TAG II Storage LLC Energy Storage Agreement

PNM Exhibit GBB-9

Is contained in the following 131 pages.

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Execution Version

ENERGY STORAGE AGREEMENT

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

TAG II STORAGE LLC

Dated as of April 30, 2026

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EXHIBITS

Exhibit A	Description of Seller's Energy Storage Facilities, Site Map, and Project Schedule
Exhibit B	One-Line, Communications and Telemetry Diagrams of Project and Interconnection Facilities
Exhibit C	Description of Site Parcel Survey
Exhibit D	Notice Addresses
Exhibit E	Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
Exhibit F	Commissioning and Annual Testing
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Exhibit O	Preparation for Commissioning

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ENERGY STORAGE AGREEMENT

This Energy Storage Agreement (this "**ESA**"), as may be amended from time to time, is entered into this Thirtieth (30th) Day of April, 2026 ("**Execution Date**"), by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or "**Buyer**"), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and TAG II Storage LLC, a Delaware limited liability company ("**Seller**"), whose principal place of business is 1435 Bedford Ave., Suite C-2, Pittsburgh, PA 15219. Buyer and Seller may be referred to in this Energy Storage Agreement individually as a "**Party**" and collectively as the "**Parties.**"

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

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

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

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

ARTICLE 1
Definitions and Rules of Interpretation

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

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

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

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

"**Actual Charge Ramp Rate**" means the maximum rate that the ESS can change its input power, as determined pursuant to Exhibit F.

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

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"**Actual Discharge Ramp Rate**" means the maximum rate that the ESS can change its output power, as determined pursuant to Exhibit F.

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

"**Actual System Latency**" means the time measured between when the control signal is received by the ESS and when the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint, as determined pursuant to Exhibit F.

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

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

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

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

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

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

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

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

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

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

"**Black Start Capability**" means that the ESS inverters shall be provided with the ability to form an islanded grid inside the Project while disconnected from the Point of Delivery if Buyer instructs Seller to reserve stored energy for this function. The ESS will not be designed to provide grid forming capability below a zero percent (0%) ESS State of Charge. Buyer may enhance the Black Start Capability after the Execution Date if (a) Buyer provides specifications for an enhanced Black Start Capability, (b) the specifications are within the capabilities of Seller's ESS integrated equipment and controls system supplier, and (c) Buyer pays all costs associated with upgrading the ESS to the enhanced Black Start Capability specifications as verified by an independent engineer. Upon the satisfaction of all of (a), (b) and (c) in the preceding sentence, Seller shall upgrade the ESS to the enhanced Black Start Capability specifications within eighteen (18) months.

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

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

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

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

"**Buyer Termination Payment**" means the sum of (a) the aggregate of all amounts then owed from Seller to Buyer, less any amounts owed from Buyer to Seller, plus (b) the difference between (i) the net present value of the Replacement ESS Costs, calculated using a

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

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

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

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

"**Commercial Operation**" means that the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (b) Seller has successfully completed the Commissioning Tests defined in Exhibit F; (c) all Seller required permits, required consents, and Governmental Approvals required for Seller to operate the Project in accordance with Applicable Law are in full force and effect; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit F or by another method acceptable to Buyer; (e) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Discharge Energy to the Point of Delivery and interconnection and delivery of Charging Energy from the Point of Delivery in an amount at least equivalent to Guaranteed PMAX and is not in material breach of its Interconnection Agreement; (f) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement; (g) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G of this agreement; and (h) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

"**Commercial Operation Date**" means the date on which all of the following have

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

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

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

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

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

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

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

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

"**Contract Value**" means the sum of the present values of the ESS Energy Payments expected to be made in each Commercial Operation Year (or portion thereof) in the then-remaining term (determined without reference to the early termination) which is to be determined in accordance with the calculation in Section 8.1(A). All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

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

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

"**Day**" means a calendar day and includes Saturdays, Sundays and holidays; if a

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payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

"**DC**" means direct current.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Electric Interconnection Point**" means the physical point at which electrical interconnection is made between the Project and the Transmission Provider's Transmission

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System as set forth in Appendix A of the Interconnection Agreement.

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

"**Eligible Change in Tariff**" means any duty, tariff, import tax, or other similar import fee or cost that becomes effective after, or the enforcement of which commences after, the Execution Date, or any increase to the applicable rate of any of the foregoing which becomes effective after the Execution Date, to the extent affecting the Energy Storage System. The 25% tariff on lithium-ion batteries enacted pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), with an effective date of January 1, 2026, shall not be considered an Eligible Change in Tariff.

"**Emergency Condition**" means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider's Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC/WECC, or (b) any system condition not consistent with Prudent Utility Practices; provided that an Emergency Condition shall not include any emergency caused by Seller's breach of its Interconnection Agreement with the Transmission Provider.

"**Energy**" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, delivered to or received from the Project, in each case at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices.

"**Energy Storage Services**" means the acceptance of Charging Energy at the Point of Delivery, the storing of Energy in the Project, and the delivery of Discharge Energy from the Project at the Point of Delivery, all in accordance with Buyer's dispatch instructions, in compliance with the ESS Unit Capabilities, and subject to the terms and conditions of this agreement.

"**Energy Storage System**" or "**ESS**" means the battery arrays, battery system controller, inverters, transformers, thermal management system, and other equipment necessary to charge, store, and subsequently deliver electricity from the Project to the Point of Delivery.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's charging, discharging, delivery or storage of electricity from renewable energy resources in contrast with the storage of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (a) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil, gas, chemical, or other substance, and (b) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include

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those currently existing or arising during the Term under local, state, regional, or federal legislation or regulation relevant to the avoidance of any emission described above under any governmental or, regulatory program, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes specifically exclude (x) Tax Benefits, (y) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; and (z) any Energy, reliability or other power attributes from the Project.

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

"Equivalent Full Cycle" means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharge Energy (in MWh) equivalent to the Guaranteed ESS Capacity over an eight (8) 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 eight (8) 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 eight (8) consecutive hours when starting from the Maximum State of Charge and discharging to the Minimum State of Charge, as determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

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

"**ESS Capacity Test**" has the meaning set forth in Exhibit F.

"**ESS Curtailment**" has the meaning set forth in Section 4.2.

"**ESS Energy Payment**" has the meaning set forth in Section 8.1(A).

"**ESS Energy Payment Rate**" means the price to be paid by Buyer to Seller for the Product, as set forth in Section 3.1.

"**ESS Meter Energy In**" has the meaning set forth in Exhibit F.

"**ESS Meter Energy Out**" has the meaning set forth in Exhibit F.

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"**ESS Non-Performance Liquidated Damages**" has the meaning set forth in Section 3.13.

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

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

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

"**ESS Roundtrip Efficiency**" means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the Electric Metering Device without adjustment to the Point of Delivery and determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

"**ESS Unit Capabilities**" has the meaning set forth in Section 3.12.

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Guaranteed Charge Ramp Rate**" has the meaning set forth in Section 3.12.

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

"**Guaranteed ESS Capacity**" means discharge of the ESS at Guaranteed PMAX for eight (8) consecutive hours.

"**Guaranteed ESS Roundtrip Efficiency**" means, with respect to a Commercial Operation Year, the applicable percentage set forth in Exhibit H.

"**Guaranteed Frequency Response Capability**" has the meaning set forth in Section 3.12.

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

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

"**Guaranteed System Latency**" has the meaning set forth in Section 3.12.

"**Hazardous Materials**" means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or as dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land,

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water, groundwater, and air, including but not limited to any material or substance that is (i) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of Applicable Law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ix) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (x) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

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

"**Interconnection Agreement**" means the separate agreement between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider's Transmission System, as such agreement may be amended, amended and restated, modified, replaced or otherwise supplemented from time to time.

"**Interconnection Facilities**" means the Transmission Provider's Interconnection Facilities and Seller's Interconnection Facilities as defined and set forth in the Interconnection Agreement (or an analogous term, to the extent the Interconnection Agreement is amended or replaced).

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

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

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

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

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

"**Licensed Professional Engineer**" means an independent, professional engineer that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV,

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(4) Clean Energy Associates, or (5) Leidos Engineering, LLC; and (B) reasonably acceptable to Buyer (provided that at least one of the foregoing (A)(1)-(5) shall be reasonably acceptable to Buyer), licensed in the State of New Mexico, and otherwise qualified to perform the work and provide the certifications required hereunder.

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

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

"**Market Event**" has the meaning set forth in Section 22.20.

"**Maximum State of Charge**" means the relative SOC above which the battery manufacturer recommends that the ESS system not be charged, expressed in percent of Nameplate Energy Capacity.

"**Minimum State of Charge**" means the relative SOC below which the battery manufacturer recommends that the ESS system not be drawn, expressed in percent of Nameplate Energy Capacity.

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

"**Monthly Billing Period**" means each Month during the Term in which Product has been made available at the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

"**Monthly Operational Report**" has the meaning set forth in Section 10.8.

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

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

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

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

"Nameplate Energy Capacity" means the maximum amount of electrical energy, expressed in megawatt-hours (MWh), that the Energy Storage System is designed to store and make available for discharge, net of auxiliary and parasitic loads, based on the manufacturer's rated specifications and measured at the applicable metering point.

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

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

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

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

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

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

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

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

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

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

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

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

"**PCS**" or "**Power Conditioning System**" means the Energy Storage System power conditioning system utilized to convert electric power from one form to another (AC to DC, DC to AC, and/or between different voltage levels), and to condition the power quality to what is needed by the interconnected systems.

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

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

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

"**Point of Delivery**" means the electric system point at which (i) Buyer delivers Charging Energy to Seller, (ii) Seller delivers Discharge Energy to Buyer and (iii) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this agreement.

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

"**Product**" means all Energy Storage Services, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, all as made available by the Project, all of which shall be delivered for Buyer's exclusive use pursuant to the terms of this agreement.

"**Project**" means Seller's energy storage facility, located in Sandoval County, New Mexico, with a designed maximum power charge and discharge capability of Ninety (90) MW for eight (8) hours (Seven Hundred Twenty (720) MWh), as identified and described in Article 3 and Exhibit A to this agreement, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Point of Delivery: Seller's equipment, buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, Seller's Interconnection Facilities necessary to connect the ESS to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this agreement.

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

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

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

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

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

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

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

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

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for ESS of the technology provided in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency Conditions; and

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

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

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

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

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

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

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

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

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

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"**Replacement ESS Costs**" means the costs to Buyer reasonable and necessary to replace the Product (including Future Environmental Attributes and Ancillary Services) as defined herein and based upon similar terms, conditions and performance standards outlined in this agreement which Seller, in accordance with this agreement, would have made available to Buyer but failed to so provide pursuant to this agreement. Buyer shall not have to enter into a replacement contract to establish the Replacement ESS Costs. If Buyer does not enter into a replacement contract, then the Replacement ESS Costs will be based on the market price for comparable Product (including Future Environmental Attributes and Ancillary Services) delivered to Buyer, as reasonably determined by Buyer or a third party selected by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Discharge Energy to the Point of Delivery and any associated transmission or distribution costs, and (b) Buyer's expenses, including reasonable attorneys' fees, incurred as a result of Seller's failure to perform under this agreement.

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

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

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

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

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

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

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

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

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

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

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

"**Seller's Interconnection Facilities**" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access

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the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this agreement.

"**Seller Excused Hours**" means those hours during which Seller is unable to make available Product as a result of: (a) a Force Majeure Event that affects the ability of Buyer to deliver Charging Energy or to receive Discharge Energy at the Point of Delivery, (b) any failure by Buyer to perform a material obligation under this agreement (other than due to a breach by Seller of its obligations under this agreement), (c) failure of Buyer to provide Charging Energy, (d) Emergency Condition, (e) Buyer's dispatch of the Project which is not in accordance with the Operating Parameters, (f) an ESS Curtailment or (g) the time that the Project is required to be offline or at limited capacity as a result of (i) annual required testing in accordance with this agreement or (ii) additional testing requested by Buyer in accordance with this agreement.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Product that would otherwise be made available from the Project at the Point of Delivery not associated with Seller Excused Hours.

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

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

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

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e.,

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Product) for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this agreement, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

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

"**State of Charge**" or "**SOC**" means the level of charge as reported by the ESS, expressed in percent of Nameplate Energy Capacity.

"**Supplemental State Tax Incentives**" means any state or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date that provides for additional or increased tax credits and is determined to be applicable to the Project, net of associated expenses, taxes, and lost Tax Benefits, if any.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch of the ESS.

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

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

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

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

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

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

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and is available to receive Charging Energy from and deliver Discharge Energy to the Point of Delivery, and ending on the Commercial Operation Date.

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

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

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

"**Ultimate Parent**" means Exus North America Holdings LLC.

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

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

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

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

1.2 Rules of Construction.

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Seller expressly recognizes that, for purposes of this agreement, the Transmission Provider shall be deemed to be a separate entity and separate contracting party

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whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

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

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this agreement are not binding upon the Local Provider. For purposes of this agreement, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

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

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

ARTICLE 2
Term and Termination

2.1 Execution Date and Term. This agreement shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Standard Time on the date that is the last Day of the Twentieth (20^{th}) Commercial Operation Year, subject to the early termination provisions set forth herein. Applicable provisions of this agreement

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shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

ARTICLE 3
Project Description

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

COMMERCIAL TERMS

<table>
<tr><td colspan="2">Buyer: Public Service Company of New Mexico</td><td>Seller: TAG II Storage LLC</td></tr>
<tr><td colspan="3">Project: TAG II Storage</td></tr>
<tr><td colspan="3">Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer Product being provided under this agreement, as further specified in the definition of “Point of Delivery.”</td></tr>
<tr><td colspan="2">Delivery Term: 20 Commercial Operation Years</td><td>Product Type: Bundled Energy Storage Services, Ancillary Services, Future Environmental Attributes, ESS Capacity, and other ESS Unit Capabilities</td></tr>
<tr><td colspan="3">ESS Energy Payment Rate: $25.65/MWh, as further specified in Section 8.1(A).</td></tr>
<tr><td colspan="2">Day(s) of week: Monday through Sunday, including NERC holidays</td><td>Hours: Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Standard Time (“MST”)</td></tr>
<tr><td colspan="3">Guaranteed Start Date: One Hundred Fifty (150) Days after the Expected Commercial Operation Date</td></tr>
<tr><td colspan="3">Expected Commercial Operation Date: August 4, 2028</td></tr>
</table>

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

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery, and the location of the Interconnection Facilities is included in Exhibit A to this agreement. Exhibit A also contains a preliminary

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indication of the location of the ESS at the Site. Seller will provide notice to Buyer of the final proposed location of the ESS and Interconnection Facilities at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes and accept or reject such changes.

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

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

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

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

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

(E) receive Charging Energy from Buyer and deliver Discharge Energy to Buyer, each at the frequency specified by Buyer;

(F) be capable of operation over an ambient temperature range of -20°F to 110°F with the full range of relative humidity;

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

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

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

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

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

(K) meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 Section 6, at the Point of Delivery; and

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

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

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a day-for-day basis (a) up to a maximum of one hundred fifty (150) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event (together with a reasonable period for the affected Party to cure the Force Majeure Event as contemplated in Section 14.2) that delays construction or commencement of operation of the Project, (b) up to a maximum of one hundred eighty (180) Days, in the event of delay associated with the interconnection of the Project (other than work performed by Seller) that delays commencement of the operation of the Project, assuming Seller provides notice to proceed to Transmission Provider within five (5) Business Days of notice of Conditions Precedent per Section 6.2, or (c) other than in connection with or arising out of or relating to any Force Majeure Events or the interconnection of the Project, (i) if Seller

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notifies Buyer that Seller requires a performance from Buyer of Buyer's obligations under Exhibit F or Exhibit O, and (ii) Buyer does not timely perform such obligations, then on a day-for-day basis without an aggregate cap for the time period for the days of delay beyond Buyer's failure to perform in a timely manner to the extent such failure by Buyer to perform delays Seller's ability to achieve Commercial Operation on or before the Expected Commercial Operation Date. Seller shall give written notice to Buyer describing any such delay in accordance with Section 14.2 after becoming aware of any extension of Expected Commercial Operation Date. The number of Days of such extension shall be calculated from the date on which the event begins. If the Expected Commercial Operation Date is extended pursuant to clause (a) or (b) of this Section for the maximum extension period set forth in the applicable clause, then Buyer will have the right to terminate this agreement without liability of either Party other than obligations already incurred.

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

3.8 ESS Capacity Shortfall Damages. If the Commercial Operation Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve Commercial Operation. If Seller has not caused all Delayed ESS Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of One Million Five Hundred Thousand Dollars ($1,500,000) per MW of Delayed ESS Capacity (as of the Guaranteed Start Date) ("**ESS Capacity Shortfall Damages**"), as the Buyer's sole and exclusive monetary remedy, and Seller's sole and exclusive monetary liability, for Buyer's damages for Seller achieving Commercial Operation at less than the Guaranteed ESS Capacity, in which case the Guaranteed PMAX and Guaranteed ESS Capacity will be reduced in an amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8 and the ESS Energy Payment Rate shall be reduced by an amount proportional to the Delayed ESS Capacity.

3.9 Test Period. Seller shall, no later than ninety (90) Days prior to the beginning of the Test Period, give written notice to Buyer of its NERC-registered Generator Owner and Generator Operator and designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the

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timing and delivery of Charging Energy from Buyer during the Test Period as reasonably required for purposes of testing and commissioning the Project. Seller shall subsequently redeliver (net of losses due to ESS Roundtrip Efficiency) such Charging Energy to Buyer at the Point of Delivery as Discharge Energy. In accordance with Section 7.2, Buyer shall retain title of such Charging Energy and Discharge Energy. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to commencement of such Test Period. Scheduling for subsequent deliveries of Discharge Energy shall be as set forth in Section 5.1.

3.10 Notice of Commercial Operation. Not less than sixty (60) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such Expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit K when Seller believes that all requirements to Commercial Operation have been satisfied (the "**Commercial Operation Notice**"). Buyer shall in writing either accept or reject Seller's Commercial Operation Notice within fifteen (15) Business Days after the date of such Commercial Operation Notice, in its reasonable discretion, and if Buyer rejects the Commercial Operation Notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. If Buyer fails to respond to the Commercial Operation Notice within fifteen (15) Business Days after the date of such Commercial Operation Notice, and all the requirements of Commercial Operation have been met, then the Commercial Operation Notice shall be deemed accepted, and the Commercial Operation Date shall be fifteen (15) Business Days after the date set forth in the Commercial Operation Notice. If Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Charging. The ESS shall be configured to charge exclusively using Energy provided by the Buyer from the electrical grid. Seller shall obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid by the Commercial Operation Date.

3.12 ESS Unit Capabilities. "**ESS Unit Capabilities**" means all of the following for the ESS, all as measured and determined at the Point of Delivery:

(A) Capability to discharge at ninety (90) MW (the "**Guaranteed PMAX**") for eight (8) uninterrupted hours, as may be adjusted pursuant to Section 3.8;

(B) [Reserved];

(C) ESS Roundtrip Efficiency equal to the Guaranteed ESS Roundtrip

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Efficiency;

(D) Actual Discharge Ramp Rate equal to the Guaranteed PMAX per second measured between 85% State of Charge and 15% State of Charge (the "**Guaranteed Discharge Ramp Rate**");

(E) Actual Charge Ramp Rate equal to the Guaranteed PMAX per second measured between 15% State of Charge to 85% State of Charge (the "**Guaranteed Charge Ramp Rate**");

(F) **Guaranteed System Latency**: <1 second;

(G) **Guaranteed Frequency Response Capability**: Guaranteed PMAX/0.1Hz; and

(H) Capability to support Ancillary Services in accordance with the system design and ESS Operating Restrictions, or as otherwise agreed by the Parties in writing.

3.13 ESS Non-Performance Liquidated Damages. ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Additional Buyer-Requested Performance Tests may also be required in accordance with Section 10.5. Seller will pay Buyer the following liquidated damages ("**ESS Non-Performance Liquidated Damages**") as the sole and exclusive remedy for ESS unit non-performance, including any failure to meet the ESS Unit Capabilities (in each case other than as excused due to (a) a Force Majeure Event, or (b) Seller Excused Hours) or to comply with the requirements of Section 7.4(A).

(A) Upon failure of Seller to satisfy the Guaranteed Discharge Ramp Rate, Guaranteed Charge Ramp Rate, Guaranteed Frequency Response Capability, or Guaranteed System Latency during ESS Unit Capabilities testing, Seller shall pay to Buyer "**ESS Response Delay Damages**" equal to ten thousand dollars ($10,000) per event (each event shall last no longer than three (3) Days). A test method and calculation for the ESS Response Delay is described in Exhibit F herein. Provided, however, under no circumstances will ESS Non-Performance Liquidated Damages (other than ESS Capacity Shortfall Damages) exceed Five Hundred Thousand Dollars ($500,000) in any Commercial Operation Year. As used in this Section 3.13(A), "event" means an occurrence causing a failure to comply by Seller lasting no more than seventy-two (72) hours; each exceedance of the seventy-two (72) hour cap by the same occurrence will be deemed a separate event. If multiple failures occur within 72 hours of the initial event, they will be treated as a single event if arising out of a common root cause.

3.14 Guaranteed ESS Roundtrip Efficiency Payment.

(A) If the ESS Roundtrip Efficiency is below the Guaranteed ESS Roundtrip Efficiency, Seller will pay to Buyer an amount equal to $100/MWh * Guaranteed PMAX * 8 hours * (1 – (ESS Roundtrip Efficiency/Guaranteed ESS Roundtrip Efficiency)).

3.15 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that acquisition, importation, transfer, and installation of all equipment, firmware, software, or any component thereof supplied to Buyer under this agreement is not

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prohibited by Applicable Law. Any breach of this Section 3.15 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.15 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.16 Eligible Change in Tariff. To the extent an Eligible Change in Tariff occurs between the Execution Date and one (1) year after NMPRC Approval that requires Seller to take additional actions to comply with Seller's obligations under this agreement and the costs associated with such actions, if they had been reasonably contemplated as of the Execution Date, increase Seller's costs by more than one and a half percent (1.5%) of the Contract Value at Contract execution, Seller shall have the right to terminate this agreement upon notice to Buyer unless Seller waives such condition in writing in its sole discretion, and Buyer shall return the Development Security and Delivery Term Security, as applicable, to Seller within fifteen (15) Days after such termination.

ARTICLE 4
AGC; ESS Curtailment

4.1 AGC.

(A) Prior to any Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall coordinate with Buyer's Power Operations Engineering in completing a full functional SCADA/RTU checkout from a points list agreed to by both Parties. Seller will maintain such AGC throughout the Delivery Term. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall commission the AGC at the Project and shall maintain the AGC in an operational state during normal Project operations such that the Project's AGC can receive remote instruction from Buyer to cause the Project to shut down, operate and ramp over its full operating capability in response to remote instruction. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to direct the dispatch of the ESS, via AGC control, to its fullest capability. Total cycles shall not exceed three hundred sixty-five (365) Equivalent Full Cycles in any Commercial Operation Year.

4.2 ESS Curtailment. An ESS Curtailment occurs any time the Project is unable to receive otherwise available Charging Energy or deliver otherwise available Discharge Energy to Buyer as a result of transmission limitations regardless of whether such curtailment is affected directly by Seller or Buyer, including as a result of Buyer's scheduling practices, or indirectly, by the Transmission Provider pursuant to the OATT or transmission service arrangements ("**ESS Curtailment**").

ARTICLE 5
Delivery and Metering

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5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this agreement to accept the Charging Energy at and from the Point of Delivery as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Energy Storage System. Seller shall use and only use the Charging Energy for Buyer's benefit in accordance with the terms and conditions of this agreement. Seller shall secure transmission necessary (i) to deliver the Discharge Energy to the Point of Delivery, and (ii) receive Charging Energy from the grid at the Point of Delivery to the ESS, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project.

(B) Seller shall be responsible for the costs of interconnection and costs required to receive and deliver Energy from the Project to Buyer at the Point of Delivery at the required voltage and frequency, including the costs of any associated network upgrades. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to Discharge Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.

(C) Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on the Project and any co-located generation systems sharing the same interconnection. If applicable, delivery of Energy from the co-located generation systems to the Transmission Provider's Transmission System shall take priority over Energy discharged from the ESS; and further provided, that when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Energy discharged from the ESS shall take priority over delivery of Energy from co-located generation systems.

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

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

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Charging Energy and Discharge Energy delivered pursuant to this agreement shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall ensure that

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Electric Metering Devices, including Primary Metering Devices and redundant metering ("**Back-Up Metering**") with independent current transformers ("**CTs**") and potential transformers ("**PTs**"), are installed at or near the Electric Interconnection Point that measures the Charging and Discharging Energy of the Project before such Energy is commingled with the energy from any other project. Metering shall be provided in an arrangement consistent with the applicable configuration depicted in Exhibit N or as otherwise agreed between the Parties.

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

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

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, secondary, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A) and the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however*, that the requesting Party

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shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Party requesting the test, unless, upon such inspection or testing, Secondary Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

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

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

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

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

ARTICLE 6
Conditions Precedent

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

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

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(B) [RESERVED].

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable; provided, however, that Buyer's failure to provide such notice shall not constitute a breach of this agreement.

ARTICLE 7
Sale and Purchase of Product

7.1 Sale and Purchase of Product. In accordance with and subject to the terms and conditions of this agreement, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Product made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that Buyer shall not be required to receive and purchase Product when and to the extent that (a) a Seller Forced Outage or a Scheduled Maintenance Outage is continuing, or (b) Seller's performance is excused during Seller Excused Hours or due to Force Majeure Event. At its sole discretion, Buyer may resell or use for another purpose all or a portion of the Product. Buyer will have exclusive rights to offer, bid, or otherwise submit the Product for resale in the market and retain and receive any and all related revenues. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this agreement.

7.2 Title and Risk of Loss. As between Seller and Buyer, Buyer shall be deemed to be in control of all Charging Energy up to delivery at the Point of Delivery, Seller shall be deemed to be in control of all Charging Energy from and after such delivery to the Point of Delivery until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy at the Point of Delivery, and Buyer shall be deemed to be in control of all Discharge Energy from and after delivery and receipt at the Point of Delivery. Buyer shall at all times retain title and risk of loss for Charging Energy, Charging Energy that is stored in the ESS, and Discharge Energy. Title and risk of loss related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this agreement all right and title to such Future Environmental Attributes is included in the ESS Energy Payment Rate and (c) such Future Environmental Attributes pass to Buyer in accordance with Section 7.2 of this agreement. If in order for Buyer to receive the benefit of any Future Environmental Attributes Seller must incur any third-party costs not otherwise provided for in this agreement or if any change in law or regulation relating to such Future Environmental Attributes occurs after the Execution Date that causes Seller to incur any third-party costs not otherwise provided for in this agreement in order to deliver the Future Environmental Attributes, then such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer; provided, that Seller shall not be required to incur any costs for Buyer to receive the benefit of Future Environmental Attributes unless requested to do so by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall

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notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. Buyer shall remain liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements, and any other applicable guidelines. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Discharge Energy and Charging Energy in accordance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines, except that Buyer shall not schedule any Discharge Energy or Charging Energy during Seller Forced Outages, Scheduled Maintenance Outages, and Force Majeure Events.

(B) [RESERVED]

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

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

(E) Seller shall configure the ramp rate for the Project such that Discharge Energy will not increase at a rate greater than twenty (20) MW per minute.

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

ARTICLE 8
Payment Calculations

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

(A) Monthly ESS Energy Payment. Subject to the provisions of this agreement, Buyer shall pay Seller an amount equal to the product of (i) the ESS Capacity, not to exceed the Guaranteed ESS Capacity, multiplied by (ii) the Monthly Hours, multiplied by (iii) the ESS Energy Payment Rate, multiplied by (iv) Monthly ESS Availability, as determined in accordance with Exhibit I (the "**ESS Energy Payment**"). The ESS Energy Payment also compensates Seller for the associated Environmental Attributes and Ancillary Services, in any Monthly Billing Period. The ESS Energy Payment includes all Taxes.

Example: For a 30-Day Month, assuming 98% availability

ESS Energy Payment =

100 MW ×30 Days ×24 hours × $25.65/MWh ×0.98

(B) If Supplemental State Tax Incentives become available in connection with the Product, Seller shall, within thirty (30) Days of guidance regarding such availability, provide an analysis to Buyer of the benefits available under this agreement. At Buyer's option, the Parties shall work together in good faith to agree to those amendments and other modifications, excluding any price increase, to this agreement which are reasonably required to allow the Parties to receive the Supplemental State Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such credits.

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

(D) Buyer shall reimburse Seller for the taxes identified in Section 9.7(A), which shall be included in the Monthly invoices in compliance with Section 9.7(A).

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

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

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ARTICLE 9
Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

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

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

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this agreement (in Dollars) to Seller for the preceding Month. Each such invoice shall show the ESS Energy Payment, information and calculations, in reasonable detail.

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

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

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

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

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

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

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in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within sixty (60) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

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

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid. A Party must notify the other Party of any error within three hundred sixty-five (365) Days of such error.

9.7 Taxes.

(A) On all invoices, Seller shall separately show all New Mexico gross receipts, sales, and other similar taxes charged to Buyer provided that in no event will interest or penalties on such taxes be reimbursable by Buyer. If the sale of Product takes place on tribal land, Seller will comply with applicable state and tribal laws governing the reporting and payment of Gross Receipts Taxes on those transactions. Buyer shall reimburse Seller for Gross Receipts Taxes, if any, imposed on Seller's sale of and Buyer's purchase of Product and on Buyer's payment and Seller's receipt of amounts due under this agreement provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Product to Buyer pursuant to this agreement.

(B) Seller shall be responsible for and shall pay when due all income, gross receipts, compensating, use, value added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof,

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including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

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

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

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

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

9.9 Netting.

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

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

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

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any such repudiation, termination or expiration.

ARTICLE 10
Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement, Applicable Law and this agreement. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of whether the sale of Product from the Project is eligible for, or receives, Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer Monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule within thirty (30) Days of the Execution Date, including key Project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with each subsequent Monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-13-16 of the New Mexico Public Utility Act and shall document the employment of these apprentices as set forth in Section 10.1(B).

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer Monthly construction updates no later than the 15th Day of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, Monthly updates shall include the Project Schedule and list of schedule risks and material cost risks as well as Seller's compliance with the apprenticeship standards established by Section 62-13-16 of the New Mexico Public Utility Act. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not modify, alter, or otherwise change the Project without the

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prior written consent of Buyer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to alter the Guaranteed ESS Capacity, annual performance, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

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

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

10.2 Commissioning and Testing.

(A) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and ten (10) Days prior notice of the final tests scheduled relating to the commissioning of the Project Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

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

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conduct itself in a manner that will not unreasonably interfere with the Project's operations.

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

10.4 Operating Parameters.

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

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection consistent with protective function requirements in IEEE Standard 2800-2022, Section 9, system protection awareness and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair that can be monitored by the System Control Center. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers standards and Prudent Utility Practices. Seller shall have qualified independent, third-party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than thirty (30) Days before the Commercial

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

(A) Seller will prepare detailed test protocols and procedures for any tests to be performed in connection with achieving Commercial Operation and for periodic tests as required within this agreement. The protocols and procedures will be developed by Seller in accordance with the requirements of the agreement and the appropriate power test code standards for energy storage facilities. Draft protocols and procedures must be submitted to Buyer and the System Control Center for review and approval, which approval will not be withheld unreasonably.

(B) Not later than one hundred eighty (180) Days before the Commercial Operation Date, Seller and Buyer shall develop mutually agreeable written test protocols, based upon the methodologies identified in Exhibit F to quantify the ESS Unit Capabilities. Seller will perform annual ESS Unit Capabilities tests in accordance with those test protocols and procedures and promptly provide the results to Buyer. With the exception of the cost for Charging Energy provided by Buyer, the annual ESS Unit Capabilities tests will be performed at Seller's expense. Annual testing for ESS Capacity and Guaranteed ESS Roundtrip Efficiency shall consist of two annual tests. Each of Buyer and Seller may elect up to two additional tests to be performed at a mutually agreed time. Within thirty (30) Days of the completion of an ESS Capacity or ESS Roundtrip Efficiency test, Seller may elect to conduct a single re-test. Upon completion of the single re-test, Seller must choose for the results of either test to be used as the basis of compliance with the applicable guarantee and the basis of applicable liquidated damages in Section 3.13, adjustment to the ESS Roundtrip Efficiency payment as outlined in Section 3.14, or adjustment to the ESS Energy Payment as outlined in Section 8.1(A).

(C) Testing for all remaining ESS Unit Capabilities, including Guaranteed Charge Ramp Rate, Guaranteed Discharge Ramp Rate, Guaranteed System Latency, Guaranteed

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Frequency Response Capability, and capability to support Ancillary Services (collectively, "Buyer-Requested Performance Tests") shall be performed once per Commercial Operation Year. Upon failure to pass any of these ESS Unit Capabilities tests, Seller will have ninety (90) Days from the test date to cure any deficiencies in the test.

(D) For all ESS Unit Capabilities tests and re-tests, Seller shall notify Buyer at least ten (10) Days prior to the initiation of the test and Buyer shall have the option to inspect the Project during such test.

(E) For all ESS Unit Capabilities tests and re-tests, Seller shall provide a test report including all performance data, model simulations, calculations, and test reports to the Buyer for analysis and approval.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this agreement. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the Scheduled Maintenance Outages by no later than October 15 for the period of June 1 through November 30 for the following Commercial Operation Year and by no later than April 15 for the subsequent period of December 1 through May 31. Should Buyer desire to change the reporting dates noted above as a result of Buyer's participation in a regional market or program (including the Western Resource Adequacy Program), the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

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

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

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

10.8 Monthly Operational Report. Not later than the fifteenth (15th) Day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**"). The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Energy output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; meteorological data; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. If any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

10.9 [Reserved].

ARTICLE 11
Future Environmental Attributes

11.1 Sale of Future Environmental Attributes.

If Future Environmental Attributes become available, this Article 11 shall apply.

(A) Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to Future Environmental Attributes associated with the Project. Upon generation and documentation of Future Environmental Attributes, Seller shall make the Future Environmental Attributes available to Buyer no later than five (5) Business Days after creation. The value of the Future Environmental Attributes transferred under this agreement shall be included in the ESS Energy Payment Rate.

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

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

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more third parties under any transaction permitted by Applicable Law.

(D) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this agreement or any successor provision providing for a federal, state and/or local tax credit determined by reference to renewable electric energy produced from renewable energy resources shall be owned by Seller.

(E) Seller shall register the Project, as necessary, no later than thirty (30) Days after Buyer notifies Seller of the availability of such Future Environmental Attributes, so that the Project is compliant with reporting requirements related to Future Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law. Notwithstanding the foregoing, Seller shall not be required to expend more than Five Thousand Dollars ($5,000) per MW annually and Ten Thousand Dollars ($10,000) per MW in the aggregate to maintain compliance due to regulatory changes relating to Future Environmental Attributes.

ARTICLE 12
Default and Remedies

12.1 Events of Default of Seller.

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

(1) Seller's dissolution or liquidation;

(2) Seller's assignment of this agreement (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 and in any consent to collateral assignment with a Lender;

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

(4) Except during a Buyer Event of Default, the sale by Seller to a third party, or diversion by Seller for any use, of Product committed to Buyer by Seller;

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

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

(7) Seller's assignment of this agreement, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as

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permitted in accordance with Article 18.

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

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

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

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

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

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

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

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

(3) Seller's failure to make any payment due to Buyer under or in connection with this agreement (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this agreement);

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

(5) Should Future Environmental Attributes become available and Seller fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this agreement.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer

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to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

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

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

12.2 Events of Default of Buyer.

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

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

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

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

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

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

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

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

(2) Any representation or warranty made by Buyer in this agreement

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shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

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

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, that if an Event of Default has occurred and has continued uncured for a period of one hundred eighty (180) Days, the Non-Defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this agreement as provided for in Section 12.4. If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include an amount of cover damages equal to Replacement ESS Costs minus the product of (x) the quantity of Product so replaced and (y) the ESS Energy Payment Rate; *provided, however, that for any termination prior to the Commercial Operation Date the Buyer Termination Payment shall be limited to an amount equal to the Development Security minus the total amount of Delay Damages received by Buyer.* Further, Seller acknowledges and agrees that in addition to the foregoing, Seller shall be obligated to pay Buyer any such damages associated with replacement of Product notwithstanding the availability or prices of electric energy and capacity from other fuel sources, such as natural gas. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any Future Environmental Attributes pursuant to this agreement, if such failure arises out of Seller's negligence or willful misconduct. Seller acknowledges that Buyer entered into this agreement for the procurement of Product, which includes Future Environmental Attributes. If Buyer is the Defaulting Party, the Parties agree that damages recoverable by Seller hereunder on account of an Event of Default of Buyer shall include costs and losses incurred by Seller due to such Event of Default, including, to the extent applicable, an amount of cover damages equal to the quantity of Product produced by Seller following such Event of Default, plus, to the extent that Seller is unable to produce Product due to the Event of Default of Buyer, an additional quantity equal to the amount of Product that would have been produced by Seller absent such Event of Default of Buyer, each multiplied by the ESS Energy Payment Rate; provided that the foregoing amount shall be reduced by an amount equal to (A) the amount of any revenues that Seller, using commercially reasonable efforts, is able to obtain by selling Product to a third party or into the market, less (B) Seller's costs and expenses incurred to effectuate any such sales, but in no event less than Zero Dollars ($0.00). Seller shall use commercially reasonable efforts to avoid, minimize or mitigate Seller's damages.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party

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shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this agreement shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this agreement, except that if Seller is the Defaulting Party, Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this agreement except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this agreement. Upon the termination of this agreement under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment, and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment, less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller).

