Date:** March 3, 2023**Applicable Labor Classifications and Corresponding Prevailing Wage Rates:**

<b>“Applicable” LABOR CLASSIFICATIONS LISTED ON WAGE DETERMINATION</b>			
<b>Labor Classifications</b>	<b>Work Performed by Labor Classification</b>	<b>Wage Rates</b>	<b>Fringe Benefits</b>
CARPENTER Form work only CARP1319-011 01/01/2023	Forming equipment pads and major foundations	\$27.70	\$12.12

**Out-of-Date Labor Classifications Requiring Submission of Conformation/Supplemental Wage Determination Request to Seek Accurate Prevailing Wage Rate\*:**

<b>“Out-of-Date” LABOR CLASSIFICATIONS LISTED ON WAGE DETERMINATION</b>			
<b>Labor Classifications</b>	<b>Work Performed by Labor Classification</b>	<b>Wage Rates</b>	<b>Fringe Benefits</b>
ELECTRICIAN ELEC0611-001 01/01/2017	Installation of major electrical components excluding modules, termination of all conductors, installation of conduit, grounding installation, wiring and string cable installation on DC cable.	\$34.50	\$10.81
CARPENTER Excludes form work SUNM2016-007 09/26/2018	Establishing elevation points and layout for grade, major equipment pads, and other layout work	\$16.43	\$0.00
IRONWORKER, REINFORCING SUNM2016-007 09/26/2018	Installation of reinforcing material for major equipment foundations	\$27.80	\$0.00
CEMENT MASON/ CONCRETE FINISHER SUNM2016-007 09/26/2018	Pouring and finishing of major equipment foundations, driveway entrances as required.	\$19.42	\$8.43
LABORERS: Common SUNM2016-007 09/26/2018	Pulling and securing of cable, logistics and material management labor, lull operator, housekeeping labor, fence installation, landscaping, equipment spotting and flagging, traffic control.	\$14.08** EO14026 - \$16.20	\$0.00

OPERATOR – Backhoe/Excavator/Trackhoe SUNM2016-007 09/26/2018	Excavation activities associated with foundation installation, electrical installation, civil grading, road installation	\$20.96	\$5.29
OPERATOR – Babcat/Skidsteer/Skid Loader SUNM2016-007 09/26/2018	Civil grading, road installation, backfilling, loading spoils, material management, waste pickup and disposal, fine grading	\$21.06	\$0.00
OPERATOR – Bulldozer SUNM2016-007 09/26/2018	Civil grading, road installation, clearing and grubbing, mass grading	\$21.06	\$0.00
OPERATOR – Grader/Blade SUNM2016-007 09/26/2018	Civil grading, road installation, mass grading, fine grading	\$19.02	\$0.00
OPERATOR – Oiler SUNM2016-007 09/26/2018	Crane spotting and assembly assist, moving and placing outrigger mats for crane leveling	\$18.23	\$0.00
OPERATOR – Roller SUNM2016-007 09/26/2018	Civil grading, road installation, mass grading, fine grading	\$18.83	\$0.00
TRUCK DRIVER SUNM2016-007 09/26/2018	Hauling of equipment for delivery to staging areas on site; Hauling of soils and/or debris across project locations.	\$14.72** EO14026 - \$16.20	\$0.00

\*Note: These wage rates are subject to a conformance/supplemental wage determination request in accordance with Section 11.9.2 of the Contract.

\*\*Denotes instances in which the wage rate must be a minimum of \$16.20 per hour.

**Apprentice Wage Rates and Ratios:** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate

specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**EXHIBIT S-2**

**FORM OF QUARTERLY PAYROLL REPORT**





**EXHIBIT S-3**

**FORM OF QUARTERLY APPRENTICE HOUR REPORT**

**QUALIFIED APPRENTICE HOUR SUMMARY REPORT**  
*SAMPLE APPRENTICESHIP REPORT*

NAME OF EMPLOYER	EMPLOYER ID NUMBER	ADDRESS	CITY	STATE	ZIP CODE
RELATIONSHIP OF EMPLOYER WITH APPRENTICESHIP <input checked="" type="checkbox"/> APPRENTICESHIP SPONSOR <input type="checkbox"/> SIGNATORY EMPLOYER					
APPRENTICESHIP SPONSOR NAME	REGISTRATION NUMBER	ADDRESS	CITY	STATE	ZIP CODE
APPRENTICESHIP REGISTRATION AGENCY	PROGRAM TYPE <input type="checkbox"/> EMPLOYER (JOINT) <input type="checkbox"/> EMPLOYER (NON-JOINT) <input type="checkbox"/> GROUP (JOINT) <input checked="" type="checkbox"/> GROUP (NON-JOINT)				
FOR WEEK ENDING	PROJECT SITE NAME	PROJECT NUMBER	ADDRESS	CITY	STATE ZIP CODE

(1) LABOR CLASSIFICATION	(2) APPROVED APPRENTICESHIP RATIO	(3) OT OR ST.	(4) NUMBER OF WORKERS							(5) HOURS WORKED							(6) TOTAL HOURS	(7) QUALIFIED APPRENTICE HOURS
			S M T W T F S S							S M T W T F S S								
			S	M	T	W	T	F	S	S	M	T	W	T	F	S		
	APPRENTICES	0																
	JOURNEYWORKERS	0																
	(8) RATIO IN COMPLIANCE																	
	APPRENTICES	0																
	JOURNEYWORKERS	0																
	(8) RATIO IN COMPLIANCE																	
	APPRENTICES	0																
	JOURNEYWORKERS	0																
	(8) RATIO IN COMPLIANCE																	
	APPRENTICES	0																
	JOURNEYWORKERS	0																
	(8) RATIO IN COMPLIANCE																	
															<b>TOTAL QUALIFIED APPRENTICE HOURS</b>			

This form reports on hours worked by qualified apprentices during the preceding week and daily conformance with Apprenticeship Ratio requirements by applicable apprenticeship agency. This form should be accompanied by payroll, registered apprenticeship, labor classification, and other information to substantiate statement of compliance with Apprenticeship Requirements of the Inflation Reduction Act.



## Exhibit T

### Data Security

**Definitions.** As used in this Exhibit –

“Security Breach” means unauthorized access, use, disclosure, distribution, modification, contamination, loss, damage, destruction, or loss of availability or integrity of any PNM Data or Confidential Information.

“Virus(es)” means computer instructions (a) that adversely affect or disable the operation, security or integrity of a computing, telecommunications or other digital operating or processing system or environment, including programs, data, databases, computer libraries and computer and communications equipment, by altering, destroying, disrupting or inhibiting such operation, security or integrity; (b) that without functional purpose, self-replicate written manual intervention; or (c) that purport to perform a useful function but which actually perform either a destructive or harmful function, or perform no useful function and utilize substantial computer, telecommunications or memory resources.

“PNM’s Data” means all PNM and Affiliate data and information processed or stored on computers or other electronic media relating to the Project, as well as any data and information derived from such data and information or data otherwise collected, produced, or generated by or provided to Contractor under this Agreement, regardless of the form in which obtained, processed, or stored. PNM Data includes, without limitation: (a) information on paper or other non-electronic media provided to Contractor for computer processing or storage, or information formerly on electronic media; (b) information provided to Contractor by PNM or its Affiliates with respect to the Project; and (c) Privacy Restricted Data.

**Cyber Breach/Compromise Notification.** Immediately, but in no event later than seventy-two (72) hours of discovery, Contractor will report to PNM any Security Breach. Contractor will report to PNM any Security Breach via telephone to Service Desk at 505-241-2678 and by email to [securitynotifications@pnmresources.com](mailto:securitynotifications@pnmresources.com). Such notice shall summarize in reasonable detail the effect on PNM and its Affiliates the nature of the Security Breach (including, , the categories and approximate number of individuals and personal information records affected, and the likely consequences of the Security Breach), and the corrective actions taken or to be taken by Contractor. Contractor shall promptly and at its sole cost and expense take all necessary and advisable corrective actions and shall cooperate fully with PNM in all reasonable and lawful efforts to prevent, mitigate, or rectify such Security Breach. As part of the foregoing, Contractor shall (i) investigate such Security Breach and perform a root cause analysis thereon; (ii) except to the extent that the Security Breach is conclusively and finally determined to be caused by PNM’s errors or omissions, remediate the effects of such Security Breach and prevent such Security Breach from recurring; and (iii) if requested by PNM, assist PNM and its Affiliates in notifying relevant government authorities and affected individuals about the Security Breach. The content of any filings, communications, notices, press releases or reports related to any Security Breach that identifies PNM or its Affiliates must be approved in writing by PNM prior to any publication or communication thereof.

Further, Contractor shall at its sole cost and expense, cause its subcontractors to: (i) in the event of any Security Breach, cooperate fully with PNM to limit the unauthorized access, disclosure or use of the PNM Data, seek the return of any such PNM Data, investigate and, except to the extent that the Security Breach is conclusively and finally determined to be caused by PNM’s errors or omissions, remedy the Security Breach and any related dispute, inquiry, claim or action; (ii) assist and support PNM in the event of an investigation by a regulator, data protection authority, judicial process or similar authority, if and to the extent that such investigation relates to any PNM Data; and (iii) comply with all requirements of applicable laws, rules, and regulations (including those that are applicable to Contractor as a processor of Privacy Restricted Data) that apply with respect to any PNM Data. Contractor shall comply with industry best practices with respect to such applicable laws, rules, and regulations relating to the protection of information that identifies or can be used to identify an individual and shall not cause PNM to be out of compliance with any of such applicable laws, rules, and regulations.

With respect to any Security Breach:

(i) PNM shall have the right, at PNM’s expense, at any time after learning of a Security Breach to engage and involve external forensic firms in the investigation of the Security Breach (which will include a right to investigate Contractor’s systems, and Contractor shall comply with all reasonable requests of such external forensic firm that do not further exacerbate the Security Breach or further compromise the security of Contractor systems. Contractor will use commercially reasonable efforts to preserve all applicable evidence relating to the Security Breach until PNM has completed a forensic investigation or confirmed in writing to Contractor that it waives its right to conduct such an investigation; and

For purposes of clarification, all references to laws, rules, and/or regulations in this Agreement shall include each of such laws, rules, and regulations as each of the same may be amended, modified, enacted, or re-enacted from time to time.

**Data Security, Confidentiality, Integrity and Availability Compliance.** Contractor shall exercise commercially reasonable efforts to prevent unauthorized exposure or disclosure of PNM Data. Contractor shall maintain, implement, and comply with a written data security program (the “Data Security Program”) that requires commercially reasonable policies and procedures to ensure compliance with applicable data protection and privacy laws, as well as the terms and conditions

of this Agreement. The Data Security Program's policies and procedures shall contain administrative, technical, and physical safeguards, including without limitation: (i) guidelines on the proper disposal of PNM Data after it is no longer needed to carry out the purposes of this Agreement; (ii) access controls on electronic systems used to maintain, access, or transmit PNM Data; (iii) access restrictions at physical locations containing PNM Data; (iv) encryption of electronic PNM Data; (v) dual control procedures; (vi) testing and monitoring of electronic systems; and (vii) procedures to detect actual and attempted attacks on or intrusions into the systems containing or accessing PNM Data. Contractor shall review the Data Security Program and all other PNM Data security precautions regularly, but no less than annually, and update and maintain them to comply with applicable laws, regulations, technology changes, and best practices.

Contractor represents and warrants that its collection, access, use, storage, disposal, and disclosure of PNM Data does and will comply with all applicable federal, state, and foreign privacy and data protection laws, as well as all other applicable regulations and directives.

Contractor shall not insert or, permit to be coded or inserted, any Virus(es) into the PNM Data. If a Virus is found in the PNM Data due to a breach of the foregoing obligation, then Contractor will be responsible for the costs to remediate the effects of the Virus on PNM's or its Affiliates' information systems and software, and will remediate the Virus from the PNM Data, all at Contractor's sole cost and expense.

Contractor shall not use PNM's Data for its own purposes, and Contractor shall only collect, access, use, maintain, or disclose PNM Data or otherwise handle PNM Data for the sole purpose of furnishing the services, deliverables, and other work under this Agreement for the benefit of PNM, in each case in accordance with the terms and conditions of the Agreement. In no event, and notwithstanding anything to the contrary under this Agreement, may Contractor use any other PNM Data in contravention of applicable laws, rules, and regulations or to the detriment of PNM or its Affiliates. Contractor agrees that PNM has the right to audit Contractor's data processing activities in connection with this Agreement.

**Subcontractors.** Contractor shall not permit any subcontractor to access PNM Data unless such subcontractor is subject to a written contract with Contractor protecting PNM Data, with terms reasonably consistent with those of this Agreement. Contractor shall exercise reasonable efforts to ensure that each subcontractor complies with all of the terms of this Agreement related to PNM Data. As between Contractor and PNM, Contractor shall pay any fees or costs related to each subcontractor's compliance with such terms.

**Data Security Reviews.** If requested by PNM, Contractor shall: (a) permit security reviews (e.g., intrusion detection, firewalls, routers) by PNM on systems storing or processing PNM Data and on Contractor policies and procedures relating to the foregoing; and (b) permit inspection and review of any or all security processes and procedures, architecture and/or data flow documentation and diagrams that relate to the fulfillment of its obligations under this Agreement.

Any report or other result generated through the reviews allowed by this provision will be Contractor's confidential information. If any review referenced above uncovers deficiencies or identifies suggested changes in Contractor's performance of the Services, Contractor shall exercise reasonable efforts promptly to address such identified deficiencies and suggested changes and shall keep PNM reasonably informed of the progress of the remediation of such deficiency or implementation of such change. In the event PNM does not agree with the remediation/implementation efforts or progress on the part of Contractor, PNM may, in its sole discretion, terminate this Agreement in accordance with the provisions of Section 21 "**Early Termination**".

**Vulnerability Scanning.** Contractor shall maintain and apply a reasonable vulnerability scanning policy and practice during the Term of this Agreement. The vulnerability scanning policy shall include Contractor, at its sole cost and expense, engaging third party to conduct external and internal vulnerability scans on at least an annual basis of: (i) any equipment used by or for Contractor that stores and/or processes any PNM Data and (ii) unrelated devices used by or for Contractor that share common network resources with the equipment described above in subclause (i). The third party shall be commercially recognized within the industry for conducting vulnerability assessments of computer platforms with such assessments scored under the National Institute of Standards and Technology (NIST) Common Vulnerability Scoring System (CVSS). Upon request Contractor shall promptly provide PNM with the results of each such vulnerability assessment. Contractor agrees to remediate or address any high vulnerability risks as measured by standard NIST CVSS scale identified through any such vulnerability scans within sixty (60) days' time from a high risk vulnerability notification/determination, and as needed, shall continually keep PNM reasonably informed of the progress of the remediation efforts. In the event PNM determines that Contractor has failed to complete such remediation within such 60-day period, PNM may, in its sole discretion, terminate this Agreement in accordance with the provisions of Section 21 "**Early Termination**". Further, PNM may also, incidentally, conduct internet vulnerability scans on the site or sites provided or otherwise used by Contractor to provide any services, deliverables, or work under this Agreement to determine or otherwise assess the existence of excessive risk to PNM.

**Ongoing monitoring.** PNM shall have the right to monitor all internet traffic to and from the facility inline and unencrypted at the appropriate location through the use of a PNM approved monitoring solution. Contractor's temporary internet connection used for non-operational, construction-related activities shall not be subject to ongoing monitoring unless such connection is used to process, collect, or transfer PNM Data.

**EXHIBIT U**  
**HEALTH AND SAFETY PLAN**



# Health and Safety Plan

Revised January 2021

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## INTRODUCTION

DEPCOM regards safety as the top priority on every job—every time. This document contains important policies and accident prevention information. Read it carefully and often. It obviously cannot answer every question and is not intended to do so. The DEPCOM Corporate Health & Safety Manual, Contractual specific requirements with the Client, site specific policies and procedures, Federal, and State Regulations and, if applicable, local labor agreements, may also need to be referenced when questions arise since the most stringent rules from each will apply to all performing work on our sites.

You are responsible for the safety of yourself, your colleagues and the job site.

You will be subject to disciplinary action for violating safety rules or behaving in a manner that exposes you or others to the risk of injury.

Statements concerning corporate policies and procedures herein, do not limit the corporation's right to terminate at will, or otherwise discipline, any employee or contractor in accordance with federal and state law.

Learn your way around, ask questions and be sure you understand all instructions and safety concerns before you start to work.

If at any time, you feel you cannot safely perform a job you are asked to do, don't do it. Speak with your supervisor before doing any work you are unsure about.

Think before you act!

## EMPLOYEE RESPONSIBILITIES

You must follow all OSHA standards, state safety regulations, federal safety laws and standards, DEPCOM safety policies and customer safety rules. In the event of a conflict between customer, DEPCOM, Subcontractor, or OSHA requirements, the more stringent policy will apply. Ask your supervisor or site safety for more information about our safety programs or policies.

1. You must report all accidents, injuries, hazardous practices or conditions to safety and a supervisor immediately for corrective action and/or medical evaluation.
2. Listen carefully to all instructions. If you don't completely understand what you are being asked to do, ask questions before starting to work.
3. Each worker has the right and responsibility to stop unsafe work and seek clarification to questions or uncertainties regarding the safe performance of a work assignment at any time.
4. Understand and follow the warnings and instructions on all signs, posters or hazard bulletins posted or issued on the job. If a sign, direction or symbol is unfamiliar, please ask your supervisor for more information before you proceed.



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- 5. Ensure you take adequate rest/ cool down breaks during the work day.
- 6. Arrive to work hydrated and drink plenty of water to prevent dehydration.

DEPCOM Power Inc. (DEPCOM) mandates that you inform your supervisor if you have any of the following concerns:

- You don't understand or are unsure of the activity you're being asked to do.
- You don't have the training or experience to perform a task safely.
- You don't have the training to use a tool, operate equipment or use special personal protective equipment safely.
- You incur any illness, injury or discomfort, no matter how insignificant it may seem.

**DEPCOM AND SUBCONTRACTOR RESPONSIBILITIES**

In response to a noted concern, Management will discuss all task instructions, work activities and safety requirements to our mutual satisfaction.

- All new employees (direct hire and contracted) and subcontracted personnel assigned to perform work in support of DEPCOM shall be given formal safety orientation training to understand our safety expectations and have access to a copy of this Plan. Employees and subcontractor personnel shall have the opportunity to ask questions. No work shall be performed by a new employee or subcontractor personnel until he or she has participated in DEPCOM safety orientation.
- Employees will be provided training to safely perform tasks assigned to them and to operate any required tools and equipment.
- Each Contractor will provide any special personal protective equipment they may need to safely do their job. Training will be provided by each employer on how to safely use, limitations of, and care for this equipment.
- Each Contractor must maintain a safe and clean work area
- Communicate new hazards to DEPCOM Management when they are found/recognized and immediately abate the concern
- Report all incidents and injuries immediately to DEPCOM Safety and submit incident reports within 24 hours
- Daily headcounts need to be submitted to DEPCOM Safety by 09:00 daily
- Ensure that at least one bilingual employee is with each crew that has non-English speaking employees, and no less than 1 for every 10 employees in that crew

**JOINT RESPONSIBILITIES**

All Personnel onsite must attend and participate in weekly safety meetings scheduled by Management and participate in daily Job Hazard Analysis (JHA) meetings. All DEPCOM and Subcontractor Management and Safety Personnel will be required to participate in weekly Safety Audits and Plan Of the Day Meetings.

**JOB HAZARD ANALYSIS (JHA)**

You are required to participate in a Job Hazard Analysis programs as directed by your supervisor:

A JHA is required in planning each job. Each task is broken into steps and the hazards for each step are identified, addressed and/or eliminated. The JHA is performed by the employees doing the work with their assigned Lead or supervisor, and recorded for future reference. A work plan specifying who is tasked to do the work, when the work will be done and how it will be done is recorded in the JHA.