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

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

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

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this agreement, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for

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herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

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

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this agreement, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this agreement, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

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

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

ARTICLE 13
Contract Administration and Notices

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

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Section 13.1.

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

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

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this agreement, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this agreement as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this agreement (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this agreement. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

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

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

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

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

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

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

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

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

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

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

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

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this agreement in an expeditious and commercially reasonable manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this agreement, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. If the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("Dispute Notice"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. If the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

ARTICLE 14
Force Majeure

14.1 Definition.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" means an event or circumstance that arises, after the Execution Date, that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, that cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this agreement. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods,

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unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this agreement is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

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

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities or other events or circumstances that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

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

(E) Except as otherwise provided in this agreement, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure

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Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this agreement (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

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

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

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event, and the effects thereof, to the extent its effects impact the ability of:

(A) Seller to deliver Discharge Energy from the Project or to accept Charging Energy to the Project, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered ESS Unavailable Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment;

(B) Buyer to receive Discharge Energy from the Project or to deliver Charging Energy to the Project, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered Seller Excused Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment; or

(C) both Buyer and Seller to perform the acts described in (A) and (B), then the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered ESS Unavailable Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment.

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ARTICLE 15
Representations, Warranties and Covenants

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

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

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

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

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

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

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

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

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

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for

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Seller's execution, delivery and performance of this agreement have been duly obtained and are in full force and effect, or will be obtained in the ordinary course of business.

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

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

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

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

(J) Seller has, and/or will have good and marketable title to the Future Environmental Attributes immediately prior to delivery to Buyer.

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

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

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

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

(O) [Reserved].

(P) [Reserved].

(Q) This ESA does not provide for the transfer of the Project to Buyer at any time during or after the Term.

(R) This ESA does not grant Buyer an option to purchase the Project or any portion of the associated assets at any time during or after the end of the Term.

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

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

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

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

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

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

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

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

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

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

ARTICLE 16
Insurance

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16.1 Evidence of Insurance.

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

16.2 Term and Modification of Insurance.

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

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

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

16.3 Endorsements and Other Requirements.

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

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

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer and its respective

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

ARTICLE 17
Legal and Regulatory Compliance and Governmental Approval

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

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

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

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

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

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(1) If the NMPRC disapproves any of the Requested Actions, then this agreement shall automatically terminate ten (10) Days after the date of such action by the NMPRC and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, except that Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

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

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval by 11:59 P.M. of December 31, 2026 ("**Regulatory End Date**"), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this agreement shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this agreement remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

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

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

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ARTICLE 18
Assignment and Other Transfer Restrictions

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

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

(B) Seller's consent shall not be required for any assignment of this agreement by Buyer to any Affiliate or in connection with the acquisition, merger, reorganization, or consolidation of Buyer or its parent corporation, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this agreement as and if required by NMPRC regulations and will resell the Product hereunder.

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

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

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

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

18.6 Assignment to Lenders.

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

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this agreement or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this agreement; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this agreement and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under

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this agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

ARTICLE 19
Credit and Security Requirements

19.1 Security. Seller shall post, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed ESS Capacity, (the "**Development Security**"), the first Fifty Thousand Dollars ($50,000) per MW of which will be posted within ninety (90) Days of the Execution Date and the second Fifty Thousand Dollars ($50,000) per MW of which will be posted no later than eighteen (18) months prior to the Expected Commercial Operation Date. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty-Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed ESS Capacity (the "**Delivery Term Security**"). Seller shall replenish the Development Security and Delivery Term Security, as applicable, to such required amount within fifteen (15) Days after any draw by Buyer. Buyer will return the Development Security to Seller in full if Commercial Operation occurs on or before the Guaranteed Start Date, provided Seller has paid in full any Delay Damages or ESS Capacity Shortfall Damages and provided the Delivery Term Security. If no amounts are due and owing under this agreement and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92nd) Day after termination of this agreement in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Buyer:

(a) cash, (b) a Letter of Credit in form acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is Creditworthy, or (d) other security as may be acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) Days before expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative

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

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

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

ARTICLE 20
Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable ("**Buyer's Indemnified Persons**"), from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the

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extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

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

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned

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or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

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

ARTICLE 21
Governmental Charges

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

ARTICLE 22
Miscellaneous

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

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this agreement, or any contractual obligation,

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

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

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

22.5 Relationship of the Parties.

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

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

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

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

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

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

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

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

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

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

22.13 Governing Law. The interpretation and performance of this agreement and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application

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

22.14 Confidentiality.

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

(B) Other than in connection with this agreement, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, legal counsel and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this agreement. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). To the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts to ensure that such Confidential Information is not made public.

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

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

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

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

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

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

(F) Seller shall immediately notify Buyer of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("Data Breach") that comes to Seller's attention. Such notification shall be made to Buyer no more than twenty-four (24) hours after Seller suspects or knows of the Data Breach. Seller shall also take the following actions in the event of a Data Breach: (a) designate a Seller representative who must be available to Buyer twenty-four (24) hours per Day, seven (7)

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Days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

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

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

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

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this agreement, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this agreement. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or

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warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions, and Buyer shall be responsible for Seller's reasonable third-party costs associated with assisting Buyer in such transactions.

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

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

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements

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set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

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

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

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

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

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Recording to the other Party upon request.

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

[Signature page(s) follow]

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

PUBLIC SERVICE COMPANY OF NEW MEXICO

By DocuSigned by: Laurie Williams B87ED845D25E4D9...

Name Laurie A Williams

Title Senior Vice President

TAG II STORAGE LLC

By _____

Name Jim Spencer

Title President and Chief Executive Officer

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

1. Name of Seller's Project: TAG II Storage

2. Location: Sandoval County, New Mexico

3. Owner (if different from Seller):

4. Operator: Exus North America Management Partners LLC

5. Equipment/Fuel:

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

   b. Total number of units at the Project: Approximately 181 ESS Units

   c. Total nameplate capacity (AC): 90 MW

   d. Total capacity at point of delivery: 90 MW

   e. Additional technology-specific information: Tesla Megapack 3

   f. Battery chemistry: Lithium Iron Phosphate

6. Project Schedule:

Key Milestone	Date
LGIA Execution	November 12, 2024
Major Equipment Supply Agreements Executed	August 1, 2026
Discretionary Permits	December 1, 2026
Close Financing	TBD
30% Design Complete	TBD
Start of Project Construction	TBD
First Major Equipment Delivered to Site	December 1, 2027
Interconnection In-Service Date	March 4, 2028
Commissioning Start Date	April 4, 2028

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Expected Commercial Operation	August 4, 2028
Guaranteed Start Date	January 1, 2029

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

Site Map

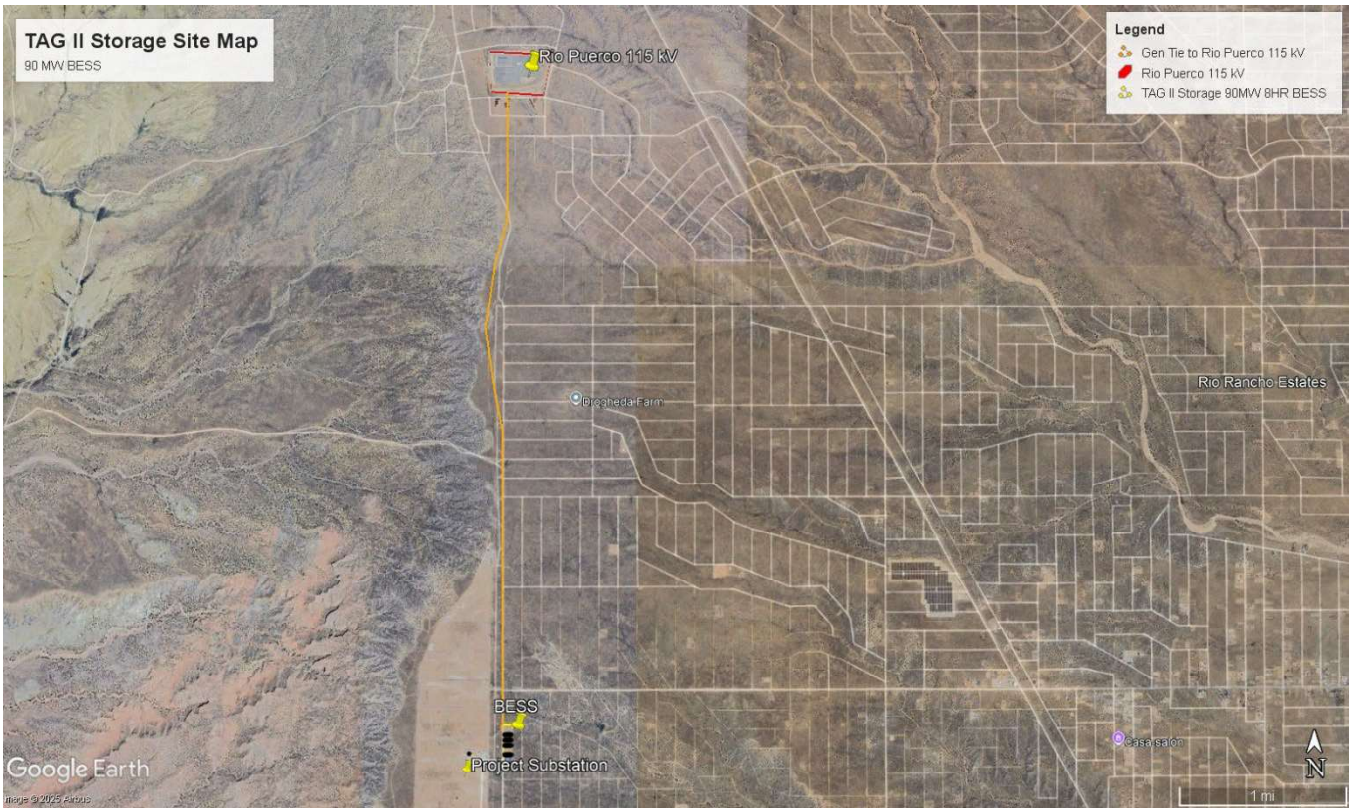

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EXHIBIT B
ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES

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

    - Interconnection Facilities;
    - the network upgrades;
    - the Electric Interconnection Point;
    - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);
    - communications and telemetry configuration with associated redundancy;
    - the House Energy power source and associated dedicated electric meter, and redundancy, ownership and location of meters and associated CTs and PTs.

2. The following discussion provides a summary of the current status of the Interconnection Agreement for the Project, the key milestone dates for completion of the necessary interconnection facilities, and documentation from the Transmission Provider supporting the identified status and milestone dates.

3. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.

4. Point of Delivery is Rio Puerco 115 kV.

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EXHIBIT C
DESCRIPTION OF SITE[1] PARCEL SURVEY FOR TAG II STORAGE PROJECT

DESCRIPTION OF SITE

Lot 6, Block 76, of Rio Rancho Estates Unit 2, filed in the Office of the County clerk of Sandoval County, New Mexico in Plat Book No. 1, Page 21, plat records of Sandoval County, New Mexico.
AND
Lots 4 and 5, Block 76, of Rio Rancho Estates Unit 2, filed in the Office of the County clerk of Sandoval County, New Mexico in Plat Book No. 1, Page 21, plat records of Sandoval County, New Mexico.
AND
Lot 13, Block 76, of Rio Rancho Estates Unit 2, filed in the Office of the County clerk of Sandoval County, New Mexico in Plat Book No. 1, Page 21, plat records of Sandoval County, New Mexico.
AND
Lot 15, Block 76, of Rio Rancho Estates Unit 2, filed in the Office of the County clerk of Sandoval County, New Mexico in Plat Book No. 1, Page 21, plat records of Sandoval County, New Mexico.
AND
Lot 20, Block 76, of Rio Rancho Estates Unit 2, filed in the Office of the County clerk of Sandoval County, New Mexico in Plat Book No. 1, Page 21, plat records of Sandoval County, New Mexico.
AND
Lots 2, 3, and 7, Block 76, or Rio Rancho Estates Unit 2.

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

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EXHIBIT D
NOTICE ADDRESSES

PUBLIC SERVICE COMPANY OF NEW MEXICO

Notices:

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

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

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

Payments:
Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

Wire Transfer:
Wells Fargo Bank
ABA# 121000248
Albuquerque, New Mexico
ME Whsle Pwr Depository: 651-537-7916
Attn: EA-Wholesale Power Marketing

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

TAG II Storage LLC

All Notices/Invoices:

Delivery Address:
Exus Renewables North America
1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219
Attn: John Markwell
Phone: 412-443-9618

With copy to:
Exus Renewables North America
1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219
Attn: Edith Webster-Freed
Phone: 929-715-3876

Mailing Address (if different from above):

Wire Transfer: [●]

With additional Notice of an Event of Default, termination and other legal notices to:
Attn: Edith Webster-Freed
Address: 1435 BEDFORD AVE. STE C2
PITTSBURGH, PA 15219
Phone: 929-715-3876

Attn: John Markwell
Address: 1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219
Phone: 412-443-9618

Project Manager:
Exus Renewables North America
Attn: Brian Reindl
Address: 1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219

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

Public Service Company of New Mexico
Attention: Laurie Williams
414 Silver Ave. SW
Albuquerque, NM 87102
Telephone: (505) 241-0641

With a copy to:

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

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EXHIBIT E

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

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
Sandoval County Zoning Map Amendment	Sandoval County
National Historic Preservation Act Section 106 Finding of Eligibility, Consultation and Approval	New Mexico State Historic Preservation Office
Building and Electrical Permit	Construction Industries Division on behalf of The State of New Mexico (NMCID)
Access/Driveway Permit	New Mexico Department of Transportation/Sandoval County
NPDES Section 402 General Permit	United States EPA

NOTE: Final actual permit requirements may vary from the above listings due to code and regulatory requirements as needed for Project completion, as is customary for commercial scale power generation facilities. This list is considered inclusive at the time of development of the agreement.

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EXHIBIT F
COMMISSIONING AND ANNUAL TESTING

Commissioning Tests

- Automatic Generation Control (AGC) Functionality Test (or equivalent)
- SCADA Functionality Test (or equivalent)
- Owner Control and Data Link Functionality Tests (See Section C in this Exhibit F)
- ESS Unit Capabilities Testing
- ESS Solar Capacity Firming Test (if applicable)

Annual Testing

- ESS Unit Capabilities Testing

Commissioning Procedures

Final testing and commissioning procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements may be modified to account for factory-performed commissioning procedures and otherwise updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures. The final energy storage plant testing and commissioning process will be based on as-built design and plant configuration, and shall verify the final, as-assembled operation. The approach shall be confirmed with all equipment suppliers to ensure a safe process.

PHASE 1 – Battery to PCS

A. Battery Module
    1. Prior to installing each battery module:
        a. Test and confirm battery module voltage

B. Battery String
    1. Once the battery modules are installed in the battery rack with the necessary electrical and communication connections with the battery switchgear and Rack BMS:
        a. Confirm battery modules have auxiliary power supply
        b. Confirm battery modules communicate with rack BMS
            i. Read the System BMS and check whether the battery banks are operable, or not.
        c. Repeat steps i through ii for all battery strings connected to the PCS.
        d. Once communication is confirmed between the battery string and the System BMS, test and confirm battery string voltage on input terminals of Switchgear, one string at a time.
        e. Once complete, send all DC contactor “on” command to the System BMS and check the DC contactor’s status via the System BMS.
        f. Initiate the pre-charge circuit to balance the battery strings prior per the battery vendor specifications.

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C. Battery Bank
   1. Once all of the battery strings within a bank are connected to the input on the PCS and the System BMS, and each input on the PCS is complete with the necessary battery bank connections:
      a. Confirm communication between the System BMS and the PCS (via the EMS, or direct)
      b. Confirm voltage on the PCS terminals is within the battery manufacturer requirements to connect the strings in parallel.

D. PCS
   1. Connect a temporary power supply such as a generator to the PCS to charge the battery bank.
   2. Turn on the PCS.
   3. Charge the battery bank.
   4. Disconnect the temporary power supply.
   5. Connect the PCS to a load bank.
   6. Discharge the battery bank into the load bank.
      a. Confirm the battery bank capacity (kWh) based on power for duration.

E. Repeat steps 1 through 4 for every PCS in the Energy Storage System.

F. End of Phase 1

G. PHASE 2 – PCS to MV Bus in Substation

H. Medium Voltage Block
   1. Disconnect / isolate the battery bank voltage from the PCS
   2. Connect the PCS to the medium voltage transformer.
   3. Connect the Medium Voltage Blocks to the Medium Voltage Feeder
   4. Connect the Medium Voltage Feeder to the Medium Voltage bus in the substation via the MV circuit breaker.
   5. With all blocks connected to the Medium Voltage Feeder (approximately 8-10 blocks per MV Feeder), test and commission each MV block, one at a time. (This assumes the substation is energized and capable of charging and discharging.)

      a. Charge each block to 100% SOC.
      b. Let the battery rest as recommended by the battery vendor.
      c. Discharge each block to 0% SOC.
      d. Open the MV Feeder circuit breaker upon completion.

I. Repeat steps 1 through 2 for all Medium Voltage Feeders

J. End of Phase 2

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K. PHASE 3 – MV bus to POI

L. One MV Feeder at a time, close the MV Feeder Breaker, and energize all of the blocks on the feeder.
M. Allow the MV Feeder to charge and then discharge. Once complete, repeat step 1 for all MV Feeders.

Commissioning Testing

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date. Final test procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements shall be updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures.

Automatic Generation Control (AGC) Functionality Test

Purpose:

This test will demonstrate the ability of the ESS to synch to AGC.

System starting state:

The ESS will be in the on-line state at between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("EMS") shall be configured to follow a predefined, agreed-upon active power profile. In the case and to the extent that Seller has not obtained authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, this profile shall not cause the ESS to charge from the grid.

Procedure**:**

1. Record the ESS active power level at the Electric Metering Device.

2. Command the ESS to follow a simulated AGC discharging signal every four (4) seconds for ten (10) minutes.

3. Upon confirmation of the availability of sufficient output from Seller's other projects or to the extent of authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, command the ESS to follow a simulated AGC charging signal every four (4) seconds for ten (10) minutes.

4. Record and store the ESS active power response (in seconds).

System end state:

The ESS will be in the on-line state and at a commanded active power level of 0 MW.

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SCADA Functionality Test

Seller shall prepare and submit to Buyer a SCADA Functionality Test procedure no later than 180 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such SCADA Functionality Test procedure and Seller shall perform and successfully demonstrate the SCADA functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

Owner Control and Data Link Functionality Test

Seller shall prepare and submit to Buyer an Owner Control and Data Link Functionality Test procedure no later than 180 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Owner Control and Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Owner Control and Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

Voltage Setpoint Functionality Test

[Test procedures to be agreed upon at a later date, consistent with the timeline set forth in Section 10.2 of the agreement and battery manufacturer's then-current operating and testing requirements]

Commissioning and Annual Tests

The following tests shall be conducted as a requirement to achieve the Commercial Operation Date and will be repeated annually (or more frequently as allowed under the agreement) throughout the term of the agreement. Final test procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements shall be updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures.

A. ESS Unit Capabilities Testing

1. ESS Capacity Test

a. General

The ESS Capacity Test ("**ESS Capacity Test**" or "**ECT**") is a test performed to determine the then-current ESS Capacity and Roundtrip Efficiency (RTE). Each ESS Capacity Test (including the initial ESS Capacity Test performed prior to Commercial Operation and each subsequent ESS Capacity Test) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit F. Buyer or its representative may be present for any ECT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

b. Requirements Applicable to all ESS Capacity Tests

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i. Purpose of Test. Each ECT shall:

- determine the ESS Capacity for the purposes of this agreement;
- determine the Roundtrip Efficiency (RTE) of the ESS;

ii. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:

- discharge time (minutes);
- ESS Charging Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh ("**ESS Meter Energy In**");
- ESS Discharge Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh ("**ESS Meter Energy Out**");
- ESS Discharge Energy measured at the ESS Electric Metering Device including the accounting of losses from the ESS Electric Metering Device to the Point of Delivery, in MWh ("**Point of Delivery Energy Out**");
- ESS Charging Energy measured at the ESS Electric Metering Device accounting for losses from the Point of Delivery to the ESS Electric Metering Device, in MWh ("**Point of Delivery Energy In**");

iii. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.

iv. Test Elements and Sequence. Each ECT shall include the following test elements:

- starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate setpoint equal to the Guaranteed ESS Capacity;
- the determination of Point of Delivery Energy In, as measured by the Electric Metering Device, that is required to charge the ESS until a 100% State of Charge is achieved as of the commencement of the ESS Capacity Test.
- the discharging of the ESS from a 100% State of Charge at a power discharge rate setpoint equal to the Guaranteed ESS Capacity (MW);
- the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after eight (8) hours of discharging at the Guaranteed ESS Capacity;
- the determination of Point of Delivery Energy Out, as measured by the ESS Electric Metering Device, that is discharged from the ESS to the Point of

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Delivery until either a 0% State of Charge is achieved or eight (8) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by eight (8) hours shall determine the ESS Capacity. The Electric Metering Device shall be programmed to correct for losses between the Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;

v. Test Conditions.

- General. At all times during an ECT, the ESS shall be operated in compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. The ESS shall have charged and discharged at least 80% of one (1) Equivalent Full Cycle in the twenty-four (24)-hour period prior to the ECT, charged to a 100% State of Charge using Charging Energy on the day of the ECT and maintained at a 100% State of Charge for at least two (2) hours prior to commencement of the ECT. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the ESS shall otherwise be at unity (1.00) power factor.

- Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT, Seller may postpone or reschedule all or part of such ECT in accordance with Section E.1.2.F of these ESS Capacity Test Procedures.

- Weather Conditions. Ambient outside dry bulb air temperature of 25°C. Seasonal weather patterns may prevent the occurrence of an ECT. In such circumstances, Seller shall supply adjusted performance metrics for the ESS at a range of ambient conditions for Buyer's review and approval (such approval not to be unreasonably conditioned, delayed or withheld) ninety (90) Business Days prior to the scheduled ECT to determine whether the scheduled ECT is feasible.

- Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Article 5 of the agreement.

vi. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section E.1.2.E(2) of this ESS Capacity Test Procedure), Seller may, in its sole discretion: (i) accept the results up to the time the ECT was suspended; provided, however, that to the extent Buyer reasonably objects to such results, Buyer may require that the ECT be repeated or that the portion thereof that was not completed, be

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completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Seller is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.

vii. Final Report. Within ten (10) Business Days after the completion of any ECT, Seller shall prepare and submit to Buyer a written report of the results of the ECT, which report shall include:

- A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;
- the measured data for the ESS Electric Metering Device readings as well as each parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT and plant log sheets verifying the operating conditions and output of the ESS;
- The ESS Capacity as determined by the ECT, including supporting calculations; and
- Seller's statement of either Seller's acceptance of the ECT or Seller's rejection of the ECT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the ECT results or Buyer's rejection of the ECT and reason(s) therefor.

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section A(1)(b)(vi) of this ESS Capacity Test Procedure.

viii. Supplementary ESS Capacity Test Protocol. No later than one hundred eighty (180) Days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit F with additional and supplementary details, procedures and requirements applicable to ESS Capacity Tests based on the then-current design of the Project (collectively, the "**Supplementary ESS Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit F. Future modifications to the Supplementary ESS Capacity Test Protocol, as mutually agreed, shall be documented and

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maintained by the Parties.

ix. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first eight (8) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this agreement, multiplied by (ii) eight (8) hours) shall be divided by eight (8) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the Day following the completion of the ESS Capacity Test for all purposes under this agreement.

x. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh-AC) and the ESS Meter Energy In (MWh-AC) as below:

$$Roundtrip\ Efficiency(\%) = \frac{ESS\ Meter\ Energy\ Out\ (MWh_{AC})}{ESS\ Meter\ Energy\ In\ (MWh_{AC})}$$

2. ESS Response Delay Test

a. **Purpose of Test:**

i. Determine the Actual Charge Ramp Rate of the ESS

ii. Determine the Actual Discharge Ramp Rate of the ESS

b. **Test Conditions:**

The Project will be in the on-line state at between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. In the case and to the extent that Seller has not obtained authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, this test shall not cause the ESS to charge from the grid.

c. **Test procedure:**

i. Actual Charge Ramp Rate:

- Send an active power charge command of Guaranteed PMAX to charge the batteries

- The time measured from when the ESS receives the Guaranteed PMAX charge command until the power measured at the Electric Metering Device changes from 0MW to at least 1% of charge Guaranteed PMAX shall be

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the Charge Ramp Latency

- The time measured to ramp from 1% to charge Guaranteed PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Charge Ramp Rate

ii. Actual Discharge Ramp Rate:

- Send an active power discharge command of Guaranteed PMAX to discharge the batteries

- The time measured from when the ESS receives the Guaranteed PMAX discharge command until the power measured at the Electric Metering Device changes from 0MW to at least 1% of discharge Guaranteed PMAX shall be the Discharge Ramp Latency

- The time measured to ramp from 1% to discharge Guaranteed PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Discharge Ramp Rate

iii. **Determination of ESS Response Delay:**

The calculation below will demonstrate the determination of the ESS Response Delay used to determine ESS Response Delay Damages according to Section 3.13.

- An "**Actual System Latency**" shall be calculated, which shall be equal to:

$$Actual\ System\ Latency = Max(Charge\ Ramp\ Latency, Discharge\ Ramp\ Latency)$$

- An "**Actual System Latency Delay**" shall be calculated, which shall be equal to:

$$Actual\ System\ Latency\ Delay = Max(Guaranteed\ System\ Latency, Actual\ System\ Latency) - Guaranteed\ System\ Latency$$

- An "**Actual Discharge Ramp Rate Delay**" shall be calculated, which shall be equal to:

$$Actual\ Discharge\ Ramp\ Rate\ Delay = Max(Guaranteed\ Discharge\ Ramp\ Rate, Actual\ Discharge\ Ramp\ Rate) - Guaranteed\ Discharge\ Ramp\ Rate$$

- An "**Actual Charge Ramp Rate Delay**" shall be calculated, which shall be equal to:

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$$Actual\ Charge\ Ramp\ Rate\ Delay = Max(Guaranteed\ Charge\ Ramp\ Rate, Actual\ Charge\ Ramp\ Rate) - Guaranteed\ Charge\ Ramp\ Rate$$

- The "**Charging ESS Response Delay**" shall be calculated, which shall be equal to:

$$Charging\ ESS\ Response\ Delay = Actual\ Charge\ Ramp\ Rate\ Delay + Actual\ System\ Latency\ Delay$$

- The "**Discharging ESS Response Delay**" shall be calculated, which shall be equal to:

$$Discharging\ ESS\ Response\ Delay = Actual\ Discharge\ Ramp\ Rate\ Delay + Actual\ System\ Latency\ Delay$$

- The "**ESS Response Delay**" shall be calculated, which shall be equal to:

$$ESS\ Response\ Delay = Max(Charging\ ESS\ Response\ Delay, Discharging\ ESS\ Response\ Delay)$$

For any instance in which the ESS Response Delay, as measured by the Electric Metering Device is a positive value during an ESS Unit Capabilities test, Seller shall pay to Buyer the ESS Response Delay Damages identified in Section 3.13.

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EXHIBIT G
INSURANCE COVERAGES

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

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

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

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

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

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

E. Network Security and Privacy Liability. If Seller or any of its contractors are providing services which provide such parties with direct access to Buyer's systems or makes them responsible for holding sensitive information of Buyer, Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual

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limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

F. Property Insurance. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. subject to customary industry standard sublimits. Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

G. Technology Errors and Omissions Insurance. Contractor and/or its subcontractors at its sole cost agree to maintain technology Errors and Omissions insurance coverage with insurance carriers with a rating of no less than A rated by Best's Insurance Guide. Technology Errors & Omissions insurance providing coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products. Coverage for violation of software copyright infringement. Technology services shall cover liabilities, punitive damages, and claim expenses arising from acts, errors and omissions, in rendering or failing to render all services and in the provision of all products in the performance of this agreement, including the failure of products to perform the intended function or serve the intended purpose. Services insured, at a minimum, include (1) systems analysis (2) systems programming (3) data processing (4) systems integration (5) outsourcing including outsourcing development and design (6) systems design, consulting, development and modification (7) training services relating to computer software or hardware (8) management, repair and maintenance of computer products, networks and systems (9) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software (10) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, (11) violation of federal, state or foreign security and/or privacy laws and regulations including but not limited to investigative and notification costs regardless of whether such incurred costs were compulsory or voluntary and any other services provided by the Seller under this agreement. No exclusion/ restriction for unencrypted portable devices/ media may be on the policy. Policy shall have minimum limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations. Such insurance must address all of the foregoing without limitation if caused by an employee or an independent contractor working on behalf of the Seller in performing services under this agreement. The policy shall have worldwide coverage territory and provide coverage for wrongful acts, claims, and lawsuits brought anywhere in the world. Such insurance may be written on a claims-made rather that an occurrence basis as long as the policy, (a) has a retroactive date prior to the date of project commencement, and (b) is maintained by Seller throughout the performance of services or storage of data in connection with this agreement and for at least three (3) years thereafter either through policies in

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force or through an extended reporting period. Seller shall provide Buyer a copy of the policy providing the insurance required under this paragraph upon written request.

If Seller is providing services which provide direct access to Buyer's systems or holding sensitive information of Buyer, then the policy shall include Network Security/Privacy coverage. This policy shall include coverage for loss, disclosure and theft of data in any form; media and content rights infringement and liability, including but not limited to, software copyright infringement; network security failure, including but not limited to, denial of service attacks and transmission of malicious code. Coverage shall include data breach regulatory fines and penalties, the cost of notifying individuals of a security or data breach, the cost of credit monitoring services and any other causally-related crisis management expense for up to one (1) year.

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EXHIBIT H

ROUNDTRIP EFFICIENCY GUARANTEE

	Annual R/T Eff
1	84%
2	83.7%
3	83.4%
4	83.1%
5	82.8%
6	82.5%
7	82.2%
8	81.9%
9	81.6%
10	81.3%
11	81%
12	80.7%
13	80.4%
14	80.1%
15	79.8%
16	79.5%
17	79.2%
18	78.9%
19	78.6%
20	78.3%

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EXHIBIT I

AVAILABILITY CALCULATIONS

Section 1. Definitions.

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

"**ESS Excused Hours**" means the aggregate Seller Excused Hours to the extent that the ESS is affected during such hours, but shall not include any hours described in clause (e) of the definition of ESS Unavailable Hours. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**ESS Unavailable Hours**" means those hours that the ESS is not available to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an ESS Excused Hour); (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; (d) otherwise not operational or capable of delivering Discharge Energy or accepting Charging Energy; or (e) unavailable due to the conditions described in Section 14.4. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour, the ESS is available but for less than the full amount of the then effective ESS Capacity, the ESS Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**Monthly ESS Availability**" means a percentage calculated as the result of (i) the sum of all Monthly ESS Available Hours divided by (ii) the Monthly Hours.

"**Monthly ESS Available Hours**" means for a relevant Month during any Commercial Operation Year, an amount of hours equal to the difference between (a) Monthly Hours, minus (b) the aggregate ESS Unavailable Hours in such Month. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the Monthly ESS Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**Monthly Hours**" means the product of (a) twenty-four (24), multiplied by (b) the number of Days in such Month.

"**Monthly Report**" has the meaning set forth in Section 3 of this Exhibit.

Section 2. Sole Remedy

The Parties agree that Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for any deficiency in the performance of the Project (excluding ESS Non-Performance Liquidated Damages pursuant to Section 3.13 of the agreement or ESS Roundtrip Efficiency deficiencies pursuant to Section 3.14 of the agreement) shall be reductions to the ESS Energy Payments due to any

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Monthly ESS Availability percentages that are less than 100%, and in each case shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default giving rise to a termination payment obligation.

Section 3. Monthly Report.

No later than the tenth (10th) Day of each Month during each Commercial Operation Year (or ten (10) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of Monthly ESS Availability for the previous Month (the "**Monthly Report**").

Section 4. Disputes.

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

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ATTACHMENT 1 TO EXHIBIT I

EXAMPLE CALCULATION

I. Example of Monthly ESS Availability Calculation

The sample calculation set forth below is based on the following assumed facts:

The ESS had the following operating characteristics:

	Hours
Monthly Hours ("MH")	720
ESS Unavailable Hours ("EUH")	86

Given these assumed facts, the Monthly ESS Available Hours for the ESS during the specific Month would be calculated as follows:

Monthly ESS Available Hours = MH – EUH : 634 = 720 – 86

Monthly ESS Availability

Given these assumed facts, the Monthly ESS Availability for the Project during the specific Month in question would be calculated as follows:

(a) Sum of Monthly ESS Available Hours: 634 hours

(b) Monthly Hours: 720 hours

(c) Monthly ESS Availability: Sum of Monthly ESS Available Hours/Monthly Hours = 634/720 = 88.1%

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EXHIBIT J

FORM OF SELLER GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of _____, _____ (the "**Effective Date**"), is made by [●]. ("**Guarantor**"), in favor of PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("**Counterparty**").

RECITALS:

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

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

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

* * *

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

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

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

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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.

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4. RESERVATION OF CERTAIN DEFENSES.

(a) Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the agreement that Obligor may assert that is based on Counterparty's breach of the agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the agreement or the lack of validity or enforceability of Obligor's obligations under the agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

(a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

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(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*):

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TO GUARANTOR:	*TO COUNTERPARTY:*
Attn: *Treasurer*	Attn: [●]
[Tel: [●] *-- for use in connection with courier deliveries]*	*[Tel:* [●] *-- for use in connection with courier deliveries]*

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

10. MISCELLANEOUS.

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

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

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

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

(e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such

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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:_____

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EXHIBIT K

COMMERCIAL OPERATION
FORM OF CERTIFICATION

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

Seller hereby certifies and represents to Buyer the following:

(1) An Energy Storage System with a designed power output capability of [●] MW for [●] ([●]) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharge Energy on a sustained basis (in accordance with the ESS manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and Charging Energy from the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project and that the Project meets, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this _____day of _____, 20__.

TAG II Storage LLC	**[Licensed Professional Engineer]**
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
	Date: _____
	License Number and LPE Stamp: _____

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EXHIBIT L

ESS OPERATING RESTRICTIONS

Subject to the terms of this agreement, the ESS shall be operated in accordance with the following operating restrictions:

1. TBD

[*Specific ESS Operating Restrictions will be included as part of the detailed Commissioning and Test procedures to be agreed upon by Buyer and Seller as set forth in Section 10.2 of the agreement and the ESS Manufacturer's then-current operating and testing requirements*]

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EXHIBIT M

ESS FUNCTIONAL MAPPING

The Project's NERC verified ESS Generator Owner, ESS Generator Operator and Scheduling Coordinator Contact functional mapping requirements, as applicable, information as follows will be provided prior to the Commercial Operation Date:

	Entity Name	Point of Contact	E-mail	Phone
Generator Owner (GO)				
Generator Operator (GOP)				
Scheduling Coordinator Contact (SCC)				

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EXHIBIT N

INTERCONNECTION METERING STANDARD

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EXHIBIT O

PREPARATION FOR COMMISSIONING

Section 1. Purpose.

This Exhibit provides guidance to the Seller on the process and requirements for the coordination and completion of commissioning and testing activities associated with the Project leading up to the Commercial Operation Date. To the extent that Seller still lacks clarity, Seller is encouraged to coordinate and discuss these items with Buyer at least ninety (90) Days prior to the Expected Commercial Operation Date.

Seller's Project Manager will work together with Buyer's Contract Manager, Power Operations staff and Generation Engineering staff to ensure all pre-commissioning and commissioning requirements are completed in a timely manner to support the achievement of critical milestones in accordance with the timelines presented herein and others as defined in the agreement and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Standard as outlined in Exhibit N of the agreement and complete all testing as defined in Exhibit F of the agreement.

Figure 1 is for reference purposes only.

Section 2. Identifying Key Points of Contact.

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the agreement.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

TABLE 1 – REQUIRED INFORMATION FOR POINT OF CONTACT LIST.

CONTACT	Company	Group	Address	Project Role	Office Phone	Mobile Phone	E-MAIL
(name)	PNM	Generation Engineering	2401 Aztec Rd NE Albuquerque, NM 87107	Contract Manager	505-241-XXXX	505-241-XXXX	…@pnm.com

The POC List shall identify, but not be limited to, the following:

Buyer Team: Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project

management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting, defining Commissioning Test requirements, reviewing and monitoring Seller's Commissioning Test plan and procedures, receiving and tracking Seller deliverables, and approval of Seller submittals as required for achievement of Commercial Operation.