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All involved employees must review the JHA, sign onto it, and then initial it when the task is complete for the day. JHA paperwork must be kept in the work area and be reviewed with any new personnel entering the work area. Copies of all JHAs must be submitted to DEPCOM Safety daily.

Daily Safety Tailgate Meeting - A tailgate meeting shall be held before starting work daily by the crew leader or designee. Using the JHA as a guide, the tailgate meeting discusses overall site conditions, hazards of the work environment, controls in place to manage risk, emergency procedures and other safety topics applicable to the work environment. A formal stretch & flex will also be conducted during this meeting with all employees.

### SAFE WORK & HOUSEKEEPING POLICIES

You are responsible to keep the worksite clean, uncluttered and organized. Safe work area rules are as follows:

1. Pick up and clean up as you go. Place all paper drinking cups, empty bottles, lunch debris and similar trash items in trash bags/barrels. Remove and dispose of trash and scrap from work areas each day. Place trash and scrap in designated areas.
2. Run electrical cords, welding leads, and air hoses at least seven feet above the work area whenever possible or lay them flat outside walkways, if there is no place to tie the cables.
3. Roll up all cords, hoses, and welding leads and other similar objects, and then reposition only those needed.
4. Report all tripping and falling hazards to a supervisor. If possible, correct the hazard immediately or “flag” or barricade the area to prevent injuries until the hazard can be corrected.
5. Check that adequate lighting is provided on stairs, in walkways, and other work areas. Notify your supervisor if additional lighting is required to safely perform or access your work.
6. Place barricades, signs and/or signals to warn others of traffic, overhead hazards, pinch points, open trenches, etc. Use a spotter if necessary. Yellow barricades tape means “Use Caution” in this area. Red barricades/tape means “Danger, Do Not Enter” this area. Barricades should be maintained between 36 and 42" above grade. Red barricaded areas shall not be entered until the barricade owner permits entry and explains the hazards. All barricades will have barricade tags detailing the hazards and the owner of the barricade. The need for any Red barricade is to be approved by DEPCOM Safety before erecting.
7. Place barricades a minimum of 2 feet back from the edge of unguarded excavations, holes, and platforms edges, unless greater distances are required by OSHA for the specific task.
8. While manually moving and/or lifting materials, always use the proper safe lifting and lowering techniques:
  - a. Don't lift until the object is close to your body, then lift with your legs, keep your back straight, retain proper footing and avoid twisting. When setting the load down, keep it close to your body, and bend your legs, not your back. Don't lift, stretch or twist while lifting or lowering a load in order to prevent injuries to your lower back.
  - b. You must always get help if a load is too heavy or awkward to be carried or moved alone. Any item over 60 lbs. should be team lifted or a piece of lifting equipment should be utilized.
9. Locate all excess materials out of jobsite foot or vehicle traffic areas and make allowances for easy access. Store Materials, tools, and equipment in a stable position to prevent rolling or falling. Remove or bend over protruding nails from lumber immediately and clear broken pallets, scrap lumber and other debris daily from the work area.



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10. Spills of fuel, oil, grease or bulk cement must be reported to DEPCOM and cleaned up immediately. If you suspect a spill could be a hazardous material, contact your supervisor for instructions before attempting to clean it up. All employers with equipment are required to have adequate spill kits readily available onsite and provide proper chain-of-custody documentation for any hazardous waste they create.
11. Keep areas around saws or other wood-working equipment clean and free of excess scrap, chips and sawdust and remove forms, pallets are removed when no longer in use. Ensure that guards are in place and working properly on all equipment.
12. All protruding rebar, grade stakes, ground rods, t-posts and similar hazards into which employees could likely fall, shall be properly guarded to eliminate the hazard of impalement.
13. Crossing over CAB wires should be avoided, but if required in certain circumstances and deemed safe to do so, employers shall provide training and enforce requirement to hold onto a CAB post with 2 hands when crossing wires in order to maintain 3 points of contact.
14. Elevated wind speeds - Weather forecasts are to be checked at the beginning of shifts each day and we begin regular anemometer readings at wind speeds around 10 mph. When wind speeds are 14 to 16 mph, additional employees are to be added to module crews to help handle and control the modules for safety purposes. If module installation is to occur at wind speeds above 16 mph, Subcontractors must develop and submit to DEPCOM for review a high wind module plan detailing how they will safely install modules at elevated wind speeds.
15. **Lightning** - All outdoor activity shall immediately cease and all personnel take cover in an enclosed shelter or vehicle when lightning strikes are within 10 miles of the work zone. A lightning warning will be issued to the field at 15-20 mile radius for awareness. If additional time is determined to be required for workers to reach safe shelter by DEPCOM CM and Safety Manager, the 10 mile minimum radius will be increased accordingly.
16. **Severe Weather** – All employers onsite must develop severe weather plans that include transportation for their employees to quickly seek adequate safe shelter for any reasonably foreseeable severe weather events.
17. Do not approach, harass, remove or feed any wildlife found onsite. Notify Safety immediately. No pets allowed on DEPCOM projects.
18. **Pandemic Preparedness** - During pandemics, employers play a key role in protecting employees' health and safety. As a company that provides critical infrastructure services, DEPCOM and its Subcontractors must also plan to continue operations in a crisis. DEPCOM and associated Subcontractors will follow all CDC, State, Local and DEPCOM Pandemic guidelines.
19. Adequate portable toilets and hand wash stations are to be provided and maintained by each contractor in all areas their work is being performed. Toilets and hand wash stations shall be maintained in clean and sanitary condition and adequately supplied with toilet paper, soap, water, and hand sanitizer at all times. Toilets must not open into roadways and shall be properly secured from potential inclement weather.
20. ALL injuries are to be reported to DEPCOM Safety immediately. ALL first aids are to be treated in the site First Aid Office which is to be provided by the EPC/ General Contractor. The First Aid Office must be kept clean, organized, well stocked, and allow for privacy of treatment.
21. Immediate notification of all incidents to DEPCOM Safety is required and detailed incident reports identifying all causal factors and corrective actions must be submitted by subcontractors to DEPCOM within 48 hours of incident unless specified otherwise by contract.

### PERSONAL PROTECTIVE EQUIPMENT (PPE)

You are mandated to dress properly, wear the proper protective equipment and take extra precautions to protect yourself at all times.

1. Safety equipment will be provided for your protection as needed. It should be used as required and kept in good condition.
2. Training on the proper selection, use, maintenance, and limitations of PPE is to be provided by your employer.
3. Report any loss or damage immediately, so the items may be replaced.





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4. Contact your supervisor for guidance if you require additional safety equipment. Replace protective equipment when worn or damaged.
5. Approved hard hats must be worn at all times in all areas except offices and parking lots. Don't wear it backwards or alter its suspension system in any way. Metal hard hats may not be used at any job site. Long hair must be kept confined under your hard hat. Your name and company name must be clearly printed on the front of your hardhat.
6. Approved safety glasses with rigid side shields must be worn at all times. If you wear prescription glasses, the required stamp (ANSIZ87.1) must be on the frame and side shields must be utilized.
7. In high noise areas or when working with or around noisy tools or equipment (within 10' of impact guns or within 100' of post drivers), hearing protection such as ear plugs or ear muffs must be worn. In extremely noisy areas (such as within 50' of post drivers) double hearing protection will be required. Noise monitoring may be required to determine adequate protection is utilized for specific tasks.
8. You are required to wear eye protection if you could be exposed to eye hazards. Use the right type of protection for the specific hazard. Different eye protection is required when performing various operations:
  - a. Safety glasses are required at all times. Full eye and face protection (mono-goggles and face shield) is required when grinding, using a saw to cut metal rock or concrete, or any time drilling or cutting at or above shoulder height.
  - b. Adequate Cutting goggles or welding hood is required when using a cutting torch.
  - c. Hoods with proper shaded lenses as well as safety glasses and hard hat required for welding. Check hood and gasket periodically for leaks.
  - d. When working with chemicals, the highest level of PPE recommended for the task on the SDS should be worn.
  - e. If you are working close (within 10') to any of the preceding listed operations, you must wear the eye protection as prescribed for the particular operation.
9. You must wear an approved safety harness with two double-locking lanyards when you are working at any elevation where you could be exposed to a fall of 6' or greater. Your safety harness should be attached by the lanyards to an approved anchorage point whenever you are exposed to the hazard of falling. Additional training is required for these situations.
10. Heavy leather work gloves or cut resistant ANSI level A4 – A9 gloves must always be worn when working or handling any tools or materials. Kevlar cut sleeves are required when handling rough or sharp materials such as racking or solar panels. Thinner, high dexterity cut resistant A4 gloves are available for tasks requiring fine motor skills such as installing small bolts or terminating wire. Nylon and non-cut resistant mechanic gloves are not allowed.
11. Safety-toed boots are required at all times when working in the construction area.
12. Metatarsal (foot) guards must be worn when tamping, chipping with a jack hammer or when similar conditions are encountered. Metatarsal guards must also be worn anytime operating or working near post driving equipment, performing post or torque tube layout, or anytime equipment manufacturers or JHAs determine their use is required by potential hazards.
13. Employees working within any construction areas where equipment or traffic hazards exist shall wear a class 2 fluorescent lime green or orange reflective shirt or vest with "reflectorized" material for visibility.
14. You must use the proper respiratory equipment. If your job includes any hazardous spray painting, plasma cutting, burning and/or possible exposure to dust, silica or toxic hazards, you will need to receive a pulmonary function test, be fit-tested with the right respirator for the specific hazard, and provided training for using the respirator. Beards and other facial hair must be removed to make sure the respirator properly seals to your face.



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### APPROPRIATE BEHAVIOR & APPEARANCE

1. Alcoholic beverages, intoxicants and narcotics, illegal or unauthorized drugs (including THC), look-alike (simulated) drugs, and related drug paraphernalia are not allowed on any job site at any time.
2. Being under the influence of banned substances is also a serious safety violation and will not be tolerated.
3. If you are using drugs prescribed by your doctor – including medical marijuana, or over-the-counter drugs for a medical condition, be sure to notify your supervisor or the safety department. Some over-the-counter and doctor-prescribed medications do not allow you to operate machinery and/or perform other tasks safely, so check with your supervisor or the safety department for medication approval.
5. Upon entering DEPCOM premises, DEPCOM may require you to be tested for drug/alcohol use or searched for possession of banned or illegal substances or materials at any time. DEPCOM employees, Temporary Staffing and all Subcontractors are required to complete pre-employment, minimum of 10% monthly random, for cause, and post incident drug and alcohol testing (including THC). Additional testing may be required at DEPCOM's discretion due to site trends. Donors identified for testing are to be escorted/monitored by management from time donor is notified of required testing until testing is completed. Monitored or Direct Observation Collection may be required by sole discretion of DEPCOM Management. DEPCOM has instituted a zero tolerance policy and, therefore, a positive test (verified by an MRO) or drug test refusal will result in immediate termination and/or removal from DEPCOM sites. Any exceptions to this policy requires approval from a DEPCOM Executive Officer. A terminated employee will be allowed to reapply for employment after six months. Employees may be tested at any time for cause.
6. Gambling, fighting, or horseplay on the job, or in areas under company control, is not allowed.
7. No one shall be permitted to carry, possess, maintain, or use any weapon on DEPCOM Power sites in a manner that violates any Federal, State, or Local laws or regulations. DEPCOM policy prohibits the harassment, threats or violent acts at the workplace, and any such act(s) will result in the termination of the acting employee.
8. Your clothing must be suitable for both the weather and the work. The minimum acceptable work outfit consists of full-length trousers (not sweat pants), a shirt with at least a 4" sleeve and sturdy safety-toe work boots. Torn or loose clothing and inappropriate logos/language are not allowed.
9. Jewelry, including rings, bracelets and necklaces, can get caught in equipment and machinery, may cause severe injuries, and may not be allowed depending on tasks performed.
10. Hair longer than collar length must be secured under your hard hat in a way that won't interfere with the intended operation of the suspension system.
11. Personal cellular phones and/or electronics are not to be used in work areas on the job site.

### HAZCOM/ SAFETY DATA SHEETS (SDS)

HAZCOM, or Hazard Communication, describes the various chemicals and hazardous materials used on the job. A written plan covering those materials and chemicals is maintained at the job site.

1. You must request a copy of the SDS, or Safety Data Sheet (formerly known as Material Safety Data Sheets (MSDS)), for any chemical you are using. If you want to review the material in the plan or any SDS, ask your supervisor or check the posted materials in the jobsite office.
2. Review the written hazard communication program and chemical list for your job site. The SDS contains technical information about a chemical not shown on the product label and contains important data on the chemical properties, first aid procedures, PPE requirements, any health and physical hazards associated with the chemical or material and other information you need to know to work safely with this product.



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3. All chemical containers, including gasoline and diesel, must be properly labeled with the actual contents of the container.
4. Only approved metal safety cans are allowable for portable fuel storage on-site.
5. If the container doesn't have a label identifying its contents, you cannot use that container until it is properly labeled.
6. Do not bring any hazardous chemicals or materials to the job site without first getting approval from your supervisor and obtaining the appropriate SDS sheet.
7. You must handle chemicals carefully and safely. You must use the proper protective equipment and safe work procedures whenever you are working with chemicals.
7. The highest level of PPE recommended for the task on the SDS should be worn.
8. In case of emergency, you must follow the job site emergency evacuation plan. Your supervisor will give you detailed information on how to evacuate your job site in the event of an emergency.
9. Some equipment and work activities have the potential to produce exposures to respirable crystalline silica. Employers must maintain compliance with OSHA 1926.1153f.

### FIRE PREVENTION & PROTECTION

Always give special attention to smoking, welding and cutting, solvent use, refueling, heaters, and the proper disposal of oily or greasy rags. You must check that all firefighting equipment is conspicuously located, freely accessible, and periodically inspected and maintained. Know the location of firefighting equipment, such as fire extinguishers, in your area and how to use them. Fire prevention rules must be followed at all times:

1. Before using an open flame or source of ignition such as welding, grinding, etc., insure that Safety has been notified and appropriate fire extinguishing equipment is ready and close to your work area.
2. Smoking, including vaping, is prohibited in areas where flammable or combustible liquids and materials are stored, used or discarded and in all buildings, tents, vehicles, and meetings. Smoke only in designated areas. Owner requirements may prohibit smoking anywhere on the premises.
3. Only small quantities of flammables are to be stored and dispensed from approved safety cans. Flammable liquid containers should be clearly labeled and stored in a grounded flammable cabinet. Work areas should be kept free of combustible materials.
4. Gasoline should be used as a motor fuel only. Never refuel a hot engine or an engine that is running. Funnels required when filling with gas cans. Clean up all spills before starting the equipment. Never store/transport fuel near ignition sources (including near running generators).
5. Outdoor fuel tanks are to be installed with adequate spill and drip containment. Fuel dispensing nozzles shall be an approved automatic-closing type without a latch-open device. Portable tanks shall be protected against collision damage and shall not be nearer than 20 feet from any building. Conspicuous and legible signs identifying the contents and prohibiting smoking shall be posted.
6. At least one portable fire extinguisher having a rating of not less than 20-B units shall be located not less than 25 feet, nor more than 75 feet, from any flammable liquid storage area located outside. At least one portable fire extinguisher having a rating of not less than 20-B:C units shall be provided on all vehicles used for transporting and/or dispensing flammable liquids.
7. Do not use compressed air hose to empty gasoline or flammable liquids from drums.
8. Oily rags must be stored in covered metal containers.
9. Keep open-flame heaters or other heating equipment away from combustible materials. Don't use open-flame heaters in a confined area.
10. Any engine being operated in an enclosed space must be kept away from combustibles, the exhaust should be properly ventilated, and a permit must be approved by Safety. A fire extinguisher should be available at all times.



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11. Ensure you know the location of posted emergency telephone numbers.
12. Take prompt action if fire should occur. Only attempt to extinguish a fire if you have been properly trained to do so and feel it safe to do so.
13. Immediately notify a Supervisor and Safety personnel of any fires.

### HEAT ILLNESS AND HYDRATION

Adequate shade and clean/cool drinking water shall be provided in all work areas by all employers onsite. Work times will be evaluated when the heat index reaches 85 degrees and late afternoon work hours may be reduced at the discretion of the Site Manager and Site Safety. Required work/rest schedules will be instituted when the heat index reaches 90 degrees. This will be monitored by Site Safety and Site Manager.

The DEPCOM Heat Illness Prevention Plan must be followed

- When the heat index reaches 90 degrees, a mandatory cool down break of 10 minutes at least every 2 hours is required at cool down tents your employer must provide in your work areas. Additional breaks may be required depending on conditions. See DEPCOM H.I.P.P. for required work/rest requirements.
- Employees should be evaluated throughout the day by their co-workers, leads, and safety personnel for any heat stress signs or symptoms should mandate additional cool down breaks or first aid/ medical treatment. Any person with any signs of heat stress must be taken immediately to the First Aid Office where a cooling vest system will be kept available and further evaluation will be made.
- Proper hydration is the key to preventing heat stress. If someone starts the day dehydrated they will not catch up during the day, so hydration at home is equally important. Team leads are required to monitor each employee's intake throughout the day.
- Each employee should have a minimum of 10 bottles of water per day or 160 ounces. Team leads are responsible for monitoring each employee on their team for water consumption. A designated water person will deliver water to work areas and will be responsible for making sure that adequate water is available. A minimum amount of water and ice must be maintained on site at all times and work should be stopped if adequate water is not available on-site. This should also be monitored by site safety and management.
- All employees should be encouraged to consume a bottle of water during morning safety meetings.
- Water carts will be roaming the site to both deliver water and encourage water intake.
- Site safety will evaluate work teams throughout the day and communicate with the teams on how their employees are doing.

### FALL PROTECTION

Fall protection is required when your work location could expose you to a fall of 6 feet or greater to a lower level. Specific training, to go over the hazards and how to mitigate them, is required and must be provided for any affected employees. Ensure that continuous fall protection use and training is in place at all times in any elevated work area that has no permanent fall protection. You must:

1. Wear an approved fall protection harness with two double-locking lanyards. Your fall harness should be attached by the lanyards to an approved anchorage point at all times when a fall exposure is present.
2. Follow the manufacturer's instructions to properly inspect and secure your lanyard. Harnesses or lanyards should not be used for purposes other than their intended use and damaged or defective lanyards need to be replaced immediately. Do not use a lanyard for lifting purposes. Always connect your second lanyard before you disconnect the first one.



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3. Wear fall protection, such as retractable reels or rope grabs, when ascending or descending all uncaged scaffold ladders and extension ladders greater than 12 feet. Going up or down a ladder with less than 12 feet exposure is the only exception to continuous fall protection.
4. Insure that all elevated work platforms (man lifts, scaffolds, etc.) are inspected daily by a Competent Person before entering the area or structure.
5. When working inside any scaffold or work-basket, 100% tie-off must be maintained.
6. If there is no place to safely tie-off, stop work until lifelines or other fall protection systems are in place. Failure to comply may result in disciplinary action. Notify Safety before any elevated work.
7. All holes from post drilling operations must be Red Barricaded preventing all access without adequate fall protection or covered with secured hole covers, which shall be made of wood at least ¾" thick, substantially larger than the diameter of the hole, and include the word "HOLE" painted on them (Fall Protection will be required if employee manually places hole cover over a hole that is 6 feet in depth or greater).
8. Working in locations that could expose you to a fall of 6 feet or greater without adequate fall protection is dangerous and grounds for immediate termination.

### LADDERS & SCAFFOLDS

Before using any scaffold or ladder, all employees must receive additional training on their safe use. All ladders and scaffolds should be visually inspected for defects immediately before use. Only ladders with a current quarterly ladder inspection marking by a competent person should be available for use. All scaffolds must be tagged safe for use by a competent person prior to each shift.

1. Scaffolds and ladders must meet or exceed OSHA and DEPCOM standards. - You are responsible to insure they have been properly inspected.
2. Only use ladders on a firm base and make sure the ladder "feet" are in good condition and properly positioned. The distance between the base of the ladder and the structure it is leaning against should be 1/4 the height of the ladder. Keep ladders free of debris, dirt, oil and grease.
3. Face the ladder when climbing or descending and use both hands. Use a hand line or material hoists for tools and loads. When working from ladders, face the ladder with both feet on the rungs. Always keep your body centered on the ladder. Reaching or leaning beyond the rails may cause the ladder to tip over and fall.
4. Do not leave a stepladder (A-frame ladder) leaning against a wall, structure, equipment or other area and do not attempt to climb the ladder in any of these positions. If working from a stepladder, don't stand with your waist above the top step of the ladder without wearing a safety harness that is tied-off to a proper anchorage point.
5. Straight ladders should be securely tied-off with the top rails extending at least 36 inches above landing or tie off position. Secure the bottom and brace long ladders with supports or outriggers. No metal ladders on DEPCOM sites. Only properly rated fiberglass ladders should be used on DEPCOM sites, as metal ladders should not be utilized around electrical current or energized equipment.
6. All scaffolds more than 6 feet above ground or surrounding area, walkways and elevated work areas should be provided with perimeter protection including top rails, mid-rails and toe boards. Protective netting is required to be installed between the top-rail and toe board whenever employees are working or walking beneath the scaffold. You are responsible to verify that the specified protection is securely in place before entering.
7. Check that all scaffold decking is of approved scaffold-grade material. All scaffold decking materials should be sized to properly bear the weight of the intended load and secured to the scaffold frame. Keep all scaffolds clear of debris and loose materials.
8. Use ladders, gangways or stairs for safe access to scaffolding. Climbing scaffold bucks is not allowed. Fall protection is required when ascending or descending uncaged scaffold ladders greater than 12 feet.



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9. Before use, verify each scaffold and ladder, has been inspected by a competent person, those that are defective must be tagged and pulled out of service until all necessary repairs are made and it has been re-inspected and approved for use by a competent person.

#### HAND TOOLS

Follow the correct procedures for using hand tools and power tools. Always report any defects and don't use the tool until the defect is corrected. Do not remove the guard from any tool. Maintain electrical grounds and avoid overloads. Use the proper tool for the job. Remember to tie-off and secure your tools when working above the ground. Use tools only for their intended purpose.

1. Keep your loose tools in a tool box or secure them against falling or dropping from work surfaces.
2. Homemade/ Job-made tools may only be used if verified to have been designed for the task by a certified Engineer.
3. Inspect every tool before you use it. Take it out of service if you find any defects such as:
  - a. Broken or missing handles or guards
  - b. Cut or taped insulation on any power cord
  - c. Broken power tool cases
  - d. Cracked handles on shovels, picks or hammers
  - e. Mushroomed surfaces on any striking tool such as a hammer wrench or chisel
4. Be aware of "the line of fire" when using tools. Never pull on a tool towards your face or body. Never use your hand to hold an object you are striking.
5. Portable band saws are not to be used for cutting wire/cable on DEPCOM sites - only appropriately sized wire/cable cutters designed for the task are to be used.
6. Generally, no knives are allowed on site. Appropriate wire cutters or wire strippers should be used wherever possible. When a knife is required for a specific task and it is decided that a safer tool does not exist, a self-retracting safety blade should be used, but only after getting written approval from DEPCOM Safety for the task, requiring cut resistant gloves & Sleeves, and addressing the specific hazards on a JHA. Corporate Safety should be consulted before issuing task specific knife exception permits.
7. Any task that requires exerting forces onto tools overhead, such as torque wrenches, shall require documented ergonomic evaluation to include the requirements to utilize a ladder or work platform to perform the task safely.

#### POWER TOOLS & EQUIPMENT

1. Only qualified personnel may operate power tools. Be sure you have received the training necessary to safely operate any power tool before you use it. If you have any questions regarding how to safely use a tool, ask your supervisor or Safety. Manufacturer Operator Manuals must be maintained onsite and be reviewed and followed by users.
2. Power equipment and tools may only be operated within their rated capacity and at appropriate safe speeds. Be prepared for the jamming of power tools such as drills. Keep good footing and balance. Use auxiliary handles if they are an option and keep both hands on the handles.



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3. Any tools that are designed to have guards and/or secondary handles are required to have those guards and handles unaltered and in place at all times. The presence of these features is so critical to our employees' safety that any worker removing a guard or handle or using an unguarded tool may be subject to immediate disciplinary action. Examples of guarded tools include:
  - a. Power saws
  - b. Portable grinders
  - c. Stationary grinders equipped with guards, properly adjusted tool rests, and attached face shield.
4. Grinding wheels, both portable and stationary, are hazardous and should be regularly checked for cracks, chips or other defects. A defective wheel should be replaced immediately. Be sure you are in a balanced position when grinding and the momentum of the disc will carry the tool away from you if it becomes stuck.
5. A grinding wheel may only be operated at its rated speed. Be sure the wheel or disc RPM rating is greater than the RPM rating of the grinder.
6. You may not use any tool with a lock-on device or switch that will allow the motor to continue operating even when your finger is removed from the switch.

#### AIR COMPRESSORS

1. Do not disconnect air hoses at compressors until the line has been bled. Do not turn compressed air on yourself or others as it can penetrate a body through the skin and cause serious injury. Don't use air for cleaning work areas or equipment without an approved air nozzle.
2. Don't substitute oxygen or other gases as a replacement for compressed air. Never use oxygen to operate pneumatic tools, pressurize a container or blow out lines.
3. Air tools should be kept in good condition. Take any defective tools out of service immediately for repair.
4. Before operating an air compressor, be sure that all hose connections are secure, pins are in place, and required whip-checks are in place for all hoses 1" or greater.
5. All hoses and connections must be thoroughly inspected for cracks, leaks, and operable safety devices before each shift.

#### ELECTRICAL TOOLS & CORDS

1. All electrical conductors, wires and cords are considered "live" until they are locked out and verified as de-energized. Always keep a safe distance from "live" electricity. Disconnect the power supply/battery when changing blades, bits, discs or auxiliary equipment or when the tool isn't in use.
2. Electrical power tools and equipment should be properly grounded. Ground Fault Circuit Interrupters (GFCIs) should be used on all outdoor tools and cords. Make sure your tools are inspected quarterly by a competent person.
3. Inspect tools and cords for damage before each use. Don't use any electrical tool or cord that has visible signs of damage.
4. Each cord set and piece of equipment connected by cord and plug shall be inspected, tested for continuity, marked, and documented by a competent person, as part of an assured grounding program, before use, after incident or repairs, or at least every 3 months as required by OSHA 1926.404(b).
5. Do not use electrical power tools or equipment while standing in water.
6. Only competent electricians are allowed to repair electric tools or equipment.
7. Secure all cords, leads and hoses out of the work area (seven feet above, if possible) to prevent damage and to prevent tripping hazards. Don't use wire to hang a cord, lead or hose.



## DEPCOM Health & Safety Plan – Revised January 2021

### POWDER-ACTUATED TOOLS

1. Only low-velocity, powder-actuated or powder-assisted tools are allowed. The tool will be operated only by a certified operator and used only in areas where explosives, flammable gases or explosive atmospheres are not present.
2. The certified operator should wear the proper eye and face protection and follow the manufacturer's instructions for inspection, maintenance, replacement parts, ammunition and proper use.
3. All employees not necessary to the work will be cleared from the area and the area barricaded.
4. Live cartridges are required to be locked in a secure place when not in use.

### EXCAVATIONS, TRENCHING & SHORING

You must follow the procedures listed below before entering or working in any excavation or trench.

1. Trenches 5 feet deep or greater require a protective sloping or shoring unless the excavation is made entirely in stable rock. If less than 5 feet deep, a competent person may determine that a protective system is not required.
2. All trenches and excavations greater than 4 feet shall have a safe and secured ladder or ramps installed no more than 25 feet from working employees. The ladder sides should extend three feet above the edge of the excavation. The ladders must be relocated as the work progresses.
3. Do not enter any trench or excavation until it has been inspected by a competent person, determined to be safe, and inspection documentation is complete. Excavations should be inspected on an inspection form daily by the competent person and any time conditions (rain, freezing temperatures, etc.) change before workers enter the excavation.
4. Any company requiring employees to enter excavations must provide a Trenching & Excavation Competent Person. The Competent Person should be documented in the DEPCOM office and given the authority to shut down the all excavation entries if deemed necessary.
5. If any condition becomes hazardous while you are in a trench or excavation, get out immediately.
6. Place all excavated soil at least two feet back from the excavation edge. The soil should be placed so that it can't fall into the trench or excavation.
7. Remove surface rocks from the edges of trenches and excavations to prevent them from falling into the trench or excavation.
8. Be aware that exhaust, fumes and vapors can collect in the trench and create a hazardous condition that could affect life and health.
9. Do not jump or walk over trenches. Adequate walkways/ trench crossings shall be provided by subcontractors whose employees are required or permitted to cross over excavations.
10. Where oxygen deficiency or a hazardous atmosphere exists or could reasonably be expected to exist, the atmospheres in the excavation shall be tested before employees enter.
11. The estimated location of utility installations, such as sewer, telephone, fuel, electric, water lines, or any other underground installations that reasonably may be expected to be encountered during excavation work, shall be determined prior to opening an excavation by calling 811.
12. Barricading should be placed as a 20' boundary in any direction of known utility lines. Additional safeguards must be taken by management if work is required within that barricade.
13. All excavations are to be barricaded with barricade tape and hazard tags when not currently attended; and at all times if over 5 feet deep.

### EQUIPMENT OPERATION





## DEPCOM Health & Safety Plan – Revised January 2021

You must not attempt to operate any type of equipment, breakers, switches, valves or other machinery unless you have been properly trained, qualified, and authorized to do so by DEPCOM. Unauthorized use of equipment may be cause for dismissal. A legible operator’s manual must be kept in all construction equipment. Operators shall have read, understand, and follow all requirements of operator’s manual.

1. Each operator is responsible for the safe operation of his or her equipment at all times. The operator is also responsible for keeping the equipment in safe operating condition and ensuring all brakes, backup alarms, seat belts, lights, controls, fire extinguishers and other required safety devices are functioning properly before using the equipment. Report any defects or malfunctions to a supervisor or safety immediately. Equipment inspection forms must be completed by each operator daily and all forms submitted to DEPCOM Safety at a minimum of once a week. Tag any unsafe equipment out of service immediately until properly repaired.
2. Obey all safety warning signs, speed limit signs and other postings. Do not start or move machinery, operate valves, or change electric switches until you have determined it is safe to do so using the appropriate safety procedures including lock-out/tag-out policies, DEPCOM safety policy and/or OSHA, federal and state laws.
3. Do not adjust, repair, grease or fuel equipment or machinery while it is in motion, running, or plugged into an electrical outlet.
4. Fueling of any DPI owned or rented equipment on-site shall only be performed by properly trained personnel authorized by the Site Construction Manager. All DPI owned or rented vehicles and equipment shall have a color coded sticker stating “Diesel Only” (Green), “Gasoline Only” (Red), or Diesel Exhaust Fluid - DEF (Blue) conspicuously affixed.
5. Whenever possible, stay off haul roads, ramps and other areas where heavy equipment is moving. Follow the spotter’s directions and keep a sharp lookout for moving equipment. Spotters must wear reflective safety vests. Flagmen should be properly trained in local and state traffic regulations.
6. All equipment, cranes and booms must be kept at least 20 feet from energized power lines or telephone poles. The safe working distance is greater when working around higher voltage lines or during inclement weather. Check with your supervisor for the appropriate safe distance before operating any equipment under these conditions. Warning signs and/or barricades should be erected for all overhead lines. Any equipment operating near powerlines that are physically capable of encroaching the exclusion zone must have a dedicated spotter.
7. Backing up blind is prohibited. Verify that backup alarms are working properly. Blind backing operations require a spotter.
8. No one is allowed to ride on any equipment unless approved seats and seat belts are provided and used.
9. Do not remove or modify any guards on equipment.
10. Keep windshields clean and free of cracks or other obstructions.
11. When transporting employees in any truck or ATV, approved seats and seatbelts must be provided, employees must be seated at all times and keep their arms and legs inside the body of the vehicle.
12. Standing or sitting on the running board, fender, hood, headache rack or on a load is never allowed. Don’t climb on, off or around equipment while it is in motion. Always mount and dismount the equipment in a safe manner using 3 points of contact.
13. Clearing rocks, roots or dirt from augers, ditcher buckets on digging wheels or conveyors is not allowed while equipment is in operation.
14. Keep away from cables during towing or winching operations. No chains are allowed onsite for any type of lifting, pulling, or towing operations. Vehicles and equipment that become stuck in mud, sand, rock, or snow shall not attempt to self-extricate themselves, instead, call for assistance and be properly towed, not pushed, out with adequate straps or cables in accordance with DEPCOM’s policy regarding no chain use on site.



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15. Vehicles, trailers, and mobile equipment shall not be left unattended unless the parking brake, if provided, is set. When parked on a grade, the wheels or tracks shall be either chocked or turned into a bank. All wire spools and disconnected trailers shall be adequately chocked.
16. Rigging of any loads, including from equipment such as forklifts and post machines, should only be done by employees properly trained on the related rigging practices. All rigging (Straps, cables, shackles, magnets, etc.) must have legible capacity tags and be inspected prior to every use.
17. Only lifting shackles designed with a cotter pin to secure the shackle's bolt/pin may be used on post driving machines or other long term rigging applications that are not regularly removed after each lift.

### FORKLIFT OPERATIONS

All forklifts should only be operated by trained, qualified, and authorized operators. If you are a forklift operator, you are required to know, understand and practice safe forklift operations. You must know and comply with the equipment manufacturer's specifications and limitations at all times. A copy of the forklift manufacturer's operating manual should be available in the cab at all times. The load rating charts should be in clear view of the operator. Any attachments used with cranes should not exceed the capacity, rating or scope recommended by the manufacturer.

1. Forklift operators are required to have successfully completed the following prior to operating any forklift:
  - a. Provide a valid driver's license.
  - b. Complete an approved Forklift Training class and written test taught by United Rentals, an approved DEPCOM trainer, or other vendor approved by DEPCOM Management.
  - c. Field test in safe forklift operation by a member of Management with documentation on file with the Safety Department.
  - d. A dated "Trained Forklift Operator" hardhat sticker issued by the Safety Department once the above has been verified.
2. Ensure the entire weight of all loads are within the chart capacity of your specific forklift and it's forks or other attachments.
3. Do not pick up or carry more than one pallet of modules at a time. Modules shall be unloaded and transported according to module unloading Standard Operating Procedures (SOP) pre-approved by DEPCOM Safety for the specific equipment present onsite.
4. Utilize a trained spotter any time you are working in congested areas or having to back up.
5. Keep all loads secure and as low to ground as possible to lower your center of gravity.
6. Complete a pre-use inspection form for all equipment and immediately notify your supervisor of any deficiencies found.
7. Only utilize approved rigging points, shackles, and straps when lifting material. Do not rig off the forks or the mast.
8. Material payloads on equipment forks, including torque tubes, shall not extend above the equipment carriage backstop, nor shall they extend wider than ten feet (10') beyond the centerline of any equipment carriage. If a payload is wider, then a wide payload stabilizer attachment, that is adequate for the payload and approved by Contractor, shall be utilized along with a ground spotter at each end of the payload.

### CRANE OPERATIONS

All cranes should be operated according to DEPCOM crane safety rules. If you are a crane operator, you are required to know, understand and practice safe crane operations. You must know and comply with the crane manufacturer's specifications and limitations at all times. A copy of the crane



### DEPCOM Health & Safety Plan – Revised January 2021

manufacturer’s operating manual should be available in the cab at all times. The load rating charts should be in clear view of the operator and attached to all load-hoisting equipment. Any load within 75% of the crane load capacity must be supported with a documented “critical lift plan.” Any attachments used with cranes should not exceed the capacity, rating or scope recommended by the manufacturer.

1. Crane operators are required to have successfully completed the following prior to operating any cranes:
  - a. Completed a current physical examination, including DOT physical and drug screen.
  - b. Have a current crane certification for the type of crane they are to operate (NCCCO, CIC, OECP, or NCCER).
  - c. Field tested and qualified in safe crane operation with a properly issued crane proficiency document on file with DEPCOM Safety Department.
2. A designated rigger and signal person with documentation of training and qualifications must coordinate and inspect all rigging used on lifts.
3. All cranes must have a passing Annual Crane Inspection on file before use on site.
4. Keep all employees completely clear of overhead or suspended loads. Tag lines will be used on all hoisted loads.
5. Stay clear of swinging counterweights. Barricade the swing radius of the counterweights. Barricades must be in place before lifting any loads.
6. No one is allowed to ride the hook, headache ball or stand on any suspended load.
7. All hoisting equipment will be operated on a firm, level foundation.
8. Only one qualified spotter in full view of the operator should give or relay signals to the operator and a qualified rigger must be used.
9. A DEPCOM crane lift plan must be completed and submitted to DEPCOM at least 96 hours prior for approval of all lifts.
10. A Critical lift plan and rigging diagram must be completed and approved for all lifts of critical plant equipment or loads over 75% of chart capacity.
11. All workers involved in lifting/rigging tasks will participate in a pre-lift briefing. A member of DEPCOM Management should be present at briefing.
12. DEPCOM Construction Manager or Project Manager must be notified immediately prior to beginning any critical lift.

### EQUIPMENT MAINTENANCE AND REPAIRS

You must ensure that all equipment is maintained in accordance with manufacturer’s requirements and is fit for use. Check equipment before and after use for any potential defects or failures.

1. Only qualified personnel are to perform maintenance or repairs to any equipment.
2. Use only approved solvents to clean parts. Using gasoline for cleaning is prohibited.
3. Don’t work under vehicles or equipment supported by jacks or hoists without protective blocking. If your work must be performed under a suspended machine or part of a suspended machine, the machine or part should be safely blocked or cribbed.
4. All mechanics are required to follow rules established for safe equipment operation.
5. Personal protective equipment should be worn whenever solvents or any other hazardous material is used.
6. Do not work on any equipment or vehicle unless you verify that any energized parts are locked out, the key is out of the ignition and the controls have been tagged so others will know you are working on the machine.
7. Any modifications to equipment must have approval from the manufacturer.

### MOTOR VEHICLE OPERATION

1. Only persons directly authorized by DEPCOM in writing are allowed to drive company owned, leased, or rented vehicles.



### DEPCOM Health & Safety Plan – Revised January 2021

2. Drivers' licenses must be valid and current and will be visually checked for:
  - a. Expiration date;
  - b. Restrictions;
  - c. Type of license, e.g., Operator (Class C), Commercial (Class B) or Chauffeur (Class A)
3. An acceptable MVR will be verified of any employee needing to drive any equipment on any public roadways.
4. Only company owned or rented vehicles with company logos and the required insurance may be driven through the site once authorized by DEPCOM Management. No personal vehicles allowed past designated parking areas.
5. An accident report form should be completed with the police whenever the outside public is involved in an accident.
6. Any driver of a company vehicle may be subject to disciplinary action, up to and including dismissal, for any accident involvement indicating negligence or failure to comply with company policy and/or safety rules.
7. All accidents on and off the job should be reported to DEPCOM Management and Safety immediately before moving vehicle.
8. All local and Federal laws must be followed at all times
9. You must notify your supervisor of any driving violation citations you may receive or if your driving privileges have been suspended.
10. No one under 21 is allowed to drive over-the-road vehicles.