- "**Power Operations**" or "**PowerOps**" – A team manager and a lead engineer will be assigned by PowerOps to model the Project into the Power Operations full network model and submit those changes to CAISO as well. Buyer and Seller will coordinate all control points and analog data requirements needed to integrate the Project into Buyer's Energy Management System ("**EMS**" consisting of SCADA & AGC). Buyer and Seller will complete remote telemetry unit ("**RTU**") control and data point testing and verify proper configuration in accordance with the schedule identified in Table 2 below.

- "**Transmission Engineering Protection & Controls**" – This group will define the interconnection protection and control requirements between the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities.

- "**Transmission Engineering Telecommunications and Telemetry unit (RTU) Control Staff**" – The Buyer and Seller will coordinate telecommunication and RTU equipment requirements from the Seller's Interconnection Facilities to the Transmission Provider's Interconnection Facilities to meet Power Operations requirements for real time awareness and control. This staff will design, and coordinate installation of communications required to gather metering quality, after the fact data from Seller resources to be used by Buyer settlement processes.

- "**Wholesale Power Marketing**" or "**WPM**" – This group is responsible for peripheral component interconnect modeling for functionality required for the participating resource schedule coordination (for EIM participation) and for additional market needs, forecasting support and management for renewable resources, schedules/optimizes energy to manage within total portfolio during commissioning, facilitates availability and outage management, and is involved in CAISO resource registration.

- "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

Seller Team: The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- **"Project Manager"** – Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.

- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the ESS. The OEM shall define and execute all OEM-required equipment and system testing.

- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.

- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.

- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:

    - Balancing Authority (BA)
    - Transmission Owner (TO)
    - Transmission Operator (TOP)
    - Generator Owner (GO)
    - Generator Operator (GOP)
    - Scheduling Coordinator (SC)
    - Distribution System Operator (DSO)

Section 3. Process Overview.

The following is a description of activities that Seller shall participate in from pre-commissioning to the Commercial Operation Date.

Section 3.1 Commissioning Kickoff Meeting.

Buyer's Generation Engineering will schedule a kickoff meeting for Project commissioning and testing activities ("**Commissioning Kickoff Meeting**") with all stakeholders upon the Start of Project Construction as identified in the Project Schedule in Exhibit A**.** This shall serve as an opportunity to get all parties engaged, communicate planned timelines, answer questions, and involve all key stakeholders to help prevent missed pre-commissioning and commissioning requirements and/or schedule delays.

The key activities fit into 2 stages or phases: 1) pre-commissioning or 2) commissioning and performance testing. Following the completion of testing, some of the data and information generated in these stages inform the final requirements that need to be completed prior to Commercial Operation.

Section 3.2 Pre-Commissioning.

Activities in this stage begin well before commissioning (*some possibly before site construction mobilization*) to ensure that all systems and resources are ready to proceed to the next stage.

Pre-requisites to commissioning and other activities shall be completed prior to commissioning including, but not limited to those items identified in Table 2 as further represented in Figure 1:

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TABLE 2: PRE-COMMISSIONING REQUIREMENTS

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Design Verification	Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving agreement obligations, including grid forming inverters, metering, etc.	**Seller**	Generation Engineering	After completion of 30% design phase of project
Seller's SCADA Controls Narrative	Controls narrative detailing items related to SCADA and telemetry planning.	**Seller**	PowerOps	120 Days after Start of Construction
	Final DB Mod file delivered to PowerOps.	**Seller**	PowerOps	10 Days prior to the scheduled Test Period
Seller's Substation Commissioning	Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled ESS performance testing.	**Seller**	Buyer's Project Manager	Prior to the scheduled performance testing
Metering	All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Standard in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary.	**Seller**	PowerOps	Prior to the scheduled performance testing
CAISO Resource Registration	Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration.	**Seller**	PowerOps	180 Days prior to the scheduled Test Period
	A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. Delays in Seller's submission to Buyer of this information will likely result in a delay in the transmission interconnection in-service date.	**Seller**	PowerOps	120 Days prior to transmission interconnection in-service date
	Buyer EIM Market Performance Group will begin submitting resource registration documentation after CAISO model submission by PowerOps.	**PowerOps**	Seller	
	Buyer must receive the necessary information for CAISO resource registration. Including: engineer-stamped one-line diagram, meter information (make, model, accuracy), calculations required to get resource reads to the Point of Interconnection, metering CT & PT accuracies for each meter.	**Seller**	PowerOps	No later than 90 Days prior to the scheduled Test Period
Power Operations Engineering Requirements for Commissioning (Attachment 1)	This Exhibit provides additional detail on the data elements and activities required by PowerOps for commissioning and testing. Included with this set of requirements is the SCADA Points Check Out: PowerOps needs to conduct a checkout one month prior to the beginning of performance testing in order to ensure that all points have been validated between the field and Buyer's System Control Center, and resources are ready to proceed to other tests. Buyer acknowledges certain points are not available prior to Test Period given commercially reasonable restrictions on access to data.	**PowerOps**	Seller	SCADA Points Check Out: PowerOps will conduct a checkout prior to the beginning of the scheduled Test Period.

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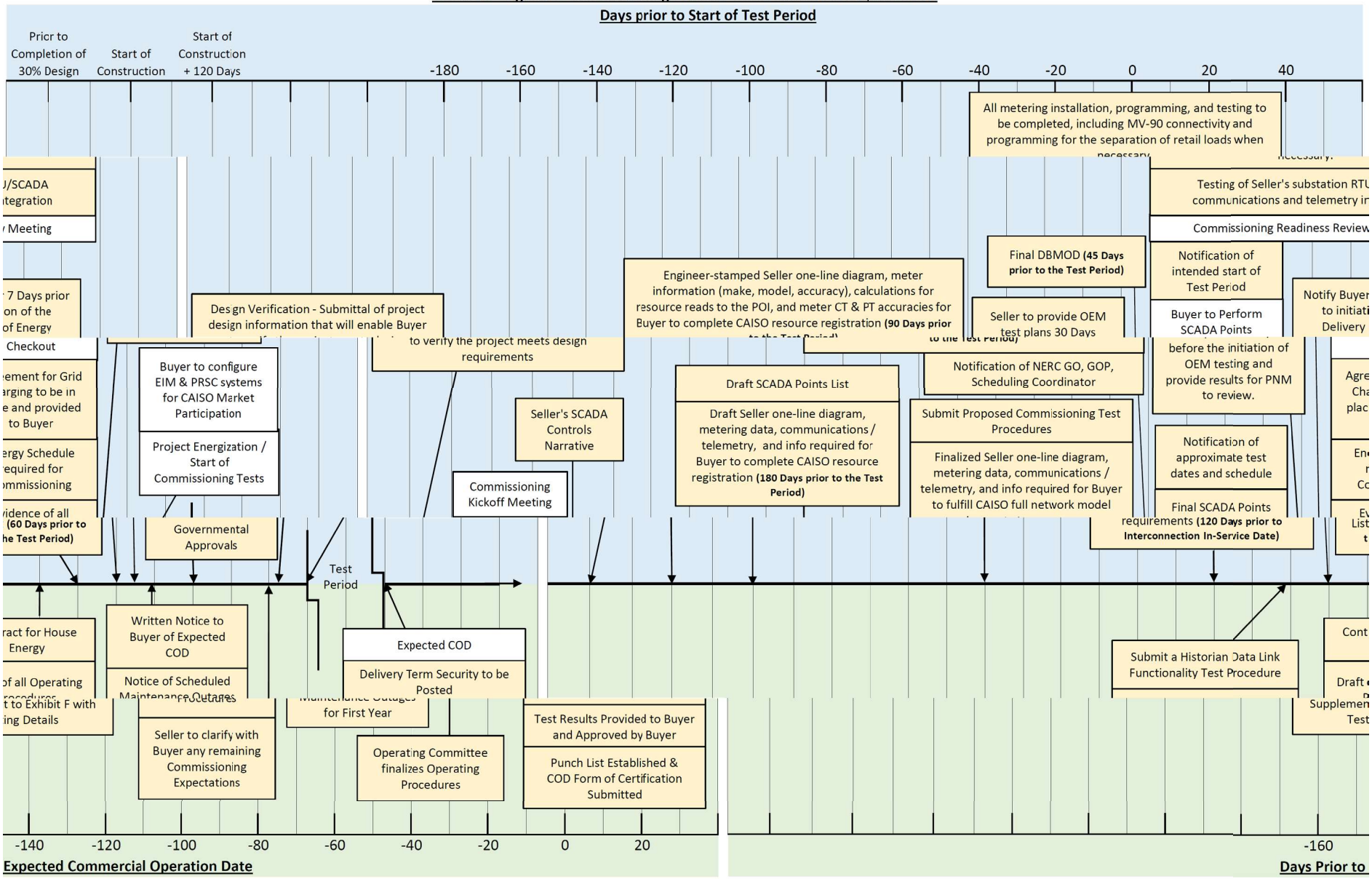
Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Power Operations & WPM Systems configuration	EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent ESS resources for CAISO market participation.	**PowerOps & WPM IT Support**	Seller	Prior to the beginning of the scheduled Test Period
Agreement for Grid Charging during testing	During testing/commissioning of facilities, agreements need to be in place with a copy provided to Buyer to allow and plan for grid charging of batteries during the testing process. These agreements will clearly define WPM, GO, GOP or their SC, BA, TO and TOP.	**Seller**	Generation Engineering	Must be complete 30 Days prior to the beginning of the scheduled Test Period.
Operating Procedure	Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering.	**Seller**	PowerOps	90 Days prior to the Commercial Operation Date
	An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project into Buyer's system.	**Seller/Buyer**	Seller / PowerOps / Generation Engineering	30 Days prior to the Commercial Operation Date
OEM Test Plan	The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide manufacturers' test plans and provide results for Buyer to review. Buyer may be an observer for these tests and shall be provided with the results.	**Seller**	Generation Engineering	Test plans required 30 Days before the initiation of the OEM Test Plan, all OEM related testing must be completed prior to declaring COD
Test Energy Plan & Schedule	Buyer Testing requirements defined in this document and Exhibit F – Commissioning and Annual Tests of the associated agreement shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans.	**Seller**	Generation Engineering	Seller shall provide its planned energy schedule 30 Days before the beginning of the scheduled Test Period.
Commissioning Readiness Review Meeting	Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in: Attachment 2: Commissioning Readiness Review	**Generation Engineering**	Seller, PowerOps	30 Days prior to the beginning of the scheduled Test Period

Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements



accordance with the above schedule requirements

Seller shall submit and be responsible for all items indicated in gold in
Seller shall otherwise support and participate in all identified activities

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Section 3.3 Commissioning.

The commissioning phase involves sequenced testing to ensure each Project component is functioning to specification with component and system level measurement and communication ("**Communications and Telemetry Integration Testing**") and performance verification ("**Performance Testing**"). Communications and Telemetry Integration Testing demonstrates that PowerOps can issue commands to and receive feedback from the Project. Communications and Telemetry Integration Testing shall consist of the following events. Additional information on these tests is provided in Exhibit F of the agreement.

- SCADA Functionality Test: This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources.
- Automatic Generation Control (AGC) Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.
- Voltage Setpoint Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Historian Data Link Functionality Tests: This test will validate the functionality of the transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Energy Management System control.

Seller shall perform Commissioning Communications and Telemetry Integration Tests in accordance with Exhibit F - Commissioning and Annual Tests.

Performance testing shall be performed to assess simulated and actual performance of the whole system against all expected use cases and measurable commercial requirements. Initial Commissioning Performance Tests shall be performed to verify initial capacity and provide a benchmark and repeatable test pattern to run annually (according to the agreement) and can be instrumental in tracking capacity guarantees or addressing premature degradation.

The testing plan for this phase must be approved by Buyer (Generation Engineering, WPM, and PowerOps) prior to initiation of testing as many tests will require substantial power and energy flows, which need to be accounted for in scheduling and dispatch.

For Seller's commissioning activities that require Buyer scheduling of energy delivery, Seller's failure to advise Buyer of any change to the planned timing of commissioning activities prior to 48 hours in advance of the change may result in an inability of Seller to conduct testing. Any such delay in commissioning activities as a result of late notification will be to Seller's account.

Seller shall perform Commissioning Performance Tests in accordance with the requirements of Exhibit F - Commissioning and Annual Tests.

Section 3.4 Final Requirements Prior to COD.

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with

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Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC & DERMS – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

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ATTACHMENT 1 TO EXHIBIT O

BUYER'S ENGINEERING REQUIREMENTS FOR COMMISSIONING

The Seller shall provide all the following information to Buyer's Contract Manager and the Power Operations team in accordance with this Exhibit and the Project Schedule.

1. Resource information – required for CAISO registration and due to Buyer 90 Days prior to the beginning of the Test Period:

    a. Nameplate values: MW, MWh, round trip efficiency, etc.

    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: All telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry communication paths must be independent of one another with no single point of failure.

    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 180 Days prior to the beginning of the scheduled Test Period.

    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Seller shall make a final SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.

    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points 30 Days prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.

    d. Telemetry for Seller's substation awareness shall include:

        - Generation side switches (89-xx1) & breakers (52-Fxx) status
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - ESS total gross values and total net values (in both MW and MVAr)

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- Gross and net values shall be provided for each resource registered with CAISO
- Point of Delivery values – MW, MVAr
- AGC setpoints for ESS and voltage setpoint. As well as the feedback for those setpoints.

- Total ESS cycle count
- Total ESS State of Charge (SOC) in both percent and MWH
- Total real power target

- Total full charge energy
- Total nominal energy
- Total energy Rem full power
- Total max charge power

e. Meteorology data: Seller shall provide meteorology data with the provided SCADA points.

3. DERMS Workbook inputs:
   a. Seller shall provide required information for the DERMS, including:
      - SCADA keys, resource characteristics, meteorology, etc.
      - Buyer's PowerOps shall be able to collect all EMS-DERMS workbook data through steps 1 & 2 above. If any gaps remain in the DERMS workbook, Seller shall be required to provide remaining data to Buyer's PowerOps team prior to the beginning of the Test Period. Buyer shall be required to provide expected DERMS workbook points prior to commencement of 2.a of this Attachment 1.

4. Testing for all AGC and voltage setpoints as defined in Exhibit F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

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ATTACHMENT 2 TO EXHIBIT O

COMMISSIONING READINESS REVIEW

Seller and Buyer shall participate in a Commissioning Readiness Review Meeting thirty (30) Days prior to the initiation of the Test Period to ensure that the Project is in a condition to support the planned commissioning and testing activities. The Parties shall ensure that for any test to be performed, the following are defined or established:

1. The purpose of the planned test.
    a. The parameter(s) / requirement(s) that is/are being verified/validated during the test.
    b. The procedure for validating such parameter(s) / requirement(s).
2. The equipment/system being tested (subsystem, system, a system of systems, other).
3. Verification that the configuration of the system under the test is sufficiently mature, defined, and representative to accomplish the planned test objectives and or support the defined program objectives.
4. Confirmation that everything is in place to begin testing.
    a. The configuration of the system is stabilized.
    b. All planned preliminary, informal, functional, unit level, subsystem, system, and qualification tests have been conducted with satisfactory results.
    c. Any deficiencies detected in the system have been addressed.
5. The expected result and how the test evaluation results might affect the program.
6. Proper resourcing of the planned test (people, test articles or articles, facilities, data systems, support equipment, logistics, etc.).
    a. Identification of personnel required and their roles.
    b. Identification of technical resources that are critical for testing (e.g. communication networks)
    c. Verification that technical resources have been tested prior to commissioning activities.
7. The risks associated with the tests and the associated risk mitigation measures.
    a. Identification of the hazards and risks associated with the specific testing.
    b. Necessary safety measures from the Project Manager to developmental and

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operational testers prior to any test using personnel.

8. The fallback plan should a technical issue or potential showstopper arise during testing.

    a. The test director will decide if an issue is a showstopper.

9. A test plan previously submitted by Seller with associated test procedures which have been reviewed and approved by Buyer. Such test plan and procedures should address all of the above items.

Encino Storage LLC Energy Storage Agreement

PNM Exhibit GBB-10

Is contained in the following 131 pages.

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ENERGY STORAGE AGREEMENT

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

ENCINO STORAGE LLC

Dated as of April 30, 2026

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ENERGY STORAGE AGREEMENT

This Energy Storage Agreement (this "**ESA**"), as may be amended from time to time, is entered into this Thirtieth (30th) Day of April, 2026 ("**Execution Date**"), by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or "**Buyer**"), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and Encino Storage LLC, a Delaware limited liability company ("**Seller**"), whose principal place of business is 1435 Bedford Ave., Suite C-2, Pittsburgh, PA 15219. Buyer and Seller may be referred to in this Energy Storage Agreement individually as a "**Party**" and collectively as the "**Parties.**"

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

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

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

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

ARTICLE 1
Definitions and Rules of Interpretation

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

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

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

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

"**Actual Charge Ramp Rate**" means the maximum rate that the ESS can change its input power, as determined pursuant to Exhibit F.

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

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"**Actual Discharge Ramp Rate**" means the maximum rate that the ESS can change its output power, as determined pursuant to Exhibit F.

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

"**Actual System Latency**" means the time measured between when the control signal is received by the ESS and when the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint, as determined pursuant to Exhibit F.

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

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

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

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

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

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

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

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

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

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

"**Black Start Capability**" means that the ESS inverters shall be provided with the ability to form an islanded grid inside the Project while disconnected from the Point of Delivery if Buyer instructs Seller to reserve stored energy for this function. The ESS will not be designed to provide grid forming capability below a zero percent (0%) ESS State of Charge. Buyer may enhance the Black Start Capability after the Execution Date if (a) Buyer provides specifications for an enhanced Black Start Capability, (b) the specifications are within the capabilities of Seller's ESS integrated equipment and controls system supplier, and (c) Buyer pays all costs associated with upgrading the ESS to the enhanced Black Start Capability specifications as verified by an independent engineer. Upon the satisfaction of all of (a), (b) and (c) in the preceding sentence, Seller shall upgrade the ESS to the enhanced Black Start Capability specifications within eighteen (18) months.

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

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

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

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

"**Buyer Termination Payment**" means the sum of (a) the aggregate of all amounts then owed from Seller to Buyer, less any amounts owed from Buyer to Seller, plus (b) the difference between (i) the net present value of the Replacement ESS Costs, calculated using a

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

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

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

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

"**Commercial Operation**" means that the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (b) Seller has successfully completed the Commissioning Tests defined in Exhibit F; (c) all Seller required permits, required consents, and Governmental Approvals required for Seller to operate the Project in accordance with Applicable Law are in full force and effect; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit F or by another method acceptable to Buyer; (e) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Discharge Energy to the Point of Delivery and interconnection and delivery of Charging Energy from the Point of Delivery in an amount at least equivalent to Guaranteed PMAX and is not in material breach of its Interconnection Agreement; (f) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement; (g) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G of this agreement; and (h) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

"**Commercial Operation Date**" means the date on which all of the following have

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

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

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

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

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

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

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

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

"**Contract Value**" means the sum of the present values of the ESS Energy Payments expected to be made in each Commercial Operation Year (or portion thereof) in the then-remaining term (determined without reference to the early termination) which is to be determined in accordance with the calculation in Section 8.1(A). All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

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

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

"**Day**" means a calendar day and includes Saturdays, Sundays and holidays; if a

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payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

"**DC**" means direct current.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Electric Interconnection Point**" means the physical point at which electrical interconnection is made between the Project and the Transmission Provider's Transmission

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System as set forth in Appendix A of the Interconnection Agreement.

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

"**Eligible Change in Tariff**" means any duty, tariff, import tax, or other similar import fee or cost that becomes effective after, or the enforcement of which commences after, the Execution Date, or any increase to the applicable rate of any of the foregoing which becomes effective after the Execution Date, to the extent affecting the Energy Storage System. The 25% tariff on lithium-ion batteries enacted pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), with an effective date of January 1, 2026, shall not be considered an Eligible Change in Tariff.

"**Emergency Condition**" means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider's Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC/WECC, or (b) any system condition not consistent with Prudent Utility Practices; provided that an Emergency Condition shall not include any emergency caused by Seller's breach of its Interconnection Agreement with the Transmission Provider.

"**Energy**" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, delivered to or received from the Project, in each case at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices.

"**Energy Storage Services**" means the acceptance of Charging Energy at the Point of Delivery, the storing of Energy in the Project, and the delivery of Discharge Energy from the Project at the Point of Delivery, all in accordance with Buyer's dispatch instructions, in compliance with the ESS Unit Capabilities, and subject to the terms and conditions of this agreement.

"**Energy Storage System**" or "**ESS**" means the battery arrays, battery system controller, inverters, transformers, thermal management system, and other equipment necessary to charge, store, and subsequently deliver electricity from the Project to the Point of Delivery.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's charging, discharging, delivery or storage of electricity from renewable energy resources in contrast with the storage of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (a) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil, gas, chemical, or other substance, and (b) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include

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those currently existing or arising during the Term under local, state, regional, or federal legislation or regulation relevant to the avoidance of any emission described above under any governmental or, regulatory program, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes specifically exclude (x) Tax Benefits, (y) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; and (z) any Energy, reliability or other power attributes from the Project.

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

"Equivalent Full Cycle" means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharge Energy (in MWh) equivalent to the Guaranteed ESS Capacity over an eight (8) 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 eight (8) 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 eight (8) consecutive hours when starting from the Maximum State of Charge and discharging to the Minimum State of Charge, as determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

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

"**ESS Capacity Test**" has the meaning set forth in Exhibit F.

"**ESS Curtailment**" has the meaning set forth in Section 4.2.

"**ESS Energy Payment**" has the meaning set forth in Section 8.1(A).

"**ESS Energy Payment Rate**" means the price to be paid by Buyer to Seller for the Product, as set forth in Section 3.1.

"**ESS Meter Energy In**" has the meaning set forth in Exhibit F.

"**ESS Meter Energy Out**" has the meaning set forth in Exhibit F.

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"**ESS Non-Performance Liquidated Damages**" has the meaning set forth in Section 3.13.

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

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

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

"**ESS Roundtrip Efficiency**" means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the Electric Metering Device without adjustment to the Point of Delivery and determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

"**ESS Unit Capabilities**" has the meaning set forth in Section 3.12.

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Guaranteed Charge Ramp Rate**" has the meaning set forth in Section 3.12.

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

"**Guaranteed ESS Capacity**" means discharge of the ESS at Guaranteed PMAX for eight (8) consecutive hours.

"**Guaranteed ESS Roundtrip Efficiency**" means, with respect to a Commercial Operation Year, the applicable percentage set forth in Exhibit H.

"**Guaranteed Frequency Response Capability**" has the meaning set forth in Section 3.12.

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

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

"**Guaranteed System Latency**" has the meaning set forth in Section 3.12.

"**Hazardous Materials**" means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or as dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land,

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water, groundwater, and air, including but not limited to any material or substance that is (i) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of Applicable Law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a "hazardous substance" pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ix) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (x) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

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

"**Interconnection Agreement**" means the separate agreement between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider's Transmission System, as such agreement may be amended, amended and restated, modified, replaced or otherwise supplemented from time to time.

"**Interconnection Facilities**" means the Transmission Provider's Interconnection Facilities and Seller's Interconnection Facilities as defined and set forth in the Interconnection Agreement (or an analogous term, to the extent the Interconnection Agreement is amended or replaced).

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

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

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

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

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

"**Licensed Professional Engineer**" means an independent, professional engineer that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV,

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(4) Clean Energy Associates, or (5) Leidos Engineering, LLC; and (B) reasonably acceptable to Buyer (provided that at least one of the foregoing (A)(1)-(5) shall be reasonably acceptable to Buyer), licensed in the State of New Mexico, and otherwise qualified to perform the work and provide the certifications required hereunder.

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

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

"**Market Event**" has the meaning set forth in Section 22.20.

"**Maximum State of Charge**" means the relative SOC above which the battery manufacturer recommends that the ESS system not be charged, expressed in percent of Nameplate Energy Capacity.

"**Minimum State of Charge**" means the relative SOC below which the battery manufacturer recommends that the ESS system not be drawn, expressed in percent of Nameplate Energy Capacity.

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

"**Monthly Billing Period**" means each Month during the Term in which Product has been made available at the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

"**Monthly Operational Report**" has the meaning set forth in Section 10.8.

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

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

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

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

"Nameplate Energy Capacity" means the maximum amount of electrical energy, expressed in megawatt-hours (MWh), that the Energy Storage System is designed to store and make available for discharge, net of auxiliary and parasitic loads, based on the manufacturer's rated specifications and measured at the applicable metering point.

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

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

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

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

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

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

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

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

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

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

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

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

"**PCS**" or "**Power Conditioning System**" means the Energy Storage System power conditioning system utilized to convert electric power from one form to another (AC to DC, DC to AC, and/or between different voltage levels), and to condition the power quality to what is needed by the interconnected systems.

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

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

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

"**Point of Delivery**" means the electric system point at which (i) Buyer delivers Charging Energy to Seller, (ii) Seller delivers Discharge Energy to Buyer and (iii) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this agreement.

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

"**Product**" means all Energy Storage Services, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, all as made available by the Project, all of which shall be delivered for Buyer's exclusive use pursuant to the terms of this agreement.

"**Project**" means Seller's energy storage facility, located in Sandoval County, New Mexico, with a designed maximum power charge and discharge capability of One Hundred Ten (110) MW for Eight (8) hours (Eight Hundred Eighty (880) MWh), as identified and described in Article 3 and Exhibit A to this agreement, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Point of Delivery: Seller's equipment, buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, Seller's Interconnection Facilities necessary to connect the ESS to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this agreement.

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

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

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

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

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

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

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

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

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for ESS of the technology provided in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency Conditions; and

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

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

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

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

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

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

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

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

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

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"**Replacement ESS Costs**" means the costs to Buyer reasonable and necessary to replace the Product (including Future Environmental Attributes and Ancillary Services) as defined herein and based upon similar terms, conditions and performance standards outlined in this agreement which Seller, in accordance with this agreement, would have made available to Buyer but failed to so provide pursuant to this agreement. Buyer shall not have to enter into a replacement contract to establish the Replacement ESS Costs. If Buyer does not enter into a replacement contract, then the Replacement ESS Costs will be based on the market price for comparable Product (including Future Environmental Attributes and Ancillary Services) delivered to Buyer, as reasonably determined by Buyer or a third party selected by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Discharge Energy to the Point of Delivery and any associated transmission or distribution costs, and (b) Buyer's expenses, including reasonable attorneys' fees, incurred as a result of Seller's failure to perform under this agreement.

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

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

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

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

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

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

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

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

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

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

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

"**Seller's Interconnection Facilities**" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access

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the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this agreement.

"**Seller Excused Hours**" means those hours during which Seller is unable to make available Product as a result of: (a) a Force Majeure Event that affects the ability of Buyer to deliver Charging Energy or to receive Discharge Energy at the Point of Delivery, (b) any failure by Buyer to perform a material obligation under this agreement (other than due to a breach by Seller of its obligations under this agreement), (c) failure of Buyer to provide Charging Energy, (d) Emergency Condition, (e) Buyer's dispatch of the Project which is not in accordance with the Operating Parameters, (f) an ESS Curtailment or (g) the time that the Project is required to be offline or at limited capacity as a result of (i) annual required testing in accordance with this agreement or (ii) additional testing requested by Buyer in accordance with this agreement.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Product that would otherwise be made available from the Project at the Point of Delivery not associated with Seller Excused Hours.

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

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

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

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e.,

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Product) for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this agreement, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

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

"**State of Charge**" or "**SOC**" means the level of charge as reported by the ESS, expressed in percent of Nameplate Energy Capacity.

"**Supplemental State Tax Incentives**" means any state or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date that provides for additional or increased tax credits and is determined to be applicable to the Project, net of associated expenses, taxes, and lost Tax Benefits, if any.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch of the ESS.

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

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

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

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

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

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

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and is available to receive Charging Energy from and deliver Discharge Energy to the Point of Delivery, and ending on the Commercial Operation Date.

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

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

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

"**Ultimate Parent**" means Exus North America Holdings LLC.

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

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

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

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

1.2 Rules of Construction.

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) Seller expressly recognizes that, for purposes of this agreement, the Transmission Provider shall be deemed to be a separate entity and separate contracting party

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whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

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

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this agreement are not binding upon the Local Provider. For purposes of this agreement, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

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

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

ARTICLE 2
Term and Termination

2.1 Execution Date and Term. This agreement shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Standard Time on the date that is the last Day of the Twentieth (20^{th}) Commercial Operation Year, subject to the early termination provisions set forth herein. Applicable provisions of this agreement

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shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

ARTICLE 3
Project Description

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

COMMERCIAL TERMS

Buyer: Public Service Company of New Mexico	**Seller:** Encino Storage LLC
Project: Encino Storage	
Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer Product being provided under this agreement, as further specified in the definition of "Point of Delivery."	
Delivery Term: 20 Commercial Operation Years	**Product Type:** Bundled Energy Storage Services, Ancillary Services, Future Environmental Attributes, ESS Capacity, and other ESS Unit Capabilities
ESS Energy Payment Rate: $25.20/MWh, as further specified in Section 8.1(A).	
Day(s) of week: Monday through Sunday, including NERC holidays	**Hours:** Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Standard Time ("MST")
Guaranteed Start Date: One Hundred Fifty (150) Days after the Expected Commercial Operation Date	
Expected Commercial Operation Date: August 4, 2028	

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

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery, and the location of the Interconnection Facilities is included in Exhibit A to this agreement. Exhibit A also contains a preliminary

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indication of the location of the ESS at the Site. Seller will provide notice to Buyer of the final proposed location of the ESS and Interconnection Facilities at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes and accept or reject such changes.

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

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

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

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

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

(E) receive Charging Energy from Buyer and deliver Discharge Energy to Buyer, each at the frequency specified by Buyer;

(F) be capable of operation over an ambient temperature range of -20°F to 110°F with the full range of relative humidity;

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

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

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

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

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

(K) meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 Section 6, at the Point of Delivery; and

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

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

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a day-for-day basis (a) up to a maximum of one hundred fifty (150) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event (together with a reasonable period for the affected Party to cure the Force Majeure Event as contemplated in Section 14.2) that delays construction or commencement of operation of the Project, (b) up to a maximum of one hundred eighty (180) Days, in the event of delay associated with the interconnection of the Project (other than work performed by Seller) that delays commencement of the operation of the Project, assuming Seller provides notice to proceed to Transmission Provider within five (5) Business Days of notice of Conditions Precedent per Section 6.2, or (c) other than in connection with or arising out of or relating to any Force Majeure Events or the interconnection of the Project, (i) if Seller

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notifies Buyer that Seller requires a performance from Buyer of Buyer's obligations under Exhibit F or Exhibit O, and (ii) Buyer does not timely perform such obligations, then on a day-for-day basis without an aggregate cap for the time period for the days of delay beyond Buyer's failure to perform in a timely manner to the extent such failure by Buyer to perform delays Seller's ability to achieve Commercial Operation on or before the Expected Commercial Operation Date. Seller shall give written notice to Buyer describing any such delay in accordance with Section 14.2 after becoming aware of any extension of Expected Commercial Operation Date. The number of Days of such extension shall be calculated from the date on which the event begins. If the Expected Commercial Operation Date is extended pursuant to clause (a) or (b) of this Section for the maximum extension period set forth in the applicable clause, then Buyer will have the right to terminate this agreement without liability of either Party other than obligations already incurred.

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

3.8 ESS Capacity Shortfall Damages. If the Commercial Operation Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve Commercial Operation. If Seller has not caused all Delayed ESS Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of One Million Five Hundred Thousand Dollars ($1,500,000) per MW of Delayed ESS Capacity (as of the Guaranteed Start Date) ("**ESS Capacity Shortfall Damages**"), as the Buyer's sole and exclusive monetary remedy, and Seller's sole and exclusive monetary liability, for Buyer's damages for Seller achieving Commercial Operation at less than the Guaranteed ESS Capacity, in which case the Guaranteed PMAX and Guaranteed ESS Capacity will be reduced in an amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8 and the ESS Energy Payment Rate shall be reduced by an amount proportional to the Delayed ESS Capacity.

3.9 Test Period. Seller shall, no later than ninety (90) Days prior to the beginning of the Test Period, give written notice to Buyer of its NERC-registered Generator Owner and Generator Operator and designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the

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timing and delivery of Charging Energy from Buyer during the Test Period as reasonably required for purposes of testing and commissioning the Project. Seller shall subsequently redeliver (net of losses due to ESS Roundtrip Efficiency) such Charging Energy to Buyer at the Point of Delivery as Discharge Energy. In accordance with Section 7.2, Buyer shall retain title of such Charging Energy and Discharge Energy. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to commencement of such Test Period. Scheduling for subsequent deliveries of Discharge Energy shall be as set forth in Section 5.1.

3.10 Notice of Commercial Operation. Not less than sixty (60) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such Expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit K when Seller believes that all requirements to Commercial Operation have been satisfied (the "**Commercial Operation Notice**"). Buyer shall in writing either accept or reject Seller's Commercial Operation Notice within fifteen (15) Business Days after the date of such Commercial Operation Notice, in its reasonable discretion, and if Buyer rejects the Commercial Operation Notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. If Buyer fails to respond to the Commercial Operation Notice within fifteen (15) Business Days after the date of such Commercial Operation Notice, and all the requirements of Commercial Operation have been met, then the Commercial Operation Notice shall be deemed accepted, and the Commercial Operation Date shall be fifteen (15) Business Days after the date set forth in the Commercial Operation Notice. If Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Charging. The ESS shall be configured to charge exclusively using Energy provided by the Buyer from the electrical grid. Seller shall obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid by the Commercial Operation Date.

3.12 ESS Unit Capabilities. "**ESS Unit Capabilities**" means all of the following for the ESS, all as measured and determined at the Point of Delivery:

(A) Capability to discharge at One Hundred and Ten (110) MW (the "**Guaranteed PMAX**") for Eight (8) uninterrupted hours, as may be adjusted pursuant to Section 3.8;

(B) [Reserved];

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(C) ESS Roundtrip Efficiency equal to the Guaranteed ESS Roundtrip Efficiency;

(D) Actual Discharge Ramp Rate equal to the Guaranteed PMAX per second measured between 85% State of Charge and 15% State of Charge (the "**Guaranteed Discharge Ramp Rate**");

(E) Actual Charge Ramp Rate equal to the Guaranteed PMAX per second measured between 15% State of Charge to 85% State of Charge (the "**Guaranteed Charge Ramp Rate**");

(F) **Guaranteed System Latency**: <1 second;

(G) **Guaranteed Frequency Response Capability**: Guaranteed PMAX/0.1Hz; and

(H) Capability to support Ancillary Services in accordance with the system design and ESS Operating Restrictions, or as otherwise agreed by the Parties in writing.

3.13 ESS Non-Performance Liquidated Damages. ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Additional Buyer-Requested Performance Tests may also be required in accordance with Section 10.5. Seller will pay Buyer the following liquidated damages ("**ESS Non-Performance Liquidated Damages**") as the sole and exclusive remedy for ESS unit non-performance, including any failure to meet the ESS Unit Capabilities (in each case other than as excused due to (a) a Force Majeure Event, or (b) Seller Excused Hours) or to comply with the requirements of Section 7.4(A).

(A) Upon failure of Seller to satisfy the Guaranteed Discharge Ramp Rate, Guaranteed Charge Ramp Rate, Guaranteed Frequency Response Capability, or Guaranteed System Latency during ESS Unit Capabilities testing, Seller shall pay to Buyer "**ESS Response Delay Damages**" equal to ten thousand dollars ($10,000) per event (each event shall last no longer than three (3) Days). A test method and calculation for the ESS Response Delay is described in Exhibit F herein. Provided, however, under no circumstances will ESS Non-Performance Liquidated Damages (other than ESS Capacity Shortfall Damages) exceed Five Hundred Thousand Dollars ($500,000) in any Commercial Operation Year. As used in this Section 3.13(A), "event" means an occurrence causing a failure to comply by Seller lasting no more than seventy-two (72) hours; each exceedance of the seventy-two (72) hour cap by the same occurrence will be deemed a separate event. If multiple failures occur within 72 hours of the initial event, they will be treated as a single event if arising out of a common root cause.

3.14 Guaranteed ESS Roundtrip Efficiency Payment.

(A) If the ESS Roundtrip Efficiency is below the Guaranteed ESS Roundtrip Efficiency, Seller will pay to Buyer an amount equal to $100/MWh * Guaranteed PMAX * 8 hours * (1 – (ESS Roundtrip Efficiency/Guaranteed ESS Roundtrip Efficiency)).

3.15 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that acquisition, importation, transfer, and installation of all equipment,

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firmware, software, or any component thereof supplied to Buyer under this agreement is not prohibited by Applicable Law. Any breach of this Section 3.15 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.15 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.16 Eligible Change in Tariff. To the extent an Eligible Change in Tariff occurs between the Execution Date and one (1) year after NMPRC Approval that requires Seller to take additional actions to comply with Seller's obligations under this agreement and the costs associated with such actions, if they had been reasonably contemplated as of the Execution Date, increase Seller's costs by more than one and a half percent (1.5%) of the Contract Value at Contract execution, Seller shall have the right to terminate this agreement upon notice to Buyer unless Seller waives such condition in writing in its sole discretion, and Buyer shall return the Development Security and Delivery Term Security, as applicable, to Seller within fifteen (15) Days after such termination.