### COMMERCIAL VEHICLE OPERATION REQUIREMENTS

1. A valid Commercial Driver's License (CDL) is required for anyone driving a vehicle combination larger than 25,999 Lbs. GVWR, capable of 15 or more passengers, or hauling hazardous materials on public roads. The CDL driver's managing company must have the proper FMCSA DOT Registration for specific vehicles classifications and the driver is also required to successfully pass a DOT physical and DOT drug test each year. DEPCOM does not hire or manage CDL drivers.
2. A DOT physical, valid driver's license, MVR, Training, and driver hour's logs (minimum of 30 days) are required for anyone driving vehicle/trailer combinations over 10,000lbs GVWR. Both truck and trailer must have a current DOT inspection, DOT #s, daily inspection, fire extinguisher, 3 Emergency triangles, and spare fuses. All drivers operating DOT vehicles owned/rented by DEPCOM must be pre-qualified/authorized by Safety.
3. Commercial drivers should have in their possession and be familiar with a copy of the Federal Motor Carrier Regulations.
4. If you operate a commercial vehicle, you may not have more than one driver's license at any time.

### LOCK-OUT, TAG-OUT, RED ROPE, & PERMIT PROTECTION

The objective of a lock-out/tag-out program is to eliminate the potential that any type of hazardous energized source is activated while a person is working on it. Only authorized employees who have received additional training on the specific requirements of DEPCOM's "Red Rope-Energized Area" and/or "Lock Out, Tag Out Program" are allowed to work on or near potentially energized equipment. "Working On" live equipment is not allowed. Any employees with potential to be affected by live equipment shall receive appropriate training as required by NFPA70e. Do NOT cross any Red Roped areas without formal Red Rope training and a signed Energized Work Authorization, failure to do is dangerous and grounds for immediate termination.

1. Only standard danger tags and locks are to be used to prevent the operation of a valve, switch, or piece of equipment when work is energized, pressurized or hazardous and serious injury or damage could result from its operation.
2. Locks and tags do not replace the responsibility for properly testing and verification of zero energy on equipment or systems. Tags are not to be removed until after it is determined that it is safe to energize that portion of the system.
3. You may not remove another person's tag or lock or bypass LOTO. Doing so is dangerous and grounds for immediate termination.



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4. A permit system is used to prevent entry into a potentially unsafe area until it has been cleared. Do not enter an area you consider potentially unsafe. Call your supervisor for authorization to do so.
5. When DC whips and harnesses are connected or connectors are installed prior to the final completion of combiner box checks, “bag and tag” shall be implemented as follows: When the possibility of inadvertent connection of a conductor could cause a downstream component or equipment to become energized, but there is no mechanism or connection point for a lock, a Brady #66066 or approved equal LOTO Tag will be attached to the conductor(s) using a zip tie having an unlocking strength of at least 50 pounds. The tag should include the name of the Company installing the Tag, Name and Phone number of the point of contact, reason for the Tag and date of the tag’s placement. The tag shall not be removed until directed so by Contractor’s authorized Commissioning representative.

\* See DEPCOM LOTO Policy for additional guidance and requirements

### MATERIAL STORAGE

1. All materials stored should be stacked, chalked, blocked, interlocked or otherwise secured to prevent sliding, falling, rolling, or collapsing.
2. Aisles and passageways are required to be kept clear to provide free and safe movement of material, equipment or employees.
3. Hazardous (flammable, combustible or other) materials may only be stored in approved designated locations such as flammable cabinets.

### CONFINED SPACE ENTRY

1. Any tank, vault, vessel or other space that is large enough for a person to enter and perform work, but has limited means for entry or exit, and is not designed for continuous occupancy is considered a confined space. All confined spaces are required to be inspected and permitted by the designated company and/or owner representative(s). Formal training and an entry permit is required prior to any entry into the confined space.
2. Additional training and appropriate PPE may be required if the potential of fumes or an oxygen-depleted atmosphere exists.
3. A designated person with adequate means of communication is required to be assigned as a watch or attendant and receive detailed instructions about his or her duties from the supervisor whenever employees are working in a confined space.
4. Rescue equipment, if required, must be available before entering the confined space.
5. Special precautions may be required when using electrical equipment inside confined spaces. Check with your supervisor for more information.
6. Burning in confined spaces may require additional ventilation and fire protection.
7. Keep all gas cylinders outside the tank or vessel.
8. The company representative will decide if and what types of personnel protection measures are required when entering confined spaces.
9. When working in confined spaces, be sure the area is continually tested for gases and has a safe oxygen level in which to work. Conditions may change without notice so testing must be repeated at regular intervals or whenever any change in conditions occurs.

### SITE SECURITY

1. The last DEPCOM employee/representative to leave the site should ensure that the entrance gate is secured at the end of the day.
2. DEPCOM Staff should ensure that all office and connex doors are secured at the end of the day.
3. DEPCOM Staff should ensure the generator has a tongue lock on it.
4. All fuel tanks should be locked/secured at the end of the day.
5. All power tools and high value material (i.e. copper) must be secured in connexs or in secured lay down yards.



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6. If someone isn't recognized, they should ask if they've been through site orientation and that they check in at the DEPCOM Office before they go into the site.
7. Gates or chains and "Authorized Personnel Only" signage should be erected at all sites entrances upon initial site mobilization.
8. After hour security personnel or monitored security should be in place when high value material begins arriving to site until at least Mechanical Completion.

**EXHIBIT V****LITHIUM CARBONATE CONTRACT PRICE ADJUSTMENT**

In accordance with Section 6.1(b) of the Contract, the Contract Price may be adjusted at the time of placement of the purchase order for the battery storage equipment in accordance with the following procedure. The following definitions shall apply for the application of this price adjustment.

**Base Contract Price (“BCP”)** = \$113,170,096

**Battery Nameplate Rating (“BNR”)** = 293,289 kWh

**Contract Price Adjustment Factor (“CPAF”)** = \$10/kWh per 100,000 RMB per tonne change in the Lithium Carbonate Price

**Contract Price Basis (“CPB”)** = 254,000 RMB per tonne of lithium carbonate

**Lithium Carbonate Price Adjustment Deadband (“Deadband”)** = +/- 10%

**Lithium Carbonate Price (“LCP”)** = Lithium pricing based on spot prices for Lithium Carbonate, 99.5% Li<sub>2</sub>CO<sub>3</sub> min, battery grade, traded in China as reported by Trading Economics for the day in question at <https://tradingeconomics.com/commodity/lithium>.

The Contract Price shall be adjusted in accordance with the following calculations:

- (a) For a Lithium Carbonate Price between 228,600 and 279,400 RMB per tonne, there shall be no change to the Contract Price.
- (b) For a Lithium Carbonate Price above 279,400 RMB per tonne, the Contract Price shall be adjusted as follows:

$$\text{Adjusted Contract Price} = \text{BCP} + (\text{LCP} - \text{CPB}) \times \text{CPAF} \times \text{BNR}$$

For example, if the LCP = 354,000 RMB per tonne, the Adjusted Contract Price would be:

$$\$113,170,096 + [(354,000 \text{ RMB per tonne} - 254,000 \text{ RMB per tonne}) \times (\$10/\text{kWh}) / (100,000 \text{ RMB per tonne}) \times 293,289 \text{ kWh}] = \$116,102,986$$

- (c) For a Lithium Carbonate Price below 228,600 RMB per tonne, the Contract Price shall be adjusted as follows:

$$\text{Adjusted Contract Price} = \text{BCP} + (\text{LCP} - \text{CPB}) \times \text{CPAF} \times \text{BNR}$$

For example, if the LCP = 154,000 RMB per tonne, the Adjusted Contract Price would be:

$$\$113,170,096 + [(154,000 \text{ RMB per tonne} - 254,000 \text{ RMB per tonne}) \times (\$10/\text{kWh}) / (100,000 \text{ RMB per tonne}) \times 293,289 \text{ kWh}] = \$110,237,206$$

A tabular representation of these Contract Price adjustment calculations is as follows:

<b>Lithium Carbonate Price (RMB / tonne)</b>	<b>Lithium Carbonate Price movement</b>	<b>Contract Price adjustment</b>	<b>Adjusted Contract Price</b>
254,000	No Change	0	\$113,170,096
228,600 to 279,400	10% + or - movement (deadband)	0	\$113,170,096
354,000	Price has increased by 100,000 RMB / tonne	293,289 kWh x \$10 = \$2,932,890	\$116,102,986
154,000	Price has decreased by 100,000 RMB / tonne	293,289 kWh x -\$10 = -\$2,932,890	\$110,237,206

All other prices and terms of the Contract shall remain unchanged.



**EXHIBIT W**  
**CRITICAL SPARE PARTS LIST**

High Voltage Breaker

Substation Station Service Transformer

Redacted Bates White Phase 1 Evaluation Report

# PNM Exhibit JWH-7

Is contained in the following 8 pages.

# Memorandum

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**To** PNM Resources  
**From** Bates White, LLC  
**Date** July 18, 2023  
**Re** 2026-2028 Generation Resources RFP: Review, Assess, and Report on Phase 1 Evaluation Report (Initial Evaluation)

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## I. Purpose

Bates White, LLC (“Bates White”) was retained by Public Service Company of New Mexico (“PNM”), a wholly owned subsidiary of PNM Resources, Inc., to serve as an Independent Monitor for its 2026-2028 Generation Resources RFP (“RFP”). The RFP was issued on November 3, 2022 and sought commitments to supply up to 500 MW in 2026, up to 400 MW in 2027, and up to 500 MW in 2028 of firm capacity resources to serve PNM’s New Mexico system. Proposals were requested for capacity and energy resources that could guarantee the delivery of new, incremental, firm capacity by or before May 1, 2026, May 1, 2027, or May 1, 2028. Given the limited time available to PNM to complete the RFP and contracting process for May 1, 2026 resources, PNM bifurcated the RFP into two paths, focusing first on the evaluation of resources promising a Guaranteed Start Date of May 1, 2026 or earlier. This memo addresses the evaluation of resources submitted for the May 1, 2026 Guaranteed Start Date.

In this memo, we review and assess PNM’s Phase 1 evaluation for the RFP. The primary document that presents the results of PNM’s evaluation is the “2026-2028 Generation Resources RFP Phase 1 Bid Evaluation Summary For May 1, 2026 Resources (“Phase 1 Report”) received on February 22, 2023. The Phase 1 Report describes the process and results of Phase 1 of the bid evaluation. We also were provided and reviewed PNM’s “Confidential PNM 2026 RFP Bid Summary Document.xls” (“Phase 1 Bid Summary Document”) which contained detailed information about each bid. PNM and Bates White held both written and oral discussions regarding the Phase 1 evaluation.

The purpose of this memo is to provide our assessment of the Phase 1 evaluation. In developing this memo, we consulted (a) the RFP documents as filed, (b) the confidential bid evaluation protocols (“Bid Evaluation Protocols”), (c) the bids, (d) the Phase 1 Bid Summary Document, (e) the Phase 1 Report, and (f) our discussions with PNM evaluators regarding the RFP and Phase 1 evaluation. We apply our own independent assessment of the Phase 1 evaluation criteria, determining if PNM

followed the evaluation protocols finalized in advance of RFP issuance, and identifying any areas with which we might disagree with PNM or require additional clarification.

## II. Analysis

In this section, we provide our analysis of PNM's Phase 1 evaluation results. Overall, we found PNM's results reasonable.

### A. Compliance with RFP, Evaluation Documents

Section 8.2.1 of the RFP states:

The evaluation will be conducted in three phases with "Phase One" being an initial screening of the Proposals for compliance with the RFP minimum requirements (See, e.g., Part 5 and Part 6), for compliance with the Proposal Prerequisites (See Section 1.4), for compliance with the Supplier Risk Security Screening Questions (See Section 3.6), and for proof of an executable plan supporting the proposed Guaranteed Start Date. The Phase One screening process will be performed for each Proposal to determine if all required information has been provided and minimum requirements satisfied. Material deficiencies may disqualify a Proposal from further consideration, and the Respondent will be notified in such event. PNM may reject incomplete or unclear Proposals from further consideration or contact Respondents for clarification, pursuant to Section 8.1 of this RFP.

The Bid Evaluation Protocols, which are non-public, elaborated on the Phase 1 evaluation process, stating:

Proposals will initially be reviewed for completeness. Any missing information identified by the RFP Administration Team or EPC Support Team, as applicable, will be requested from Bidders.

Proposal attributes will be summarized in the Bid comparison tool (Attachment B). Initial observations will be summarized and presented based on the Bid comparison template. Considering the initial review of Proposals, information provided in response to Bidder questions and clarifications, and the trends observed in the Bid comparison, Bidders and/or Proposals may be eliminated from consideration based on the evaluation by the RFP Administration Team (with input from the EPC Support Team regarding EPC Proposals) and

with the Project Manager's approval. Elimination during Phase 1 would be limited to Proposals that do not comply with (i) the Proposal Prerequisites in Section 1.4 of the RFP Instructions to Bidders, (ii) the Supplier Risk Security Screening Questions issued with the RFP, (iii) law regarding the possession of a required contractor's license associated with EPC and BT Proposals (iv) other minimum resource requirements as identified in Sections 4, 5 and 6 of the RFP Instructions to Bidders, or (v) are otherwise incomplete after requesting additional information based on the RFP requirements or (vi) possess significant feasibility or viability concerns as compared to similar Proposals, including consideration of (a) the Bidder's prior history of project performance, (b) the Bidder's prior history of project defaults, or (c) Bidder's lack of experience with the technology at the size and scale proposed. Reasons for elimination will be documented, a Phase 1 Bid evaluation report will be prepared and issued for review by the Independent Evaluator, and Bidders will be notified accordingly at the end of Phase 1.<sup>1</sup>

In our view, PNM conducted the Phase 1 evaluation in a manner that was consistent with the RFP documents, including the non-public evaluation protocols. PNM evaluated each bid for completeness and compliance with the RFP requirements. This included a review of each bid's compliance with the RFP's stated "Proposal Prerequisites."<sup>2</sup> Bids removed from further consideration during the Phase 1 Evaluation process were done for reasons that were consistent with the RFP, as we explain below.

PNM documented its Phase 1 evaluation in the Phase 1 Report, which was shared with Bates White, consistent with the RFP.

## **B. Bids Received**

Bids specifying a May 1, 2026 Guaranteed Start Date (or earlier) were due on January 12, 2023. Bids were received through PNM's secure file transfer bidding platform. Bates White had access to the bidding platform, which allowed bidders to submit their proposals as well as to engage in questions and answers with PNM. The due date for bids specifying Guaranteed Start Dates later than May 1, 2026 came later, but would be submitted on the same bidding platform in the same RFP. Both PNM and Bates White ensured that all bids received were received before the deadline. Two bids (explained below) were late and did not pass Phase 1 of the evaluation.

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<sup>1</sup> Bid Evaluation Protocols, section 6.1.

<sup>2</sup> RFP, Section 1.4.

Twenty-one (21) bidders submitted bids, representing thirty-one (31) projects and a total of fifty-eight (58) bid variants for consideration. The bids represented a variety of technologies, including:

- 25 bids for solar PV + energy storage systems (“ESS”)
- 15 bids for standalone ESS
- 10 bids for standalone solar PV
- 3 bids for demand-side resources (“DSR”)
- 2 bids for standalone wind
- 2 bids for natural gas-fired aeroderivative turbines (“Aero”)
- 1 bid for natural gas-fired reciprocating internal combustion engine (“RICE”)

The bids also included a variety of contractual vehicles, including:

- 35 power purchase agreements (“PPAs”)
- 10 energy storage agreements (“ESAs”)
- 8 engineering, procurement, and construction agreements (“EPC”)
- 3 DSR agreements
- 2 build-transfer agreements (“BT”)

The RFP specified two locational preferences. Projects that were sited either (a) on Navajo Nation lands or (b) in the Central Consolidated School District (“CCSD”) would be preferred in the evaluation.<sup>3</sup> Thirteen (13) bids were received from the CCSD, representing five bidders and five projects. No bids were received on Navajo Nation land.

Table 1 provides a high-level summary of the bids received.

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<sup>3</sup> Bid Evaluation Document, section 1.

**Table 1. Bids Received**

Bid #	Bidder Name	Project Name	Bid Technology	Bid type	Generation Capacity (MW)	Energy Storage Capacity (MW)
53-1			Aero	EPC	39	-
53-2			Aero	EPC	235	-
7-1.1			Solar	PPA	400	-
7-1.2			Solar	PPA	400	-
7-2			Solar	BT	400	-
11-1			Solar	PPA	190	-
18-1			Solar	PPA	50	-
23-1.1			Solar	PPA	200	-
23-1.2			Solar	PPA	175	-
23-1.3			Solar	PPA	150	-
23-1.4			Solar	PPA	100	-
45-1			Wind	PPA	200	-
47-1			Wind	PPA	180	-
16-1			BESS	ESA	-	100
16-2			BESS	ESA	-	50
27-1			Solar	PPA	100	-
35-1			BESS	EPC	-	60
35-2.1			BESS	EPC	-	10
35-2.2			BESS	EPC	-	10
35-2.3			BESS	EPC	-	30
35-2.4			BESS	EPC	-	70
41-1.1			BESS	ESA	-	150
41-1.2			BESS	ESA	-	150
43-1.1			BESS	ESA	-	50
43-1.2			BESS	ESA	-	50
43-2.1			BESS	ESA	-	200
43-2.2			BESS	ESA	-	200
45-1.1			BESS	ESA	-	100
45-1.2			BESS	ESA	-	100
29-1			DSR	DSR	85	-
33-1.1			DSR	DSR	5	-
33-1.2			DSR	DSR	5	-
7-3.1			Solar & BESS	PPA	400	100
7-3.2			Solar & BESS	PPA	400	100
7-4			Solar & BESS	BT	400	100
9-1			Solar & BESS	EPC	100	30
11-2			Solar & BESS	PPA	190	190
12-1			Solar & BESS	PPA	75	38
16-3			Solar & BESS	PPA	90	68
17-1.1			Solar & BESS	PPA	90	50
17-1.2			Solar & BESS	PPA	90	50
17-2.1			Solar & BESS	PPA	90	50
17-2.2			Solar & BESS	PPA	90	50
18-2.1			Solar & BESS	PPA	50	25
18-2.2			Solar & BESS	PPA	50	50
18-3.1			Solar & BESS	PPA	165	50
18-3.2			Solar & BESS	PPA	165	100
22-1			Solar & BESS	PPA	50	24
22-2			Solar & BESS	PPA	50	24
22-3			Solar & BESS	PPA	150	71
22-4			Solar & BESS	PPA	190	90
23-2.1			Solar & BESS	PPA	200	100
23-2.2			Solar & BESS	PPA	175	88
23-2.3			Solar & BESS	PPA	150	75
23-2.4			Solar & BESS	PPA	100	50
25-1			Solar & BESS	PPA	100	100
27-2			Solar & BESS	PPA	100	30
51-1			RICE	PPA	185	-

## C. Phase 1 Evaluation Results

Of the 58 bid variants received, 18 failed to meet the minimum requirements of the RFP and were eliminated by PNM from further evaluation. Details on those eliminations (and our assessment of each) is as follows.

- Bids 7-2, 7-4, 9-1:** Each of these bids failed to demonstrate that the bidder possessed the necessary New Mexico Contractor’s License. The RFP required all EPC and BT bidders to “submit proof of having a valid contractor’s license in accordance with the New Mexico Construction Industries Division.”<sup>4</sup> PNM offered both bidders the chance to cure this deficiency in their respective bids. Neither bidder adequately addressed this deficiency. We agreed with PNM’s exclusion of these bids from further evaluation. Bids 7-2 and 7-4 were the only two BT bids received in the RFP, while bid 9-1 was from [REDACTED].
- Bids 22-3, 22-4:** These bids were submitted after the RFP’s stated deadline for bids and thus were excluded by PNM from further evaluation. Notably, these bids were from [REDACTED]. Bates White agreed with the exclusion of these bids from further evaluation.
- Bids 18-1, 18-2.1, 18-2.2, 22-2, 27-1, 27-2, 41-1.1, 41-1.2, 43-2.1, 43-2.2, 46-1:** Each of these bids did not meet the RFP preference to “be accepted into PNM’s Generator Interconnection Queue in Cluster 13 or earlier.”<sup>5</sup> These bids were in either Cluster 14 or 15. For such bids, the RFP called for “an assessment of the viability of the quoted Guaranteed Start Date by PNM’s transmission team.”<sup>6</sup> In each case, PNM concluded that the bids did not include sufficient justification or documentation that the quoted capacity can be delivered to PNM’s load by the proposed Guaranteed Start Date. Bates White discussed this issue with PNM, seeking to understand why projects in Cluster 14 and 15 would likely fail to reach commercial operations by May 1, 2026. PNM Transmission provided their interconnection study timeline and we agreed that the referenced bids all contained substantial risk in meeting a Guaranteed Start Date of May 1, 2026. As such, we found the exclusion of these bids reasonable. Worth noting is that bids 22-2 and 22-3 were bid by [REDACTED]. Given that each of these bids was eliminated due to the viability of their interconnection schedules relative to the May 1, 2026 date, all such bids were allowed to be resubmitted with a later Guaranteed Start Date for the evaluation of the 2027/2028 bids.