ARTICLE 4
AGC; ESS Curtailment

4.1 AGC.

(A) Prior to any Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall coordinate with Buyer's Power Operations Engineering in completing a full functional SCADA/RTU checkout from a points list agreed to by both Parties. Seller will maintain such AGC throughout the Delivery Term. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall commission the AGC at the Project and shall maintain the AGC in an operational state during normal Project operations such that the Project's AGC can receive remote instruction from Buyer to cause the Project to shut down, operate and ramp over its full operating capability in response to remote instruction. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to direct the dispatch of the ESS, via AGC control, to its fullest capability. Total cycles shall not exceed three hundred sixty-five (365) Equivalent Full Cycles in any Commercial Operation Year.

4.2 ESS Curtailment. An ESS Curtailment occurs any time the Project is unable to receive otherwise available Charging Energy or deliver otherwise available Discharge Energy to Buyer as a result of transmission limitations regardless of whether such curtailment is affected directly by Seller or Buyer, including as a result of Buyer's scheduling practices, or indirectly, by the Transmission Provider pursuant to the OATT or transmission service arrangements ("**ESS Curtailment**").

ARTICLE 5

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Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this agreement to accept the Charging Energy at and from the Point of Delivery as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Energy Storage System. Seller shall use and only use the Charging Energy for Buyer's benefit in accordance with the terms and conditions of this agreement. Seller shall secure transmission necessary (i) to deliver the Discharge Energy to the Point of Delivery, and (ii) receive Charging Energy from the grid at the Point of Delivery to the ESS, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project.

(B) Seller shall be responsible for the costs of interconnection and costs required to receive and deliver Energy from the Project to Buyer at the Point of Delivery at the required voltage and frequency, including the costs of any associated network upgrades. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to Discharge Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.

(C) Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on the Project and any co-located generation systems sharing the same interconnection. If applicable, delivery of Energy from the co-located generation systems to the Transmission Provider's Transmission System shall take priority over Energy discharged from the ESS; and further provided, that when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Energy discharged from the ESS shall take priority over delivery of Energy from co-located generation systems.

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

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

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Charging Energy and Discharge Energy delivered

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

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

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

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, secondary, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A) and the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or

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

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

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

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

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

ARTICLE 6
Conditions Precedent

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

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

(B) [RESERVED].

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable; provided, however, that Buyer's failure to provide such notice shall not constitute a breach of this agreement.

ARTICLE 7
Sale and Purchase of Product

7.1 Sale and Purchase of Product. In accordance with and subject to the terms and conditions of this agreement, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Product made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that Buyer shall not be required to receive and purchase Product when and to the extent that (a) a Seller Forced Outage or a Scheduled Maintenance Outage is continuing, or (b) Seller's performance is excused during Seller Excused Hours or due to Force Majeure Event. At its sole discretion, Buyer may resell or use for another purpose all or a portion of the Product. Buyer will have exclusive rights to offer, bid, or otherwise submit the Product for resale in the market and retain and receive any and all related revenues. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this agreement.

7.2 Title and Risk of Loss. As between Seller and Buyer, Buyer shall be deemed to be in control of all Charging Energy up to delivery at the Point of Delivery, Seller shall be deemed to be in control of all Charging Energy from and after such delivery to the Point of Delivery until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy at the Point of Delivery, and Buyer shall be deemed to be in control of all Discharge Energy from and after delivery and receipt at the Point of Delivery. Buyer shall at all times retain title and risk of loss for Charging Energy, Charging Energy that is stored in the ESS, and Discharge Energy. Title and risk of loss related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this agreement all right and title to such Future Environmental Attributes is included in the ESS Energy Payment Rate and (c) such Future Environmental Attributes pass to Buyer in accordance with Section 7.2 of this agreement. If in order for Buyer to receive the benefit of any Future Environmental Attributes Seller must incur any third-party costs not otherwise provided for in this agreement or if any change in law or regulation relating to such Future Environmental Attributes occurs after the Execution Date that causes Seller to incur any third-party costs not otherwise provided for in this agreement in order to deliver the Future Environmental Attributes, then such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer; provided, that Seller shall not be required to incur any costs for Buyer to receive the benefit of Future Environmental Attributes

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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. Buyer shall remain liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements, and any other applicable guidelines. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Discharge Energy and Charging Energy in accordance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines, except that Buyer shall not schedule any Discharge Energy or Charging Energy during Seller Forced Outages, Scheduled Maintenance Outages, and Force Majeure Events.

(B) [RESERVED]

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

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

(E) Seller shall configure the ramp rate for the Project such that Discharge Energy will not increase at a rate greater than twenty (20) MW per minute.

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

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ARTICLE 8
Payment Calculations

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

(A) Monthly ESS Energy Payment. Subject to the provisions of this agreement, Buyer shall pay Seller an amount equal to the product of (i) the ESS Capacity, not to exceed the Guaranteed ESS Capacity, multiplied by (ii) the Monthly Hours, multiplied by (iii) the ESS Energy Payment Rate, multiplied by (iv) Monthly ESS Availability, as determined in accordance with Exhibit I (the "**ESS Energy Payment**"). The ESS Energy Payment also compensates Seller for the associated Environmental Attributes and Ancillary Services, in any Monthly Billing Period. The ESS Energy Payment includes all Taxes.

Example: For a 30-Day Month, assuming 98% availability

ESS Energy Payment =

100 MW ×30 Days ×24 hours × $25.20/MWh ×0.98

(B) If Supplemental State Tax Incentives become available in connection with the Product, Seller shall, within thirty (30) Days of guidance regarding such availability, provide an analysis to Buyer of the benefits available under this agreement. At Buyer's option, the Parties shall work together in good faith to agree to those amendments and other modifications, excluding any price increase, to this agreement which are reasonably required to allow the Parties to receive the Supplemental State Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such credits.

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

(D) Buyer shall reimburse Seller for the taxes identified in Section 9.7(A), which shall be included in the Monthly invoices in compliance with Section 9.7(A).

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

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

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extent such Supplemental State Tax Incentives are applicable to the time period before the repudiation, termination or expiration of this agreement.

ARTICLE 9
Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

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

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

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this agreement (in Dollars) to Seller for the preceding Month. Each such invoice shall show the ESS Energy Payment, information and calculations, in reasonable detail.

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

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

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

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

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

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this agreement is not paid when due, then, in addition to such unpaid amount, interest shall be due and

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payable thereon. Applicable interest shall be calculated at a rate equal to the lower of (i) the "prime" rate as published in *The Wall Street Journal* on the first Business Day of each Month plus one-half percent (0.5%) and (ii) the maximum interest rate allowed by Applicable Law ("**Default Rate**"), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within sixty (60) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

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

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid. A Party must notify the other Party of any error within three hundred sixty-five (365) Days of such error.

9.7 Taxes.

(A) On all invoices, Seller shall separately show all New Mexico gross receipts, sales, and other similar taxes charged to Buyer provided that in no event will interest or penalties on such taxes be reimbursable by Buyer. If the sale of Product takes place on tribal land, Seller will comply with applicable state and tribal laws governing the reporting and payment of Gross Receipts Taxes on those transactions. Buyer shall reimburse Seller for Gross Receipts Taxes, if any, imposed on Seller's sale of and Buyer's purchase of Product and on Buyer's payment and Seller's receipt of amounts due under this agreement provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Product to Buyer pursuant to this agreement.

(B) Seller shall be responsible for and shall pay when due all income, gross receipts, compensating, use, value added, employment, ad valorem, personal real property or other

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

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

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

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

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

9.9 Netting.

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

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

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

ARTICLE 10
Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement, Applicable Law and this agreement. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of whether the sale of Product from the Project is eligible for, or receives, Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer Monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule within thirty (30) Days of the Execution Date, including key Project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with each subsequent Monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-13-16 of the New Mexico Public Utility Act and shall document the employment of these apprentices as set forth in Section 10.1(B).

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer Monthly construction updates no later than the 15th Day of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, Monthly updates shall include the Project Schedule and list of schedule risks and material cost risks as well as Seller's compliance with the apprenticeship standards established by Section 62-13-16 of the New Mexico Public Utility Act. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay

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ongoing activities of Seller or its contractors.

(C) Seller may not modify, alter, or otherwise change the Project without the prior written consent of Buyer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to alter the Guaranteed ESS Capacity, annual performance, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

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

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

10.2 Commissioning and Testing.

(A) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and ten (10) Days prior notice of the final tests scheduled relating to the commissioning of the Project Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with three (3) Days advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the

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operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

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

10.4 Operating Parameters.

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

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection consistent with protective function requirements in IEEE Standard 2800-2022, Section 9, system protection awareness and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair that can be monitored by the System Control Center. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers standards and Prudent Utility Practices. Seller shall have qualified independent, third-party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day written notice

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of planned testing and/or calibration.

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

(A) Seller will prepare detailed test protocols and procedures for any tests to be performed in connection with achieving Commercial Operation and for periodic tests as required within this agreement. The protocols and procedures will be developed by Seller in accordance with the requirements of the agreement and the appropriate power test code standards for energy storage facilities. Draft protocols and procedures must be submitted to Buyer and the System Control Center for review and approval, which approval will not be withheld unreasonably.

(B) Not later than one hundred eighty (180) Days before the Commercial Operation Date, Seller and Buyer shall develop mutually agreeable written test protocols, based upon the methodologies identified in Exhibit F to quantify the ESS Unit Capabilities. Seller will perform annual ESS Unit Capabilities tests in accordance with those test protocols and procedures and promptly provide the results to Buyer. With the exception of the cost for Charging Energy provided by Buyer, the annual ESS Unit Capabilities tests will be performed at Seller's expense. Annual testing for ESS Capacity and Guaranteed ESS Roundtrip Efficiency shall consist of two annual tests. Each of Buyer and Seller may elect up to two additional tests to be performed at a mutually agreed time. Within thirty (30) Days of the completion of an ESS Capacity or ESS Roundtrip Efficiency test, Seller may elect to conduct a single re-test. Upon completion of the single re-test, Seller must choose for the results of either test to be used as the basis of compliance with the applicable guarantee and the basis of applicable liquidated damages in Section 3.13, adjustment to the ESS Roundtrip Efficiency payment as outlined in Section 3.14, or adjustment to the ESS Energy Payment as outlined in Section 8.1(A).

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(C) 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 (collectively, "Buyer-Requested Performance Tests") shall be performed once per Commercial Operation Year. Upon failure to pass any of these ESS Unit Capabilities tests, Seller will have ninety (90) Days from the test date to cure any deficiencies in the test.

(D) For all ESS Unit Capabilities tests and re-tests, Seller shall notify Buyer at least ten (10) Days prior to the initiation of the test and Buyer shall have the option to inspect the Project during such test.

(E) For all ESS Unit Capabilities tests and re-tests, Seller shall provide a test report including all performance data, model simulations, calculations, and test reports to the Buyer for analysis and approval.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this agreement. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the Scheduled Maintenance Outages by no later than October 15 for the period of June 1 through November 30 for the following Commercial Operation Year and by no later than April 15 for the subsequent period of December 1 through May 31. Should Buyer desire to change the reporting dates noted above as a result of Buyer's participation in a regional market or program (including the Western Resource Adequacy Program), the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

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

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Outage.

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

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

10.8 Monthly Operational Report. Not later than the fifteenth (15th) Day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**"). The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Energy output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; meteorological data; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. If any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

10.9 [Reserved].

ARTICLE 11
Future Environmental Attributes

11.1 Sale of Future Environmental Attributes.

If Future Environmental Attributes become available, this Article 11 shall apply.

(A) Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to Future Environmental Attributes associated with the Project. Upon generation and documentation of Future Environmental Attributes, Seller shall make the Future Environmental Attributes available to Buyer no later than five (5) Business Days after creation. The value of the Future Environmental Attributes transferred under this agreement shall be included in the ESS Energy Payment Rate.

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

(C) Ownership by Buyer of Future Environmental Attributes shall include any Future Environmental Attributes that are reserved or "banked" throughout the Term of this agreement, but not used, sold, assigned or otherwise transferred during the Term of this agreement.

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Buyer may, to the extent permitted by Applicable Law and this agreement, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this agreement or any successor provision providing for a federal, state and/or local tax credit determined by reference to renewable electric energy produced from renewable energy resources shall be owned by Seller.

(E) Seller shall register the Project, as necessary, no later than thirty (30) Days after Buyer notifies Seller of the availability of such Future Environmental Attributes, so that the Project is compliant with reporting requirements related to Future Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law. Notwithstanding the foregoing, Seller shall not be required to expend more than Five Thousand Dollars ($5,000) per MW annually and Ten Thousand Dollars ($10,000) per MW in the aggregate to maintain compliance due to regulatory changes relating to Future Environmental Attributes.

ARTICLE 12
Default and Remedies

12.1 Events of Default of Seller.

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

(1) Seller's dissolution or liquidation;

(2) Seller's assignment of this agreement (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 and in any consent to collateral assignment with a Lender;

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

(4) Except during a Buyer Event of Default, the sale by Seller to a third party, or diversion by Seller for any use, of Product committed to Buyer by Seller;

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

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

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

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

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

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

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

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

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

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

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

(3) Seller's failure to make any payment due to Buyer under or in connection with this agreement (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this agreement);

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

(5) Should Future Environmental Attributes become available and Seller fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this agreement.

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

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

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

12.2 Events of Default of Buyer.

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

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

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

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

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

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

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

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

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

12.3 Damages Prior to Termination.

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

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, that if an Event of Default has occurred and has continued uncured for a period of one hundred eighty (180) Days, the Non-Defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this agreement as provided for in Section 12.4. If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include an amount of cover damages equal to Replacement ESS Costs minus the product of (x) the quantity of Product so replaced and (y) the ESS Energy Payment Rate; *provided, however, that for any termination prior to the Commercial Operation Date the Buyer Termination Payment shall be limited to an amount equal to the Development Security minus the total amount of Delay Damages received by Buyer.* Further, Seller acknowledges and agrees that in addition to the foregoing, Seller shall be obligated to pay Buyer any such damages associated with replacement of Product notwithstanding the availability or prices of electric energy and capacity from other fuel sources, such as natural gas. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any Future Environmental Attributes pursuant to this agreement, if such failure arises out of Seller's negligence or willful misconduct. Seller acknowledges that Buyer entered into this agreement for the procurement of Product, which includes Future Environmental Attributes. If Buyer is the Defaulting Party, the Parties agree that damages recoverable by Seller hereunder on account of an Event of Default of Buyer shall include costs and losses incurred by Seller due to such Event of Default, including, to the extent applicable, an amount of cover damages equal to the quantity of Product produced by Seller following such Event of Default, plus, to the extent that Seller is unable to produce Product due to the Event of Default of Buyer, an additional quantity equal to the amount of Product that would have been produced by Seller absent such Event of Default of Buyer, each multiplied by the ESS Energy Payment Rate; provided that the foregoing amount shall be reduced by an amount equal to (A) the amount of any revenues that Seller, using commercially reasonable efforts, is able to obtain by selling Product to a third party or into the market, less (B) Seller's costs and expenses incurred to effectuate any such sales, but in no event less than Zero Dollars ($0.00). Seller shall use commercially reasonable efforts to avoid, minimize or mitigate Seller's damages.

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12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this agreement shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this agreement, except that if Seller is the Defaulting Party, Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this agreement except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this agreement. Upon the termination of this agreement under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment, and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment, less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller).

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

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

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

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this agreement, and the exercise, or the

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beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

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

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this agreement, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this agreement, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

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

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

ARTICLE 13
Contract Administration and Notices

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

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time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

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

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

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this agreement, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this agreement as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this agreement (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this agreement. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

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

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

(C) Project Development Records and Data Submissions. Seller shall submit or

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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 agreement, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this agreement, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Product from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

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

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

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

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

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

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Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this agreement.

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

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this agreement in an expeditious and commercially reasonable manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this agreement, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. If the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("Dispute Notice"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. If the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

ARTICLE 14
Force Majeure

14.1 Definition.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" means an event or circumstance that arises, after the Execution Date, that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, that cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this agreement. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or

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military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this agreement is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

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

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities or other events or circumstances that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

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

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

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

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

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event, and the effects thereof, to the extent its effects impact the ability of:

(A) Seller to deliver Discharge Energy from the Project or to accept Charging Energy to the Project, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered ESS Unavailable Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment;

(B) Buyer to receive Discharge Energy from the Project or to deliver Charging Energy to the Project, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered Seller Excused Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment; or

(C) both Buyer and Seller to perform the acts described in (A) and (B), then the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered ESS Unavailable Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment.

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ARTICLE 15
Representations, Warranties and Covenants

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

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

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

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

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

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

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

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

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

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for

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Seller's execution, delivery and performance of this agreement have been duly obtained and are in full force and effect, or will be obtained in the ordinary course of business.

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

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

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

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

(J) Seller has, and/or will have good and marketable title to the Future Environmental Attributes immediately prior to delivery to Buyer.

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

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

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

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

(O) [Reserved].

(P) [Reserved].

(Q) This ESA does not provide for the transfer of the Project to Buyer at any time during or after the Term.

(R) This ESA does not grant Buyer an option to purchase the Project or any portion of the associated assets at any time during or after the end of the Term.

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

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

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

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

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

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

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

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

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

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

ARTICLE 16
Insurance

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16.1 Evidence of Insurance.

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

16.2 Term and Modification of Insurance.

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

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

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

16.3 Endorsements and Other Requirements.

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

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

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G names Buyer and its respective

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

ARTICLE 17
Legal and Regulatory Compliance and Governmental Approval

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

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

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

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

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

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(1) If the NMPRC disapproves any of the Requested Actions, then this agreement shall automatically terminate ten (10) Days after the date of such action by the NMPRC and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, except that Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

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

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval by 11:59 P.M. of December 31, 2026 ("**Regulatory End Date**"), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this agreement shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this agreement remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

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

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

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ARTICLE 18
Assignment and Other Transfer Restrictions

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

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

(B) Seller's consent shall not be required for any assignment of this agreement by Buyer to any Affiliate or in connection with the acquisition, merger, reorganization, or consolidation of Buyer or its parent corporation, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this agreement as and if required by NMPRC regulations and will resell the Product hereunder.

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

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

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

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

18.6 Assignment to Lenders.

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

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this agreement or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this agreement; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this agreement and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under

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this agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

ARTICLE 19
Credit and Security Requirements

19.1 Security. Seller shall post, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed ESS Capacity, (the "**Development Security**"), the first Fifty Thousand Dollars ($50,000) per MW of which will be posted within ninety (90) Days of the Execution Date and the second Fifty Thousand Dollars ($50,000) per MW of which will be posted no later than eighteen (18) months prior to the Expected Commercial Operation Date. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty-Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed ESS Capacity (the "**Delivery Term Security**"). Seller shall replenish the Development Security and Delivery Term Security, as applicable, to such required amount within fifteen (15) Days after any draw by Buyer. Buyer will return the Development Security to Seller in full if Commercial Operation occurs on or before the Guaranteed Start Date, provided Seller has paid in full any Delay Damages or ESS Capacity Shortfall Damages and provided the Delivery Term Security. If no amounts are due and owing under this agreement and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92nd) Day after termination of this agreement in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Buyer:

(a) cash, (b) a Letter of Credit in form acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is Creditworthy, or (d) other security as may be acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) Days before expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative

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

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

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

ARTICLE 20
Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable ("**Buyer's Indemnified Persons**"), from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the

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extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

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

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned

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or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

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

ARTICLE 21
Governmental Charges

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

ARTICLE 22
Miscellaneous

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

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this agreement, or any contractual obligation,

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

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

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

22.5 Relationship of the Parties.

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

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

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

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

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

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

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

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

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

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

22.13 Governing Law. The interpretation and performance of this agreement and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application

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

22.14 Confidentiality.

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

(B) Other than in connection with this agreement, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, legal counsel and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this agreement. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). To the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts to ensure that such Confidential Information is not made public.

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

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

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

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

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

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

(F) Seller shall immediately notify Buyer of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("Data Breach") that comes to Seller's attention. Such notification shall be made to Buyer no more than twenty-four (24) hours after Seller suspects or knows of the Data Breach. Seller shall also take the following actions in the event of a Data Breach: (a) designate a Seller representative who must be available to Buyer twenty-four (24) hours per Day, seven (7)

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Days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

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

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

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

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this agreement, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this agreement. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or

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warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions, and Buyer shall be responsible for Seller's reasonable third-party costs associated with assisting Buyer in such transactions.

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

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

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements

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set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

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

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

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

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

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Recording to the other Party upon request.

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

[Signature page(s) follow]

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

PUBLIC SERVICE COMPANY OF NEW MEXICO

By DocuSigned by: Laurie Williams B87ED845D25E4D9...

Name Laurie A Williams

Title Senior Vice President

ENCINO STORAGE LLC

By _____

Name Jim Spencer

Title President and Chief Executive Officer

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

1. Name of Seller's Project: Encino Storage

2. Location: Sandoval County, New Mexico

3. Owner (if different from Seller):

4. Operator: Exus North America Management Partners LLC

5. Equipment/Fuel:

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

   b. Total number of units at the Project: Approximately 221 ESS Units

   c. Total nameplate capacity (AC): 110 MW

   d. Total capacity at point of delivery: 110 MW

   e. Additional technology-specific information: Approximately 28 ESS MV transformers

   f. Battery chemistry: Lithium Iron Phosphate

6. Project Schedule:

Key Milestone	Date
LGIA Execution	May 15, 2025
Major Equipment Supply Agreements Executed	August 1, 2026
Discretionary Permits	December 1, 2026
Close Financing	TBD
30% Design Complete	TBD
Start of Project Construction	TBD
First Major Equipment Delivered to Site	December 1, 2027
Interconnection In-Service Date	March 4, 2028
Commissioning Start Date	April 4, 2028

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Expected Commercial Operation	August 4, 2028
Guaranteed Start Date	January 1, 2029

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

Site Map

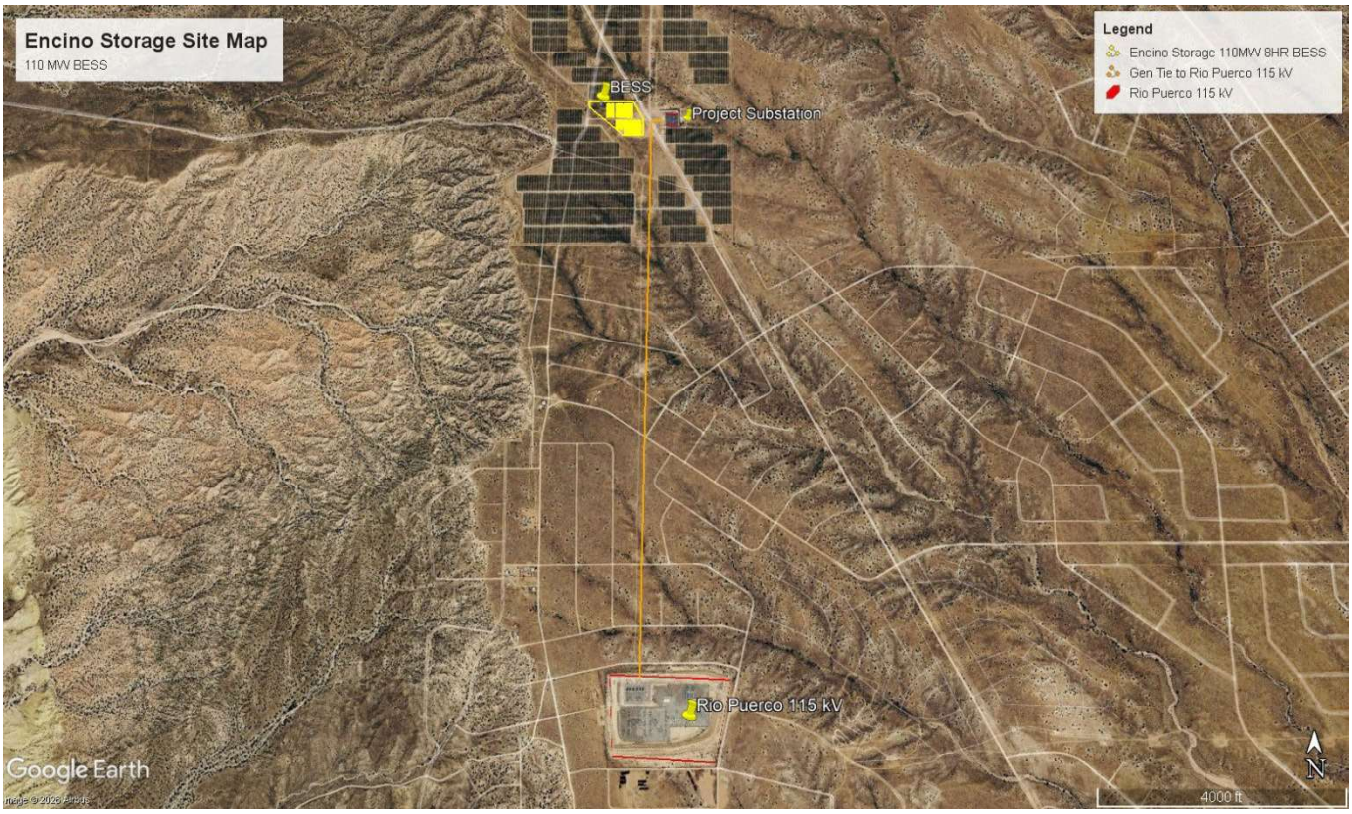

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EXHIBIT B
ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES

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

    - Interconnection Facilities;
    - the network upgrades;
    - the Electric Interconnection Point;
    - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);
    - communications and telemetry configuration with associated redundancy;
    - the House Energy power source and associated dedicated electric meter, and redundancy, ownership and location of meters and associated CTs and PTs.

2. The following discussion provides a summary of the current status of the Interconnection Agreement for the Project, the key milestone dates for completion of the necessary interconnection facilities, and documentation from the Transmission Provider supporting the identified status and milestone dates.

3. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.

4. Point of Delivery is Rio Puerco 115 kV.

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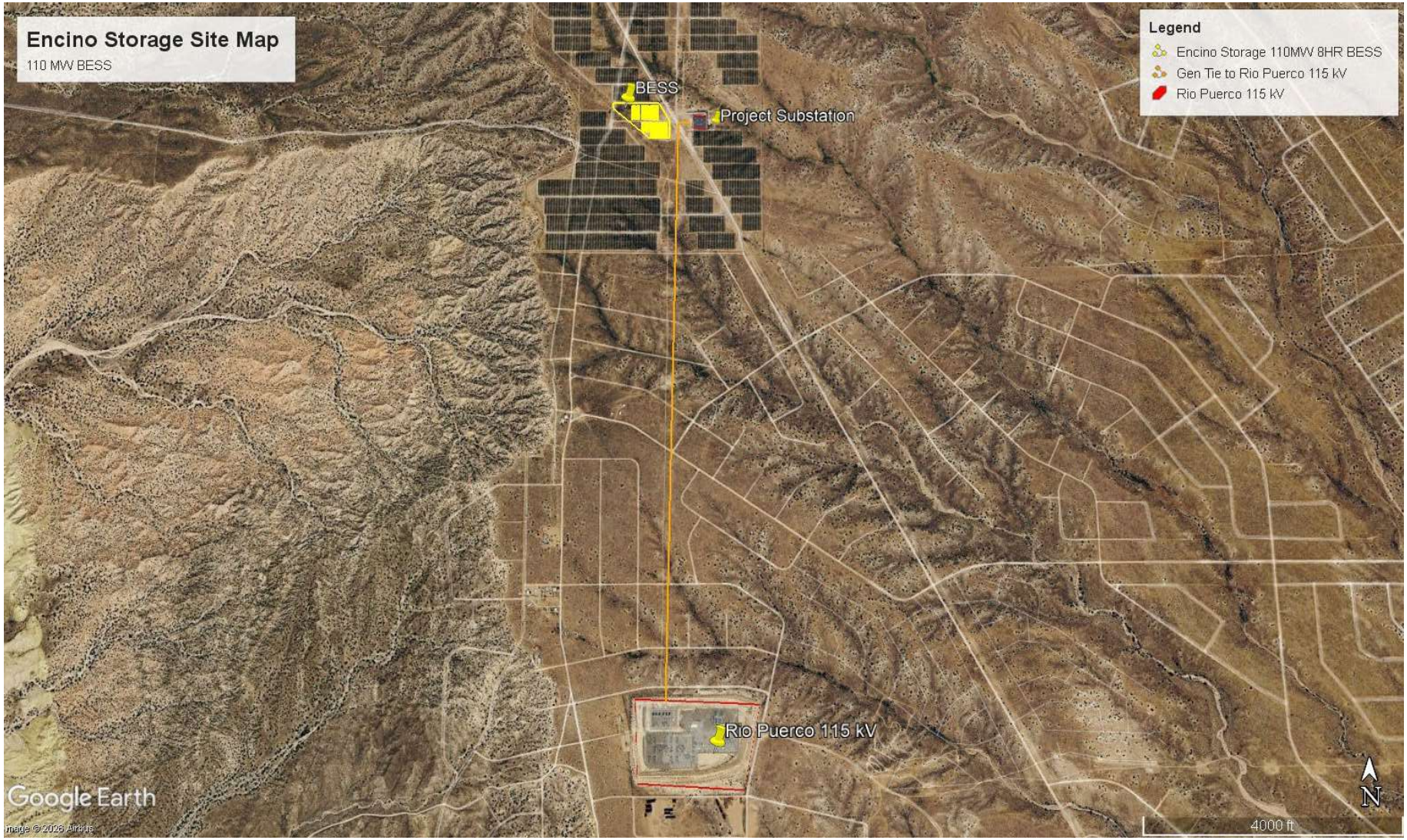

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EXHIBIT C
DESCRIPTION OF SITE[1] PARCEL SURVEY FOR ENCINO STORAGE PROJECT

DESCRIPTION OF SITE

A Portion of the easterly 835 acres (more or less) of Sections 8 and 17, Township 13 North, Range 1 East, N.M.P.M., Sandoval County, New Mexico.

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

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EXHIBIT D
NOTICE ADDRESSES

PUBLIC SERVICE COMPANY OF NEW MEXICO

Notices:

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

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

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

Payments:
Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

Wire Transfer:
Wells Fargo Bank
ABA# 121000248
Albuquerque, New Mexico
ME Whsle Pwr Depository: 651-537-7916
Attn: EA-Wholesale Power Marketing

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

ENCINO STORAGE LLC

All Notices/Invoices:

Delivery Address:
Exus Renewables North America
1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219
Attn: John Markwell
Phone: 412-443-9618

With copy to:
Exus Renewables North America
1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219
Attn: Edith Webster-Freed
Phone: 929-715-3876

Mailing Address (if different from above):

Wire Transfer: [●]

With additional Notice of an Event of Default, termination and other legal notices to:
Attn: Edith Webster-Freed
Address: 1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219
Phone: 929-715-3876

Attn: John Markwell
Address: 1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219
Phone: 412-443-9618

Project Manager:
Exus Renewables North America
Attn: Brian Reindl
Address: 1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219

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

Public Service Company of New Mexico
Attention: Laurie Williams
414 Silver Ave. SW
Albuquerque, NM 87102
Telephone: (505) 241-0641

With a copy to:

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

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EXHIBIT E

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

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
Sandoval County Zoning Map Amendment	Sandoval County
National Historic Preservation Act Section 106 Finding of Eligibility, Consultation and Approval	New Mexico State Historic Preservation Office
Building and Electrical Permit	Construction Industries Division on behalf of The State of New Mexico (NMCID)
Access/Driveway Permit	New Mexico Department of Transportation/Sandoval County
NPDES Section 402 General Permit	United States EPA

NOTE: Final actual permit requirements may vary from the above listings due to code and regulatory requirements as needed for Project completion, as is customary for commercial scale power generation facilities. This list is considered inclusive at the time of development of the agreement.

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EXHIBIT F
COMMISSIONING AND ANNUAL TESTING

Commissioning Tests

- Automatic Generation Control (AGC) Functionality Test (or equivalent)
- SCADA Functionality Test (or equivalent)
- Owner Control and Data Link Functionality Tests (See Section C in this Exhibit F)
- ESS Unit Capabilities Testing
- ESS Solar Capacity Firming Test (if applicable)

Annual Testing

- ESS Unit Capabilities Testing

Commissioning Procedures

Final testing and commissioning procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements may be modified to account for factory-performed commissioning procedures and otherwise updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures. The final energy storage plant testing and commissioning process will be based on as-built design and plant configuration, and shall verify the final, as-assembled operation. The approach shall be confirmed with all equipment suppliers to ensure a safe process.

PHASE 1 – Battery to PCS

A. Battery Module
    1. Prior to installing each battery module:
        a. Test and confirm battery module voltage

B. Battery String
    1. Once the battery modules are installed in the battery rack with the necessary electrical and communication connections with the battery switchgear and Rack BMS:
        a. Confirm battery modules have auxiliary power supply
        b. Confirm battery modules communicate with rack BMS
            i. Read the System BMS and check whether the battery banks are operable, or not.
        c. Repeat steps i through ii for all battery strings connected to the PCS.
        d. Once communication is confirmed between the battery string and the System BMS, test and confirm battery string voltage on input terminals of Switchgear, one string at a time.
        e. Once complete, send all DC contactor “on” command to the System BMS and check the DC contactor’s status via the System BMS.
        f. Initiate the pre-charge circuit to balance the battery strings prior per the battery vendor specifications.

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C. Battery Bank
   1. Once all of the battery strings within a bank are connected to the input on the PCS and the System BMS, and each input on the PCS is complete with the necessary battery bank connections:
      a. Confirm communication between the System BMS and the PCS (via the EMS, or direct)
      b. Confirm voltage on the PCS terminals is within the battery manufacturer requirements to connect the strings in parallel.

D. PCS
   1. Connect a temporary power supply such as a generator to the PCS to charge the battery bank.
   2. Turn on the PCS.
   3. Charge the battery bank.
   4. Disconnect the temporary power supply.
   5. Connect the PCS to a load bank.
   6. Discharge the battery bank into the load bank.
      a. Confirm the battery bank capacity (kWh) based on power for duration.

E. Repeat steps 1 through 4 for every PCS in the Energy Storage System.

F. End of Phase 1

G. PHASE 2 – PCS to MV Bus in Substation

H. Medium Voltage Block
   1. Disconnect / isolate the battery bank voltage from the PCS
   2. Connect the PCS to the medium voltage transformer.
   3. Connect the Medium Voltage Blocks to the Medium Voltage Feeder
   4. Connect the Medium Voltage Feeder to the Medium Voltage bus in the substation via the MV circuit breaker.
   5. With all blocks connected to the Medium Voltage Feeder (approximately 8-10 blocks per MV Feeder), test and commission each MV block, one at a time. (This assumes the substation is energized and capable of charging and discharging.)

      a. Charge each block to 100% SOC.
      b. Let the battery rest as recommended by the battery vendor.
      c. Discharge each block to 0% SOC.
      d. Open the MV Feeder circuit breaker upon completion.

I. Repeat steps 1 through 2 for all Medium Voltage Feeders

J. End of Phase 2

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K. PHASE 3 – MV bus to POI

L. One MV Feeder at a time, close the MV Feeder Breaker, and energize all of the blocks on the feeder.
M. Allow the MV Feeder to charge and then discharge. Once complete, repeat step 1 for all MV Feeders.

Commissioning Testing

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date. Final test procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements shall be updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures.

Automatic Generation Control (AGC) Functionality Test

Purpose:

This test will demonstrate the ability of the ESS to synch to AGC.

System starting state:

The ESS will be in the on-line state at between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("EMS") shall be configured to follow a predefined, agreed-upon active power profile. In the case and to the extent that Seller has not obtained authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, this profile shall not cause the ESS to charge from the grid.

Procedure**:**

1. Record the ESS active power level at the Electric Metering Device.

2. Command the ESS to follow a simulated AGC discharging signal every four (4) seconds for ten (10) minutes.

3. Upon confirmation of the availability of sufficient output from Seller's other projects or to the extent of authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, command the ESS to follow a simulated AGC charging signal every four (4) seconds for ten (10) minutes.

4. Record and store the ESS active power response (in seconds).

System end state:

The ESS will be in the on-line state and at a commanded active power level of 0 MW.

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SCADA Functionality Test

Seller shall prepare and submit to Buyer a SCADA Functionality Test procedure no later than 180 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such SCADA Functionality Test procedure and Seller shall perform and successfully demonstrate the SCADA functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

Owner Control and Data Link Functionality Test

Seller shall prepare and submit to Buyer an Owner Control and Data Link Functionality Test procedure no later than 180 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Owner Control and Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Owner Control and Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

Voltage Setpoint Functionality Test

[Test procedures to be agreed upon at a later date, consistent with the timeline set forth in Section 10.2 of the agreement and battery manufacturer's then-current operating and testing requirements]

Commissioning and Annual Tests

The following tests shall be conducted as a requirement to achieve the Commercial Operation Date and will be repeated annually (or more frequently as allowed under the agreement) throughout the term of the agreement. Final test procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements shall be updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures.