<sup>4</sup> RFP, section 1.4.

<sup>5</sup> RFP, section 1.3.

<sup>6</sup> RFP, section 1.3.



- **Bids 43-1.1, 51-1:** Both projects were eliminated by PNM due to a lack of sufficient justification or documentation that the quoted capacity could be delivered to PNM’s load by the proposed Guaranteed Start Date. We inquired with PNM Transmission regarding these exclusions. For Bid 43-1.1, PNM Transmission provided a detailed explanation of how the bid could not reach commercial operations until at least the fourth quarter of 2025, which was several months later than the bid’s Guaranteed Start Date of May 1, 2025. (The bidder also submitted the same project as a separate bid variant with a Guaranteed Start Date of May 1, 2026—this bid was passed through the Phase 1 evaluation process.) For Bid 51-1, PNM also provided a detailed explanation of the risks associated with this bid’s proposed schedule and why it was unlikely to meet its Guaranteed Start Date of May 1, 2026. Given these explanations, we found that the exclusion of these bids was reasonable.

All other bid variants were passed through the Phase 1 evaluation process to be evaluated in Phase 2. In total, forty (40) bid variants from sixteen (16) bidders representing twenty-one (21) projects passed Phase 1. These included:

- 17 bids for solar PV + ESS
- 10 bids for standalone ESS
- 7 bids for standalone solar PV
- 3 bids for DSR
- 1 bid for standalone wind
- 2 bids for natural gas-fired aeroderivative turbines (“Aero”)
- 0 bids for natural gas-fired RICE

The transaction type for these bid variants breaks down as follows:

- 25 PPAs
- 5 ESAs
- 7 EPCs

- 3 DSR agreements
- 0 BTs

Collectively, the bids that passed Phase 1 included a total of 4,783 MW of generation capacity and 7,467 MWh of energy storage capacity, not accounting for mutual exclusivity. The projects that passed Phase 1 are shown in Table 2 below.

**Table 2. Phase 1 Passing Bids**

Bid #	Bidder Name	Project Name	Bid Technology	Bid type	Generation Capacity (MW)	Energy Storage Capacity (MWh)
53-1			Aero	EPC	39	-
53-2			Aero	EPC	235	-
7-1.1			Solar	PPA	400	-
7-1.2			Solar	PPA	400	-
11-1			Solar	PPA	190	-
23-1.1			Solar	PPA	200	-
23-1.2			Solar	PPA	175	-
23-1.3			Solar	PPA	150	-
23-1.4			Solar	PPA	100	-
47-1			Wind	PPA	180	-
16-1			BESS	ESA	-	100
16-2			BESS	ESA	-	50
35-1			BESS	EPC	-	60
35-2.1			BESS	EPC	-	10
35-2.2			BESS	EPC	-	10
35-2.3			BESS	EPC	-	30
35-2.4			BESS	EPC	-	70
43-1.2			BESS	ESA	-	50
45-1.1			BESS	ESA	-	100
45-1.2			BESS	ESA	-	100
29-1			DSR	DSR	85	-
33-1.1			DSR	DSR	5	-
33-1.2			DSR	DSR	5	-
7-3.1			Solar & BESS	PPA	400	100
7-3.2			Solar & BESS	PPA	400	100
11-2			Solar & BESS	PPA	190	190
12-1			Solar & BESS	PPA	75	38
16-3			Solar & BESS	PPA	90	68
17-1.1			Solar & BESS	PPA	90	50
17-1.2			Solar & BESS	PPA	90	50
17-2.1			Solar & BESS	PPA	90	50
17-2.2			Solar & BESS	PPA	90	50
18-3.1			Solar & BESS	PPA	165	50
18-3.2			Solar & BESS	PPA	165	100
22-1			Solar & BESS	PPA	50	24
23-2.1			Solar & BESS	PPA	200	100
23-2.2			Solar & BESS	PPA	175	88
23-2.3			Solar & BESS	PPA	150	75
23-2.4			Solar & BESS	PPA	100	50
25-1			Solar & BESS	PPA	100	100

Redacted Bates White Phase 2 Evaluation Report

# PNM Exhibit JWH-8

Is contained in the following 26 pages.

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**To** PNM Resources  
**From** Bates White, LLC  
**Date** July 18, 2023 (as updated August 22, 2023)  
**Re** 2026-2028 Generation Resources RFP: Review, Assess, and Report on Phase 2 Evaluation Report

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## Purpose

Bates White, LLC (“Bates White”) was retained by Public Service Company of New Mexico (“PNM”), a wholly owned subsidiary of PNM Resources, Inc., to serve as an Independent Monitor for its 2026-2028 Generation Resources RFP (“RFP”). The RFP was issued on November 3, 2022 and sought the supply of up to 500 MW in 2026, up to 400 MW in 2027, and up to 500 MW in 2028 of firm capacity resources to serve PNM’s New Mexico system. Proposals were requested for capacity and energy resources that could guarantee the delivery of new, incremental, firm capacity by or before May 1, 2026, May 1, 2027, or May 1, 2028. Given the limited time available to PNM to complete the RFP and contracting process for May 1, 2026 resources, PNM bifurcated the RFP into two paths, focusing first on the evaluation of resources promising a Guaranteed Start Date of May 1, 2026 or earlier. This memo addresses the evaluation of resources submitted for the May 1, 2026 Guaranteed Start Date.

In this memo, we review and assess PNM’s Phase 2 evaluation for the RFP. The primary document that presents the results of PNM’s evaluation is the “2026-2028 Generation Resources RFP Phase 2 Bid Evaluation Summary For May 1, 2026 Resources (“Phase 2 Report”), received on March 28, 2023 as an initial draft and revised to a final report released on April 15, 2023. The Phase 2 Report describes the process and results of Phase 2 of the bid evaluation. We also were provided and reviewed PNM’s “Confidential PNM 2026 RFP Bid Summary Document.xls” (“Phase 2 Bid Summary Document”) which contained detailed information about each bid, including updates made following the Phase 1 evaluation. PNM also provided the “bid evaluation matrix,” which scored all bids on both price and non-price factors (“Bid Evaluation Matrix”). PNM and Bates White held both written and oral discussions regarding the Phase 2 evaluation.

The purpose of this memo is to provide our assessment of the Phase 2 evaluation. In developing this memo, we consulted (a) the RFP documents as filed, (b) the confidential bid evaluation protocols (“Bid Evaluation Protocols”), (c) the bids, (d) the Phase 2 Bid Summary Document, (e) the Phase 2 Report, (f) the Bid Evaluation Matrix, (g) a transmission evaluation spreadsheet provided by PNM

Transmission, and (h) our discussions with PNM evaluators regarding the RFP and Phase 2 evaluation. We apply our own independent assessment of the Phase 2 evaluation criteria, determining if PNM followed the evaluation protocols finalized in advance of RFP issuance, and identifying any areas with which we might disagree with PNM or require additional clarification.

## 1. Analysis

In this section, we provide our analysis of PNM's Phase 2 evaluation results. Overall, we found PNM's results reasonable.

### A. Compliance with RFP, Evaluation Documents

Section 8.2.2 of the RFP explains the Phase 2 evaluation process. The purpose of Phase 2 is to select a shortlist of bids from those that passed the Phase 1 evaluation. PNM's approach was to establish a shortlist consisting of "best-in-class" bids of each technology offered in response to the RFP. The Phase 2 evaluation ranked bids based on both price and non-price evaluation factors. Accordingly, Phase 2 included both a Price Evaluation and Non-Price Evaluation. The Price Evaluation is as follows:

PNM will rank all Proposals from a cost standpoint. The price screening consists of measuring each Proposal's total delivered cost of energy, including:

- (a) Capital costs and/or capacity costs;
- (b) Fixed operation and maintenance costs;
- (c) Variable production costs;
- (d) Fuel and water costs;
- (e) Transmission costs, including third party wheeling;
- (f) Operational costs, including system regulation requirements as a result of the project;
- (g) Other system benefits (including accounting for availability of RECs) or costs (including impact to system losses);
- (h) Opportunities for marketing of excess energy;
- (i) Any additional costs that are required, but not provided for in the Proposal; and

(j) Financial implications of accounting and tax treatment.<sup>1</sup>

The Non-Price Evaluation, which acts to measure “the viability of the project and the Respondent’s ability to deliver the project as proposed,” included the following factors:

A. Project viability including:

- a) Project development and permitting status, including any potential for delay as the result of a Respondent’s need for regulatory actions or approvals or for permitting, land acquisition, licensing, transmission interconnection, or transmission service;
- b) Commercial viability, maintainability, and maturity of technology proposed at the scale quoted;
- c) Detailed project critical path schedule identifying all important development elements, environmental permit milestones and their timing;
- d) Respondent’s experience with technology and contract structure proposed; and
- e) Viability of performance and capacity quoted.

B. Contribution to PNM’s overall system reliability. (i.e. the project’s operational control or lack thereof and its effect on PNM’s reliability metrics);

C. Project Employment plan – measuring Respondent’s intention for employment of local, New Mexico work force, minority and woman-owned businesses, and apprentices for the construction of the facilities;

D. Environmental and siting plan – An assessment of the emissions profile, environmental footprint and overall environmental feasibility for each project, site, access, permits, and all necessary right of ways; and

E. Respondent’s OSHA Safety records.<sup>2</sup>

The Bid Evaluation Protocols, which is non-public, elaborated on the Phase 2 evaluation process. It stated that, if necessary, “additional Bidder questions and clarifications will be issued by the RFP Administration Team considering input and feedback from the EPC Support Team.”<sup>3</sup> PNM’s subject matter experts would continue to be involved in the evaluation, as required.<sup>4</sup> The shortlist “will be established based on total evaluated delivered cost of energy and total evaluated delivered cost of capacity as well as the overall viability of the Proposal with respect to its ability to achieve

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<sup>1</sup> RFP, section 8.2.2.1.

<sup>2</sup> RFP, section 8.2.2.2.

<sup>3</sup> Bid Evaluation Protocols, section 6.2.

<sup>4</sup> Bid Evaluation Protocols, section 6.2.

commercial operation by the proposed [Guaranteed Start Date]” and compliance with New Mexico laws and regulations.<sup>5</sup>

The Evaluation Protocols also explained that “the shortlist should generally maintain offerings in each technology category with sufficient capacity to deliver the full requested capacity, if available,” and named several of those technologies (e.g., “solar generation,” “energy storage,” etc.).<sup>6</sup> The Evaluation Protocols stated that the shortlist will retain separate best-in-class generation projects on Navajo Nation lands and Central Consolidated School District (“CCSD”) lands.<sup>7</sup>

In our view, PNM conducted the Phase 2 evaluation in a manner that was consistent with the RFP documents, including the non-public Evaluation Protocols. PNM evaluated all bids that passed the Phase 1 evaluation. This included both a Price Evaluation and Non-Price Evaluation of all remaining bids. PNM separated the bids into technology categories that were consistent with the RFP and Evaluation Protocols, including (a) solar photovoltaics (“PV”), (b) solar PV plus energy storage systems (“ESS”), (c) standalone ESS, (d) demand-side resources (“DSR”), (e) wind, and (f) natural gas-fired aeroderivative turbines (“Aero”). PNM also established a separate category for the shortlist containing bids from the CCSD; no projects were bid into the RFP on Navajo Nation lands, so no separate category was developed for such projects. PNM calculated for all bids, as applicable, the levelized cost of energy (“LCOE”) and levelized cost of capacity (“LCOC”), as well as “risk-adjusted” LCOEs and LCOCs, as applicable, which was intended to “monetize” each Proposal’s inability to achieve a perfect non-price evaluation score for evaluation factors associated with deliverability of the project.<sup>8</sup> Ultimately, while PNM calculated risk-adjusted LCOEs and LCOCs (as applicable) for the bids, PNM relied on the non-risk adjusted LCOE and LCOCs in its Phase 2 evaluation.

[REDACTED]

[REDACTED]

<sup>5</sup> Bid Evaluation Protocols, section 6.2.

<sup>6</sup> Bid Evaluation Protocols, section 6.2.

<sup>7</sup> Bid Evaluation Protocols, section 6.2.

<sup>8</sup> See Section 4.1.3 of the Bid Evaluation Protocols.

<sup>9</sup> [REDACTED]

[REDACTED]

PNM documented its Phase 2 evaluation in the Phase 2 Report, which was shared with Bates White, consistent with the RFP. Bates White independently verified all LCOE and LCOC calculations, as well as the determination and calculation of the Price, Non-Price, and Total scores in the Bid Evaluation Matrix.<sup>15</sup> We provided PNM with direct written feedback including numerous questions and comments on PNM's Phase 2 evaluation. PNM provided Bates White with written responses to our questions and comments. We noted that the shortlist originally proposed by PNM contained only 310 MW of ESS capacity. Subsequent to the issue of the draft Phase 2 report, PNM expanded the shortlist to include the two next highest scoring ESS bids (35-2.3 and 35-2.4) on the shortlist, following the establishment of clearly defined sites applicable to these two projects. This increased the total ESS capacity to 380 MW, bringing it closer to the 500 MW maximum capacity target stated in the RFP. (No other bids that passed Phase 1 and were not otherwise reasonably eliminated from shortlist consideration were available to expand the shortlist any further.)

Bids removed from further consideration during the Phase 2 Evaluation process were done for reasons that were consistent with the RFP, as we explain below.

10 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

<sup>15</sup> We note that PNM developed two matrices, one for EPC bids and one for all other bids (e.g., "market" bids). For simplicity, we refer to just one single Bid Evaluation Matrix.



## B. Phase 2 Evaluation Results

In Phase 1, PNM selected forty (40) bids from sixteen (16) bidders representing twenty-one (21) projects. These included:

- 17 bids for solar PV + ESS
- 10 bids for standalone ESS
- 7 bids for standalone solar PV
- 3 bids for DSR
- 1 bid for standalone wind
- 2 bids for natural gas-fired aeroderivative turbines (“Aero”)
- 0 bids for natural gas-fired RICE

The contract types for these offers are as follows:

- 25 PPAs
- 5 ESAs
- 7 EPCs
- 3 DSR agreements
- 0 BTs

Collectively, the bids that passed Phase 1 included a total of 4,783 MW of generation capacity and 7,467 MWh of energy storage capacity. When accounting for the maximum capacities available at each site (i.e., accounting for mutual exclusivity of bids), the bids that passed Phase 1 totaled 2,693 MW of generation capacity and 4,997 MWh of storage capacity. The projects that were evaluated in Phase 2 are shown in Table 1 below.

**Table 1. Bids Evaluated in Phase 2**

Bid #	Bidder Name	Project Name	Bid Technology	Bid type	Generation Capacity (MW)	Energy Storage Capacity (MW)
53-1			Aero	EPC	39	-
53-2			Aero	EPC	235	-
7-1.1			Solar	PPA	400	-
7-1.2			Solar	PPA	400	-
11-1			Solar	PPA	190	-
23-1.1			Solar	PPA	200	-
23-1.2			Solar	PPA	175	-
23-1.3			Solar	PPA	150	-
23-1.4			Solar	PPA	100	-
47-1			Wind	PPA	180	-
16-1			BESS	ESA	-	100
16-2			BESS	ESA	-	50
35-1			BESS	EPC	-	60
35-2.1			BESS	EPC	-	10
35-2.2			BESS	EPC	-	10
35-2.3			BESS	EPC	-	30
35-2.4			BESS	EPC	-	70
43-1.2			BESS	ESA	-	50
45-1.1			BESS	ESA	-	100
45-1.2			BESS	ESA	-	100
29-1			DSR	DSR	85	-
33-1.1			DSR	DSR	5	-
33-1.2			DSR	DSR	5	-
7-3.1			Solar & BESS	PPA	400	100
7-3.2			Solar & BESS	PPA	400	100
11-2			Solar & BESS	PPA	190	190
12-1			Solar & BESS	PPA	75	38
16-3			Solar & BESS	PPA	90	68
17-1.1			Solar & BESS	PPA	90	50
17-1.2			Solar & BESS	PPA	90	50
17-2.1			Solar & BESS	PPA	90	50
17-2.2			Solar & BESS	PPA	90	50
18-3.1			Solar & BESS	PPA	165	50
18-3.2			Solar & BESS	PPA	100	100
22-1			Solar & BESS	PPA	50	24
23-2.1			Solar & BESS	PPA	200	100
23-2.2			Solar & BESS	PPA	175	88
23-2.3			Solar & BESS	PPA	150	75
23-2.4			Solar & BESS	PPA	100	50
25-1			Solar & BESS	PPA	100	100

In our view, PNM conducted the Phase 2 evaluation in a manner that was consistent with the RFP documents, including the non-public evaluation protocols. PNM assessed all bids that passed the Phase 1 evaluation and assessed each via PNM subject matter expert feedback, lifecycle financial analysis, an assessment of total delivered cost, and viability of delivering the project within the proposed timeline. Resources were evaluated in Phase 2 using the weighted scoring matrix identified in the RFP documents.

PNM solicited and received clarifying information from bidders in carrying out the Phase 2 evaluation and shortlist development. All observed communications were conducted through the RFP website portal. PNM's subject matter experts, including EPC and transmission experts, provided feedback and input into the evaluation.

PNM's shortlist represents the "best-in-class" proposals of each technology offered in response to the RFP. PNM's shortlist includes several bids in CCSD. (No bids were received from projects to be located on Navajo Nation land.)

The shortlist was unable to include sufficient resources in all available technologies to fill the quantity targets. However, this was due a lack of viable bids across all technologies. The shortlist does not include any projects with known fatal flaws and maintained viable bids that offered the most attractive delivered cost of energy and capacity.

Bids were eliminated for two primary reasons. First, many were eliminated due to uncompetitive pricing, consistent with the RFP and bid evaluation protocols. Second, many bids were eliminated due to estimated interconnection in-service dates that were materially beyond the RFP stated COD deadline of May 1, 2026. As we explain below, we found PNM's decisions reasonable and found they followed the evaluation documents.

Consistent with the RFP design and PNM's Phase 2 evaluation, we address the bids selected (and unselected) by technology category below.

## **1. Solar PV Bids**

Seven bid variants from three bidders representing three projects were evaluated in Phase 2. Table 2 below shows the solar PV bids, Short List selections (in white), and unselected bids (in gray). Bids 7-1.1 and 7-1.2 were unselected due to feedback from PNM Transmission that the network upgrades necessary to reliably interconnect this project would not be completed before May 1, 2026. Specifically, PNM Transmission estimated that the project would not meet its interconnection in-

service date until three years after the “notice to proceed” (“NTP”) date, which is the date on which PNM expects to receive a final, non-appealable approval of projects from the New Mexico PRC.<sup>16</sup> Given that PNM expects the NTP and PRC approval date to be June 30, 2024, the project would not be able to meet a May 1, 2026 Guaranteed Start Date. Bid 11-1 was also eliminated, for two reasons. First, PNM had concerns with the bid’s schedule. The bidder requested an NTP date (including PRC approval) of September 30, 2023 in order to meet the bid-in Guaranteed Start Date, citing “long-lead times for some major equipment” associated with the project.<sup>17</sup> Second, the project’s bid price was considerably higher than all other solar PV bids. At an LCOE of \$ [REDACTED]/MWh, the bid was 61% more expensive than the marginal (i.e., most expensive selected) solar PV bid and 62% higher than the simple average bid price of all other solar PV bids received. PNM selected four solar bids from a single bidder and a single project, [REDACTED] project (bid 23, including four total variants). Bates White agreed with the solar PV shortlist selections and unselected bids.

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<sup>16</sup> RFP, section 1.4.

<sup>17</sup> [REDACTED] January 20, 2023 response to question 3 from PNM.

**Table 2. Solar PV Bids Evaluated in Phase 2 (with Short List selections in white)**

Bid #	Bidder Name	Project Name	Bid Technology	Bid type	Generation Capacity (MW)	Energy Storage Capacity (MW)	Accredited capacity (MW)	LCOE (\$/MWh)	LCOC (\$/MW)	Risk-Adjusted LCOE (\$/MWh)	Risk-Adjusted LCOC (\$/MW)	Price Score (LCOE)	Price Score (LCOC)	Non-Price Score	Total Score - LCOE	Total Score - LCOC
23-1.1			Solar	PPA	200	-	3.28									
23-1.2			Solar	PPA	175	-	2.87									
23-1.3			Solar	PPA	150	-	2.46									
23-1.4			Solar	PPA	100	-	1.64									
7-1.1			Solar	PPA	400	-	6.56									
7-1.2			Solar	PPA	400	-	6.56			Not viable by May 2026 due to interconnection schedule/network upgrade needs						
11-1			Solar	PPA	190	-	3.12			Not viable by May 2026, unreasonably high cost						

## 2. Solar PV + ESS Bids

Seventeen bid variants from nine bidders representing eleven projects were evaluated in Phase 2. Table 3 below shows the solar PV + ESS bids, Short List selections (in white), and unselected bids (in gray).<sup>18</sup> Several bids went unselected:

- Bids 7-3.1 and 7-3.2 were not selected due to feedback from PNM Transmission that the network upgrades necessary to reliably interconnect this project would not be completed before May 1, 2026. Specifically, PNM Transmission estimated that the project would not meet its interconnection in-service date until three years after the NTP date, which is the date on which PNM expects to receive a final, non-appealable approval of projects from the New Mexico PRC.<sup>19</sup> Given that PNM expects the NTP and PRC approval date to be June 30, 2024, the project would not be able to meet a May 1, 2026 Guaranteed Start Date.
- Bid 11-2 was also eliminated, for two reasons. First, PNM had concerns with the bid's schedule. The bidder requested an NTP date (including PRC approval) of September 30, 2023 in order to meet the bid-in Guaranteed Start Date, citing "long-lead times for some major equipment" associated with the project.<sup>20</sup> Second, the project's bid price was considerably higher than all other solar PV bids. At an LCOE of \$ [REDACTED] /MWh, the bid was 265% more expensive than the marginal solar PV + ESS bid. Its LCOC (\$ [REDACTED] MW) was 112% more expensive than the marginal solar PV + ESS bid.
- Bids 17-1 and 17-2 were not selected due to feedback from PNM Transmission that the network upgrades necessary to reliably interconnect this project would not be completed before May 1, 2026. Specifically, PNM Transmission estimated that the project would not meet its interconnection in-service date until five years after the NTP date. Given that PNM expects the NTP and PRC approval date to be June 30, 2024, the project would not be able to meet a May 1, 2026 Guaranteed Start Date.
- Bid 12-1 was not selected for three stated reasons by PNM: (1) unfavorable commercial terms, (2) limited team experience, and (3) a challenged schedule in which the estimated commercial operations date is the same as the Guaranteed Start Date, suggesting no contingency or margin of error in the bidder's schedule. Bates White noted to PNM the attractiveness of this bid's pricing and questioned why this bid was not included on the

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<sup>18</sup> The table shows most bids as broken down by their solar PV (generation) component and ESS (storage) component.

<sup>19</sup> RFP, section 1.4.

<sup>20</sup> [REDACTED] January 20, 2023 response to question 3 from PNM.

- shortlist. PNM explained that it considered these three issues as contributing to the questionability of the “overall viability of the Proposal with respect to its ability to achieve commercial operation by the required Guaranteed Start Date,” which is a primary objective of the Phase 2 evaluation as identified in the RFP. PNM explained that the Bidder’s proposed commercial terms were far from those requested in the Form Agreement as well as any others recently contracted by PNM suggesting the potential for an extended contract negotiation. PNM noted that the key team member’s largest solar project is 10 MW with no experience in New Mexico or with Investor-Owned Utilities and the request for a release in 2023 and an estimated commercial operations date on the same date as the Guaranteed Start Date represents a questionable project schedule with little to no margin for an RFP that is focused on the most viable projects to support the requested Guaranteed Start Date. It should also be noted that Bid 12-1 also scored lower than all other shortlisted solar PV + ESS bids.
- Bid 16-3 went unselected as well. PNM noted that this bid was not cost competitive and also was subject to an increased risk of curtailment given that it would be co-located with another resource. Bid 16-3 was among the most expensive solar PV + ESS bids evaluated on both an LCOC and LCOE basis. Bid 16-3 would also be placed behind the interconnection of existing wind projects that currently fill the interconnection capacity. Bid 16-3 would be secondary to the export of wind generation from the site. As such, PNM claimed it would be difficult to forecast the ability to fully utilize the wind, solar, and storage projects to the extent that PNM would desire to dispatch these resources.
  - Bids 17-2.1 and 17-2.2 were two bid variants involving the same project, with 17-2.1 having a first-year bid price that would be escalated a [REDACTED] year during the contract term and 17-2.2 being a non-escalated price option. The non-escalated bid was ranked [REDACTED] than other unselected bids (12-1 and 16-3). PNM also had concerns associated with project viability related to this bidder’s experience in delivering similar projects. Specifically, the bidder had limited experience, particularly in the U.S., in delivering similarly-sized solar PV + BESS projects as the 90 MW solar PV + 200 MWh ESS [REDACTED] project proposed here. The bidder acknowledged through Q&A with PNM that the “two most similar projects developed and sold and that are currently operational are [REDACTED] [REDACTED]”<sup>21</sup>.
  - Bid 22-1, an [REDACTED] sponsored by [REDACTED], went unselected due to its uncompetitive price offer and concerns about the project’s schedule. Bid 22-1 was the [REDACTED] scoring solar PV + ESS bid on an LCOE basis and was outperformed by all shortlisted offers on an

<sup>21</sup> [REDACTED] January 20, 2023 response to question 29 from PNM.

LCOC basis except bid 18-3. Moreover, the bidder specified an expected commercial operations date one month prior to its Guaranteed Start Date; when asked if the bidder would be willing to specify an earlier expected commercial operations date to increase the duration between these milestones in a manner more consistent with the RFP Form Agreements (Appendix A-1 and Appendix B-2), the bidder stated that due to “equipment lead times,” they “would not be comfortable making this date early unless NTP and NMPRC approval came earlier than June 30, 2024.”<sup>22</sup>

PNM thus selected seven solar PV + ESS bids from three bidders representing three projects: (1) [REDACTED] project, with 165 MW of solar PV plus 50 MW ESS (18-3.1) or 100 MW ESS (18-3.2), (2) [REDACTED] project, with between 100 MW and 200 MW of solar PV plus 50 MW to 100 MW of ESS across four bid variants (23-2.1 through 23-2.4), and (3) [REDACTED] 100 MW solar PV plus 100 MW ESS [REDACTED] project (25-1). Each of the selected bids outscored the unselected bids.

Collectively, these projects offer a maximum total of 465 MW of solar PV, 300 MW of ESS capacity, and 258.3 MW of accredited capacity. During our review of PNM’s proposed Phase 2 results, Bates White noted to PNM that these capacity totals do not meet the maximum total capacity being sought in the RFP. We suggested reconsideration of bids 16-3 and 12-1. PNM responded with reasonable concerns about these two bids, which are explained above. Ultimately, Bates White agreed with the solar PV + ESS shortlist selections and unselected bids.

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<sup>22</sup> [REDACTED] January 20, 2023 response to question 1 from PNM.



Memorandum

**Table 3. Solar PV + ESS Bids Evaluated in Phase 2 (with Short List selections in white)**

Bid #	Bidder Name	Project Name	Bid Technology	Bid type	Generation Capacity (MW)	Energy Storage Capacity (MW)	Accredited capacity (MW)	LCOE (\$/MWh)	LCOC (\$/MW)	Risk-Adjusted LCOE (\$/MWh)	Risk-Adjusted LCOC (\$/MW)	Price Score (LCOE)	Price Score (LCOC)	Non-Price Score	Total Score - LCOE	Total Score - LCOC
18-3.1			Solar & BESS	PPA	165	50	44.89									
18-3.1S			Solar & BESS	PPA	165	-	2.71									
18-3.1B			Solar & BESS	PPA	-	50	42.18									
18-3.2			Solar & BESS	PFA	165	100	86.27									
18-3.2S			Solar & BESS	PPA	165	-	2.71									
18-3.2B			Solar & BESS	PPA	-	100	83.56									
23-2.1			Solar & BESS	PPA	200	100	86.85									
23-2.1S			Solar & BESS	PPA	200	-	3.28									
23-2.1B			Solar & BESS	PFA	-	100	83.56									
23-2.2			Solar & BESS	PPA	175	88	76.39									
23-2.2S			Solar & BESS	PPA	175	-	2.87									
23-2.2B			Solar & BESS	PPA	-	88	73.52									
23-2.3			Solar & BESS	PPA	150	75	65.73									
23-2.3S			Solar & BESS	PPA	150	-	2.46									
23-2.3B			Solar & BESS	PPA	-	75	63.27									
23-2.4			Solar & BESS	PPA	100	50	43.82									
23-2.4S			Solar & BESS	PPA	100	-	1.64									
23-2.4B			Solar & BESS	PPA	-	50	42.18									
25-1			Solar & BESS	PPA	100	100	85.21									
25-1S			Solar & BESS	PPA	100	-	1.64									
25-1B			Solar & BESS	PPA	-	100	83.56									
12-1			Solar & BESS	PPA	75	38	32.87									
12-1S			Solar & BESS	PPA	75	-	1.23									
12-1B			Solar & BESS	PPA	-	38	31.64									
10-3			Solar & BESS	PPA	90	68	58.84									
16-3S			Solar & BESS	PPA	90	-	1.48									
16-3B			Solar & BESS	PPA	-	68	57.36									
17-2.2			Solar & BESS	PPA	90	50	43.66									
17-2.2S			Solar & BESS	PPA	90	-	1.48									
17-2.2B			Solar & BESS	PPA	-	50	42.18									
22-1			Solar & BESS	PPA	50	24	20.90									
22-1S			Solar & BESS	PPA	50	-	0.82									
22-1B			Solar & BESS	PPA	-	24	20.08									
7-3.1			Solar & BESS	PPA	400	100	110.48									
7-3.2			Solar & BESS	PPA	400	100	110.48									Not viable by May 2026 due to interconnection schedule/network upgrade needs
11-2			Solar & BESS	PPA	190	190	168.99									Cost, schedule
17-1.1			Solar & BESS	PPA	90	50	48.23									Not viable by May 2026 due to interconnection schedule/network upgrade needs
17-1.2			Solar & BESS	PPA	90	50	48.23									
17-2.1			Solar & BESS	PPA	90	50	48.23									More expensive than fixed price option above

### 3. Standalone ESS Bids

Ten bid variants from four bidders representing six projects were evaluated in Phase 2. Five bids representing two projects were EPC bids, with the remainder of the bids offered under an ESA contract structure. Table 4 below shows the standalone ESS bids, Short List selections (in white), and unselected bids (in gray). Four bid variants went unselected:

- 43-1.2, the [REDACTED] 50 MW/200 MWh ESS project bid in by [REDACTED], was unselected due to a prior default history associated with the project. Specifically, a version of the project had previously been selected by PNM in a solicitation process, but [REDACTED] failed to deliver the project at the contracted price, instead asking for significant price increases. PNM ultimately terminated the agreement with [REDACTED]. PNM considered this prior lack of performance to be a fatal flaw that led to a low confidence in the bidder's ability to deliver the project on time. We note that the RFP did not specifically identify a prior default or lack of performance as a threshold or eligibility requirement, and indeed this bid passed Phase 1 of the evaluation when such screens were applied. PNM relied instead upon a general lack of confidence in the bidder's ability to deliver on its project as bid given that the bidder defaulted on a contract for an ESS project at this very site less than a year ago. We cannot say this is an unreasonable decision, though it may be preferable for PNM to better specify the impact of prior underperformance or defaults in the evaluation process in future RFPs. We also note that the bid had a [REDACTED] LCOC and had a lower total score than the short-listed ESS bids.
- 35-2.1 and 35-2.2 were two 10 MW variants of [REDACTED]'s EPC bids at the [REDACTED] site. (Two other bid variants of this project – 30 MW and 70 MW, (35-2.3 and 35-2.4) respectively, which would add ESS to existing PNM sites, including potentially Santolina – were selected.) PNM explained that it was choosing to add the larger two bid variants to the shortlist since they offered lower prices. Bid variant 35-2.2, in particular, was more expensive ([REDACTED]/MW LCOC) than the other two bid variants (\$[REDACTED]/MW-\$[REDACTED]/MW LCOC). PNM originally planned to not select any of these four variants for the shortlist; Bates White noted that PNM's preliminary shortlist for this technology category fell well short of the maximum target capacity. However, following the establishment of clear definitions for the applicable sites, PNM indicated that it would pass these two variants to the shortlist, adding up to 70 MW of additional potential ESS capacity to the shortlist.
- 45-1.2 is one of two bid variants offered by [REDACTED] for its [REDACTED] storage project. This variant is identical with bid 45-1.1, which was selected for the shortlist, but for its use of

price escalation. PNM opted to go forward with the non-escalated price offer variant for this bid.

PNM thus selected six bids from three bidders representing five projects: (1) [REDACTED]'s 100 MW/400MWh [REDACTED] project (16-1), (2) [REDACTED]'s 50 MW/200 MWh [REDACTED] project (16-2), (3) [REDACTED]'s 60 MW/240 MWh [REDACTED] project (EPC, 35-1), (4) [REDACTED]'s [REDACTED] project (30 MW/120 MWh (35-2.3) and 70 MW/280 MWh (35-2.4) (EPC)), and (5) [REDACTED]'s 100 MW/400 MWh [REDACTED] project (45-1.1).

Collectively, these projects offer a maximum total of 380 MW/1,520 MWh of ESS capacity and 319.0 MW of accredited capacity. As noted above, during our review of PNM's proposed Phase 2 results, Bates White noted to PNM that these capacity totals do not meet the maximum total capacity being sought in the RFP. PNM added bids 35-2.3 and 35-2.4 in response to our review. Ultimately, Bates White agreed with the standalone ESS shortlist selections and unselected bids.

**Table 4. Standalone ESS Bids Evaluated in Phase 2 (with Short List selections in white)**

Bid #	Bidder Name	Project Name	Bid Technology	Bid type	Generation Capacity (MW)	Energy Storage Capacity (MW)	Accredited capacity (MW)	LCOE (\$/MWh)	LCOC (\$/MW)	Risk-Adjusted LCOE (\$/MWh)	Risk-Adjusted LCOC (\$/MW)	Price Score (LCOE)	Price Score (LCOC)	Non-Price Score	Total Score - LCOE	Total Score - LCOC
16-1			BESS	ESA	-	100	83.56									
16-2			BESS	ESA	-	50	42.18									
35-1			BESS	EPC	-	60	50.62									
45-1.1			BESS	ESA	-	100	83.56									
35-2.3			BESS	EPC	-	30	25.31									
35-2.4			BESS	EPC	-	70	59.05									
43-1.2			BESS	ESA	-	50	42.18									
35-2.1			BESS	EPC	-	10	8.44									
35-2.2			BESS	EPC	-	10	8.62									
45-1.2			BESS	ESA	-	100	83.56									
											Not selected due to superiority of 45-1.1					

#### 4. DSR Bids

Three bid variants from two bidders representing two projects were evaluated in Phase 2. Table 5 below shows the standalone DSR bids, Short List selections (in white), and unselected bids (in gray). No bids were selected for the shortlist.

- Bid 29-1 was unselected for two primary reasons. First, the bidder did not provide an offer of firm capacity, as solicited by the RFP.<sup>23</sup> The bidder acknowledged that it “cannot provide a guaranteed firm capacity on an annual timescale, as there are many interdependencies in program design for which we would require PNM input and real world customer feedback, as well as weather/climate dependencies.”<sup>24</sup> [REDACTED] instead proposed a “pay-for-performance model in which PNM only pays for the actual capacity that is delivered.”<sup>25</sup> While such an approach may have value, the RFP was clear in soliciting firm capacity where bidders provide availability guarantees over the life of the contract. [REDACTED] did not do that here. Second, PNM noted that it had concerns with the viability of the quantity of DSR resources proposed in the bid. [REDACTED]’s forecast of its customer assets was based on historical observations, similar-sized utilities, and information from its vendor partners. In all, [REDACTED] was assuming 176,000 residential participants and 150 commercial and industrial participants. In our view, the lack of an offer of firm capacity – the product being procured in this RFP<sup>26</sup> – represents sufficient grounds for not selecting this bid for the shortlist.
- Bids 33-1.1 and 33-1.2, which were bid variants of a [REDACTED] MW DSR resource that differed only in contract term length (12 years vs. 20 years), also went unselected. PNM’s primary reason for this was its high offer price, which translated to LCOCs of \$ [REDACTED] /MW (33-1.1) and \$ [REDACTED] /MW (33-1.2). These high prices made it highly unlikely that the bids could be cost effective, as required by the RFP.<sup>27</sup> PNM also noted that the availability of the resource as bid would be limited. The resource would require a 10-minute notice period to be called upon,

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<sup>23</sup> RFP, sections 1.3, 5.5.

<sup>24</sup> [REDACTED] January 20, 2023 response to question 14 from PNM.

<sup>25</sup> [REDACTED] January 20, 2023 response to question 14 from PNM.

<sup>26</sup> We note that the RFP is not always 100% clear on this issue. See, for example, Part 4 (“Types of Eligible Proposals”), which states in relevant part when describing the “types of Proposals [that] are eligible for consideration under this RFP”: “Proposals to sell energy, capacity, and/or ancillary services...” Future PNM RFPs should remove any ambiguity about the product being procured. Here, we see the clear language of sections 1.2, 1.3, and 5.5 as clearly identifying the product as firm capacity.

<sup>27</sup> RFP, section 1.2, Part 3.

would not provide any ancillary services, and may be limited when customer assets are providing backup power to customers in the event of a grid outage.<sup>28</sup>

As such, PNM advanced no DSR bids to the shortlist. We found this result reasonable, given the discussion above.

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<sup>28</sup> [REDACTED] January 20, 2023 response to question 7 from PNM.

**Table 5. DSR Bids Evaluated in Phase 2 (none selected for Short List)**

Bid #	Bidder Name	Project Name	Bid Technology	Bid type	Generation Capacity (MW)	Energy Storage Capacity (MW)	Accredited capacity (MW)	LCOE (\$/MWh)	LCOC (\$/MW)	Risk-Adjusted LCOE (\$/MWh)	Risk-Adjusted LCOC (\$/MW)	Price Score (LCOE)	Price Score (LCOC)	Non-Price Score	Total Score - LCOE	Total Score - LCOC
33-1.2			DSR	DSR	5	-	1.16									
29-1			DSR	DSR	85	-	TBD									
33-1.1			DSR	DSR	5	-	1.16									

## 5. Wind Bids

One wind bid was evaluated in Phase 2, the 180 MW [REDACTED] project from [REDACTED] (47-1). Table 6 below shows the lone wind bid evaluated, with Short List selections (in white—none selected), and unselected bids (in gray).