A. ESS Unit Capabilities Testing

1. ESS Capacity Test

a. General

The ESS Capacity Test ("**ESS Capacity Test**" or "**ECT**") is a test performed to determine the then-current ESS Capacity and Roundtrip Efficiency (RTE). Each ESS Capacity Test (including the initial ESS Capacity Test performed prior to Commercial Operation and each subsequent ESS Capacity Test) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit F. Buyer or its representative may be present for any ECT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

b. Requirements Applicable to all ESS Capacity Tests

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i. Purpose of Test. Each ECT shall:

- determine the ESS Capacity for the purposes of this agreement;
- determine the Roundtrip Efficiency (RTE) of the ESS;

ii. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:

- discharge time (minutes);
- ESS Charging Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh ("**ESS Meter Energy In**");
- ESS Discharge Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh ("**ESS Meter Energy Out**");
- ESS Discharge Energy measured at the ESS Electric Metering Device including the accounting of losses from the ESS Electric Metering Device to the Point of Delivery, in MWh ("**Point of Delivery Energy Out**");
- ESS Charging Energy measured at the ESS Electric Metering Device accounting for losses from the Point of Delivery to the ESS Electric Metering Device, in MWh ("**Point of Delivery Energy In**");

iii. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.

iv. Test Elements and Sequence. Each ECT shall include the following test elements:

- starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate setpoint equal to the Guaranteed ESS Capacity;
- the determination of Point of Delivery Energy In, as measured by the Electric Metering Device, that is required to charge the ESS until a 100% State of Charge is achieved as of the commencement of the ESS Capacity Test.
- the discharging of the ESS from a 100% State of Charge at a power discharge rate setpoint equal to the Guaranteed ESS Capacity (MW);
- the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after eight (8) hours of discharging at the Guaranteed ESS Capacity;
- the determination of Point of Delivery Energy Out, as measured by the ESS Electric Metering Device, that is discharged from the ESS to the Point of

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Delivery until either a 0% State of Charge is achieved or eight (8) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by eight (8) hours shall determine the ESS Capacity. The Electric Metering Device shall be programmed to correct for losses between the Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;

v. Test Conditions.

- General. At all times during an ECT, the ESS shall be operated in compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. The ESS shall have charged and discharged at least 80% of one (1) Equivalent Full Cycle in the twenty-four (24)-hour period prior to the ECT, charged to a 100% State of Charge using Charging Energy on the day of the ECT and maintained at a 100% State of Charge for at least two (2) hours prior to commencement of the ECT. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the ESS shall otherwise be at unity (1.00) power factor.

- Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT, Seller may postpone or reschedule all or part of such ECT in accordance with Section E.1.2.F of these ESS Capacity Test Procedures.

- Weather Conditions. Ambient outside dry bulb air temperature of 25°C. Seasonal weather patterns may prevent the occurrence of an ECT. In such circumstances, Seller shall supply adjusted performance metrics for the ESS at a range of ambient conditions for Buyer's review and approval (such approval not to be unreasonably conditioned, delayed or withheld) ninety (90) Business Days prior to the scheduled ECT to determine whether the scheduled ECT is feasible.

- Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Article 5 of the agreement.

vi. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section E.1.2.E(2) of this ESS Capacity Test Procedure), Seller may, in its sole discretion: (i) accept the results up to the time the ECT was suspended; provided, however, that to the extent Buyer reasonably objects to such results, Buyer may require that the ECT be repeated or that the portion thereof that was not completed, be

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completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Seller is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.

vii. Final Report. Within ten (10) Business Days after the completion of any ECT, Seller shall prepare and submit to Buyer a written report of the results of the ECT, which report shall include:

- A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;
- the measured data for the ESS Electric Metering Device readings as well as each parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT and plant log sheets verifying the operating conditions and output of the ESS;
- The ESS Capacity as determined by the ECT, including supporting calculations; and
- Seller's statement of either Seller's acceptance of the ECT or Seller's rejection of the ECT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the ECT results or Buyer's rejection of the ECT and reason(s) therefor.

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section A(1)(b)(vi) of this ESS Capacity Test Procedure.

viii. Supplementary ESS Capacity Test Protocol. No later than one hundred eighty (180) Days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit F with additional and supplementary details, procedures and requirements applicable to ESS Capacity Tests based on the then-current design of the Project (collectively, the "**Supplementary ESS Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit F. Future modifications to the Supplementary ESS Capacity Test Protocol, as mutually agreed, shall be documented and

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maintained by the Parties.

ix. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first eight (8) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this agreement, multiplied by (ii) eight (8) hours) shall be divided by eight (8) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the Day following the completion of the ESS Capacity Test for all purposes under this agreement.

x. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh-AC) and the ESS Meter Energy In (MWh-AC) as below:

$$Roundtrip\ Efficiency(\%) = \frac{ESS\ Meter\ Energy\ Out\ (MWh_{AC})}{ESS\ Meter\ Energy\ In\ (MWh_{AC})}$$

2. ESS Response Delay Test

a. **Purpose of Test:**

i. Determine the Actual Charge Ramp Rate of the ESS

ii. Determine the Actual Discharge Ramp Rate of the ESS

b. **Test Conditions:**

The Project will be in the on-line state at between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. In the case and to the extent that Seller has not obtained authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, this test shall not cause the ESS to charge from the grid.

c. **Test procedure:**

i. Actual Charge Ramp Rate:

- Send an active power charge command of Guaranteed PMAX to charge the batteries

- The time measured from when the ESS receives the Guaranteed PMAX charge command until the power measured at the Electric Metering Device changes from 0MW to at least 1% of charge Guaranteed PMAX shall be

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the Charge Ramp Latency

- The time measured to ramp from 1% to charge Guaranteed PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Charge Ramp Rate

ii. Actual Discharge Ramp Rate:

- Send an active power discharge command of Guaranteed PMAX to discharge the batteries

- The time measured from when the ESS receives the Guaranteed PMAX discharge command until the power measured at the Electric Metering Device changes from 0MW to at least 1% of discharge Guaranteed PMAX shall be the Discharge Ramp Latency

- The time measured to ramp from 1% to discharge Guaranteed PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Discharge Ramp Rate

iii. **Determination of ESS Response Delay:**

The calculation below will demonstrate the determination of the ESS Response Delay used to determine ESS Response Delay Damages according to Section 3.13.

- An "**Actual System Latency**" shall be calculated, which shall be equal to:

$$Actual\ System\ Latency = Max(Charge\ Ramp\ Latency, Discharge\ Ramp\ Latency)$$

- An "**Actual System Latency Delay**" shall be calculated, which shall be equal to:

$$Actual\ System\ Latency\ Delay = Max(Guaranteed\ System\ Latency, Actual\ System\ Latency) - Guaranteed\ System\ Latency$$

- An "**Actual Discharge Ramp Rate Delay**" shall be calculated, which shall be equal to:

$$Actual\ Discharge\ Ramp\ Rate\ Delay = Max(Guaranteed\ Discharge\ Ramp\ Rate, Actual\ Discharge\ Ramp\ Rate) - Guaranteed\ Discharge\ Ramp\ Rate$$

- An "**Actual Charge Ramp Rate Delay**" shall be calculated, which shall be equal to:

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$$Actual\ Charge\ Ramp\ Rate\ Delay = Max(Guaranteed\ Charge\ Ramp\ Rate, Actual\ Charge\ Ramp\ Rate) - Guaranteed\ Charge\ Ramp\ Rate$$

- The "**Charging ESS Response Delay**" shall be calculated, which shall be equal to:

$$Charging\ ESS\ Response\ Delay = Actual\ Charge\ Ramp\ Rate\ Delay + Actual\ System\ Latency\ Delay$$

- The "**Discharging ESS Response Delay**" shall be calculated, which shall be equal to:

$$Discharging\ ESS\ Response\ Delay = Actual\ Discharge\ Ramp\ Rate\ Delay + Actual\ System\ Latency\ Delay$$

- The "**ESS Response Delay**" shall be calculated, which shall be equal to:

$$ESS\ Response\ Delay = Max(Charging\ ESS\ Response\ Delay, Discharging\ ESS\ Response\ Delay)$$

For any instance in which the ESS Response Delay, as measured by the Electric Metering Device is a positive value during an ESS Unit Capabilities test, Seller shall pay to Buyer the ESS Response Delay Damages identified in Section 3.13.

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EXHIBIT G
INSURANCE COVERAGES

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

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

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

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

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

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

E. Network Security and Privacy Liability. If Seller or any of its contractors are providing services which provide such parties with direct access to Buyer's systems or makes them responsible for holding sensitive information of Buyer, Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual

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limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

F. Property Insurance. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. subject to customary industry standard sublimits. Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

G. Technology Errors and Omissions Insurance. Contractor and/or its subcontractors at its sole cost agree to maintain technology Errors and Omissions insurance coverage with insurance carriers with a rating of no less than A rated by Best's Insurance Guide. Technology Errors & Omissions insurance providing coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products. Coverage for violation of software copyright infringement. Technology services shall cover liabilities, punitive damages, and claim expenses arising from acts, errors and omissions, in rendering or failing to render all services and in the provision of all products in the performance of this agreement, including the failure of products to perform the intended function or serve the intended purpose. Services insured, at a minimum, include (1) systems analysis (2) systems programming (3) data processing (4) systems integration (5) outsourcing including outsourcing development and design (6) systems design, consulting, development and modification (7) training services relating to computer software or hardware (8) management, repair and maintenance of computer products, networks and systems (9) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software (10) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, (11) violation of federal, state or foreign security and/or privacy laws and regulations including but not limited to investigative and notification costs regardless of whether such incurred costs were compulsory or voluntary and any other services provided by the Seller under this agreement. No exclusion/ restriction for unencrypted portable devices/ media may be on the policy. Policy shall have minimum limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations. Such insurance must address all of the foregoing without limitation if caused by an employee or an independent contractor working on behalf of the Seller in performing services under this agreement. The policy shall have worldwide coverage territory and provide coverage for wrongful acts, claims, and lawsuits brought anywhere in the world. Such insurance may be written on a claims-made rather that an occurrence basis as long as the policy, (a) has a retroactive date prior to the date of project commencement, and (b) is maintained by Seller throughout the performance of services or storage of data in connection with this agreement and for at least three (3) years thereafter either through policies in

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force or through an extended reporting period. Seller shall provide Buyer a copy of the policy providing the insurance required under this paragraph upon written request.

If Seller is providing services which provide direct access to Buyer's systems or holding sensitive information of Buyer, then the policy shall include Network Security/Privacy coverage. This policy shall include coverage for loss, disclosure and theft of data in any form; media and content rights infringement and liability, including but not limited to, software copyright infringement; network security failure, including but not limited to, denial of service attacks and transmission of malicious code. Coverage shall include data breach regulatory fines and penalties, the cost of notifying individuals of a security or data breach, the cost of credit monitoring services and any other causally-related crisis management expense for up to one (1) year.

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EXHIBIT H

ROUNDTRIP EFFICIENCY GUARANTEE

	Annual R/T Eff
1	84%
2	83.7%
3	83.4%
4	83.1%
5	82.8%
6	82.5%
7	82.2%
8	81.9%
9	81.6%
10	81.3%
11	81%
12	80.7%
13	80.4%
14	80.1%
15	79.8%
16	79.5%
17	79.2%
18	78.9%
19	78.6%
20	78.3%

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EXHIBIT I

AVAILABILITY CALCULATIONS

Section 1. Definitions.

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

"**ESS Excused Hours**" means the aggregate Seller Excused Hours to the extent that the ESS is affected during such hours, but shall not include any hours described in clause (e) of the definition of ESS Unavailable Hours. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**ESS Unavailable Hours**" means those hours that the ESS is not available to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an ESS Excused Hour); (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; (d) otherwise not operational or capable of delivering Discharge Energy or accepting Charging Energy; or (e) unavailable due to the conditions described in Section 14.4. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour, the ESS is available but for less than the full amount of the then effective ESS Capacity, the ESS Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**Monthly ESS Availability**" means a percentage calculated as the result of (i) the sum of all Monthly ESS Available Hours divided by (ii) the Monthly Hours.

"**Monthly ESS Available Hours**" means for a relevant Month during any Commercial Operation Year, an amount of hours equal to the difference between (a) Monthly Hours, minus (b) the aggregate ESS Unavailable Hours in such Month. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the Monthly ESS Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**Monthly Hours**" means the product of (a) twenty-four (24), multiplied by (b) the number of Days in such Month.

"**Monthly Report**" has the meaning set forth in Section 3 of this Exhibit.

Section 2. Sole Remedy

The Parties agree that Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for any deficiency in the performance of the Project (excluding ESS Non-Performance Liquidated Damages pursuant to Section 3.13 of the agreement or ESS Roundtrip Efficiency deficiencies pursuant to Section 3.14 of the agreement) shall be reductions to the ESS Energy Payments due to any

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Monthly ESS Availability percentages that are less than 100%, and in each case shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default giving rise to a termination payment obligation.

Section 3. Monthly Report.

No later than the tenth (10th) Day of each Month during each Commercial Operation Year (or ten (10) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of Monthly ESS Availability for the previous Month (the "**Monthly Report**").

Section 4. Disputes.

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

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ATTACHMENT 1 TO EXHIBIT I

EXAMPLE CALCULATION

I. Example of Monthly ESS Availability Calculation

The sample calculation set forth below is based on the following assumed facts:

The ESS had the following operating characteristics:

	Hours
Monthly Hours ("MH")	720
ESS Unavailable Hours ("EUH")	86

Given these assumed facts, the Monthly ESS Available Hours for the ESS during the specific Month would be calculated as follows:

Monthly ESS Available Hours = MH – EUH : 634 = 720 – 86

Monthly ESS Availability

Given these assumed facts, the Monthly ESS Availability for the Project during the specific Month in question would be calculated as follows:

(a) Sum of Monthly ESS Available Hours: 634 hours

(b) Monthly Hours: 720 hours

(c) Monthly ESS Availability: Sum of Monthly ESS Available Hours/Monthly Hours = 634/720 = 88.1%

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EXHIBIT J

FORM OF SELLER GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of _____, _____ (the "**Effective Date**"), is made by [●]. ("**Guarantor**"), in favor of PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("**Counterparty**").

RECITALS:

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

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

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

* * *

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

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

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

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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.

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4. RESERVATION OF CERTAIN DEFENSES.

(a) Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the agreement that Obligor may assert that is based on Counterparty's breach of the agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the agreement or the lack of validity or enforceability of Obligor's obligations under the agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

(a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

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(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*):

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TO GUARANTOR:	*TO COUNTERPARTY:*
Attn: *Treasurer*	Attn: [●]
[Tel: [●] *-- for use in connection with courier deliveries]*	*[Tel:* [●] *-- for use in connection with courier deliveries]*

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

10. MISCELLANEOUS.

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

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

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

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

(e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such

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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:_____

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EXHIBIT K

COMMERCIAL OPERATION
FORM OF CERTIFICATION

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

Seller hereby certifies and represents to Buyer the following:

(1) An Energy Storage System with a designed power output capability of 110 MW for eight (8) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharge Energy on a sustained basis (in accordance with the ESS manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and Charging Energy from the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project and that the Project meets, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this _____day of _____, 20__.

Encino Storage LLC	**[Licensed Professional Engineer]**
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
	Date: _____
	License Number and LPE Stamp: _____

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EXHIBIT L

ESS OPERATING RESTRICTIONS

Subject to the terms of this agreement, the ESS shall be operated in accordance with the following operating restrictions:

1. TBD

[*Specific ESS Operating Restrictions will be included as part of the detailed Commissioning and Test procedures to be agreed upon by Buyer and Seller as set forth in Section 10.2 of the agreement and the ESS Manufacturer's then-current operating and testing requirements*]

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EXHIBIT M

ESS FUNCTIONAL MAPPING

The Project's NERC verified ESS Generator Owner, ESS Generator Operator and Scheduling Coordinator Contact functional mapping requirements, as applicable, information as follows will be provided prior to the Commercial Operation Date:

	Entity Name	Point of Contact	E-mail	Phone
Generator Owner (GO)				
Generator Operator (GOP)				
Scheduling Coordinator Contact (SCC)				

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EXHIBIT N

INTERCONNECTION METERING STANDARD

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EXHIBIT O

PREPARATION FOR COMMISSIONING

Section 1. Purpose.

This Exhibit provides guidance to the Seller on the process and requirements for the coordination and completion of commissioning and testing activities associated with the Project leading up to the Commercial Operation Date. To the extent that Seller still lacks clarity, Seller is encouraged to coordinate and discuss these items with Buyer at least ninety (90) Days prior to the Expected Commercial Operation Date.

Seller's Project Manager will work together with Buyer's Contract Manager, Power Operations staff and Generation Engineering staff to ensure all pre-commissioning and commissioning requirements are completed in a timely manner to support the achievement of critical milestones in accordance with the timelines presented herein and others as defined in the agreement and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Standard as outlined in Exhibit N of the agreement and complete all testing as defined in Exhibit F of the agreement.

Figure 1 is for reference purposes only.

Section 2. Identifying Key Points of Contact.

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the agreement.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

TABLE 1 – REQUIRED INFORMATION FOR POINT OF CONTACT LIST.

Contact	Company	Group	Address	Project Role	Office Phone	Mobile Phone	Email
Eric Meadors	PNM	Generation Contracts & Development	2401 Aztec Rd NE Albuquerque, NM 87107	Contract Manager	(505) 241-2179	(505) 801-7803	Eric.Meadors@txnmenergy.com

The POC List shall identify, but not be limited to, the following:

Buyer Team: Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting, defining Commissioning Test requirements, reviewing and monitoring Seller's Commissioning Test

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plan and procedures, receiving and tracking Seller deliverables, and approval of Seller submittals as required for achievement of Commercial Operation.

- "**Power Operations**" or "**PowerOps**" – A team manager and a lead engineer will be assigned by PowerOps to model the Project into the Power Operations full network model and submit those changes to CAISO as well. Buyer and Seller will coordinate all control points and analog data requirements needed to integrate the Project into Buyer's Energy Management System ("**EMS**" consisting of SCADA & AGC). Buyer and Seller will complete remote telemetry unit ("**RTU**") control and data point testing and verify proper configuration in accordance with the schedule identified in Table 2 below.

- "**Transmission Engineering Protection & Controls**" – This group will define the interconnection protection and control requirements between the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities.

- "**Transmission Engineering Telecommunications and Telemetry unit (RTU) Control Staff**" – The Buyer and Seller will coordinate telecommunication and RTU equipment requirements from the Seller's Interconnection Facilities to the Transmission Provider's Interconnection Facilities to meet Power Operations requirements for real time awareness and control. This staff will design, and coordinate installation of communications required to gather metering quality, after the fact data from Seller resources to be used by Buyer settlement processes.

- "**Wholesale Power Marketing**" or "**WPM**" – This group is responsible for peripheral component interconnect modeling for functionality required for the participating resource schedule coordination (for EIM participation) and for additional market needs, forecasting support and management for renewable resources, schedules/optimizes energy to manage within total portfolio during commissioning, facilitates availability and outage management, and is involved in CAISO resource registration.

- "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

Seller Team: The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- **"Project Manager"** – Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.

- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the ESS. The OEM shall define and execute all OEM-required equipment and system testing.

- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.

- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.

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- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:

    - Balancing Authority (BA)
    - Transmission Owner (TO)
    - Transmission Operator (TOP)
    - Generator Owner (GO)
    - Generator Operator (GOP)
    - Scheduling Coordinator (SC)
    - Distribution System Operator (DSO)

Section 3. Process Overview.

The following is a description of activities that Seller shall participate in from pre-commissioning to the Commercial Operation Date.

Section 3.1 Commissioning Kickoff Meeting.

Buyer's Generation Engineering will schedule a kickoff meeting for Project commissioning and testing activities ("**Commissioning Kickoff Meeting**") with all stakeholders upon the Start of Project Construction as identified in the Project Schedule in Exhibit A**.** This shall serve as an opportunity to get all parties engaged, communicate planned timelines, answer questions, and involve all key stakeholders to help prevent missed pre-commissioning and commissioning requirements and/or schedule delays.

The key activities fit into 2 stages or phases: 1) pre-commissioning or 2) commissioning and performance testing. Following the completion of testing, some of the data and information generated in these stages inform the final requirements that need to be completed prior to Commercial Operation.

Section 3.2 Pre-Commissioning.

Activities in this stage begin well before commissioning (*some possibly before site construction mobilization*) to ensure that all systems and resources are ready to proceed to the next stage.

Pre-requisites to commissioning and other activities shall be completed prior to commissioning including, but not limited to those items identified in Table 2 as further represented in Figure 1:

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TABLE 2: PRE-COMMISSIONING REQUIREMENTS

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Design Verification	Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving agreement obligations, including grid forming inverters, metering, etc.	**Seller**	Generation Engineering	After completion of 30% design phase of project
Seller's SCADA Controls Narrative	Controls narrative detailing items related to SCADA and telemetry planning.	**Seller**	PowerOps	120 Days after Start of Construction
	Final DB Mod file delivered to PowerOps.	**Seller**	PowerOps	10 Days prior to the scheduled Test Period
Seller's Substation Commissioning	Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled ESS performance testing.	**Seller**	Buyer's Project Manager	Prior to the scheduled performance testing
Metering	All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Standard in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary.	**Seller**	PowerOps	Prior to the scheduled performance testing
CAISO Resource Registration	Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration.	**Seller**	PowerOps	180 Days prior to the scheduled Test Period
	A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. Delays in Seller's submission to Buyer of this information will likely result in a delay in the transmission interconnection in-service date.	**Seller**	PowerOps	120 Days prior to transmission interconnection in-service date
	Buyer EIM Market Performance Group will begin submitting resource registration documentation after CAISO model submission by PowerOps.	**PowerOps**	Seller	
	Buyer must receive the necessary information for CAISO resource registration. Including: engineer-stamped one-line diagram, meter information (make, model, accuracy), calculations required to get resource reads to the Point of Interconnection, metering CT & PT accuracies for each meter.	**Seller**	PowerOps	No later than 90 Days prior to the scheduled Test Period
Power Operations Engineering Requirements for Commissioning (Attachment 1)	This Exhibit provides additional detail on the data elements and activities required by PowerOps for commissioning and testing. Included with this set of requirements is the SCADA Points Check Out: PowerOps needs to conduct a checkout one month prior to the beginning of performance testing in order to ensure that all points have been validated between the field and Buyer's System Control Center, and resources are ready to proceed to other tests. Buyer acknowledges certain points are not available prior to Test Period given commercially reasonable restrictions on access to data.	**PowerOps**	Seller	SCADA Points Check Out: PowerOps will conduct a checkout prior to the beginning of the scheduled Test Period.

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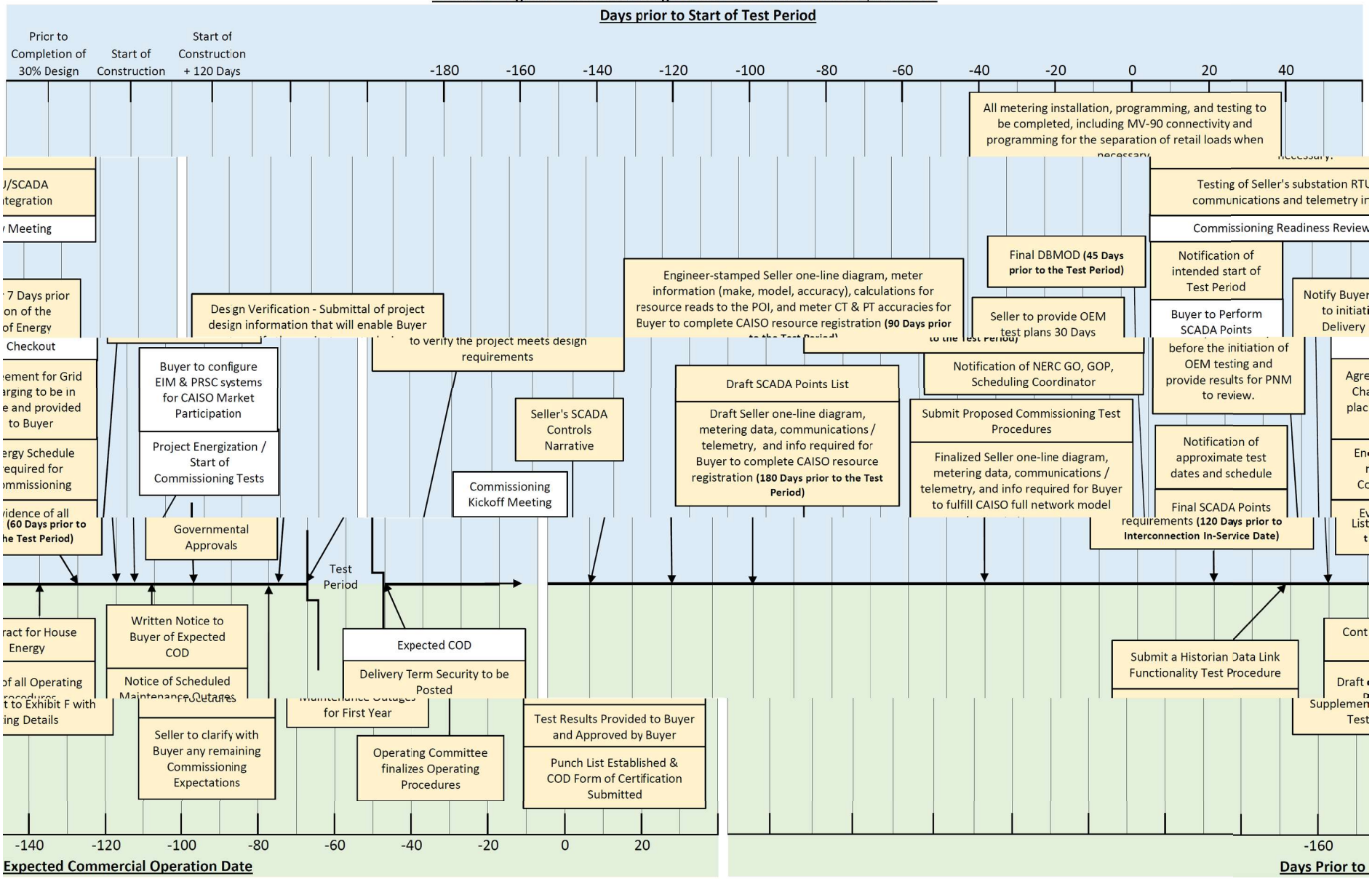
Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Power Operations & WPM Systems configuration	EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent ESS resources for CAISO market participation.	**PowerOps & WPM IT Support**	Seller	Prior to the beginning of the scheduled Test Period
Agreement for Grid Charging during testing	During testing/commissioning of facilities, agreements need to be in place with a copy provided to Buyer to allow and plan for grid charging of batteries during the testing process. These agreements will clearly define WPM, GO, GOP or their SC, BA, TO and TOP.	**Seller**	Generation Engineering	Must be complete 30 Days prior to the beginning of the scheduled Test Period.
Operating Procedure	Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering.	**Seller**	PowerOps	90 Days prior to the Commercial Operation Date
	An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project into Buyer's system.	**Seller/Buyer**	Seller / PowerOps / Generation Engineering	30 Days prior to the Commercial Operation Date
OEM Test Plan	The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide manufacturers' test plans and provide results for Buyer to review. Buyer may be an observer for these tests and shall be provided with the results.	**Seller**	Generation Engineering	Test plans required 30 Days before the initiation of the OEM Test Plan, all OEM related testing must be completed prior to declaring COD
Test Energy Plan & Schedule	Buyer Testing requirements defined in this document and Exhibit F – Commissioning and Annual Tests of the associated agreement shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans.	**Seller**	Generation Engineering	Seller shall provide its planned energy schedule 30 Days before the beginning of the scheduled Test Period.
Commissioning Readiness Review Meeting	Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in: Attachment 2: Commissioning Readiness Review	**Generation Engineering**	Seller, PowerOps	30 Days prior to the beginning of the scheduled Test Period

Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements



accordance with the above schedule requirements

Seller shall submit and be responsible for all items indicated in gold in
Seller shall otherwise support and participate in all identified activities

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Section 3.3 Commissioning.

The commissioning phase involves sequenced testing to ensure each Project component is functioning to specification with component and system level measurement and communication ("**Communications and Telemetry Integration Testing**") and performance verification ("**Performance Testing**"). Communications and Telemetry Integration Testing demonstrates that PowerOps can issue commands to and receive feedback from the Project. Communications and Telemetry Integration Testing shall consist of the following events. Additional information on these tests is provided in Exhibit F of the agreement.

- SCADA Functionality Test: This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources.
- Automatic Generation Control (AGC) Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.
- Voltage Setpoint Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Historian Data Link Functionality Tests: This test will validate the functionality of the transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Energy Management System control.

Seller shall perform Commissioning Communications and Telemetry Integration Tests in accordance with Exhibit F - Commissioning and Annual Tests.

Performance testing shall be performed to assess simulated and actual performance of the whole system against all expected use cases and measurable commercial requirements. Initial Commissioning Performance Tests shall be performed to verify initial capacity and provide a benchmark and repeatable test pattern to run annually (according to the agreement) and can be instrumental in tracking capacity guarantees or addressing premature degradation.

The testing plan for this phase must be approved by Buyer (Generation Engineering, WPM, and PowerOps) prior to initiation of testing as many tests will require substantial power and energy flows, which need to be accounted for in scheduling and dispatch.

For Seller's commissioning activities that require Buyer scheduling of energy delivery, Seller's failure to advise Buyer of any change to the planned timing of commissioning activities prior to 48 hours in advance of the change may result in an inability of Seller to conduct testing. Any such delay in commissioning activities as a result of late notification will be to Seller's account.

Seller shall perform Commissioning Performance Tests in accordance with the requirements of Exhibit F - Commissioning and Annual Tests.

Section 3.4 Final Requirements Prior to COD.

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with

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Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC & DERMS – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

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ATTACHMENT 1 TO EXHIBIT O

BUYER'S ENGINEERING REQUIREMENTS FOR COMMISSIONING

The Seller shall provide all the following information to Buyer's Contract Manager and the Power Operations team in accordance with this Exhibit and the Project Schedule.

1. Resource information – required for CAISO registration and due to Buyer 90 Days prior to the beginning of the Test Period:

    a. Nameplate values: MW, MWh, round trip efficiency, etc.

    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: All telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry communication paths must be independent of one another with no single point of failure.

    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 180 Days prior to the beginning of the scheduled Test Period.

    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Seller shall make a final SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.

    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points 30 Days prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.

    d. Telemetry for Seller's substation awareness shall include:

        - Generation side switches (89-xx1) & breakers (52-Fxx) status
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - ESS total gross values and total net values (in both MW and MVAr)

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- Gross and net values shall be provided for each resource registered with CAISO
- Point of Delivery values – MW, MVAr
- AGC setpoints for ESS and voltage setpoint. As well as the feedback for those setpoints.

- Total ESS cycle count
- Total ESS State of Charge (SOC) in both percent and MWH
- Total real power target

- Total full charge energy
- Total nominal energy
- Total energy Rem full power
- Total max charge power

e. Meteorology data: Seller shall provide meteorology data with the provided SCADA points.

3. DERMS Workbook inputs:
   a. Seller shall provide required information for the DERMS, including:
      - SCADA keys, resource characteristics, meteorology, etc.
      - Buyer's PowerOps shall be able to collect all EMS-DERMS workbook data through steps 1 & 2 above. If any gaps remain in the DERMS workbook, Seller shall be required to provide remaining data to Buyer's PowerOps team prior to the beginning of the Test Period. Buyer shall be required to provide expected DERMS workbook points prior to commencement of 2.a of this Attachment 1.

4. Testing for all AGC and voltage setpoints as defined in Exhibit F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

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ATTACHMENT 2 TO EXHIBIT O

COMMISSIONING READINESS REVIEW

Seller and Buyer shall participate in a Commissioning Readiness Review Meeting thirty (30) Days prior to the initiation of the Test Period to ensure that the Project is in a condition to support the planned commissioning and testing activities. The Parties shall ensure that for any test to be performed, the following are defined or established:

1. The purpose of the planned test.

    a. The parameter(s) / requirement(s) that is/are being verified/validated during the test.

    b. The procedure for validating such parameter(s) / requirement(s).

2. The equipment/system being tested (subsystem, system, a system of systems, other).

3. Verification that the configuration of the system under the test is sufficiently mature, defined, and representative to accomplish the planned test objectives and or support the defined program objectives.

4. Confirmation that everything is in place to begin testing.

    a. The configuration of the system is stabilized.

    b. All planned preliminary, informal, functional, unit level, subsystem, system, and qualification tests have been conducted with satisfactory results.

    c. Any deficiencies detected in the system have been addressed.

5. The expected result and how the test evaluation results might affect the program.

6. Proper resourcing of the planned test (people, test articles or articles, facilities, data systems, support equipment, logistics, etc.).

    a. Identification of personnel required and their roles.

    b. Identification of technical resources that are critical for testing (e.g. communication networks)

    c. Verification that technical resources have been tested prior to commissioning activities.

7. The risks associated with the tests and the associated risk mitigation measures.

    a. Identification of the hazards and risks associated with the specific testing.

    b. Necessary safety measures from the Project Manager to developmental and

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operational testers prior to any test using personnel.

8. The fallback plan should a technical issue or potential showstopper arise during testing.

    a. The test director will decide if an issue is a showstopper.

9. A test plan previously submitted by Seller with associated test procedures which have been reviewed and approved by Buyer. Such test plan and procedures should address all of the above items.

Britton Storage LLC Energy Storage Agreement

PNM Exhibit GBB-11

Is contained in the following 148 pages.

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ENERGY STORAGE AGREEMENT

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

BRITTON STORAGE LLC

Dated as of April 30, 2026

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EXHIBITS

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Exhibit B	One-Line, Communications and Telemetry Diagrams of Project and Interconnection Facilities
Exhibit C	Description of Site Parcel Survey
Exhibit D	Notice Addresses
Exhibit E	Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
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Exhibit O	Preparation for Commissioning
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Exhibit Q	Form of Estoppel Certificate

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ENERGY STORAGE AGREEMENT

This Energy Storage Agreement (this "**Agreement**" or "**ESA**"), as may be amended from time to time, is entered into this Thirtieth (30th) Day of April, 2026 ("**Execution Date**"), by and between Public Service Company of New Mexico, a New Mexico corporation ("**PNM**" or "**Buyer**"), whose principal place of business is 414 Silver Avenue SW, Albuquerque, NM 87102, and Britton Storage LLC, a Delaware limited liability company ("**Seller**"), whose principal place of business is 1435 Bedford Ave. Ste. C2 Pittsburgh, PA 15219. Buyer and Seller may be referred to in this Energy Storage Agreement individually as a "**Party**" and collectively as the "**Parties.**"

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

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

WHEREAS, pursuant to that certain Second Amended and Restated Special Service Contract dated effective August 21, 2018 (as amended from time to time, "**Special Service Contract**"), between Buyer and Greater Kudu LLC ("**Retail Customer**"), as amended from time to time, Buyer has agreed, by entering into this Agreement, to procure the Product from the Project to serve Retail Customer's load; and

WHEREAS, Seller desires to sell and deliver to Buyer the Product (as defined herein) from the Project and any and all associated or correlative Environmental Attributes, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this Agreement.

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

ARTICLE 1
Definitions and Rules of Interpretation

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

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

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

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

"**Actual Charge Ramp Rate**" means the maximum rate that the ESS can change its input power, as determined pursuant to Exhibit F.

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

"**Actual Discharge Ramp Rate**" means the maximum rate that the ESS can change its output power, as determined pursuant to Exhibit F.

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

"**Actual System Latency**" means the time measured between when the control signal is received by the ESS and when the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint, as determined pursuant to Exhibit F.

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

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

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

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

"**AGC**" stands for "**Automatic Generation Control**" and means energy management system equipment that accepts communications from the System Control Center and automatically adjusts the quantity of Charging Energy and Discharge Energy of the Project, including communication circuits to communicate Project operating information to Buyer's

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representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

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

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

"**Applicable Law**" means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, executive orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction over this Agreement and matters related thereto, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

"**Attestation and Bill of Sale**" has the meaning set forth in Section 9.1(C).

"**Back-Up Metering**" has the meaning set forth in Section 5.3(A).

"**Balancing Authority**" or "**BA**" has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

"**Bankruptcy Code**" means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as amended from time to time.

"**Black Start Capability**" means that the ESS inverters shall be provided with the ability to form an islanded grid inside the Project while disconnected from the Point of Delivery if Buyer instructs Seller to reserve stored energy for this function. The ESS will not be designed to provide grid forming capability below a zero percent (0%) ESS State of Charge. Buyer may enhance the Black Start Capability after the Execution Date if (a) Buyer provides specifications for an enhanced Black Start Capability, (b) the specifications are within the capabilities of Seller's ESS integrated equipment and controls system supplier, and (c) Buyer pays all costs associated with upgrading the ESS to the enhanced Black Start Capability specifications as verified by an independent engineer. Upon the satisfaction of all of (a), (b) and (c) in the preceding sentence, Seller shall upgrade the ESS to the enhanced Black Start Capability specifications within eighteen (18) months.