Bid 47-1 went unselected due to feedback from PNM Transmission, which could not conclude that the bid could meet its Guaranteed Start Date. The [REDACTED] project would be located in [REDACTED] and would interconnect to a 48-mile, 345 kV line that will interconnect to a 345 kV/115kV [REDACTED] Substation, located adjacent to and interconnecting with the [REDACTED], which is owned and operated by [REDACTED]. From there, the interconnection extends an additional 66 miles on another segment of the [REDACTED] (115 kV) where it will ultimately connect at the [REDACTED] substation near [REDACTED]. PNM could not determine a credible estimate for the estimated interconnection in-service date or a date by which PNM would need to provide a notice to proceed to [REDACTED]. PNM Transmission explained that it would need to know the timing of the non-PNM interconnection facilities to develop its estimate of the PNM interconnection facilities needed to facilitate the project. PNM did note that the project will need significant transmission upgrades, including a 345 kV/115 kV transformer, which will take three years. PNM Transmission also noted that the project's interconnection study is over five years old and so any cost and construction estimates therein would have to be revisited based on current market prices and procurement times. We agreed that the project contained above normal risk that harmed its viability by its Guaranteed Start Date of May 1, 2026 and that its exclusion was reasonable, given the importance of PNM securing firm capacity by that date.



**Table 6. Wind Bids Evaluated in Phase 2 (none selected for Short List)**

Bid #	Bidder Name	Project Name	Bid Technology	Bid type	Generation Capacity (MW)	Energy Storage Capacity (MW)	Accredited capacity (MW)	LCOE (\$/MWh)	LCOC (\$/MW)	Risk-Adjusted LCOE (\$/MWh)	Risk-Adjusted LCOC (\$/MW)	Price Score (LCOE)	Price Score (LCOC)	Non-Price Score	Total Score - LCOE	Total Score - LCOC
47-1			Wind	PPA	180	-	20.01			Not viable by May 2026 due to interconnection schedule/network upgrade needs						

## 6. Gas Aero Bids

Two bid variants (both EPC) from one bidder representing two projects were evaluated in Phase 2. Table 7 below shows the gas-fired aeroderivative turbine bids, Short List selections (in white), and unselected bids (in gray). One bid was selected for the shortlist.

For the Phase 2 shortlist, PNM selected bid 53-1 only, a 39 MW project that featured an LM6000 unit at [REDACTED]. In Phase 3, after the Phase 2 selections for the shortlist had been finalized, PNM explained that it would not be pursuing any new natural gas-fired projects for the shortlist “in an effort to ensure a timely approval of the resources and an ability to support the 5/1/2026 [Guaranteed Start Date].”<sup>29</sup> PNM sees regulatory risk associated with incremental gas-fired generation capacity additions, and at minimum that receiving regulatory approval of such projects will take longer than a portfolio of projects that does not include gas. This extra approval time and overall regulatory risk make gas-fired projects, including 53-1 and 53-2, riskier and difficult to justify for inclusion on the shortlist, according to PNM. We cannot know or predict the outcome or regulatory review duration of a gas-fired resource, but we acknowledge that this risk exists and has no evidence to suggest PNM’s position is anything but within the bounds of reasonableness. As such, we did not object to PNM’s decision to not include any gas-fired aero bids in the shortlist.<sup>30</sup>

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<sup>29</sup> PNM’s March 28, 2023 email to Bates White.

<sup>30</sup> We note, too, that bid 53-2 was not originally selected for shortlist inclusion. This project featured installation of six LM6000s at [REDACTED] totaling 235 MW. This project had other schedule and permitting risks, including securing air permits and installation of a new natural gas lateral pipeline.

**Table 7. Gas Aero Bids Evaluated in Phase 2**

Bid #	Bidder Name	Project Name	Bid Technology	Bid type	Generation Capacity (MW)	Energy Storage Capacity (MW)	Accredited capacity (MW)	LCOE (\$/MWh)	LCOC (\$/MW)	Risk-Adjusted LCOE (\$/MWh)	Risk-Adjusted LCOC (\$/MW)	Price Score (LCOE)	Price Score (LCOC)	Non-Price Score	Total Score - LCOE	Total Score - LCOC
53-1			Gas - Aero	EPC	39	-	39.22									
53-2			Gas - Aero	EPC	235	-	229.85									

## 7. Final Shortlist

PNM's shortlist includes eighteen (18) total bids from seven (7) bidders across nine (9) projects. The shortlist includes (a) solar, (b) solar plus storage, and (c) standalone storage. The bids' ownership structures included PPAs, ESAs, and EPC contracts. When not accounting for site and bid variant mutual exclusivity, the bids' collective generation capacity totaled 1,719 MW, the collective storage capacity of the storage bids was 973 MW/3,890 MWh, and the total accredited capacity of the projects was 881.91 MW. When accounting for site and bid variant mutual exclusivity, the bids' collective maximum generation capacity totaled 704 MW, the collective maximum storage capacity of the storage bids was 680 MW/2,720 MWh, and the total maximum accredited capacity of the projects was 576.63 MW. The full shortlist is shown in Table 8 on the following page.

In our view, PNM's shortlist is reasonable and reflects the challenges faced by utilities across the country seeking to decarbonize their portfolios in a reliable manner. While there are robust amounts of interest from developers in the marketplace willing to offer a variety of projects, interconnection times remain a significant hurdle to viability for many projects. (Recall that there were a large number of projects eliminated in Phase 1 due to unviable project timelines caused by interconnection in-service dates projected to be later than project Guaranteed Start Dates.) PNM's RFP, particularly for resources to be in place by May 1, 2026, should not subject customers to undue risk that the projects selected in this RFP are delayed and fail to meet their Guaranteed Start Dates due to interconnection timing issues.

**Table 8. Short List**

Bid #	Bidder Name	Project Name	Bid Technology	Bid type	Generation Capacity (MW)	Generation Output (Annual MWh)	Energy Storage Capacity (MW)	Energy Storage (MWh)	Accredited capacity (MW)	Location	Guaranteed COD	Contract term (Years)
53-1			Gas - Aero	EPC	39	35,505	-	-	38.22		5/1/2026	-
23-1.1			Solar	PPA	200	643,087	-	-	3.28		5/1/2026	20
23-1.2			Solar	PPA	175	562,698	-	-	2.87		5/1/2026	20
23-1.3			Solar	PPA	150	482,306	-	-	2.46		5/1/2026	20
23-1.4			Solar	PPA	100	321,525	-	-	1.64		5/1/2026	20
16-1			BESS	ESA	-	-	100	400	33.56		5/1/2026	20
16-2			BESS	ESA	-	-	50	200	42.18		5/1/2026	20
35-1			BFSS	FPC	-	-	60	240	50.62		5/1/2026	-
45-1.1			BESS	ESA	-	-	100	400	33.56		5/1/2026	20
35-2.3			BESS	EPC	-	-	30	120	25.31		5/1/2026	-
35-2.4			BFSS	FPC	-	-	70	280	59.05		5/1/2026	-
18-3.1			Solar & BESS	PPA	165	464,597	50	200	44.89		5/1/2026	20
18-3.2			Solar & BESS	PPA	165	464,597	100	400	36.27		5/1/2026	20
23-2.1			Solar & BESS	PPA	200	643,087	100	400	36.85		5/1/2026	20
23-2.2			Solar & BESS	PPA	175	562,698	88	350	76.39		5/1/2026	20
23-2.3			Solar & BESS	PPA	150	482,306	75	300	65.73		5/1/2026	20
23-2.4			Solar & BESS	PPA	100	321,525	50	200	43.82		5/1/2026	20
25-1			Solar & BESS	PPA	100	276,482	100	400	35.21		5/1/2026	20

Redacted Bates White Phase3 Evaluation Report

# PNM Exhibit JWH-9

Is contained in the following 15 pages.

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**To** PNM Resources  
**From** Bates White, LLC  
**Date** September 29, 2023  
**Re** 2026-2028 Generation Resources RFP: Review, Assess, and Report on Phase 3 Evaluation Report

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## Purpose

Bates White, LLC (“Bates White”) was retained by Public Service Company of New Mexico (“PNM”), a wholly owned subsidiary of PNM Resources, Inc., to serve as an Independent Monitor for its 2026-2028 Generation Resources RFP (“RFP”). The RFP was issued on November 3, 2022 and sought the supply of up to 500 MW in 2026, up to 400 MW in 2027, and up to 500 MW in 2028 of firm capacity resources to serve PNM’s New Mexico system. Proposals were requested for capacity and energy resources that could guarantee the delivery of new, incremental, firm capacity by or before May 1, 2026, May 1, 2027, or May 1, 2028. Given the limited time available to PNM to complete the RFP and contracting process for May 1, 2026 resources, PNM bifurcated the RFP into two paths, focusing first on the evaluation of resources promising a Guaranteed Start Date of May 1, 2026 or earlier. This memo addresses the evaluation of resources submitted for the May 1, 2026 Guaranteed Start Date.

In this memo, we review and assess PNM’s Phase 3 evaluation for the RFP. The primary document that presents the results of PNM’s evaluation is the “2026-2028 Generation Resources RFP Phase 3 Bid Evaluation Summary” (“Phase 3 Report”), received on August 22, 2023 as an initial draft and revised to a final report released on August 28, 2023. The Phase 3 Report describes the process and results of Phase 3 of the bid evaluation. We also were provided and reviewed PNM’s “Confidential PNM 2026 RFP Bid Summary Document (20230602).xls” (“Phase 3 Bid Summary Document”) which contained detailed information about each bid, including updates made following the Phase 2 evaluation. PNM also sent Bates White modeling inputs, modeling results, and information related to the issue of imputed debt. PNM and Bates White held both written and oral discussions regarding the Phase 3 evaluation.

In developing this memo, we consulted (a) the RFP documents as filed, (b) the confidential bid evaluation protocols (“Bid Evaluation Protocols”), (c) the bids, (d) the Phase 3 Bid Summary Document, (e) the Phase 3 Report, (f) modeling inputs and outputs, (g) imputed debt materials provided by PNM, and (h) our discussions with PNM evaluators regarding the RFP and Phase 3 evaluation. We assess PNM’s application of the Phase 3 evaluation criteria, determining if PNM

followed the evaluation protocols finalized in advance of RFP issuance, and identifying any areas with which we might disagree with PNM or require additional clarification.

## 1. Analysis

In this section, we provide our analysis of PNM's Phase 3 evaluation results. Overall, we found PNM's results reasonable.

### A. Compliance with RFP, Evaluation Documents

The purpose of Phase 3 is to evaluate all short-listed bids to select a project or portfolio of projects that best meets the objectives of the RFP. Section 8.2.3 of the RFP explains the Phase 3 evaluation process:

Short-listed Proposals will undergo further assessment in the Phase Three evaluation. The Phase Three evaluation will involve portfolio system modeling, more in-depth assessment of the pricing factors noted [earlier in the RFP], additional due diligence assessment of the ability to achieve the project schedule, as well as comparison and ranking of additional non-price factors. All factors will be ranked in a Proposal ranking matrix to assist in the final selection of Proposals. The results of the ranking matrix will be considered in conjunction with portfolio economics and system reliability evaluation results from the system portfolio modeling analyses. From the final set of short-listed Proposals, PNM will select the preferred alternative or combination of alternatives and will pursue negotiations to secure resources. Provided the parties successfully negotiate an Agreement for the project, PNM will then make appropriate filings seeking approval from the Commission based on the negotiated terms of the Agreement(s).<sup>1</sup>

The RFP identified the "additional non-price factors" included in Phase 3, including (a) commercial/contract compliance, (b) respondent characteristics, (c) environmental considerations, (d) project design plan and characteristics, (e) electrical interconnection plan and transmission system benefits, and (f) community/stakeholder considerations.<sup>2</sup> The RFP also allowed PNM to consider potential benefits from the projects through participation in the California ISO's Energy Imbalance Market, a market in which PNM is a participant.<sup>3</sup>

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<sup>1</sup> RFP, section 8.2.3.

<sup>2</sup> RFP, section 8.2.3.1.

<sup>3</sup> RFP, section 8.3.2.1.



The Bid Evaluation Protocols document, which is non-public, elaborated on the Phase 3 evaluation process. It stated that, if necessary, “additional Bidder questions and clarifications [may be] issued, as required, and more in-depth PNM SME reviews [will take] place.”<sup>4</sup> The Bid Evaluation Matrix “may be further refined for the shortlisted resources to identify those, by technology, that evaluate most favorably.”<sup>5</sup> The Bid Evaluation Protocols stated that “various portfolios will be evaluated and analyzed via PNM’s system portfolio modeling tools” and that “the system portfolio modeling will be utilized to determine several new resource portfolios that best satisfy the RFP objectives.”<sup>6</sup> The Protocols further stated:

Following the completion of the scoring matrices and the portfolio modeling, both with the ‘as-evaluated’ costs and the risk-adjusted costs, PNM may pursue contract negotiations with one or more Bidders. Due to timing constraints associated with the May 1, 2026 resources, PNM may also advance initial provisional negotiations sooner than completion of the evaluation based on Proposals under consideration and pending results of the final evaluation. PNM anticipates advancing multiple Proposals into a final shortlist selection to maintain leverage and competitive forces and to retain alternative Proposals should negotiations with selected Bidders be unsuccessful.

At the conclusion of Phase 3, a Phase 3 Evaluation Summary report will be issued and provided to the Independent Evaluator for review. Bidders will be notified accordingly regarding potential selection or non-consideration.<sup>7</sup>

In our view, PNM conducted the Phase 3 evaluation in a manner that was consistent with the RFP documents, including the non-public Evaluation Protocols. PNM evaluated all bids that passed the Phase 2 evaluation. These “short list” projects included 18 project variants from 7 bidders and 9 projects, including:

- Four standalone solar bids, all offered under a PPA structure
- Six standalone BESS bids, with three offered under ESA contracts and the others under EPC arrangements
- Seven solar-plus-storage bids, all offered under PPAs
- One gas-fired aeroderivative bid offered under an EPC structure

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<sup>4</sup> Bid Evaluation Protocols, section 6.3.

<sup>5</sup> Bid Evaluation Protocols, section 6.3.

<sup>6</sup> Bid Evaluation Protocols, section 6.3.

<sup>7</sup> Bid Evaluation Protocols, section 6.3.

[REDACTED]  
[REDACTED]  
[REDACTED] PNM updated its bid summary document to reflect the Phase 3 evaluation work. PNM engaged in bidder meetings with shortlisted bidders and sought further clarifications of bid terms with bidders through the bidding platform. PNM considered the results of the portfolio modeling alongside other critical information about each bid in selecting a final award group. PNM documented its Phase 3 evaluation in the Phase 3 Report, which was shared with Bates White, consistent with the RFP. Bates White reviewed PNM's portfolio modeling assumptions, inputs, and results. We were in regular contact with PNM in the latter stages of Phase 3, particularly as results were presented and other issues arose regarding imputed debt (explained below). In addition to conference calls with PNM, we provided PNM with direct written feedback including numerous questions and comments on PNM's Phase 3 evaluation. PNM provided Bates White with written responses to our questions and comments. The final award group was developed consistent with the RFP documents and, as we explain below, was reasonable. We provide details of the Phase 3 Evaluation process below.

## B. Description of Portfolio Modeling Process

The Phase 3 evaluation was largely conducted by PNM's resource planning team using commercially-available, off-the-shelf production cost simulation modeling software.<sup>8</sup> Modeling inputs were developed by PNM's RFP administration team and provided to the resource planning team; the EPC support team provided additional inputs and assumptions to be used in the model (e.g., resource characteristics, O&M costs). The model sought to determine the lowest cost portfolio of new resources to meet forecasted customer load needs, including all reliability planning constraints and applicable environmental regulations.

To accomplish this, the model required myriad inputs and assumptions, which included:

- Costs, performance characteristics, commercial operations dates, and asset life of short-listed RFP resources. These inputs come from the bidders themselves, with the exception of the effective load carrying capability ("ELCC") of each resource, which we explain below.
- Costs, performance characteristics, commercial operations dates, and asset life of existing PNM resources. These inputs reflect the assets that currently serve PNM's ratepayers and are intended to be consistent with PNM's Integrated Resource Plan ("IRP") process and modeling.

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<sup>8</sup> PNM used the EnCompass model for this purpose.

- Forecasted PNM load, using PNM’s most up-to-date base case load forecast.
- Environmental limits and requirements. These include resource-specific limitations (e.g., emissions limitations associated with Section 62-19-10(D) of the New Mexico Public Utility Act) and PNM-wide requirements (e.g., Renewable Portfolio Standard (“RPS”)).
- Reliability requirements, which is based on a specified loss of load expectation (“LOLE”) over the planning horizon, and is explained further below.
- Transmission system capabilities and limitations, which reflects PNM’s existing transmission assets.
- Fuel prices, which are consistent with those used in PNM’s IRP process.
- Generic resource capital costs and characteristics that would be available to the model in future years in the planning horizon.

PNM conducted sensitivity modeling runs on several of these variables, including load forecasts, LOLE assumptions, and fuel prices. These sensitivities are important, as they allow for a more robust review of the competing portfolios’ performances and avoid portfolio selections that are overly dependent on extreme assumptions around a single variable.

The ultimate metric PNM used to judge resource portfolios is the net present value (“NPV”) of PNM’s revenue requirement (“NPVRR”) for the planning horizon (in this case, 20 years), accounting for all the costs of the new and existing resources.

Before we turn to the results of the Phase 3 evaluation, we highlight three key inputs to the model.

## **1. RFP Resource ELCCs**

Determining the usefulness in a given resource’s contribution to addressing system capacity needs is not done by simply attributing the resource’s entire nameplate capacity to the existing set of system resources. Instead, it is important to incorporate the specific technology of the resource to ensure that the capacity contribution of that resource is accurate. This is particularly important in systems that have higher levels of renewable energy penetration. To take a highly simplified example, consider a system that has peak demand of 1,000 MW. A system of 1,000 MW of solar PV resources would not be a reliable solution, despite its total nameplate capacity of 1,000 MW. The PV-only system would only produce electricity during the daylight hours (and not always at full capacity). By contrast, a 1,000 MW gas-fired turbine would be able to produce its full nameplate capacity (or close to it) as needed.

To account for these and other realities and complexities in assessing resource capacity contributions, PNM (and many other utilities) use loss-of-load probability models<sup>9</sup> to assess the “effective load carrying capability,” or ELCC, of each resource. ELCC essentially determines the capacity contribution, in MW, that can be relied upon in meeting the utility’s peak demand, plus planning reserve margin, over the planning horizon. Importantly, resource ELCCs can change dramatically as renewable penetration increases. For example, as solar penetration increases, a utility’s “net load” – load, minus renewable generation – decreases, which can shift that utility’s peak hours to evening hours when solar generation stops producing. Thus, in systems with no solar resource penetration, new solar resource ELCCs will be much higher than those in systems with high amounts of solar resource penetration.

PNM accounted for this phenomenon by using resource-specific ELCCs for its renewable generation resources and energy storage resources. PNM used values consistent with its 2020 IRP. New solar PV received ELCCs between 0% and 6% of nameplate capacity, depending on solar penetration; new 4-hour duration battery storage resources had ELCCs between 24% and 93% of nameplate capacity, depending on battery storage penetration. It is our understanding that PNM has committed to update its ELCC studies,<sup>10</sup> but those updates were not used in the Phase 3 evaluation. We recommend PNM continue to monitor and, where appropriate, update its ELCC studies and use its most updated ELCC values in future evaluations and planning exercises.

## 2. Reliability Planning Standard (LOLE)

One of the more important planning criteria electric utilities must determine is the amount of excess capacity to carry in order to maintain reliability – this accounts for the fact that not all resources will be on line at all times or perform as expected. This excess is known as a “planning reserve margin.” For example, if a utility forecasts a peak demand of 1,000 MW, and has a 10% planning reserve margin, the utility will seek to ensure 1,100 MW of resource capacity.