"**Business Day**" means any Day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday where banks in Albuquerque, New Mexico, are permitted or authorized to close.

"**Buyer**" has the meaning set forth in the Preamble and acts herein in its merchant

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function capacity.

"**Buyer Costs**" means brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred and documented by Buyer either in terminating any arrangement pursuant to which it has hedged its obligations under this Agreement or entering into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by Buyer in connection with the termination of this Agreement, to the extent such costs are not already included in Replacement ESS Costs.

"**Buyer-Requested Performance Tests**" has the meaning set forth in Section 10.5(C).

"**Buyer Termination Payment**" means the sum of (a) the aggregate of all amounts then owed from Seller to Buyer, less any amounts owed from Buyer to Seller, plus (b) the difference between (i) the net present value of the Replacement ESS Costs, calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, and (ii) the Contract Value; provided that if (b)(i) is less than (b)(ii), then zero, plus (c) any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any Future Environmental Attributes that are available pursuant to this Agreement as of the date of termination of this Agreement, Seller acknowledging that Buyer entered into this Agreement for the procurement of Product, which includes any Future Environmental Attributes; plus (d) Buyer Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this Agreement, and similar considerations. The Buyer Termination Payment does not include consequential, incidental, punitive, exemplary, indirect or business interruption damages.

"**CAISO**" means the California Independent System Operator Corporation and any successor entity.

"**Change of Control**" means any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding direct or indirect equity or voting interests in Seller.

"**Charging Energy**" means the amount of Energy supplied by Buyer at Buyer's cost and in accordance with Prudent Utility Practices, and delivered to Seller at the Point of Delivery to be stored at the Project for the purpose of charging the ESS and discharge at a later time, as measured in MWh by the Electric Metering Devices, accounting for estimated AC losses (based on methodology agreed to by the Parties) between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

"**Commercial Operation**" means that the following conditions have been and remain simultaneously true and correct and capable of being continuously satisfied by Seller: (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (b) Seller has successfully completed the Commissioning Tests defined in Exhibit F; (c) all Seller required

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permits, required consents, and Governmental Approvals required for Seller to operate the Project in accordance with Applicable Law are in full force and effect; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit F or by another method acceptable to Buyer; (e) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Discharge Energy to the Point of Delivery and interconnection and delivery of Charging Energy from the Point of Delivery in an amount at least equivalent to Guaranteed PMAX and is not in material breach of its Interconnection Agreement; (f) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement; (g) Seller has obtained required insurance coverage in compliance with Section 16.1 and Exhibit G-1 of this Agreement; and (h) Seller has provided to Buyer an officer's certificate that the Project has been completed in all material respects.

"**Commercial Operation Date**" means the date on which all of the following have occurred: (a) Buyer accepts from Seller a written notification to Buyer that the Commercial Operation has commenced, and Buyer validates that all requirements for Commercial Operation have been satisfied in accordance with Section 3.10, (b) Seller provides to Buyer a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit K, with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

"**Commercial Operation Notice**" has the meaning set forth in Section 3.10.

"**Commercial Operation Year**" means a period of twelve (12) consecutive Months. The first Commercial Operation Year shall commence on the Commercial Operation Date and end on the last Day of the Month that is twelve (12) full Months after the Commercial Operation Date, and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

"**Commissioning Performance Test**" means the initial ESS Unit Capabilities testing detailed in Exhibit F required to be completed prior to Commercial Operation and successfully satisfied as a requirement for achieving Commercial Operation.

"**Commissioning Readiness Review Meeting**" has the meaning set forth in Exhibit O.

"**Commissioning Tests**" has the meaning set forth in Section 10.2 as further defined in Exhibit F.

"**Commissioning Kickoff Meeting**" has the meaning set forth in Section 3.1 of Exhibit O.

"**Confidential Information**" has the meaning set forth in Section 22.14(C).

"**Contract Value**" means the sum of the present values of the ESS Energy Payments expected to be made in each Commercial Operation Year (or portion thereof) in the

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then-remaining term (determined without reference to the early termination) which is to be determined in accordance with the calculation in Section 8.1(A). All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

"**Creditworthy**" or "**Creditworthiness**" means that, with respect to any two of the three Rating Agencies provided, the long-term credit rating of a Person's long-term senior unsecured debt is at least as follows: (a) "Baa3" or higher by Moody's, (b) "BBB-" or higher by S&P, and (c) "BBB-" or higher by Fitch.

"Data Breach" has the meaning set forth in Section 22.14(F).

"**Day**" means a calendar day and includes Saturdays, Sundays and holidays; if a payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

"**DC**" means direct current.

"**Default Rate**" has the meaning set forth in Section 9.4.

"**Defaulting Party**" means the Party with respect to which an Event of Default under Article 12 has occurred.

"**Delay Damages**" has the meaning set forth in Section 3.7.

"**Delayed ESS Capacity**" has the meaning set forth in Section 3.7.

"**Delivery Term**" has the meaning set forth in Section 7.1.

"**Delivery Term Security**" has the meaning set forth in Section 19.1.

"**Development Security**" has the meaning set forth in Section 19.1.

"**Discharge Energy**" means Energy discharged from the ESS and delivered to Buyer at the Point of Delivery, as measured in MWh by the Electric Metering Devices, corrected for any estimated electrical losses to the Point of Delivery, based on methodology agreed to by the Parties.

"**Disclosing Party**" has the meaning set forth in Section 22.14(A).

"**Dispute Notice**" has the meaning set forth in Section 13.8.

"**Disputing Party**" has the meaning set forth in Section 9.5(A).

"**Dollars**" means the lawful currency of the United States of America.

"**Downgrade Event**" is when a Person fails to maintain Creditworthiness.

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"**Early Termination Date**" has the meaning set forth in Section 12.4.

"**EDAM**" means the Extended Day-Ahead Market, an extension of CAISO's existing day-ahead energy market, that will be offered to participants outside of the CAISO balancing authority area to participate in day-ahead trading, and which is expected to launch in Q2 2026.

"**EIM**" means the Western Energy Imbalance Market, an energy-only real-time market operated by CAISO and offered to western participants outside of the CAISO balancing authority area, where such participants can voluntarily determine how their transmission and generation resources engage in the market.

"**Electric Interconnection Point**" means the physical point at which electrical interconnection is made between the Project and the Transmission Provider's Transmission System as set forth in Appendix A of the Interconnection Agreement.

"**Electric Metering Device(s)**" means all metering and data processing equipment used to measure, record, or transmit data relating to Charging Energy and Discharge Energy. Electric Metering Devices include the Primary Metering Devices and Back-Up Metering including the metering current transformers and the metering voltage transformers.

"**Eligible Change in Tariff**" means any duty, tariff, import tax, or other similar import fee or cost that becomes effective after, or the enforcement of which commences after, the Execution Date, or any increase to the applicable rate of any of the foregoing which becomes effective after the Execution Date, to the extent affecting the Energy Storage System. The 25% tariff on lithium-ion batteries enacted pursuant to Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411), with an effective date of January 1, 2026, shall not be considered an Eligible Change in Tariff.

"**Emergency Condition**" means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider's Transmission System or otherwise be required in accordance with the requirements of the Reliability Coordinator and/or NERC/WECC, or (b) any system condition not consistent with Prudent Utility Practices; provided that an Emergency Condition shall not include any emergency caused by Seller's breach of its Interconnection Agreement with the Transmission Provider.

"**Energy**" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, delivered to or received from the Project, in each case at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices.

"**Energy Storage Services**" means the acceptance of Charging Energy at the Point of Delivery, the storing of Energy in the Project, and the delivery of Discharge Energy from the Project at the Point of Delivery, all in accordance with Buyer's dispatch instructions, in compliance with the ESS Unit Capabilities, and subject to the terms and conditions of this agreement.

"**Energy Storage System**" or "**ESS**" means the battery arrays, battery system controller, inverters, transformers, thermal management system, and other equipment necessary to

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charge, store, and subsequently deliver electricity from the Project to the Point of Delivery.

"**Environmental Attributes**" means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental or other nature that are created or otherwise arise from the Project's charging, discharging, delivery or storage of electricity from renewable energy resources in contrast with the storage of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (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 storage, purchase, sale or use of Energy. Environmental Attributes include (A) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants designated by the United States Environmental Protection Agency or other governmental agencies, (B) any credit, allowance or instrument issued or issuable by a Governmental Authority under regulations of the Environmental Protection Agency under the Clean Air Act, (C) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the earth's climate by trapping heat in the atmosphere, (D) credits, benefits or allowances resulting from the compliance of the Project or Project Energy with the laws, rules and standards of the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol of the UNFCCC or crediting "early action" with a view thereto. Environmental Attributes include all RECs, any and all aspects of a REC, and the exclusive right to claim the additionality, or "but for cause", of such Projects' development and commercial operation, (E) all WREGIS Certificates as defined by the WREGIS Operating Rules and (F) those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances, including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes include any attributes similar to those described in the foregoing to the extent associated with any cryptocurrency, blockchain, and similar or related commodities, tokens, or anything of actual, potential, or theoretical value related to, measured by, or associated with the Project's storage or discharging of electricity. Environmental Attributes specifically exclude (i) Tax Benefits, (ii) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; (iii) any Energy, reliability or other power attributes from the Project, (iv) matters designated by Buyer as sources of liability, and (v) any adverse wildlife or environmental impacts.

"**Environmental Contamination**" means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to

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constitute a violation of Applicable Law, and present a material risk under Applicable Law that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this Agreement.

"Equivalent Full Cycle" means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharge Energy (in MWh) equivalent to the Guaranteed ESS Capacity over an eight (8) 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 eight (8) 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 eight (8) consecutive hours when starting from the Maximum State of Charge and discharging to the Minimum State of Charge, as determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

"**ESS Capacity Shortfall Damages**" has the meaning set forth in Section 3.8.

"**ESS Capacity Test**" has the meaning set forth in Exhibit F.

"**ESS Curtailment**" has the meaning set forth in Section 4.2.

"**ESS Energy Payment**" has the meaning set forth in Section 8.1(A).

"**ESS Energy Payment Rate**" means the price to be paid by Buyer to Seller for the Product, as set forth in Section 3.1.

"**ESS Meter Energy In**" has the meaning set forth in Exhibit F.

"**ESS Meter Energy Out**" has the meaning set forth in Exhibit F.

"**ESS Non-Performance Liquidated Damages**" has the meaning set forth in Section 3.13.

"**ESS Operating Restrictions**" means the operating restrictions of the ESS set forth in Exhibit L.

"**ESS Response Delay**" has the meaning set forth in Exhibit F.

"**ESS Response Delay Damages**" has the meaning set forth in Section 3.13(A).

"**ESS Roundtrip Efficiency**" means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the Electric Metering Device without adjustment to the Point of Delivery and determined periodically in accordance with applicable test

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protocols and procedures set forth in Exhibit F.

"**ESS Unit Capabilities**" has the meaning set forth in Section 3.12.

"**Event of Default**" means a Seller Event of Default as set forth in Section 12.1 or a Buyer Event of Default as set forth in Section 12.2.

"**Execution Date**" has the meaning set forth in the Preamble.

"**Expected Commercial Operation Date**" has the meaning set forth in Section 3.1.

"**FERC**" means the Federal Energy Regulatory Commission or any successor agency.

"**Fitch**" means Fitch Ratings Inc and any successor thereto.

"**Force Majeure Event**" has the meaning set forth in Section 14.1.

"**Frequency Response Capability**" means the ability of the ESS to react to frequency within predefined bounds as specified in Section 3.12(G), measured in MW per 0.1 Hz, by charging or discharging to counter frequency deviations and supporting frequency as required by NERC Reliability Standard BAL-003-1, IEEE Standard 2800-2022, and September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance at the Point of Delivery, as may be amended or updated, and is within the capabilities of the ESS as of the Commercial Operation Date.

"**Future Environmental Attributes**" means the Environmental Attributes, if any, that are associated with the Project, and that the Project and the Energy Storage Services provided therefrom are eligible to receive or generate, based on Applicable Laws, policies or programs of a Governmental Authority that take effect after the Execution Date. Future Environmental Attributes are further described in Section 7.3 and Article 11 herein.

"**GAAP**" has the meaning set forth in Section 22.18.

"**Government Official**" means any official or employee of any multinational, national, regional, or local government in any country, including any official or employee of any government department, agency, commission, or division; any official or employee of any government-owned or -controlled enterprise; any official or employee of any public educational, scientific, or research institution; any political party or official or employee of a political party; any candidate for public office; any official or employee of a public international organization; and any person acting on behalf of or any relatives, family, or household members of any of those listed above.

"**Governmental Approval**" means any authorization, consent, permission, approval (including an NMPRC Approval), license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation by, any Governmental Authority relating to the construction, development, ownership, occupation, startup, testing, operation or maintenance of the Project or to the execution, delivery or performance of this

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Agreement or the procurement pursuant to this Agreement of Environmental Attributes and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of, or regulation with regard to any Non-Governmental Compliance Obligations.

"**Governmental Authority**" means any federal, tribal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

"**Governmental Charges**" means any Taxes, charges or costs that are assessed or levied by any Governmental Authority or other Person, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of the Product contemplated by this Agreement, either directly or indirectly.

"**Gross Receipts Taxes**" means any New Mexico state and local sales taxes, gross receipts taxes and similar taxes and charges.

"**Guaranteed Charge Ramp Rate**" has the meaning set forth in Section 3.12.

"**Guaranteed Discharge Ramp Rate**" has the meaning set forth in Section 3.12.

"**Guaranteed ESS Capacity**" means discharge of the ESS at Guaranteed PMAX for eight (8) consecutive hours.

"**Guaranteed ESS Roundtrip Efficiency**" means, with respect to a Commercial Operation Year, the applicable percentage set forth in Exhibit H.

"**Guaranteed Frequency Response Capability**" has the meaning set forth in Section 3.12.

"**Guaranteed PMAX**" has the meaning set forth in Section 3.12.

"**Guaranteed Start Date**" has the meaning set forth in Section 3.1.

"**Guaranteed System Latency**" has the meaning set forth in Section 3.12.

"**Hazardous Materials**" means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or as dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including but not limited to any material or substance that is (i) defined as "toxic," "polluting," "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "solid waste" or "restricted hazardous waste" under any provision of Applicable Law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a "hazardous substance"

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pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (vii) defined as a "hazardous waste" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (viii) defined as a "hazardous substance" pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (ix) defined as a "chemical substance" under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (x) defined as a "pesticide" under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

"**House Energy**" has the meaning set forth in Section 1.4.

"**Interconnection Agreement**" means the separate agreement between Seller and the Transmission Provider for interconnection of the Project to the Transmission Provider's Transmission System, as such agreement may be amended, amended and restated, modified, replaced or otherwise supplemented from time to time.

"**Interconnection Facilities**" means the Transmission Provider's Interconnection Facilities and Seller's Interconnection Facilities as defined and set forth in the Interconnection Agreement (or an analogous term, to the extent the Interconnection Agreement is amended or replaced).

"**Issuer Minimum Requirements**" has the meaning set forth in Section 19.2.

"**kW**" means one or more kilowatts AC of electricity, as the context requires.

"**kWh**" means kilowatt hour AC.

"**Lender(s)**" means any and all Persons other than an Affiliate of Seller: (a) lending money or extending credit (including any financing lease, monetization of Tax Benefits, construction, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller or to an Affiliate of Seller: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing (including tax equity bridge financing), credit support, credit enhancement or interest rate protection in connection with the Project; or (iv) for any capital improvement or replacement related to the Project; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

"**Letter of Credit**" means an irrevocable, unconditional, transferable standby letter of credit for the benefit of the receiving Party that is issued by an entity meeting the Issuer Minimum Requirements and otherwise satisfies the requirements set forth in Section 19.2.

"**Licensed Professional Engineer**" means an independent, professional engineer that is: (A) selected by Seller from among (1) Sargent & Lundy, (2) Burns & McDonnell, (3) DNV, (4) Clean Energy Associates, or (5) Leidos Engineering, LLC; and (B) reasonably acceptable to Buyer (provided that at least one of the foregoing (A)(1)-(5) shall be reasonably acceptable to Buyer), licensed in the State of New Mexico, and otherwise qualified to perform the work and provide the certifications required hereunder.

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"**Local Provider**" has the meaning set forth in Section 1.4.

"**Losses**" has the meaning set forth in Section 20.1(A).

"**Market Event**" has the meaning set forth in Section 22.22.

"**Maximum State of Charge**" means the relative SOC above which the battery manufacturer recommends that the ESS system not be charged, expressed in percent of Nameplate Energy Capacity.

"**Minimum State of Charge**" means the relative SOC below which the battery manufacturer recommends that the ESS system not be drawn, expressed in percent of Nameplate Energy Capacity.

"**Month**" or "**Monthly**" means a calendar month.

"**Monthly Billing Period**" means each Month during the Term in which Product has been made available at the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

"**Monthly Operational Report**" has the meaning set forth in Section 10.8.

"**Moody's**" means Moody's Investor Services, Inc. and any successor thereto.

"**Mountain Standard Time**" or "**MST**" means the time that is seven (7) hours behind Coordinated Universal Time (UTC).

"**Munitions List**" means any list of articles, services or technology designated as defense or military articles, technologies, software or services by any relevant Government Authority, including items listed on the United States Munitions List and/or the Common Military List of the European Union.

"**MW**" means megawatt or one thousand (1,000) kW AC.

"**MWh**" means megawatt hours AC.

"Nameplate Energy Capacity" means the maximum amount of electrical energy, expressed in megawatt-hours (MWh), that the Energy Storage System is designed to store and make available for discharge, net of auxiliary and parasitic loads, based on the manufacturer's rated specifications and measured at the applicable metering point.

"**NERC**" means the North American Electric Reliability Corporation or any successor organization.

"**NMPRC**" means the New Mexico Public Regulation Commission or any successor agency.

"**NMPRC Approval**" has the meaning set forth in Section 17.3(B).

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"**Non-Defaulting Party**" means the Party other than the Defaulting Party with respect to an Event of Default that has occurred under Article 12.

"**Non-Governmental Compliance Obligations**" means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees, accounts, and/or other obligations with WREGIS, NERC, WECC, and all other applicable agencies, and self-regulatory organizations to which the Party is required to have membership and/or submit to jurisdiction in the performance of this Agreement.

"**O&M Records**" has the meaning set forth in Section 13.4(A).

"**OATT**" means Open Access Transmission Tariff.

"**Operating Parameters**" has the meaning set forth in Section 10.4(A).

"**Operating Procedures**" means those procedures developed pursuant to Section 10.5.

"**Operating Records**" means all operating logs, blueprints for construction, operating manuals, all warranties on equipment, material engineering drawings, environmental permits, plans, and all documents, including but not limited to supply contracts, studies, and any other records requested by the NMPRC, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project.

"**Outage Notice**" has the meaning set forth in Section 7.5.

"**Party**" or "**Parties**" has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

"**PCS**" or "**Power Conditioning System**" means the Energy Storage System power conditioning system utilized to convert electric power from one form to another (AC to DC, DC to AC, and/or between different voltage levels), and to condition the power quality to what is needed by the interconnected systems.

"**Person**" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

"**PNM**" has the meaning set forth in the Preamble.

"**Point of Contact List**" or "**POC List**" has the meaning set forth in Section 2 of ExhibitO.

"**Point of Delivery**" means the electric system point at which (i) Buyer delivers Charging Energy to Seller, (ii) Seller delivers Discharge Energy to Buyer and (iii) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this agreement.

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"**Primary Metering Device(s)**" means the metering and data processing equipment used as the primary basis to measure, record, or transmit data relating to the Charging Energy or Discharge Energy associated with the Project. Primary Metering Devices include the metering current transformers and the metering voltage transformers.

"**Product**" means all Energy Storage Services, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, all as made available by the Project, all of which shall be delivered for Buyer's exclusive use pursuant to the terms of this Agreement.

"**Project**" means Seller's energy storage facility, located in Torrance County, New Mexico, with a designed maximum power charge and discharge capability of 60 MW for eight (8) hours (480 MWh), as identified and described in Article 3 and Exhibit A to this Agreement, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Point of Delivery: Seller's equipment, buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, Seller's Interconnection Facilities necessary to connect the ESS to the Electric Interconnection Point (excluding Transmission Provider's Interconnection Facilities), protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this Agreement.

"**Project Manager**" has the meaning set forth in Section 10.1(D).

"**Project Schedule**" has the meaning set forth in Section 3.2.

"**Promotional Materials**" has the meaning set forth in Section 22.15(A).

"**Prudent Utility Practice(s)**" means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the battery energy storage industry, WECC and/or NERC) for similar facilities that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practice(s) are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances. Subject to the foregoing, with respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project's needs;

(B) sufficient operating personnel are available when needed and are adequately experienced, trained and licensed as necessary to operate the Project properly, efficiently, and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency Conditions whether caused by events on or off the Site;

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(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive ("**VAR**") loading, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for ESS of the technology provided in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and Emergency Conditions; and

(G) equipment, components, and processes are appropriately permitted with any local, state, or federal Governmental Authority and are operated and maintained in accordance with applicable permit and regulatory requirements.

"**PTs**" has the meaning set forth in Section 5.3(A).

"**Qualified Operator**" is (a) a Person that has at least three (3) years' experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

"**Qualified Transferee**" means a Person that (a) (i) has (or its ultimate parent or any upstream equity owner of such Person has) a tangible net worth that is equal to or in excess of $250,000,000 or maintains (or its ultimate parent or any upstream equity owner maintains) Creditworthiness, and (ii) retains, or causes Seller to retain, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project), or (b) is reasonably acceptable to Buyer and Retail Customer.

"**Receiving Party**" has the meaning set forth in Section 22.14(A).

"**Receiving Party's Representatives**" has the meaning set forth in Section 22.14(B).

"**Recording**" has the meaning set forth in Section 22.19.

"**Regulatory End Date**" has the meaning set forth in Section 17.3(B)(3).

"**Reliability Coordinator**" means the entity that fulfills the duties of the Reliability Coordinator as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

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"**Replacement ESS Costs**" means the costs to Buyer reasonable and necessary to replace the Product (including Future Environmental Attributes and Ancillary Services) as defined herein and based upon similar terms, conditions and performance standards outlined in this Agreement which Seller, in accordance with this Agreement, would have made available to Buyer but failed to so provide pursuant to this Agreement. Buyer shall not have to enter into a replacement contract to establish the Replacement ESS Costs. If Buyer does not enter into a replacement contract, then the Replacement ESS Costs will be based on the market price for comparable Product (including Future Environmental Attributes and Ancillary Services) delivered to Buyer, as reasonably determined by Buyer or a third party selected by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Discharge Energy to the Point of Delivery and any associated transmission or distribution costs, and (b) Buyer's expenses, including reasonable attorneys' fees, incurred as a result of Seller's failure to perform under this Agreement.

"**Requested Actions**" has the meaning set forth in Section 17.3.

"**Retail Customer"** has the meaning set forth in the Recitals.

"**S&P**" means Standard & Poor's Corporation and any successor thereto.

"**Sanctioned Person**" means any Person (i) that is the target of Sanctions or owned or controlled by any such Person(s), or (ii) located, organized or resident in, or directly or indirectly owned or controlled by the government of any Sanctioned Territory.

"**Sanctioned Territory**" means any country or territory now or hereafter subject to comprehensive Sanctions.

"**Sanctions**" means any economic or trade sanctions administered or enforced by any Governmental Authorities of the United States, (including the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") and the U.S. Department of State), the United Nations, the European Community or, His Majesty's Treasury or any, and each other sanctions authority which has jurisdiction in respect of any Party or the Project.

"**SCADA**" means the Project's remote supervisory control and data acquisition system, which includes all necessary components and contact points at the Project.

"**Scheduled Maintenance Outage**" means a time during which the ESS is shut down or its output reduced to undergo scheduled maintenance in accordance with this agreement, or as otherwise agreed by Seller and Buyer.

"**Scheduling Coordinator Contact**" has the meaning set forth in Section 3.9.

"Scope Reporting Rule" means the SEC's Enhancement and Standardization of Climate-Related Disclosures for Investors, 17 Code of Federal Regulations § 229.1500, et seq., and (b) California Health and Safety Code Sections 38532 and 38533, and the rules and regulations of the California Air Resources Board thereunder, both as amended from time to time, and, to the extent Buyer or Retail Customer voluntarily elects in its sole discretion to comply therewith, as set

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forth in statute and in proposed or final rule form, despite being stayed or vacated by appealable judicial action.

"**SEC**" has the meaning set forth in Section 22.18.

"**Secondary Metering**" has the meaning set forth in Section 5.3(D).

"**Security**" means Development Security or Delivery Term Security, as applicable.

"**Seller**" has the meaning set forth in the Preamble.

"**Seller's Costs**" means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this agreement or in entering into new arrangements which replace this agreement; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this agreement.

"**Seller's Financial Statements**" has the meaning set forth in Section 22.18(B).

"**Seller's Interconnection Facilities**" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this Agreement.

"**Seller Excused Hours**" means those hours during which Seller is unable to make available Product as a result of: (a) a Force Majeure Event that affects the ability of Buyer to deliver Charging Energy or to receive Discharge Energy at the Point of Delivery, (b) any failure by Buyer to perform a material obligation under this agreement (other than due to a breach by Seller of its obligations under this agreement), (c) failure of Buyer to provide Charging Energy, (d) Emergency Condition, (e) Buyer's dispatch of the Project which is not in accordance with the Operating Parameters, (f) an ESS Curtailment or (g) the time that the Project is required to be offline or at limited capacity as a result of (i) annual required testing in accordance with this agreement or (ii) additional testing requested by Buyer in accordance with this Agreement.

"**Seller Forced Outage**" means an unplanned reduction, interruption or suspension of all or a portion of Product that would otherwise be made available from the Project at the Point of Delivery not associated with Seller Excused Hours.

"**Seller Guarantor**" means a Person that has delivered a Seller Guaranty for the benefit of Buyer.

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"**Seller Guaranty**" means a guaranty in substantially the form attached as Exhibit J.

"**Seller Parties**" means: (a) Seller's Affiliates; (b) owners, directors, officers and employees of Seller or Seller Affiliates; and (c) representatives, agents, and subcontractors of Seller and/or Seller Affiliates, in each case, providing services on behalf of, or engaged by, Seller or Seller Affiliates in connection with this Agreement and any activity contemplated hereunder or thereunder (and a "Seller Party" is any one of the foregoing).

"**Seller Permitted Transfer**" means any of the following: (a) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to a Tax Equity Investor so long as such Tax Equity Investor remains a passive owner of such interests and Seller's Ultimate Parent retains the ability to control the management and policies of Seller; (b) a transfer of: (i) all or substantially all of the assets of Seller's Ultimate Parent in a single transaction; (ii) all or substantially all of Seller's Ultimate Parent's renewable energy generation portfolio in a single transaction or (iii) a direct or indirect transfer to a Person of 50% or more of the shares of, or equity interests in, Seller; *provided*, that in the case of (b), (A) the transferee is a Qualified Transferee, and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements; or (c) the direct or indirect transfer of shares of, or equity interests in, Seller in a single transaction or series of transactions to any Seller's Lender and any subsequent assignee, designee or transferee thereof; provided that in the case of (c), (A) the Seller's Lender or its applicable assignee, designee or transferee is a Qualified Transferee and (B) that such transfer does not have a material adverse effect on the Seller's credit characteristics and Seller maintains compliance with the applicable Seller security requirements.

"**Seller Termination Payment**" means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Product) for the remainder of the Term calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this Agreement, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

"**Site**" means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this Agreement. This Agreement is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval. Adding or subtracting contiguous parcels of property will not be deemed a relocation requiring Buyer consent.

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"**State of Charge**" or "**SOC**" means the level of charge as reported by the ESS, expressed in percent of Nameplate Energy Capacity.

"**Supplemental State Tax Incentives**" means any state or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date that provides for additional or increased tax credits and is determined to be applicable to the Project, net of associated expenses, taxes, and lost Tax Benefits, if any.

"**Special Service Contract**" has the meaning set forth in the Recitals.

"**System Control Center**" or "**SCC**" means Buyer's representative(s) responsible for dispatch of the ESS.

"**Tax Benefits**" means (a) federal and state investment and/or production tax credits, Supplemental State Tax Incentives, and any other tax credits that are or will be generated by or attributable to the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"**Tax Equity Financing**" means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a "**Tax Equity Investor**") in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax Benefits, depreciation and other Tax Benefits associated with the Project.

"**Tax Equity Investor**" has the meaning set forth in the definition of Tax Equity Financing.

"**Taxes**" means all taxes, fees, levies, licenses or charges, including Gross Receipts Taxes, imposed by any Governmental Authority.

"**Term**" means the period during which this Agreement shall remain in full force and effect, and which is further defined in Article 2.

"**Termination Payment**" means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

"**Test Period**" means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider's Transmission System and is available to receive Charging Energy from and deliver Discharge Energy to the Point of Delivery, and ending on the Commercial Operation Date.

"**Trade Control**" means any of the following: Sanctions, applicable export and import controls and U.S. antiboycott law, excluding any blocking rules or other countermeasures which are administered or enforced by any Governmental Authority, other than a Governmental

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Authority of the United States, the United Kingdom, the European Union, or the United Nations.

"**Transmission Provider**" means the Person, designated agent, or third party acting in its transmission function capacity, owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"**Transmission Provider's Interconnection Facilities**" means the facilities described as Transmission Provider's Interconnection Facilities in the Interconnection Agreement.

"**Transmission Provider's Transmission System**" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"**Ultimate Parent**" means Exus North America Holdings LLC.

"**WECC**" means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

"**Western Interconnection**" means the area of the Northern American transmission system overseen by WECC.

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor system.

"**WREGIS Operating Rules**" means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to "Articles," "Sections," "Exhibits," or "Schedules" shall be to articles, sections, exhibits, or schedules of this Agreement unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this Agreement; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this Agreement, the terms of this Agreement shall take precedence.

(D) This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author of this Agreement or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided

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otherwise in this Agreement, (i) where the Agreement requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words "include" or "including" or similar words shall be interpreted as "including but not limited to" or "including, without limitation."

(G) All uses of the word "shall" in this Agreement are to be interpreted as imperative and not permissive.

(H) The words "hereof," "herein" and "hereunder" and words of similar import when used in any document refer to this Agreement as a whole.

(I) Except in connection with federal taxes, use of the words "tax" or "taxes" shall be interpreted to include taxes, fees, surcharges, and the like.

(J) References to "or" are disjunctive but not necessarily exclusive; unless the context dictates otherwise, "or" is to be interpreted as "and/or" rather than "either/or."

1.3 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this Agreement are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this Agreement, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity. Seller acknowledges that Buyer, acting in its merchant capacity function as purchaser hereunder, has no responsibility for or control over Transmission Provider, and is not liable for any breach of agreement or duty by Transmission Provider.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This Agreement does not provide for the supply of retail electric power to the Project for any purpose ("House Energy"). Seller shall contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement. Local Provider metering of House Energy, backfeed power and station service power must be separate, bi-directional or able to be financially separated from metering used to meter the Charging Energy

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and Discharge Energy of the ESS in a manner that complies with WREGIS Operating Rules and is acceptable to Buyer.

(A) Seller's arrangements for the supply of House Energy to the Project shall be separate and free-standing arrangements. Seller is responsible for independently securing a contract for necessary House Energy, backfeed power and station service power for the Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this Agreement are not binding upon the Local Provider. For purposes of this Agreement, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this Agreement, nothing in Seller's arrangements for the supply of House Energy, backfeed power, or station service power to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Separate from energy provided to the battery, Seller shall have the right to consume energy concurrently generated by the Project for House Energy, consistent with WREGIS requirements for station service. House Energy, backfeed power and station service power shall be real time measured by either (i) separate Electric Metering Devices for Energy and for House Energy, backfeed power and station service power or (ii) a single Electric Metering Device that separately measures Energy and House Energy, backfeed power and station service power. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

ARTICLE 2
Term and Termination

2.1 Execution Date and Term. This Agreement shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Standard Time on the date that is the last Day of the Twentieth (20^{th}) Commercial Operation Year, subject to the early termination provisions set forth herein. Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

ARTICLE 3
Project Description

3.1 Commercial Terms. The following commercial terms apply to the transaction contemplated by this Agreement, as each term is more fully set forth in this Agreement:

COMMERCIAL TERMS

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Buyer: Public Service Company of New Mexico	**Seller:** Britton Storage LLC
Project: Britton	
Point of Delivery: The point within WECC Path 48 where Seller makes available to Buyer Product being provided under this Agreement, as further specified in the definition of "Point of Delivery."	
Delivery Term: 20 Commercial Operation Years	**Product Type:** Bundled Energy Storage Services, Ancillary Services, Future Environmental Attributes, ESS Capacity, and other ESS Unit Capabilities
ESS Energy Payment Rate: $25.83/MWh, as further specified in Section 8.1(A).	
Day(s) of week: Monday through Sunday, including NERC holidays	**Hours:** Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Standard Time ("MST")
Guaranteed Start Date: One Hundred Fifty (150) Days after the Expected Commercial Operation Date	
Expected Commercial Operation Date: August 4, 2028	

3.2 Project. Exhibit A provides a detailed description and implementation schedule ("**Project Schedule**") of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point, the location of the Point of Delivery, and the location of the Interconnection Facilities is included in Exhibit A to this Agreement. Exhibit A also contains a preliminary indication of the location of the ESS at the Site. Seller will provide notice to Buyer of the final proposed location of the ESS and Interconnection Facilities at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes. Buyer shall retain the right to review such proposed changes with Retail Customer and, taking into account the concerns and comments of Retail Customer, accept or reject such changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project in accordance with Prudent Utility Practices, the terms of this Agreement and the Interconnection Agreement. The Project shall meet or exceed the

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recommended performance specifications of this Section 3.4(A) through Section 3.4(H), and as appropriately defined in IEEE Standard 2800-2022 Sections 4.3 through Section 4.9 at the Point of Delivery, at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, system telemetering equipment and communications equipment;

(B) be equipped for and capable of AGC by Buyer;

(C) use redundant communication and metering circuits, consistent with the configuration outlined in Exhibit N Interconnection Metering Standard from the Project to the System Control Center which operate independently for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for automated control via the AGC;

(D) supply Discharge Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) receive Charging Energy from Buyer and deliver Discharge Energy to Buyer, each at the frequency specified by Buyer;

(F) be capable of operation over an ambient temperature range of -20°F to 110°F with the full range of relative humidity;

(G) be capable of being started and stopped automatically in response to a remote signal from the System Control Center;

(H) be capable of immediate disconnection remotely by the System Control Center;

The Project shall meet or exceed the recommended performance specifications of this Section 3.4(I) through Section 3.4(K), and as appropriately defined in IEEE Standard 2800-2022 Section 5, Section 6 and Section 7 at the Point of Delivery at all times;

(I) meet voltage and reactive/active power control performance, IEEE Standard 2800-2022 Section 5 at the Point of Delivery;

(J) meet the normal and abnormal performance category, IEEE Standard 2800-2022 Section 7 at the Point of Delivery, which shall be Category II minimum;

(K) meet or exceed the recommended performance specifications defined in Appendix A of the September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance and IEEE Standard 2800-2022 Section 6, at the Point of Delivery; and

(L) No later than the earlier of (i) ninety (90) Days following Seller's commencement of construction of the Project or (ii) thirty (30) Days prior to issuance of a purchase order for Seller's SCADA or equivalent systems, the Parties shall develop and mutually agree to

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system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the ESS. These controls shall include the following MESA-ESS modes or equivalent: (i) Charge- Discharge (real power dispatch), (ii) Coordinated Charge-Discharge (state of charge management), (iii) Active Power Smoothing, (iv) Automatic Generation Control, and (v) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE Standard 2800-2022 Section 7: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with Buyer's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with Buyer's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to webservers, (iii) production change management, and (iv) CIP governance requirements. Seller shall submit a controls narrative detailing items related to SCADA and telemetry planning as well as a draft and final SCADA points list within a timeline as identified in Table 2 of Exhibit O for Buyer's review and approval.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth in this Agreement, Seller shall achieve the Commercial Operation Date no later than the Expected Commercial Operation Date.