To determine the appropriate planning reserve margin, utilities may rely upon a calculation of the loss of load expectation, or LOLE, for their system given a peak demand forecast and a modeled supply portfolio. LOLE is a common metric calculated by production cost simulation and capacity expansion models that determines, for a given time period, the number of hours in which the system would have insufficient supply to meet demand. The most common time horizon for reporting the LOLE is the

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<sup>9</sup> PNM uses the off-the-shelf, commercially-available model SERVM.

<sup>10</sup> RFP, page 7.

number of days in a year that supply would be insufficient to meet demand. Utilities, including PNM, use loss-of-load probability modeling software to do this; PNM uses SERVUM.

Many utilities have established LOLE planning standards, and the most common is “0.1 LOLE,” which means that there will be one day in ten years in which the system’s supply would be insufficient to meet demand. PNM does not have a formally established standard. PNM has historically used 0.2 LOLE, a less stringent standard that translates to two loss of load event days in ten years. In its 2020 IRP report, PNM again used the 0.2 LOLE standard, but noted that “[i]n the future, we plan to transition to 0.1 days per year,”<sup>11</sup> or to a 0.1 LOLE.

In the Phase 3 evaluation, PNM considered both a 0.1 and 0.2 LOLE. We explain the results in section C.

### **3. RFP Short-Listed Energy Storage Resource Costs (Fixed and Variable—Imputed Debt Issue)**

The RFP offered bidders substantial flexibility in their bids, allowing resource technologies, contract/ownership structures, and bid price options of all kinds. This included projects that included energy storage (either standalone or paired with renewable generation), allowing for third-party energy storage agreements (“ESA”) that include capacity price components, variable priced components, or both; third-party power purchase agreements (“PPA”) for projects paired with generation resources (allowing for fixed and/or variable pricing); and engineering, procurement, and construction (“EPC”) agreements that require specification of a lump sum payment to deliver the project (which would then be owned by PNM).

While these flexibilities are a best practice of competitive procurement, PNM cannot control which options bidders select. In this instance, standalone BESS offers fell into three categories: (1) standalone BESS bids under ESAs with capacity charge (\$/kW-month) bids; (2) standalone BESS bids under EPC contracts with lump sum (\$) bid prices; and (3) solar PV plus BESS projects that include both a fixed capacity payment (\$/kW-month) and a variable price component (\$/MWh). The common factor in the non-EPC types of offers is that the bidder is paid a specified capacity payment, regardless of how the BESS system is used (i.e., how much energy it discharges to the grid).

During the Phase 3 evaluation, PNM identified a concern with the fixed capacity payment structure for the standalone BESS projects bid under an ESA contract and PV+BESS projects bid under the PPA contract. PNM’s concern was that the fixed capacity payment structure would result in an on-

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<sup>11</sup> PNM 2020 IRP Report, page 45, n. 13.

balance sheet lease liability under accounting standard ASC 842 or, in the event that the contracts were not recognized as on-balance sheet liabilities, that the credit rating agencies would “impute” the fixed capacity payments under the ESAs/PPAs as debt in calculating their respective credit metrics for PNM. Since those credit metrics are direct inputs into the credit rating agencies’ credit ratings of PNM and its affiliates, such imputed debt adjustments could impact PNM’s cost of capital and, by extension, have impacts on ratepayers.

In response to its concern, PNM reached out to all ESA and PV+BESS PPA bidders that passed the Phase 1 evaluation and that were not excluded due to non-price viability concerns to submit, at the bidder’s option, a purely variable price offer that did not include a capacity component.<sup>12</sup> PNM sought variable-priced offers from all Phase 2 resources – not only those on the short list – to test whether, under variable-priced structures, the short list remained valid. Table 1 shows the bids that passed Phase 1 and the details of their original bid and variable priced bids. Gray-shaded projects are those not included on the short list.

**Table 1. Variable-Priced Offers (2026 COD)**

Bid #	Bidder Name	Project Name	Bid Technology	Bid type	Original Bid		Variable Bid
					PPA Price (\$/MWh)	Capacity Price (\$/kW-month)	Total Variable Price (\$/MWh)
15-1			BESS	ESA			
15-2			BESS	ESA			
45-1.1			BESS	ESA			
18-3.1			Solar & BESS	PPA			
18-3.2			Solar & BESS	PPA			
23-2.1			Solar & BESS	PPA			
23-2.2			Solar & BESS	PPA			
23-2.3			Solar & BESS	PPA			
23-2.4			Solar & BESS	PPA			
25-1			Solar & BESS	PPA			
43-1.2			BESS	ESA			
45-1.2			BESS	ESA			
12-1			Solar & BESS	PPA			
15-3			Solar & BESS	PPA			
17-2.2			Solar & BESS	PPA			
22-1			Solar & BESS	PPA			
7-3.1			Solar & BESS	PPA			
7-3.2			Solar & BESS	PPA			
11-2			Solar & BESS	PPA			
17-1.1			Solar & BESS	PPA			
17-1.2			Solar & BESS	PPA			
17-2.1			Solar & BESS	PPA			

\* Bidder offered a volumetric price, but required mandatory payment based on 146,000 MWh/year

\*\* Bidder offered a volumetric price for 2026 and later COD bids; 2026 bids not evaluated due to non-price exclusion of those bids

<sup>12</sup> PNM also sought variable-priced offers from bidders with relevant projects and CODs of 2027 or 2028, which are being evaluated separately.

Table 1 demonstrates that the lowest priced variable offers for BESS projects came from bids already on the shortlist. For paired solar-plus-storage projects, the lowest priced bids came mainly from projects already on the short list, though [REDACTED]'s and [REDACTED]'s variable priced bids were higher than those of [REDACTED] (12-1) and [REDACTED] (22-1). However, bid 25-1 – which has a 1:1 ratio of BESS capacity (100 MW) to its solar capacity (100 MW), which leads to higher ELCC values – produced the lowest levelized cost of capacity among the hybrid bids—this is shown in Table 2 below. Other bids, such as bids 22-1 and 12-1, had smaller battery installations relative to their PV capacity (and thus lower ELCCs), which means higher levelized costs of capacity for those projects. Moreover, PNM's view (which was reasonable, in our view) was that the Phase 2 evaluation did not rely solely on pricing for the shortlist selection, and thus the volumetric pricing did not justify an alteration to the selected bids for the Phase 2 shortlist based upon the evaluated and ranked proposals. Additionally, after submitting its variable priced offers, [REDACTED] withdrew its bids (18-3.1 and 18-3.2) from further consideration.<sup>13</sup>

Importantly, Table 1 includes only the bid prices as offered by the bidders but does not include other costs associated with the bids, including Gross Receipts Tax and losses from the BESS systems. Table 2 shows the levelized prices of the variable priced offers. Please note that variable priced offers from dissimilar resources (i.e., BESS and Solar & BESS) should not be compared. Gray-shaded projects are those not included on the short list.

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<sup>13</sup> The bidder did not provide a reason for its withdrawal.

**Table 2. Levelized Costs of Energy, Capacity for Variable-Priced Offers (2026 COD)**

Bid #	Bidder Name	Project Name	Bid Technology	Bid type	BESS LCOC (\$/kW-year)	LCOE (\$/MWh)
16-1			BESS	ESA		
16-2			BESS	ESA		
45-1.1			BESS	ESA		
18-3.1			Solar & BESS	PPA		
18-3.2			Solar & BESS	PPA		
23-2.1			Solar & BESS	PPA		
23-2.2			Solar & BESS	PPA		
23-2.3			Solar & BESS	PPA		
23-2.4			Solar & BESS	PPA		
25-1			Solar & BESS	PPA		
43-1.2			BESS	ESA		
45-1.2			BESS	ESA		
12-1			Solar & BESS	PPA		
16-3			Solar & BESS	PPA		
17-2.2			Solar & BESS	PPA		
22-1			Solar & BESS	PPA		
7-3.1			Solar & BESS	PPA		
7-3.2			Solar & BESS	PPA		
11-2			Solar & BESS	PPA		
17-1.1			Solar & BESS	PPA		
17-1.2			Solar & BESS	PPA		
17-2.1			Solar & BESS	PPA		

\* Bidder offered a volumetric price, but required mandatory payment based on 146,000 MWh/year

Bates White and PNM discussed this issue at length. It has been our experience that utilities may seek return on purchased power, or boosted return on equity, or more advantageous capital structures in an effort to offset the specter of imputed debt. In competitive solicitations, utilities may also seek to include imputed debt “adders” to third-party offers as well, making those offers less competitive. As independent evaluators and expert witnesses, we consistently seek evidence that rating agencies actually will impute debt.

In this case, we found that PNM had sufficient evidence that at least one rating agency (Standard & Poors (“S&P”)) is likely to impute some level of debt associated with any energy storage project that includes a fixed capacity payment.<sup>14</sup> We based this conclusion primarily based on PNM’s summary of meetings held with S&P and Moody’s (who is not likely to impute debt), as well as our understanding of the credit rating agencies’ debt imputation approaches. Most notable was the fact that S&P stated in a September 2022 opinion that “if financial metrics decline such that PNM’s ratio of CFO pre-W/C to debt is sustained below 16% the rating could be downgraded.” This provided to us clear evidence that additional imputed debt could potentially lead to real-world consequences for PNM.

<sup>14</sup> We found no evidence that any agreements pursued in this RFP would result in on-balance sheet lease liabilities under accounting standard ASC 842.



We also discussed the amount of debt imputation likely to occur. S&P's debt imputation calculation depends on the portion of the ESAs that are considered for imputation (assumed to be 70% by PNM) and the risk reduction applied to the ESAs (assumed to be 50-75% by PNM). The risk reduction factor is typically driven by the certainty of cost recovery associated with the ESAs, where more certain cost recovery leads to higher discount factors. PNM is currently unable to recover the costs of the ESAs through a fuel adjustment charge, nor does PNM have a legislative mandate that assures cost recovery. PNM must recover the costs of the ESAs through base rates, unless PNM seeks an alternative approach (such as a rider) from the PRC. Such a request would carry regulatory risk, and PNM provided evidence demonstrating this risk. We considered multiple approaches to debt imputation, including targeting cash flow metric thresholds and imputation of equity. The selected method ultimately had no impact on the portfolio modeling results or the Phase 3 evaluation.

Importantly, we inquired with PNM about whether it would actually pursue offsetting the cost of imputed debt with the PRC if it was to select fixed price offers. PNM confirmed it would likely pursue cost recovery. Given this, we found it reasonable that PNM sought variable-priced offers from energy storage bidders since it would be possible that the variable-priced offers – which were likely to have higher evaluated direct costs – would actually be lower cost to customers due to the avoidance of imputed debt and its effects. PNM was not obligated to select the variable price offers, but would only have the option to do so.

## C. Phase 3 Evaluation Results

PNM conducted its portfolio modeling for the following resources, each of which was on the short list as having passed Phase 2. For energy storage projects with a fixed capacity payment, PNM modeled both the original bids and the variable-priced offers, if applicable.

**Table 3. Bids Modeled in Phase 3<sup>15</sup>**

Bid #	Bidder Name	Project Name	Technology	Bid type	Generation Capacity (MW)	Energy Storage Capacity (MW)	ELCC (MW)
53-1			Gas - Aero	EPC	39	-	38
23-1.1			Solar	PPA	200	-	12
23-1.2			Solar	PPA	175	-	11
23-1.3			Solar	PPA	150	-	9
23-1.4			Solar	PPA	100		6
16-1			BESS	ESA	-	100	89
16-2			BESS	ESA	-	50	44
35-1			BESS	EPC	-	60	53
45-1.1			BESS	ESA	-	100	89
35-2.3			BESS	EPC	-	30	31
35-2.4			BESS	EPC	-	70	13
18-3.1			Solar & BESS	PPA	165	50	99
18-3.2			Solar & BESS	PPA	165	100	54
23-2.1			Solar & BESS	PPA	200	100	101
23-2.2			Solar & BESS	PPA	175	88	88
23-2.3			Solar & BESS	PPA	150	75	76
23-2.4			Solar & BESS	PPA	100	50	50
25-1			Solar & BESS	PPA	100	100	95

PNM’s portfolio modeling conducted a total of sixteen (16) primary model runs using the EnCompass model. The model runs considered both fixed and variable priced offers of the energy storage resources, as well as assessed a variety of sensitivities. For example, PNM considered different load scenarios, both a base case and a case in which an additional 50 MW of peak load is added (to reflect potential “economic development” load in its footprint). PNM considered the impact of different levels of imputed debt, and in some cases required the model to select a project in the Central Consolidated School District (Bid 23 and variants are to be located in the CCSD). PNM also tested both a 0.1 LOLE and a 0.2 LOLE.

The portfolio modeling results demonstrated that four projects were selected in almost every scenario.

- Bid 16-1, [REDACTED] s 100 MW / 400 MWh [REDACTED] standalone BESS project was selected in all 16 scenarios.

<sup>15</sup> Source: PNM June 12, 2023 slides sent to Bates White, slide 7. Note the storage capacity for bids 35-2.3 and 35-2.4 do not match the slides, but instead match the Bid Summary Document. ELCCs reflect the June 12 slides.

- Bid 16-2, ██████'s 50 MW / 200 MWh ██████ standalone BESS project was also selected in all 16 scenarios.
- Bid 25-1, ██████'s 100 MW solar plus 100 MW / 400 MWh BESS ██████ project was selected in 14 out of 16 scenarios.
- Bid 35-1, ██████'s 60 MW / 240 MWh ██████ BESS project was selected in 13 out of 16 scenarios.

No other project was selected in more than five scenarios. (Bid 23-2.4 was selected in five scenarios.) The overall uniformity of the model runs across the scenarios give us confidence that PNM identified the optimal subset of potential winning projects.

PNM conducted additional modeling to test (a) different debt imputation methods, (b) changes in natural gas prices, (c) changes in supply technology costs, and (d) changes in CO<sub>2</sub> prices. The results remained the same: bids 16-1 and 16-2 were selected in all 51 scenarios; bid 25-1 was selected in 46 out of 51 scenarios; and bid 35-1 was selected in 40 out of 51 scenarios. No other bid was selected in more than 12 scenarios (bid 35-4).

PNM's RFP sought capacity of 200-1,000 MW, with up to 500 MW being needed in 2026.<sup>16</sup> (The evaluation of the bids with 2027 and 2028 CODs is ongoing.) During the Phase 3 evaluation, PNM determined that in order to meet the 0.2 LOLE standard, it would require approximately 210 MW of capacity; under the 0.1 LOLE standard, the amount of capacity needed would be 270 MW.<sup>17</sup> Here, the summation of the three leading bids – 16-1, 16-2, and 25-1 – would result in a total accredited capacity of 228 MW. Thus, the three leading bids would be sufficient to meet the 0.2 LOLE standard, but not the more stringent 0.1 LOLE standard. To achieve the minimum to meet the 0.1 LOLE standard, the next best bid (35-1) must be added to the portfolio, resulting in a total accredited capacity of 281 MW. PNM decided to pursue contracts with all four resources.

Bates White's role as independent evaluator did not include an analysis of the appropriate LOLE for PNM. We recognize that PNM has historically planned its system to a 0.2 LOLE standard, but indicated in its most recent IRP report that it planned to transition to a 0.1 LOLE. Here, we can say that, for the LOLE of 0.2, the selected projects (16-1, 16-2, and 25-1) represent the optimal portfolio. If an LOLE of 0.1 is pursued, the selected projects (16-1, 16-2, 25-1, and 35-1) represent the optimal portfolio. (PNM ultimately pursued the latter portfolio in planning to meet the 0.1 LOLE standard.)

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<sup>16</sup> RFP, section 1.3.

<sup>17</sup> PNM's June 12, 2023 presentation, slide 2.

The remaining key question was, for the [REDACTED] projects (16-1 and 16-2) and the [REDACTED] project (25-1), whether to select the fixed capacity price option or the variable-priced option. PNM’s portfolio modeling demonstrated that the cost of moving to a variable price contract for the recommended portfolio is about \$ [REDACTED] on an NPV basis (in 2023\$)—that is, ignoring any impact of imputed debt, the variable cost options for the [REDACTED] and [REDACTED] bids increase the total cost of the portfolio by \$ [REDACTED] on an NPV basis (in 2023\$). However, when the cost of imputed debt is added, the cost of the fixed capacity price portfolio increases by between \$ [REDACTED] and \$ [REDACTED], depending on the imputed debt method and assumptions used. Thus, by including the likely impact of imputed debt, the cost of the fixed capacity price portfolio is either approximately the same as or up to \$ [REDACTED] higher than the variable priced portfolio. This is shown in Table 4 below.

**Table 4. Comparison of Fixed Capacity Price, Variable-Priced Portfolios**

Pricing	NPV of PNM Revenue Requirement (\$mm 2023)	Comparison to Variable Price Portfolio (\$mm)	Comparison to Variable Price Portfolio (%)
Variable Pricing			
Fixed Capacity, No Imputed Debt			
Fixed Capacity (Low Imputed Debt), Credit Ratio Method			
Fixed Capacity (Low Imputed Debt), Capital Structure Method			
Fixed Capacity (High Imputed Debt), Credit Ratio Method			
Fixed Capacity (High Imputed Debt), Capital Structure Method			

It should be noted that the percentage difference between the variable-priced portfolio and the fixed capacity payment portfolios at various levels of assumed imputed debt vary by less than 1%, and so can be considered comparable in cost (given the \$ [REDACTED] revenue requirements at stake). In addition to the small cost difference, PNM had concerns about the regulatory uncertainty in getting recovery of the cost of imputed debt and would not know the outcome of that regulatory request until after the resources would be approved and contracted. Thus, PNM selected the variable-priced offers.

We agreed with PNM’s selections. As a final check on the selections, we reviewed the revisions to the energy storage agreements submitted by [REDACTED] and [REDACTED] to assess the additional redlines made by those bidders to reflect the variable price offers. (Such changes were necessary to reflect the different payment structure.) In our view, the revisions made by the bidders did not vary materially from the original bids submitted in the RFP. Thus, we were in agreement with PNM’s final award group selections, which are shown in Table 5 below.

**Table 5. Final Award Group Selections**

Bid #	Bidder Name	Project Name	Technology	Bid type	Generation Capacity (MW)	Energy Storage Capacity (MW)	ELCC (MW)
16-1	[REDACTED]	[REDACTED]	BESS	ESA	-	100	89
16-2			BESS	ESA	-	50	44
25-1			Solar & BESS	PPA	100	100	95
35-1			BESS	EPC	-	60	53
Total					100	310	281

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

<b>IN THE MATTER OF PUBLIC SERVICE</b>	)	
<b>COMPANY OF NEW MEXICO'S APPLICATION</b>	)	
<b>FOR APPROVAL OF PURCHASED POWER</b>	)	
<b>AGREEMENTS, ENERGY STORAGE</b>	)	
<b>AGREEMENTS, AND CERTIFICATES OF PUBLIC</b>	)	
<b>CONVENIENCE AND NECESSITY FOR SYSTEM</b>	)	<b>Case No. 23-00xxx-UT</b>
<b>RESOURCES IN 2026,</b>	)	
	)	
<b>PUBLIC SERVICE COMPANY OF NEW MEXICO,</b>	)	
	)	
<b>Applicant</b>	)	
<hr/>	)	

**SELF AFFIRMATION**

**Jeremy W. Heslop, Senior Manager, Generation Contracts, Public Service Company of New Mexico**, upon being duly sworn according to law, under oath, deposes and states: I have read the foregoing **Direct Testimony of Jeremy W. Heslop** and it is true and accurate based on my personal knowledge and belief.

DATED this 25<sup>th</sup> day of October, 2023.

/s/ Jeremy W. Heslop  
**JEREMY W. HESLOP**

*GCG # 530297v4*