3.6 Extension of Expected Commercial Operation Date. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended on a day-for-day basis (a) up to a maximum of one hundred fifty (150) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event (together with a reasonable period for the affected Party to cure the Force Majeure Event as contemplated in Section 14.2) that delays construction or commencement of operation of the Project, (b) up to a maximum of one hundred eighty (180) Days, in the event of delay associated with the interconnection of the Project (other than work performed by Seller) that delays commencement of the operation of the Project, assuming Seller provides notice to proceed to Transmission Provider within five (5) Business Days of notice of Conditions Precedent per Section 6.2, or (c) other than in connection with or arising out of or relating to any Force Majeure Events or the interconnection of the Project, (i) if Seller notifies Buyer that Seller requires a performance from Buyer of Buyer's obligations under Exhibit F or Exhibit O, and (ii) Buyer does not timely perform such obligations, then on a day-for-day basis without an aggregate cap for the time period for the days of delay beyond Buyer's failure to perform in a timely manner to the extent such failure by Buyer to perform delays Seller's ability to achieve Commercial Operation on or before the Expected Commercial Operation Date. Seller shall give written notice to Buyer describing any such delay in accordance with Section 14.2 after becoming aware of any extension of Expected Commercial Operation Date. The number of Days of such extension shall be calculated from the date on which the event begins. If the Expected Commercial Operation Date is extended pursuant to clause (a) or (b) of this Section for the maximum extension period set forth in the applicable clause, then Buyer will have the right to terminate this agreement without liability of either Party other than obligations already incurred.

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3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller shall use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date in an amount equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed ESS Capacity for each Day of delay until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date. "**Delayed ESS Capacity**" is an amount equal to the difference between the Guaranteed ESS Capacity and the ESS Capacity as of the determination date. The Delay Damages and, if applicable, Buyer Termination Payment subject to the limitations set forth in Section 12.3(B), are the Buyer's sole and exclusive monetary remedies, and Seller's sole and exclusive monetary liabilities, for Buyer's damages due to any delays in achieving, or failure to achieve, the Expected Commercial Operation Date.

3.8 ESS Capacity Shortfall Damages. If the Commercial Operation Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve Commercial Operation. If Seller has not caused all Delayed ESS Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of One Million Five Hundred Thousand Dollars ($1,500,000) per MW of Delayed ESS Capacity (as of the Guaranteed Start Date) ("**ESS Capacity Shortfall Damages**"), as the Buyer's sole and exclusive monetary remedy, and Seller's sole and exclusive monetary liability, for Buyer's damages for Seller achieving Commercial Operation at less than the Guaranteed ESS Capacity, in which case the Guaranteed PMAX and Guaranteed ESS Capacity will be reduced in an amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8 and the ESS Energy Payment Rate shall be reduced by an amount proportional to the Delayed ESS Capacity.

3.9 Test Period. Seller shall, no later than ninety (90) Days prior to the beginning of the Test Period, give written notice to Buyer of its NERC-registered Generator Owner and Generator Operator and designate a point of contact with Buyer as Scheduling Coordinator (the "**Scheduling Coordinator Contact**"), in accordance with Exhibit M. Seller shall subsequently give no less than thirty (30) Days prior written notice to Buyer of its intended start of the Test Period. Prior notification requirements to Buyer for initiation of Commissioning Tests shall be as identified in Section 10.2. During the Test Period, Seller and Buyer shall mutually agree on the timing and delivery of Charging Energy from Buyer during the Test Period as reasonably required for purposes of testing and commissioning the Project. Seller shall subsequently redeliver (net of losses due to ESS Roundtrip Efficiency) such Charging Energy to Buyer at the Point of Delivery as Discharge Energy. In accordance with Section 7.2, Buyer shall retain title of such Charging Energy and Discharge Energy. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to commencement of such Test Period. Scheduling for subsequent deliveries of Discharge Energy shall be as set forth in Section 5.1.

3.10 Notice of Commercial Operation. Not less than sixty (60) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such Expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial

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Operation Date. Seller shall provide Buyer notice in the form of Exhibit K when Seller believes that all requirements to Commercial Operation have been satisfied (the "**Commercial Operation Notice**"). Buyer shall in writing either accept or reject Seller's Commercial Operation Notice within fifteen (15) Business Days after the date of such Commercial Operation Notice, in its reasonable discretion, and if Buyer rejects the Commercial Operation Notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. If Buyer fails to respond to the Commercial Operation Notice within fifteen (15) Business Days after the date of such Commercial Operation Notice, and all the requirements of Commercial Operation have been met, then the Commercial Operation Notice shall be deemed accepted, and the Commercial Operation Date shall be fifteen (15) Business Days after the date set forth in the Commercial Operation Notice. If Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Charging. The ESS shall be configured to charge exclusively using Energy provided by the Buyer from the electrical grid. Seller shall obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid by the Commercial Operation Date.

3.12 ESS Unit Capabilities. "**ESS Unit Capabilities**" means all of the following for the ESS, all as measured and determined at the Point of Delivery:

(A) Capability to discharge at sixty (60) MW (the "**Guaranteed PMAX**") for eight (8) uninterrupted hours, as may be adjusted pursuant to Section 3.8;

(B) [Reserved];

(C) ESS Roundtrip Efficiency equal to the Guaranteed ESS Roundtrip Efficiency;

(D) Actual Discharge Ramp Rate equal to the Guaranteed PMAX per second measured between 85% State of Charge and 15% State of Charge (the "**Guaranteed Discharge Ramp Rate**");

(E) Actual Charge Ramp Rate equal to the Guaranteed PMAX per second measured between 15% State of Charge to 85% State of Charge (the "**Guaranteed Charge Ramp Rate**");

(F) **Guaranteed System Latency**: <1 second;

(G) **Guaranteed Frequency Response Capability**: Guaranteed PMAX/0.1Hz;

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and

(H) Capability to support Ancillary Services in accordance with the system design and ESS Operating Restrictions, or as otherwise agreed by the Parties in writing.

3.13 ESS Non-Performance Liquidated Damages. ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Additional Buyer-Requested Performance Tests may also be required in accordance with Section 10.5. Seller will pay Buyer the following liquidated damages ("**ESS Non-Performance Liquidated Damages**") as the sole and exclusive remedy for ESS unit non-performance, including any failure to meet the ESS Unit Capabilities (in each case other than as excused due to (a) a Force Majeure Event, or (b) Seller Excused Hours) or to comply with the requirements of Section 7.4(A).

(A) Upon failure of Seller to satisfy the Guaranteed Discharge Ramp Rate, Guaranteed Charge Ramp Rate, Guaranteed Frequency Response Capability, or Guaranteed System Latency during ESS Unit Capabilities testing, Seller shall pay to Buyer "**ESS Response Delay Damages**" equal to ten thousand dollars ($10,000) per event (each event shall last no longer than three (3) Days). A test method and calculation for the ESS Response Delay is described in Exhibit F herein. Provided, however, under no circumstances will ESS Non-Performance Liquidated Damages (other than ESS Capacity Shortfall Damages) exceed Five Hundred Thousand Dollars ($500,000) in any Commercial Operation Year. As used in this Section 3.13(A), "event" means an occurrence causing a failure to comply by Seller lasting no more than seventy-two (72) hours; each exceedance of the seventy-two (72) hour cap by the same occurrence will be deemed a separate event. If multiple failures occur within 72 hours of the initial event, they will be treated as a single event if arising out of a common root cause.

3.14 Guaranteed ESS Roundtrip Efficiency Payment.

(A) If the ESS Roundtrip Efficiency is below the Guaranteed ESS Roundtrip Efficiency, Seller will pay to Buyer an amount equal to $100/MWh * Guaranteed PMAX * 8 hours * (1 – (ESS Roundtrip Efficiency/Guaranteed ESS Roundtrip Efficiency)).

3.15 Prohibition Against Acquisition, Importation, Transfer, or Installation. Seller is required to ensure that acquisition, importation, transfer, and installation of all equipment, firmware, software, or any component thereof supplied to Buyer under this Agreement is not prohibited by Applicable Law. Any breach of this Section 3.15 by Seller or any of its contractors or subcontractors will be considered a material breach. To the fullest extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer's Indemnified Persons from and against any and all Losses (including but not limited to any fines or penalties), arising out of or resulting from any breach of this Section 3.15 by Seller, its contractors or subcontractors or any of their respective Affiliates.

3.16 Eligible Change in Tariff. To the extent an Eligible Change in Tariff occurs between the Execution Date and one (1) year after NMPRC Approval that requires Seller to take additional actions to comply with Seller's obligations under this Agreement and the costs associated with such actions, if they had been reasonably contemplated as of the Execution Date, increase Seller's costs by more than one and a half percent (1.5%) of the Contract Value at Contract

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execution, Seller shall have the right to terminate this Agreement upon notice to Buyer unless Seller waives such condition in writing in its sole discretion, and Buyer shall return the Development Security and Delivery Term Security, as applicable, to Seller within fifteen (15) Days after such termination.

ARTICLE 4
AGC; ESS Curtailment

4.1 AGC.

(A) Prior to any Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall coordinate with Buyer's Power Operations Engineering in completing a full functional SCADA/RTU checkout from a points list agreed to by both Parties. Seller will maintain such AGC throughout the Delivery Term. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall commission the AGC at the Project and shall maintain the AGC in an operational state during normal Project operations such that the Project's AGC can receive remote instruction from Buyer to cause the Project to shut down, operate and ramp over its full operating capability in response to remote instruction. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to direct the dispatch of the ESS, via AGC control, to its fullest capability. Total cycles shall not exceed three hundred sixty-five (365) Equivalent Full Cycles in any Commercial Operation Year.

4.2 ESS Curtailment. An ESS Curtailment occurs any time the Project is unable to receive otherwise available Charging Energy or deliver otherwise available Discharge Energy to Buyer as a result of transmission limitations regardless of whether such curtailment is affected directly by Seller or Buyer, including as a result of Buyer's scheduling practices, or indirectly, by the Transmission Provider pursuant to the OATT or transmission service arrangements ("**ESS Curtailment**").

ARTICLE 5
Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this Agreement to accept the Charging Energy at and from the Point of Delivery as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Energy Storage System. Seller shall use and only use the Charging Energy for Buyer's benefit in accordance with the terms and conditions of this Agreement. Seller shall secure transmission necessary (i) to deliver the Discharge Energy to the Point of Delivery, and (ii) receive Charging Energy from the grid at the Point of Delivery to the ESS, including diligently negotiating and executing an Interconnection Agreement with the Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement

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as are necessary to accommodate the characteristics of the Project.

(B) Seller shall be responsible for the costs of interconnection and costs required to receive and deliver Energy from the Project to Buyer at the Point of Delivery at the required voltage and frequency, including the costs of any associated network upgrades. Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to Discharge Energy up to the Point of Delivery and for Charging Energy after the Point of Delivery.

(C) Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on the Project and any co-located generation systems sharing the same interconnection. If applicable, delivery of Energy from the co-located generation systems to the Transmission Provider's Transmission System shall take priority over Energy discharged from the ESS; and further provided, that when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Energy discharged from the ESS shall take priority over delivery of Energy from co-located generation systems.

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to (i) take Discharge Energy at the Point of Delivery and deliver it to points beyond, and (ii) to deliver Charging Energy to the Point of Delivery including as necessary under participation in any regional market, including the EIM or the EDAM, if any.

(E) Seller shall be responsible for separately sourcing, metering and payment for an electrical power supply and associated power consumption for the Project House Energy.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MST on the daily availability of the Project to the SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Charging Energy and Discharge Energy delivered pursuant to this Agreement shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall ensure that Electric Metering Devices, including Primary Metering Devices and redundant metering ("**Back-Up Metering**") with independent current transformers ("**CTs**") and potential transformers ("**PTs**"), are installed at or near the Electric Interconnection Point that measures the Charging and Discharging Energy of the Project before such Energy is commingled with the energy from any other project. Metering shall be provided in an arrangement consistent with the applicable configuration depicted in Exhibit N or as otherwise agreed between the Parties.

(B) The following provisions of this Section 5.3 shall govern Electric Metering Devices except to the extent the Interconnection Agreement modifies or otherwise conflicts with these provisions, in which case, the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Charging Energy and

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Discharge Energy made available to Buyer by Seller under this Agreement and to monitor and coordinate operation of the Project shall be purchased and installed, in accordance with the Interconnection Agreement at no cost to Buyer under this Agreement. The design of the Electric Metering Device system shall be subject to Buyer approval prior to commencement of construction of the Project. Electric Metering Devices shall be bi-directional and shall be capable of measuring and reading instantaneous, five minute, fifteen minute and hourly real and reactive power and Energy, if supplied by either the co-located generation system or ESS system. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery based initially on the amount specified by the manufacturer for expected losses, *provided* that the Parties may revise this loss adjustment based on actual experience. Buyer shall, at its own expense, inspect and test the Electric Metering Devices upon installation and at least annually thereafter and provide all test results to Seller upon request within a reasonable timeframe. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including arranging with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices. Seller, at its sole expense, shall also have the right to conduct its own tests of the Electric Metering Devices in Seller's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Buyer. Either Party shall have the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted by the other Party. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Transmission Provider.

(D) In addition to the Electric Metering Devices, either Party may elect to install and maintain, at its own expense, secondary, backup metering devices ("**Secondary Metering**") in addition to the redundant Back-Up Metering referenced above in Section 5.3(A) and the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Parties. The installing Party, at its own expense, shall inspect and test Secondary Metering upon installation and at least annually thereafter. The installing Party shall provide the other Party with reasonable advance notice of, and permit a representative of the other Party to witness and verify, such inspections and tests, *provided, however*, that such Party shall not unreasonably interfere with or disrupt the activities of the installing Party and shall comply with all applicable safety standards. Upon written request, the installing Party shall perform additional inspections or tests of Secondary Metering and shall permit a qualified representative of the requesting Party to inspect or witness the testing of Secondary Metering, *provided, however*, that the requesting Party 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

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and at that Party's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device or Secondary Metering fails to register, or if the measurement made by an Electric Metering Device or Secondary Metering is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Secondary Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Primary Metering Device is found to be defective or inaccurate, the Parties shall first use Back-up Metering, followed by Secondary Metering, if installed, to determine the amount of such inaccuracy, *provided, however*, that such Back-Up Metering or Secondary Metering has been tested and maintained in accordance with the provisions of this Article. If Secondary Metering is not installed, or the Back-Up Metering and Secondary Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Charging Energy to the Project at the Point of Delivery and Discharge Energy from the Project to the Point of Delivery, in each case during periods of similar operating conditions when the Primary Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

ARTICLE 6
Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this Agreement are subject to satisfaction of the following conditions precedent:

(A) Subject to Section 17.3, receipt of NMPRC Approval; and

(B) [RESERVED].

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable; provided, however, that Buyer's failure to provide such notice shall not constitute a breach of this Agreement.

ARTICLE 7
Sale and Purchase of Product

7.1 Sale and Purchase of Product. In accordance with and subject to the terms and conditions of this agreement, commencing on the Commercial Operation Date and continuing

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through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Product made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that Buyer shall not be required to receive and purchase Product when and to the extent that (a) a Seller Forced Outage or a Scheduled Maintenance Outage is continuing, or (b) Seller's performance is excused during Seller Excused Hours or due to Force Majeure Event. At its sole discretion, Buyer may resell or use for another purpose all or a portion of the Product. Buyer will have exclusive rights to offer, bid, or otherwise submit the Product for resale in the market and retain and receive any and all related revenues. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement.

7.2 Title and Risk of Loss. As between Seller and Buyer, Buyer shall be deemed to be in control of all Charging Energy up to delivery at the Point of Delivery, Seller shall be deemed to be in control of all Charging Energy from and after such delivery to the Point of Delivery until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy at the Point of Delivery, and Buyer shall be deemed to be in control of all Discharge Energy from and after delivery and receipt at the Point of Delivery. Buyer shall at all times retain title and risk of loss for Charging Energy, Charging Energy that is stored in the ESS, and Discharge Energy. Title and risk of loss related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery.

7.3 Future Environmental Attributes. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this Agreement all right and title to such Future Environmental Attributes is included in the ESS Energy Payment Rate and (c) such Future Environmental Attributes pass to Buyer in accordance with Section 7.2 of this Agreement. If in order for Buyer to receive the benefit of any Future Environmental Attributes Seller must incur any third-party costs not otherwise provided for in this Agreement, 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. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements, and any other applicable guidelines. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Discharge Energy and Charging Energy in accordance with NERC/WECC operating policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines, except that Buyer

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shall not schedule any Discharge Energy or Charging Energy during Seller Forced Outages, Scheduled Maintenance Outages, and Force Majeure Events.

(B) [RESERVED]

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily ESS availability for each week (Sunday through Saturday) by 4:00 p.m. MST on the date falling at least three (3) Days prior to the beginning of that week.

(D) If, at any time following submission of a good faith estimate as described in Section 7.4(C) above, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

(E) Seller shall configure the ramp rate for the Project such that Discharge Energy will not increase at a rate greater than twenty (20) MW per minute.

7.5 Forced Outages. Seller shall promptly advise Buyer of events that may form the basis for a declaration of the existence or termination of a Seller Forced Outage. Seller shall at the earliest practicable date provide Buyer written notice ("**Outage Notice**") of the declaration of the existence of a Seller Forced Outage. Seller, through its Scheduling Coordinator Contact, shall provide such notice to the System Control Center. An Outage Notice shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Product, if any, that would be available for delivery at the Point of Delivery during such event. Seller shall keep Buyer informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

ARTICLE 8
Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and, other than charges for test energy, will begin on the first day after the Commercial Operation Date with hour ending 0100:

(A) Monthly ESS Energy Payment. Subject to the provisions of this agreement, Buyer shall pay Seller an amount equal to the product of (i) the ESS Capacity, not to exceed the Guaranteed ESS Capacity, multiplied by (ii) the Monthly Hours, multiplied by (iii) the ESS Energy Payment Rate, multiplied by (iv) Monthly ESS Availability, as determined in accordance with Exhibit I (the "**ESS Energy Payment**"). The ESS Energy Payment also compensates Seller for the associated Environmental Attributes and Ancillary Services, in any Monthly Billing Period. The ESS Energy Payment includes all Taxes.

Example: For a 30-Day Month, assuming 98% availability

ESS Energy Payment =

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100 MW ×30 Days ×24 hours × $25.83/MWh ×0.98

(B) If Supplemental State Tax Incentives become available in connection with the Product, Seller shall, within thirty (30) Days of guidance regarding such availability, provide an analysis to Buyer of the benefits available under this agreement. At Buyer's option, the Parties shall work together in good faith to agree to those amendments and other modifications, excluding any price increase, to this agreement which are reasonably required to allow the Parties to receive the Supplemental State Tax Incentives and Seller shall use commercially reasonable efforts to become eligible for and to obtain any such credits.

(C) In the event that Seller, Affiliate of Seller or Tax Equity Investor becomes eligible to receive and receives any Supplemental State Tax Incentives with respect to the Project, the value of such Supplemental State Tax Incentives will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental State Tax Incentives by Seller, Affiliate of Seller, or Tax Equity Investor, Seller will remit to Buyer a payment equal to fifty percent (50%) of the value of such Supplemental State Tax Incentives.

(D) Buyer shall reimburse Seller for the taxes identified in Section 9.7(A), which shall be included in the Monthly invoices in compliance with Section 9.7(A).

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this agreement consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this Agreement for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. This Section 8.3 shall only apply to Section 8.1(C) to the extent such Supplemental State Tax Incentives are applicable to the time period before the repudiation, termination or expiration of this Agreement.

ARTICLE 9
Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MST on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the Commercial Operation Date, Buyer shall pay to Seller, Monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this Agreement (in Dollars) to Seller for the preceding Month. Each such invoice shall show the ESS Energy Payment, information and calculations, in

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reasonable detail, including an Attestation and Bill of Sale verifying the associated Future Environmental Attributes, if applicable, in the form of Exhibit G-2 ("**Attestation and Bill of Sale**").

(D) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(E) If any date on which any payment by Buyer would otherwise have been due is not a Business Day, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(F) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this Agreement, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. All payments to be made by either Seller or Buyer under this Agreement shall be made in Dollars in immediately available cleared funds by wire transfer or electronic funds transfer into the relevant account specified in this Agreement or, if no account is specified, into the account designated in writing by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this Agreement is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the lower of (i) the "prime" rate as published in *The Wall Street Journal* on the first Business Day of each Month plus one-half percent (0.5%) and (ii) the maximum interest rate allowed by Applicable Law ("**Default Rate**"), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within sixty (60) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

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(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid. A Party must notify the other Party of any error within three hundred sixty-five (365) Days of such error.

9.7 Taxes.

(A) On all invoices, Seller shall separately show all New Mexico gross receipts, sales, and other similar taxes charged to Buyer provided that in no event will interest or penalties on such taxes be reimbursable by Buyer. If the sale of Product takes place on tribal land, Seller will comply with applicable state and tribal laws governing the reporting and payment of Gross Receipts Taxes on those transactions. Buyer shall reimburse Seller for Gross Receipts Taxes, if any, imposed on Seller's sale of and Buyer's purchase of Product and on Buyer's payment and Seller's receipt of amounts due under this Agreement provided, however, that in no event shall Buyer be liable for any Taxes other than Gross Receipts Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Product to Buyer pursuant to this Agreement.

(B) Seller shall be responsible for and shall pay when due all income, gross receipts, compensating, use, value added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this Agreement and implement the provisions in this Agreement in a manner that will minimize Taxes due and payable by all Parties.

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(D) The Parties shall provide each other, upon written request, with copies of any documentation respecting this Agreement or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this Agreement, including Section 9.9 below, all payments between the Parties under this Agreement shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this Agreement, including damages and other payments that are owed by a Party to the other Party pursuant to this Agreement. Undisputed and non-offset portions of amounts invoiced under this Agreement shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this Agreement, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment under this Agreement.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this Agreement for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

ARTICLE 10
Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement, Applicable Law and this Agreement. Seller shall bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Project's eligibility to receive Tax Benefits or qualify for accelerated depreciation or other accounting treatment. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price, shall be effective regardless of whether the sale of Product from the Project is eligible for, or receives, Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer Monthly development and construction updates. Seller shall provide to Buyer a functional Project Schedule

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within thirty (30) Days of the Execution Date, including key Project milestones as reasonably agreed with Buyer, and shall resubmit the schedule, including a one (1) Month look-ahead of project activities, with each subsequent Monthly update. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, Section 62-13-16 of the New Mexico Public Utility Act and shall document the employment of these apprentices as set forth in Section 10.1(B).

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer Monthly construction updates no later than the 15th Day of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, Monthly updates shall include the Project Schedule and list of schedule risks and material cost risks as well as Seller's compliance with the apprenticeship standards established by Section 62-13-16 of the New Mexico Public Utility Act. If Seller becomes aware of any date on the Project Schedule that will not be achieved by the required date, Seller must provide Buyer written notice no later than the originally scheduled date, and a recovery plan to achieve such milestone and minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Seller's monthly reporting on compliance with the New Mexico Public Utility Act apprenticeship standards shall include (i) the total number of employees the Seller will employ during construction, (ii) the job title or classification of each employee, (iii) the total number of employees who are apprentices, and in which job classification, and (iv) the name of the registered apprenticeship program each apprentice is attached to, along with proof of their registration. If Seller claims unavailability of apprentices to hire, Seller shall submit an affidavit documenting its efforts to obtain apprentices, where Seller sought apprentices, and the responses received from those sources. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project to the extent that such activities do not interfere with or unreasonably delay ongoing activities of Seller or its contractors.

(C) Seller may not modify, alter, or otherwise change the Project without the prior written consent of Buyer after consultation with Retail Customer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to alter the Guaranteed ESS Capacity, annual performance, or availability of the Project or to materially and adversely impact the capabilities of the Project; or (iii) in connection with routine maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date) a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller. Upon written request by Buyer outlining material concerns regarding the existing Project Manager,

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Seller shall use commercially reasonable efforts to replace the Project Manager.

(E) Other than the rights and obligations of Buyer specified in this Agreement and any documents ancillary hereto, neither this Agreement nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning and Testing.

(A) Seller shall provide proposed Commissioning Test procedures to Buyer and the System Control Center at least one hundred twenty (120) Days prior to the performance of the first planned Commissioning Test. Commissioning Tests shall be performed in accordance with test procedures mutually agreed by Buyer and Seller. Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and ten (10) Days prior notice of the final tests scheduled relating to the commissioning of the Project Commissioning Tests. Representatives of Buyer shall have the right to be present at all such testing and Seller shall promptly provide results of all Commissioning Tests for verification by Buyer. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer shall provide Seller with three (3) Days advance notice, within normal working days, with the names and affiliations of its authorized agents, employees and inspectors, prior to such authorized personnel being permitted to access the Site. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this Agreement, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this Agreement, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices and the ESS Operating Restrictions ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this Agreement, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate

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and maintain the Project in accordance with all requirements set forth in this Agreement, and (ii) comply with reasonable requirements of Buyer regarding day-to-day, hourly, five-minute and real-time data communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Discharge Energy delivered by Seller will meet all requirements defined in IEEE Standard 2800-2022, Sections 5, 7 and 8, for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this Agreement. Seller shall provide Buyer with all real time measurement parameters of the Project including individual inverter and system availability data made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection consistent with protective function requirements in IEEE Standard 2800-2022, Section 9, system protection awareness and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair that can be monitored by the System Control Center. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers standards and Prudent Utility Practices. Seller shall have qualified independent, third-party personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. Buyer reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with ten (10) Day written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than thirty (30) Days before the Commercial Operation Date, Seller shall provide Buyer a draft of all operating procedures and collaborate with Buyer to finalize mutually agreeable, written operating procedures within the timeline defined in Table 2 of Exhibit O (collectively, the "Operating Procedures"). Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of Day-to-Day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, Charging Energy, and Discharge Energy reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, this Agreement, Prudent Utility Practice, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel or designated representatives of Seller capable of starting, running, and stopping the Project must be continuously available, either at the

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Project or capable of being at the Project on ninety (90) minutes' notice, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per Day, seven (7) Days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project. Buyer will use reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

(A) Seller will prepare detailed test protocols and procedures for any tests to be performed in connection with achieving Commercial Operation and for periodic tests as required within this agreement. The protocols and procedures will be developed by Seller in accordance with the requirements of the agreement and the appropriate power test code standards for energy storage facilities. Draft protocols and procedures must be submitted to Buyer and the System Control Center for review and approval, which approval will not be withheld unreasonably.

(B) Not later than one hundred eighty (180) Days before the Commercial Operation Date, Seller and Buyer shall develop mutually agreeable written test protocols, based upon the methodologies identified in Exhibit F to quantify the ESS Unit Capabilities. Seller will perform annual ESS Unit Capabilities tests in accordance with those test protocols and procedures and promptly provide the results to Buyer. With the exception of the cost for Charging Energy provided by Buyer, the annual ESS Unit Capabilities tests will be performed at Seller's expense. Annual testing for ESS Capacity and Guaranteed ESS Roundtrip Efficiency shall consist of two annual tests. Each of Buyer and Seller may elect up to two additional tests to be performed at a mutually agreed time. Within thirty (30) Days of the completion of an ESS Capacity or ESS Roundtrip Efficiency test, Seller may elect to conduct a single re-test. Upon completion of the single re-test, Seller must choose for the results of either test to be used as the basis of compliance with the applicable guarantee and the basis of applicable liquidated damages in Section 3.13, adjustment to the ESS Roundtrip Efficiency payment as outlined in Section 3.14, or adjustment to the ESS Energy Payment as outlined in Section 8.1(A).

(C) Testing for all remaining ESS Unit Capabilities, including Guaranteed Charge Ramp Rate, Guaranteed Discharge Ramp Rate, Guaranteed System Latency, Guaranteed Frequency Response Capability, and capability to support Ancillary Services (collectively, "Buyer-Requested Performance Tests") shall be performed once per Commercial Operation Year. Upon failure to pass any of these ESS Unit Capabilities tests, Seller will have ninety (90) Days from the test date to cure any deficiencies in the test.

(D) For all ESS Unit Capabilities tests and re-tests, Seller shall notify Buyer at least ten (10) Days prior to the initiation of the test and Buyer shall have the option to inspect the Project during such test.

(E) For all ESS Unit Capabilities tests and re-tests, Seller shall provide a test report including all performance data, model simulations, calculations, and test reports to the Buyer for analysis and approval.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance

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with this A greement. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, Seller shall provide Buyer with a notice of the Scheduled Maintenance Outages by no later than October 15 for the period of June 1 through November 30 for the following Commercial Operation Year and by no later than April 15 for the subsequent period of December 1 through May 31. Should Buyer desire to change the reporting dates noted above as a result of Buyer's participation in a regional market or program (including the Western Resource Adequacy Program), the Seller will adjust these reporting dates for compliance upon mutual agreement of the Parties.

(B) With the April 15 forecast, Seller shall provide a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's capacity, including the duration of such event. Each Scheduled Maintenance Outage will be subject to approval by Buyer, not to be unreasonably withheld. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Product for any reason at any time during May 1st through September 30th, December, or January without the prior written approval of Buyer, which approval may be withheld or granted in Buyer's sole discretion. Buyer may request Seller to defer or reschedule any Scheduled Maintenance Outage up to forty-eight (48) hours before commencement of the outage. Seller may not make any changes to any annual maintenance schedule approved by Buyer without Buyer's prior written approval, which shall not be unreasonably withheld. Seller must give Buyer no less than ninety (90) Days' advance written notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change. Prior notice and Buyer approval shall not be required if such project maintenance is required for safety, Emergency Conditions, or compliance with Applicable Law and cannot be delayed until the next Scheduled Maintenance Outage.

(C) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Product to the Point of Delivery. Seller shall also obtain and maintain an appropriate water supply for the Project during the Term to maintain reliability of the Project. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. Seller shall not sell or divert Product to any Person other than Buyer.

10.8 Monthly Operational Report. Not later than the fifteenth (15th) Day of each Month after the Commercial Operation Date, Seller shall provide a report summarizing Project operations in the prior Month ("**Monthly Operational Report**"). The Monthly Operational Report shall include a summary of operations and maintenance activities performed; scheduling and forecasting activities; daily capacity and Energy output reports; a unit operations log; Seller Forced Outages, deratings, and Scheduled Maintenance Outage reporting; meteorological data; and such other matters as may be mutually agreed upon by the Parties for the prior Month. Included in the Monthly

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Operational Report shall be a schedule prepared and maintained by Seller identifying all Scheduled Maintenance Outages forecast in the next three (3) Months. The data reported in the Monthly Operational Report must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. If any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

10.9 [Reserved].

ARTICLE 11
Future Environmental Attributes

11.1 Sale of Future Environmental Attributes. Effective from the date on which Seller first makes Product available:

(A) Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to Future Environmental Attributes associated with the Project. Upon generation and documentation of Future Environmental Attributes, Seller shall make the Future Environmental Attributes available to Buyer within than fifteen (15) Business Days after the Future Environmental Attributes are available to be transferred in the respective attribute tracking system. Buyer may request that Seller provide Buyer with a reasonable estimate of the incremental costs, if any, that Seller would incur to deliver to Buyer Future Environmental Attributes pursuant to WREGIS or another tracking system or registry, as requested by Buyer. Seller shall provide such reasonable cost estimate to Buyer within thirty (30) days of receipt of Buyer's request. Following Buyer's receipt of Seller's cost estimate, Buyer may thereafter require Seller deliver such Future Environmental Attributes, and Seller shall do so, at Buyer's expense; provided, however, that Buyer may further thereafter request Seller to cease delivery of some or all of such Future Environmental Attributes, and after the effective date of such request, Seller shall cease delivering as requested by Buyer.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Environmental Attributes shall include any Future Environmental Attributes that are reserved or "banked" throughout the Term of this Agreement, but not used, sold, assigned or otherwise transferred during the Term of this Agreement. Buyer may, to the extent permitted by Applicable Law and this Agreement, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) Buyer shall have the exclusive right to transfer Environmental Attributes to Retail Customer, or retain the Environmental Attributes and retire the Future Environmental Attributes on behalf of Retail Customer, pursuant to the terms of the Special Service Contract.

(E) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law. Except as otherwise provided in Section 8.1 and Section 22.22, Tax Benefits in effect on the Execution

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Date of this ESA or any success 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. 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.

(F) 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 an Environmental Attribute, 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.

(G) Seller shall not report in any public communication, or under any program, that any of the Future Environmental Attributes or part thereof provided to Buyer hereunder belong to any Person other than Buyer or Retail Customer. Seller hereby irrevocably assigns to Buyer all rights, title and interest in the Future Environmental Attributes for Buyer to own, hold and manage in Buyer's or Retail Customer's own name and account, including any rights associated with any renewable energy information or tracking system that exists or may be established (including participation in any applicable Environmental Attribute registration or tracking program) with regard to monitoring, registering, tracking, certifying, or trading such Future Environmental Attributes. Seller represents that it has not claimed, and agrees that it will not hereafter claim, any Future Environmental Attributes, "renewable energy", "clean energy", "green energy" or similar attributes of the Project or Project Energy as belonging or attributable to Seller, to the Project or the Project's generation, generation equipment, or to Project Energy, and as of the Execution Date, represents that it is not actually aware of any such claims made by third parties. Seller shall promptly report to Buyer any such claims made by third parties of which Seller becomes aware. To the extent that any such public communication is allowed under Section 13.1, in any public communication concerning the Project, Project Energy or the Future Environmental Attributes, Seller must at all times be fully compliant with the Federal Trade Commission's "Green Guides," 77 Federal Register 62122, including 16 Code of Federal Regulations §260.15. The Parties agree to work together in good faith to cause the correction of any confusing or misleading claim or public communications made by a Party or a third party concerning any relationship with each other or each other's Affiliates, the Future Environmental Attributes, or the Project. Seller covenants not to collect for its own benefit or allow any Person other than Buyer to collect, or permit any electronic connection with the Project or its metering that enables creation of, any cryptocurrency, blockchain-enabled, or similar types of commodities or tokens that are created using measurements of Project Energy.

ARTICLE 12
Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable:

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(1) Seller's dissolution or liquidation;

(2) Seller's assignment of this Agreement (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 and in any consent to collateral assignment with a Lender;

(3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller voluntarily taking advantage of any such law by answer or otherwise;

(4) Except during a Buyer Event of Default, the sale by Seller to a third party, or diversion by Seller for any use, of Product committed to Buyer by Seller;

(5) Seller's actual fraud, tampering with Buyer-owned facilities or other material misrepresentation or willful misconduct in connection with this Agreement or the operation of the Project;

(6) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, as may be extended pursuant to the terms of this Agreement, or other date mutually agreed to by the Parties in writing;

(7) Seller's assignment of this Agreement, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18.

(B) Any of the following events shall constitute an Event of Default of Seller upon Seller's failure to cure within the applicable time-period specified below:

(1) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure;

(2) The failure of Seller to make any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

(3) The failure of Seller Guarantor to make, when due, any payment required, unless remedied within ten (10) Business Days of receipt of notice of such failure;

(4) The failure of any Seller Guarantor to be Creditworthy if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer;

(5) Any representation or warranty in Section 22.20 is breached by Seller in writing or is or becomes false or misleading in any material respect and is not remedied within five (5) Days after notice;

(6) Seller's failure to deliver Environmental Attributes in accordance

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with the terms of this Agreement, unless remedied within five (5) Business Days of receipt of notice of such failure; or

(7) Seller breaches any obligation in Section 22.21(A), (B), (C), or (E), that results in any violation of Trade Controls by Buyer or Buyer Affiliates (provided that if such breach is capable of cure an Event of Default will occur only if Seller fails to take such actions necessary to avoid any violation of Trade Controls by Buyer or Buyer Affiliates within five (5) Business Days after Seller obtaining knowledge of such breach). Mitigatory actions could include without limitation Seller withholding further payment from or terminating a contract with a Contractor who has become or engaged with a Sanctioned Party.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer or from a Force Majeure Event, Seller is not able to make Product available at the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements (including the Interconnection Agreement) required to make Product available at the Point of Delivery;

(3) Seller's failure to make any payment due to Buyer under or in connection with this Agreement (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this Agreement);

(4) Seller's failure to comply with any other material obligation under this Agreement, which would result in a material adverse impact on Buyer; or

(5) Should Future Environmental Attributes become available and Seller fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this Agreement.

(D) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Any representation or warranty made by Seller in this Agreement, except those representations and warranties made pursuant to Section 22.20 or Section 22.21, shall prove to have been false or misleading in any respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on

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Buyer; or

(2) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor or its parent or any Affiliate that could materially impact Seller's ability to perform its obligations hereunder; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment for the benefit of creditors;

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise; or

(4) Buyer's assignment of this Agreement except as permitted in accordance with Article 18.

(5) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this Agreement) shall constitute an Event of Default upon the failure of Buyer to cure within thirty (30) Days of written notice from Seller to Buyer.

(B) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; provided, however, that Buyer does not obtain a stay or dismissal of the filing within the cure period; or

(2) Any representation or warranty made by Buyer in this Agreement 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

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limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this Agreement from the Defaulting Party as set forth in Section 12.3(B), (ii) exercise its rights pursuant to Section 12.5, (iii) suspend performance, (iv) with respect to a Seller Event of Default, exercise its rights pursuant to Section 12.10 with respect to any Security, and (v) exercise its rights to terminate this Agreement pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; *provided*, *however, that for any termination prior to the Commercial Operation Date the Buyer Termination Payment shall be limited to an amount equal to the Development Security minus the total amount of Delay Damages received by Buyer.*

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between one (1) and sixty (60) Days after the notice thereof, upon which this Agreement shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this Agreement, except that if Seller is the Defaulting Party, Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this Agreement except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this Agreement. Upon the termination of this Agreement under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment, and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment, less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller).

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. The notice shall include a written statement explaining in reasonable detail

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the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment.

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material performance obligation of the other Party under this Agreement.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this Agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this Agreement, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this Agreement satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss. The Parties agree that the Termination Payment does not represent such waived consequential, incidental, punitive, exemplary, indirect, or business interruption damages.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this Agreement, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this Agreement, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement, subject to Buyer's obligation to return any surplus proceeds remaining after such

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obligations are satisfied in full.

ARTICLE 13
Contract Administration and Notices

13.1 Notices in Writing. Notices required by this Agreement shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this Agreement to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt or delivered via means of electronic transmission (with receipt confirmed), to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section 13.1.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this Agreement. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this Agreement and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this Agreement.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this Agreement, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this Agreement as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this Agreement (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this Agreement. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

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(A) Operating and Maintenance Records. Seller shall maintain an accurate and up-to-date operating log, in electronic format, that will include, without limitation, dispatch and scheduled Discharge Energy delivered, Charging Energy received, and House Energy consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practice or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) Billing and Payment Records. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) Project Development Records and Data Submissions. Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) monthly construction progress reports in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B), and (ii) reports, when and as Seller becomes aware, of any new condition or event that may have a material adverse effect on the timely completion of the Project.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Product from, the Project in accordance with this Agreement, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this Agreement, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Product from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the ESS.

(4) Upon request by Buyer, but not earlier than forty-five (45) Days following the Commercial Operation Date, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; and (iv) except with respect to the obligations of Buyer to maintain the confidentiality

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of documents and information received by it, does not impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only, and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this Agreement, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless there has been an Event of Default by Seller, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this A greement. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this Agreement.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, Exhibit C, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this Agreement in an expeditious and commercially reasonable manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this Agreement, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. If the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("Dispute Notice"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. If the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

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ARTICLE 14
Force Majeure

14.1 Definition.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" means an event or circumstance that arises, after the Execution Date, that is not reasonably foreseeable, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers, that cannot be prevented or avoided despite taking all reasonable technical and commercial precautions and measures, and that adversely affects the performance by that Party of its obligations under or pursuant to this Agreement. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement). A pandemic shall be considered a Force Majeure Event only if the affected Party's ability to perform its obligations under this Agreement is prevented or substantially hindered due to (i) the work not being exempt from any restrictions on work imposed by a Governmental Authority, or (ii) any other order, rule, regulation or action or delays by any Governmental Authorities, including permitting delays, that are not in effect and/or applicable to the Project as of the Execution Date.

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance, the inability of Seller to meet regulatory standards, or failure by Seller to obtain on a timely basis and maintain a necessary permit or other regulatory approval shall not be considered a Force Majeure Event, unless Seller can demonstrate that the event was not reasonably foreseeable, was beyond Seller's reasonable control, and was not caused by the negligence or lack of due diligence by Seller or its agents.

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, except to the extent such inability arises from a Force Majeure Event; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, except to the extent such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay caused by the processing of Seller's interconnection request except to the extent such delay arises from a Force Majeure Event; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear or flaws, including any design flaws; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities or other events or circumstances that affect the cost of equipment, labor, materials or

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supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this Agreement beyond its stated Term. In the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller after the Commercial Operation Date continues for an uninterrupted period of two hundred seventy (270) Days from its inception, either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this Agreement upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(E) Except as otherwise provided in this Agreement, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this Agreement (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. If any delay or nonperformance results from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided notice given after such ten (10) Business Days is effective only for the period after the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this Agreement and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event, and the effects thereof, to the extent its effects impact the ability of:

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(A) Seller to deliver Discharge Energy from the Project or to accept Charging Energy to the Project, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered ESS Unavailable Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment;

(B) Buyer to receive Discharge Energy from the Project or to deliver Charging Energy to the Project, the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered Seller Excused Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment; or

(C) both Buyer and Seller to perform the acts described in (A) and (B), then the hours during which such Force Majeure Event (and its effects) prevents such performance shall be considered ESS Unavailable Hours for purposes of calculating Monthly ESS Available Hours in connection with the ESS Energy Payment.

ARTICLE 15
Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents, warrants and covenants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

(B) The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in

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favor of a Lender or as otherwise may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

(C) The obligations of Seller under this Agreement are valid and binding obligations of Seller.

(D) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this Agreement have been duly obtained and are in full force and effect, or will be obtained in the ordinary course of business.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term.

(G) Seller shall disclose to Buyer and to Retail Customer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the development, construction or operation of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has or shall obtain sufficient water necessary for operation of the Project in accordance with Prudent Utility Practices.

(J) Seller has, and/or will have good and marketable title to the Future Environmental Attributes immediately prior to delivery to Buyer.

(K) Seller has not sold, delivered or transferred the Future Environmental Attributes to any other Person, in whole or in part.

(L) All right, title and interest in and to the Future Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) 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.

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(N) [Reserved].

(O) [Reserved].

(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) Seller is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this Agreement.

(B) The execution, delivery, and performance of its obligations under this Agreement by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, members, managers and/or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement.

(C) This Agreement is a valid and binding obligation of Buyer, subject to the

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contingencies identified in Article 6.

(D) The execution and performance of this Agreement will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1 and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this Agreement have been duly obtained and are in full force and effect.

(F) Buyer is an "eligible contract participant" within the meaning of Section 1a(18) of the United States Commodity Exchange Act.

ARTICLE 16
Insurance

16.1 Evidence of Insurance.

(A) Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter within thirty (30) Days of the annual insurance policy renewal or update or change of the insurance policy, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G-1 and this Article 16 along with endorsements required below in Section 16.3, and a list of any other endorsements to the policy that limit the coverage provided by the ISO form with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this Agreement shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this Agreement shall cover occurrences during the Term of this Agreement on an "occurrence" basis. If any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G-1 within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the

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Term of this Agreement, to request Seller to modify the insurance minimum limits specified in Exhibit G-1 in order to maintain reasonable coverage amounts. Seller shall make commercially reasonable efforts to comply with such request.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide endorsements evidencing that the insurers shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all 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 Agreement is primary and non-contributory with respect to other insurance carried by Buyer and/or Retail Customer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G-1 names Buyer, Retail Customer and their respective Affiliates, officers, directors, and employees as additional insureds for both ongoing and completed operations but only to the extent Buyer or Retail Customer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G-1 shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

ARTICLE 17
Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Seller shall at all times comply with all Applicable Laws and shall promptly notify Buyer of any material investigations, written notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the Agreement. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this Agreement to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Product at the rates specified in Article 8, shall be conditioned upon the

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receipt of NMPRC Approval in connection with (i) the execution and performance of this Agreement; and (ii) any waivers as set forth in Buyer's request for approval of this Agreement (collectively, "**Requested Actions**"). An NMPRC order that defers action on cost recovery to a future case shall not be a material adverse financial order. In particular:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order with no material adverse financial determination, which final written order is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, *provided* that each of Seller, Retail Customer, and Buyer agrees, subject to each Party's reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then the Parties and Retail Customer may meet and confer at the request of Buyer or Retail Customer concerning whether this Agreement should remain in effect, such request to be made no later than ten (10) Days after the date of the NMPRC disapproval. This Agreement 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 Agreement should remain in effect. Upon automatic termination, this Agreement shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, except that Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties and Retail Customer shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer and Retail Customer will amend this Agreement to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this Agreement. If the Parties and Retail Customer are unable to mutually agree on any amendments to this Agreement to address such NMPRC Approval order, then this Agreement shall automatically terminate ten (10) Days after the date on which the Parties and Retail Customer conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this Agreement remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval by 11:59 P.M. of December 31, 2026 ("**Regulatory End Date**"), then the Parties 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

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this Agreement shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this Agreement remain in effect. Upon such termination Buyer shall return the Development Security to Seller, less any amounts due from Seller to Buyer.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that Seller contributes in whole or in part to actions that result in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for monetary penalties.

17.5 Compliance Information. Each Party shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

ARTICLE 18
Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this Agreement, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) any assignment or transfer of this Agreement by Seller to an Affiliate of Seller; (ii) a Seller Permitted Transfer; or (iii) any assignment or transfer of this Agreement by Seller to a Person succeeding to all or substantially all of the assets of Seller, *provided* that in the case of any assignment or transfer pursuant to clauses (i), (ii) or (iii) above, such assignee (a) shall have agreed in writing to be bound by the terms and conditions hereof and furnished a copy of the assignment or transfer document to Buyer; (b) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (c) delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (d) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this Agreement.

(B) Seller's consent shall not be required for any assignment of this Agreement by Buyer to any Affiliate or in connection with the acquisition, merger, reorganization, or

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consolidation of Buyer or its parent corporation, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this Agreement as and if required by NMPRC regulations and will resell the Product hereunder.

18.2 Conditions on Transfers. If the rights and interests of a Party in this Agreement shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this Agreement or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this Agreement with the Affiliate as if such Person had been named under this Agreement; *provided, however,* that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this Agreement made without fulfilling the requirements of this Agreement shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this Agreement without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico and licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders.

(A) Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this Agreement or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or expand Buyer's liability, risks or obligations under this Agreement; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this Agreement and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone number of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this

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Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice. If Seller collaterally assigns this Agreement to Seller's Lenders pursuant to this Section 18.6, Buyer, at Seller's sole cost and expense, if requested shall enter into a Lender Consent with Seller's Lenders substantially in the form of Exhibit P. If Seller enters into a Tax Equity Financing, Buyer, at Seller's sole cost and expense, if requested shall provide an Estoppel Certificate to Seller's Tax Equity Investors substantially in the form of Exhibit Q. Seller will within five (5) Business Days of written demand reimburse Buyer for Buyer's reasonable and documented third-party costs and expenses, including outside counsel legal fees and third-party costs of due diligence, incurred in connection with any action or exercise of rights or remedies by any of Seller's Lenders against Seller, including any proceeding or foreclosure against Seller or this Agreement.

ARTICLE 19
Credit and Security Requirements

19.1 Security. Seller shall post, at its sole cost and expense, security equal to One Hundred Thousand Dollars ($100,000) per MW multiplied by the Guaranteed ESS Capacity, (the "**Development Security**"), the first Fifty Thousand Dollars ($50,000) per MW of which will be posted within ninety (90) Days of the Execution Date and the second Fifty Thousand Dollars ($50,000) per MW of which will be posted no later than eighteen (18) months prior to the Expected Commercial Operation Date. Not later than the Commercial Operation Date, and as a condition thereto, Seller shall post and maintain, at its sole cost and expense, security equal to One Hundred Twenty-Five Thousand Dollars ($125,000) per MW multiplied by the Guaranteed ESS Capacity (the "**Delivery Term Security**"). Seller shall replenish the Development Security and Delivery Term Security, as applicable, to such required amount within fifteen (15) Days after any draw by Buyer. Buyer will return the Development Security to Seller in full if Commercial Operation occurs on or before the Guaranteed Start Date, provided Seller has paid in full any Delay Damages or ESS Capacity Shortfall Damages and provided the Delivery Term Security. If no amounts are due and owing under this Agreement and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the ninety-second (92nd) Day after termination of this Agreement in accordance with its terms.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Buyer:

(a) cash, (b) a Letter of Credit in form acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars ($10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor that is Creditworthy, or (d) other security as may be acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be

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suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall state that it shall renew automatically for successive one-year or shorter periods unless Buyer receives written notice from the issuing bank at least sixty (60) Days prior to the expiration date stated in the Letter of Credit that the issuing bank elects not to extend the Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, or does not receive notice within sixty (60) Days before expiration that it will be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit, then Seller shall have five (5) Business Days (or ten (10) Business Days if the only event is that the credit rating of the issuer bank of a Letter of Credit has fallen below the Issuer Minimum Requirements) (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. Buyer shall not be required to post security.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this Agreement, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security. In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under the Development Security or Delivery Term Security, as applicable to recover any amounts owing to it arising out of this Agreement, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this A greement. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this Agreement, as Buyer may select. Security constitutes security for, but does not limit, Seller's obligations hereunder and shall not be Buyer's exclusive remedy for Seller's failure to perform this Agreement.

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ARTICLE 20
Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable ("**Buyer's Indemnified Persons**"), from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable ("**Seller's Indemnified Persons**"), from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If

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indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Insurance Proceeds. If an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

ARTICLE 21
Governmental Charges

21.1 Allocation of Governmental Charges. Seller shall pay or cause to be paid to the applicable Governmental Authority all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer 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 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 Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this Agreement and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Product hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

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ARTICLE 22
Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this Agreement, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this Agreement, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this Agreement, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Standard of Review. The terms and conditions and the rates for service specified in this Agreement shall remain in effect for the term of the transaction described herein. Absent the Parties' written agreement, this Agreement shall not be subject to change by application of either Party pursuant to Section 205 or 206 of the Federal Power Act. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this Agreement whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956); and clarified by their progeny, including Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527 (2008), and the Parties shall not take, and waive any right to take, a contrary position in any proceeding.

22.4 Certain Third Party Beneficiary Rights. In executing this Agreement, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Except as expressly permitted in this Agreement in Section 22.4(B), nothing in this Agreement shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this Agreement.

(A) It is the intention of the Parties that while the Special Service Contract is in effect with respect to this Agreement, Retail Customer is an express third-party beneficiary to this Agreement. The provisions of this Agreement are for the benefit of Retail Customer as well as the Parties hereto, and shall be enforceable by Retail Customer as an express third party beneficiary hereof as if it were a Party hereto. In addition, Retail Customer shall have the following rights:

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(1) Seller shall provide Retail Customer a copy of any notice of a change in the location of the Site provided to Buyer under Section 3.3;

(2) Seller shall provide notice to Retail Customer of any proposed material changes that result in a change to the expected output of the Project; and

(3) Seller will provide notice to Retail Customer regarding any requested Lender accommodations under Section 18.6;

(4) The Parties shall not amend the Agreement 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 Agreement to automatically terminate under Section 17.3(B)(3) without the prior written consent of Retail Customer, such consent not to be unreasonably withheld, conditioned, or delayed.

provided, that the rights granted to the Retail Customer pursuant to this Section 22.4(B) shall expire, terminate and be of no further force and effect upon the expiration or termination of the Special Service Contract, regardless of the cause. Any termination or expiration of the Special Service Contract shall not otherwise affect the rights and obligations of the Buyer and Seller as set forth in this Agreement.

(B) Buyer shall provide prompt notice (and in any case within five (5) Days) to Seller of any termination of the Special Service Contract.

22.5 Relationship of the Parties.

(A) This Agreement shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers' compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller or such Persons represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

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22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this Agreement shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this Agreement, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the Agreement and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this Agreement constitute the entire agreement between Buyer and Seller with respect to its subject matter and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to prior approval by any Governmental Authority with jurisdiction over this Agreement, this Agreement may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that 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 Agreement, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

22.12 Counterparts. This Agreement or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law. The interpretation and performance of this Agreement and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this Agreement shall be brought in the

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United States District Court for the District of New Mexico; the Parties, however, DO NOT WAIVE their state law claims by agreeing to dispute resolution in federal courts and if claims must be brought in New Mexico state courts with jurisdiction to be preserved, the Parties agree to such jurisdiction and venue. **TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES IRREVOCABLY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED**.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, "Disclosing Party" refers to the Party disclosing information to the other Party, and the term "Receiving Party" refers to the Party receiving information from the other Party.

(B) Other than in connection with this Agreement, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, legal counsel and accountants (collectively, "**Receiving Party's Representatives**"), but only if such Receiving Party's Representatives need to know the Confidential Information in connection with this Agreement. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). 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 Agreement to the Receiving Party or its Receiving Party's Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party's Representatives have access by virtue of this Agreement (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic), and any information processed or stored on computers or other electronic media by Disclosing Party or on Disclosing Party's behalf)), or which concerns this Agreement, the Disclosing Party or the Disclosing Party's stockholders, members, affiliates or subsidiaries, and which is designated by the Disclosing Party at the time of its disclosure, or promptly thereafter, as "confidential" (whether by stamping any such written material or by memorializing in writing the confidential nature of any such oral or visual information). Any such information furnished to the Receiving Party or its Receiving Party's Representatives by a director, officer, employee, Affiliate, stockholder, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this Agreement. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this Agreement:

(1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or Receiving Party's Representatives;

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(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this Agreement, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this Agreement, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this Agreement, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this Agreement that relates solely to this Agreement shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this Agreement, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, including discovery, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure shall, prior to disclosure, inform the other Party of the disclosure and allow the Party, at its own expense, to seek confidential treatment from the Governmental Authority. The Party making the disclosure shall also use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information and shall make such disclosure of Confidential Information subject to a protective order or other similar procedure (provided the Party requesting such protective order or similar procedure shall reimburse the other Party for its third-party costs incurred in seeking such protective order or similar procedure).

(F) Seller shall immediately notify Buyer of any security incident involving a suspected or known unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("Data Breach") that comes to Seller's attention. Such notification shall be made to Buyer no more than twenty-four (24) hours after Seller suspects or knows of the Data Breach. Seller shall also take the following actions in the event of a Data Breach: (a) designate a Seller representative who must be available to Buyer twenty-four (24) hours per Day, seven (7) Days per week as a primary contact regarding Seller's obligations under this Section 22.14(F); (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems

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necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Seller may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or Governmental Authority. Seller shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

22.15 Marketing Rights; Press Releases and Media Contact; Access.

(A) Seller hereby grants to Buyer, and Buyer shall have the exclusive right to transfer to Retail Customer, the right to advertise, market, and promote to the general public the benefits of this Agreement and the Environmental Attributes that are to be generated under this Agreement and required to be delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this Agreement and the creation, sale or retirement of such Environmental Attributes (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller shall make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

(B) Except as otherwise provided herein, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written approval of the other Party, which approval shall not be unreasonably withheld, delayed or conditioned. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain permits, licenses, releases and other approvals relating to the Project; (ii) as necessary to fulfill such Party's obligations under this Agreement or as otherwise required by Applicable Law; or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

(C) Seller will provide Buyer and Retail Customer with reasonable access to the Project, including building(s) (if any), for Buyer and Retail Customer, Affiliates and invitees for the sole purpose of presenting information about Retail Customer and its relationship to the Project; provided, that Buyer and Retail Customer shall provide Seller with at least two (2) Days prior written notice of such intended access 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

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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 Agreement, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this Agreement. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions.

22.17 Forward Contract and Master Netting Agreement. The Parties intend that this Agreement constitutes a "forward contract" with each of Seller and Buyer as a "forward contract merchant," and a "master netting agreement" between two "master netting agreement participants" within the meanings given such terms in the Bankruptcy Code, and a "forward agreement" within the meaning of Bankruptcy Code § 101(53B)(A)(i)(VII), and "spot … forward … or other commodity agreement" within the meaning of Bankruptcy Code § 101(53B)(A)(i)(II).

22.18 Accounting Matters. The Parties acknowledge that Generally Accepted Accounting Principles in the United States of America ("**GAAP**") and the rules of the United States Securities and Exchange Commission ("**SEC**") require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this Agreement (a) will be considered a lease under Accounting Standards Codification 842 - Leases, or (b) require consolidation of Seller's financial information with Buyer's financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the Agreement, jointly the "**Accounting Standards**"). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the Parties agree to the following provisions for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

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(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) ("**Seller's Financial Statements**") shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States) on a quarterly basis. All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter upon the request of Buyer, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section as Confidential Information in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

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(F) Seller shall provide Buyer, within a reasonable time following Buyer's written request, but in any event no later than five (5) Business Days following such request, all such information in Seller's possession or control as Buyer shall reasonably request for Buyer's or Retail Customer's compliance with the Scope Reporting Rule.

22.19 Telephone Recording. Each Party to this Agreement acknowledges and agrees to the taping or electronic recording ("**Recording**") of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this Agreement. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. If a dispute occurs between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

22.20 Anti-Corruption. In connection with the negotiation and performance of this Agreement and the development, construction, and operation of the Project or the Site, Seller, on behalf of itself and Seller Parties, represents, warrants and covenants that they have not engaged in, and will refrain from offering, promising, paying, giving, authorizing the paying or giving of, soliciting, or accepting or agreeing to accept money or Anything of Value, directly or indirectly, to or from (a) any Government Official to (i) influence any act or decision of a Government Official in their official capacity, (ii) induce a Government Official to use their influence with a Governmental Authority, or (iii) otherwise secure any improper advantage; or (b) any person in any manner that would constitute bribery or an illegal kickback, or would otherwise violate applicable anti-corruption law, rule or regulation. If Seller fails to comply with this Section 22.20 then Buyer may terminate this Agreement in accordance with Section 12.4. In connection with the performance of this Agreement and all fees charged Buyer, Seller shall maintain books and records practices and internal controls to ensure (a) that receipts and expenses are accurately recorded with reasonable detail and are based on accurate and sufficient supporting documentation and (b) that no "off the books" accounts are created or maintained. Unless otherwise required by law, such books and records will be maintained for seven (7) years after termination or expiration of this Agreement. Seller will immediately report to Buyer any actual, potential, threatened, or requested breach of this Section 22.20 by Seller or its representatives, including any knowledge of any request, inquiry, subpoena or investigation from or by any Governmental Authority. Notice must be provided by contacting Legal-Notices@meta.com and energylegal@meta.com and describing the facts and circumstances associated with the incident or incidents. Such notification must set forth Seller's knowledge of the incident or incidents and what actions, if any, are being taken in response. Seller will ensure that the contractors and subcontractors it retains in connection with this Agreement expressly agree to anti-corruption undertakings, representations, and warranties substantially similar to the provisions herein. If Buyer has reason to believe that a breach of this Section 22.20 has occurred or will occur, Buyer shall have the right to audit Seller's books and records insofar as they relate to performance of this Agreement and to withhold further payments without any liability to Seller until reasonably satisfied that no breach has occurred. If the Agreement is terminated pursuant to an Event of Default under Section 12.1(B), Buyer shall have no obligation to make further payments hereunder following termination of this Agreement other than all payments due to Seller during the Term of this Agreement as of such termination date.

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22.21 Trade Controls.

(A) Seller will be responsible for, or will cause a Seller Party to be responsible for, exporting and importing any equipment or property Seller or Seller Parties require to perform the services under this Agreement, including obtaining all necessary permits, acting as the importer of record, compliance with applicable export and import controls, and payment of any related duties, export charges, taxes and any other amounts imposed by any Governmental Authority.

(B) In no instance may Seller or Seller Parties list Buyer or any Buyer Affiliates as the importer or exporter of record on any import, export, customs or other documentation.

(C) In no event shall Seller provide equipment or property that (i) is on a Munitions List, or (ii) originated, offloaded or transferred to a different ship or carried in any Sanctioned Territory.

(D) The Seller shall provide to Buyer all Trade Control related documentation as may be required for Buyer or its Affiliates to comply with (or demonstrate compliance with) or respond to inquiries from any Government Authority in relation to, Trade Controls.

(E) Seller (i) represents and warrants that neither Seller, nor any Seller Party, is a Sanctioned Person, and (ii) agrees that, in connection with its performance, negotiation and execution of this Agreement, the Seller and each Seller Party has (A) complied and shall comply with all Trade Controls, and (B) shall not (directly or indirectly) engage with any Sanctioned Persons.

(F) Notwithstanding anything to the contrary in this Agreement, Buyer shall not be obligated to seek any permits or licenses required for dealings or transactions with Sanctioned Persons.

(G) Contractors. Seller will make commercially reasonable efforts to ensure that the Seller Parties it retains in connection with the performance of its obligations under this Agreement expressly agree in writing to the trade controls undertakings, representations, and warranties substantially similar to the provisions in this Section 22.21.

(H) Notice. If (a) Seller becomes aware that any breach of the terms of this Section 22.21 has occurred, is likely to occur, or (b) Seller or any Seller Party has become a Sanctioned Person, in each case, Seller shall provide notice to Buyer of the associated facts and circumstances within three (3) days of obtaining knowledge thereof.

(I) Excusal and Release. Notwithstanding any other provision of this Agreement to the contrary, Buyer shall be excused and released, without any liability to Seller from all obligations to perform under this Agreement (including to make any further payments) if and for so long as performance of any of its obligations (including any payments) would be illegal or not reasonably practicable under Sanctions.

(J) Subject to Section 12.1(B)(8), Buyer may terminate this Agreement, within five (5) days and without further liability, upon written notice to the Seller, if the Seller has breached this Section 22.21 (A), (B), (C), or (E) in which case, the Buyer shall have no obligation

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to make further payments following termination of this Agreement; provided that to the extent permitted by Sanctions, Buyer has made all payments due to Seller during the Term of this Agreement as of the termination date

22.22 Market Event. If during the Delivery Term, (i) an alternative energy market design is implemented in which the Project will participate, as determined by Buyer, or (ii) if any of the Project, the Electric Interconnection Point, Retail Customer's load or Buyer no longer reside in the same market (each of (i) and (ii) is a "**Market Event**") and such Market Event materially changes the ability of the Parties to deliver or receive Energy at the Point of Delivery or has a material adverse effect on the ability of either Party to perform its obligations under this Agreement, the Parties and Retail Customer shall negotiate in good faith to amend this Agreement to resolve such changes in order to effect performance of this Agreement, at the least possible cost to the Parties and Retail Customer, consistent with this Agreement, including Section 7.4(A). To the extent that the Parties are unable to do so, either Party may initiate the process set forth in Section 13.8.

[Signature page(s) follow]

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first above written. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By DocuSigned by: Laurie Williams B87ED845D25E4D9...

Name Laurie A Williams

Title Senior Vice President

BRITTON STORAGE LLC

By _____

Name Jim Spencer

Title President and Chief Executive Officer

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EXHIBIT A
DESCRIPTION OF SELLER'S ENERGY STORAGE FACILITIES, SITE MAP, AND PROJECT SCHEDULE

1. Name of Seller's Project: Britton Storage LLC

2. Location: Torrance County, New Mexico

3. Owner (if different from Seller):

4. Operator: Exus North America Management Partners, LLC

5. Equipment/Fuel:

   a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Energy Storage; Biomass (including Fuel)): Energy Storage

   b. Total number of units at the Project: Approximately 121 ESS Units

   c. Total nameplate capacity (AC): 60 MW

   d. Total capacity at point of delivery: 60 MW

   e. Additional technology-specific information: Approximately 16 ESS MV transformers

   f. Battery chemistry: Lithium Iron Phosphate

6. Project Schedule:

Key Milestone	Date
LGIA Execution	February 21, 2018
Major Equipment Supply Agreements Executed	August 1, 2026
Discretionary Permits	December 1, 2026
Close Financing	TBD
30% Design Complete	TBD
Start of Project Construction	TBD
First Major Equipment Delivered to Site	December 1, 2027
Interconnection In-Service Date	March 4, 2028
Commissioning Start Date	April 4, 2028

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Expected Commercial Operation	August 4, 2028
Guaranteed Start Date	January 1, 2029

Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the Agreement.

Site Map

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EXHIBIT B
ONE-LINE AND COMMUNICATIONS AND TELEMETRY DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES

1. See attached one-line diagram and communications and telemetry diagram of the Project. The diagrams indicate the following:

    - Interconnection Facilities;
    - the network upgrades;
    - the Electric Interconnection Point;
    - the Point of Delivery into WECC Path 48 (if different than the Electric Interconnection Point);
    - communications and telemetry configuration with associated redundancy;
    - the House Energy power source and associated dedicated electric meter, and redundancy, ownership and location of meters and associated CTs and PTs.

2. The following discussion provides a summary of the current status of the Interconnection Agreement for the Project, the key milestone dates for completion of the necessary interconnection facilities, and documentation from the Transmission Provider supporting the identified status and milestone dates.

3. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.

4. Point of Delivery is Britton 115kV.

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EXHIBIT C
DESCRIPTION OF SITE[1] PARCEL SURVEY FOR BRITTON STORAGE PROJECT

A portion of the Tract designated "3-A" located within the North Half (N. %) of Section Eight (8) and the Southeast Quarter (SE %) of Section Five (5), Township Nine (9) North, Range Eight (8) East, N.M.P.M., as the same is shown and designated on that certain Plat entitled "Lands of Tillery Five Partnership (A New Mexico Partnership) and Norma Sue Harvey", prepared by Timothy Ray Oden, P.L.S., #8667 on October 12, 1996, filed for record on November 27, 1996, at 2:32 o'clock, P.M., as document number 9620067, and filed in Cabinet C, Slide 400, Public Records of Torrance County, New Mexico.

[1] NTD: To be updated ~60 days prior to COD.

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EXHIBIT D
NOTICE ADDRESSES

PUBLIC SERVICE COMPANY OF NEW MEXICO

Notices:

Delivery Address:
Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

Invoices:
Attn: Energy Analysis
Phone: (505)541-2585
Fax: (505) 241-2434
Email: PNMEAM@pnmresources.com

Scheduling:
Attn: Traders
Phone: (505) 855-6226 day-ahead
(505)855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

Payments:
Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

Wire Transfer:
Wells Fargo Bank
ABA# 121000248
Albuquerque, New Mexico
ME Whsle Pwr Depository: 651-537-7916
Attn: EA-Wholesale Power Marketing

Contract Manager:
Public Service Company of New Mexico
Attention: Eric Meadors
2401 Aztec Rd. NE, MS Z120
Albuquerque, NM 87107
Telephone: (505) 241-2179
Fax: (505) 241-2392

BRITTON STORAGE LLC

All Notices/Invoices:

Delivery Address:
Exus Renewables North America
1435 Bedford Ave. Ste. C2
Pittsburgh PA 15219
Attn: John Markwell
Phone: 412-443-9618

With copy to:
Exus Renewables North America
1435 Bedford Ave. Ste. C2
Pittsburgh PA 15219
Attn: Edith Webster-Freed
Phone: 929-715-3876

Mailing Address (if different from above):

Wire Transfer: [●]

With additional Notice of an Event of Default, termination and other legal notices to:
Attn: Edith Webster-Freed
Address: 1435 BEDFORD AVE. STE C2
PITTSBURGH, PA 15219
Phone: 929-715-3876

Attn: John Markwell
Address: 1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219
Phone: 412-443-9618

Project Manager:
Exus Renewables North America
Attn: Brian Reindl
Address: 1435 Bedford Ave. Ste C2
Pittsburgh, PA 15219

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With additional notice of an Event of Default, termination and other legal notices to:

Public Service Company of New Mexico
Attention: Laurie Williams
414 Silver Ave. SW, MS Z220
Albuquerque, NM 87102
Telephone: (505) 241-0641

With a copy to:

Public Service Company of New Mexico
Attention: Christopher Atencio
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-2700
Fax: (505) 241-4318

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EXHIBIT E

SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS, APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
National Historic Preservation Act Section 106 Finding of Eligibility, Consultation and Approval	New Mexico State Historic Preservation Office
Building and Electrical Permit	Construction Industries Division on behalf of The State of New Mexico (NMCID)
Access/Driveway Permit	New Mexico Department of Transportation/Sandoval County
NPDES Section 402 General Permit	United States EPA
Torrance County Planning and Zoning Letter	Torrance County

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.

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EXHIBIT F
COMMISSIONING AND ANNUAL TESTING

Commissioning Tests

- Automatic Generation Control (AGC) Functionality Test (or equivalent)
- SCADA Functionality Test (or equivalent)
- Owner Control and Data Link Functionality Tests (See Section C in this Exhibit F)
- ESS Unit Capabilities Testing
- ESS Solar Capacity Firming Test (if applicable)

Annual Testing

- ESS Unit Capabilities Testing

Commissioning Procedures

Final testing and commissioning procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements may be modified to account for factory-performed commissioning procedures and otherwise updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures. The final energy storage plant testing and commissioning process will be based on as-built design and plant configuration, and shall verify the final, as-assembled operation. The approach shall be confirmed with all equipment suppliers to ensure a safe process.

PHASE 1 – Battery to PCS

A. Battery Module
    1. Prior to installing each battery module:
        a. Test and confirm battery module voltage

B. Battery String
    1. Once the battery modules are installed in the battery rack with the necessary electrical and communication connections with the battery switchgear and Rack BMS:
        a. Confirm battery modules have auxiliary power supply
        b. Confirm battery modules communicate with rack BMS
            i. Read the System BMS and check whether the battery banks are operable, or not.
        c. Repeat steps i through ii for all battery strings connected to the PCS.
        d. Once communication is confirmed between the battery string and the System BMS, test and confirm battery string voltage on input terminals of Switchgear, one string at a time.
        e. Once complete, send all DC contactor “on” command to the System BMS and check the DC contactor’s status via the System BMS.
        f. Initiate the pre-charge circuit to balance the battery strings prior per the battery vendor specifications.

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C. Battery Bank
   1. Once all of the battery strings within a bank are connected to the input on the PCS and the System BMS, and each input on the PCS is complete with the necessary battery bank connections:
      a. Confirm communication between the System BMS and the PCS (via the EMS, or direct)
      b. Confirm voltage on the PCS terminals is within the battery manufacturer requirements to connect the strings in parallel.

D. PCS
   1. Connect a temporary power supply such as a generator to the PCS to charge the battery bank.
   2. Turn on the PCS.
   3. Charge the battery bank.
   4. Disconnect the temporary power supply.
   5. Connect the PCS to a load bank.
   6. Discharge the battery bank into the load bank.
      a. Confirm the battery bank capacity (kWh) based on power for duration.

E. Repeat steps 1 through 4 for every PCS in the Energy Storage System.

F. End of Phase 1

G. PHASE 2 – PCS to MV Bus in Substation

H. Medium Voltage Block
   1. Disconnect / isolate the battery bank voltage from the PCS
   2. Connect the PCS to the medium voltage transformer.
   3. Connect the Medium Voltage Blocks to the Medium Voltage Feeder
   4. Connect the Medium Voltage Feeder to the Medium Voltage bus in the substation via the MV circuit breaker.
   5. With all blocks connected to the Medium Voltage Feeder (approximately 8-10 blocks per MV Feeder), test and commission each MV block, one at a time. (This assumes the substation is energized and capable of charging and discharging.)

      a. Charge each block to 100% SOC.
      b. Let the battery rest as recommended by the battery vendor.
      c. Discharge each block to 0% SOC.
      d. Open the MV Feeder circuit breaker upon completion.

I. Repeat steps 1 through 2 for all Medium Voltage Feeders

J. End of Phase 2

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K. PHASE 3 – MV bus to POI

L. One MV Feeder at a time, close the MV Feeder Breaker, and energize all of the blocks on the feeder.
M. Allow the MV Feeder to charge and then discharge. Once complete, repeat step 1 for all MV Feeders.

Commissioning Testing

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date. Final test procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements shall be updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures.

Automatic Generation Control (AGC) Functionality Test

Purpose:

This test will demonstrate the ability of the ESS to synch to AGC.

System starting state:

The ESS will be in the on-line state at between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Energy Management System ("EMS") shall be configured to follow a predefined, agreed-upon active power profile. In the case and to the extent that Seller has not obtained authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, this profile shall not cause the ESS to charge from the grid.

Procedure**:**

1. Record the ESS active power level at the Electric Metering Device.

2. Command the ESS to follow a simulated AGC discharging signal every four (4) seconds for ten (10) minutes.

3. Upon confirmation of the availability of sufficient output from Seller's other projects or to the extent of authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, command the ESS to follow a simulated AGC charging signal every four (4) seconds for ten (10) minutes.

4. Record and store the ESS active power response (in seconds).

System end state:

The ESS will be in the on-line state and at a commanded active power level of 0 MW.

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SCADA Functionality Test

Seller shall prepare and submit to Buyer a SCADA Functionality Test procedure no later than 180 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such SCADA Functionality Test procedure and Seller shall perform and successfully demonstrate the SCADA functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

Owner Control and Data Link Functionality Test

Seller shall prepare and submit to Buyer an Owner Control and Data Link Functionality Test procedure no later than 180 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Owner Control and Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Owner Control and Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

Voltage Setpoint Functionality Test

[Test procedures to be agreed upon at a later date, consistent with the timeline set forth in Section 10.2 of the agreement and battery manufacturer's then-current operating and testing requirements]

Commissioning and Annual Tests

The following tests shall be conducted as a requirement to achieve the Commercial Operation Date and will be repeated annually (or more frequently as allowed under the agreement) throughout the term of the agreement. Final test procedures shall be as mutually agreed by the Parties but shall be in general conformance with the following requirements as such requirements shall be updated to reflect changes in technology and equipment configuration, delivery procedures, manufacturer specifications and warranties, and then-applicable industry-standard testing procedures.

A. ESS Unit Capabilities Testing

1. ESS Capacity Test

a. General

The ESS Capacity Test ("**ESS Capacity Test**" or "**ECT**") is a test performed to determine the then-current ESS Capacity and Roundtrip Efficiency (RTE). Each ESS Capacity Test (including the initial ESS Capacity Test performed prior to Commercial Operation and each subsequent ESS Capacity Test) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit F. Buyer or its representative may be present for any ECT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

b. Requirements Applicable to all ESS Capacity Tests

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i. Purpose of Test. Each ECT shall:

- determine the ESS Capacity for the purposes of this agreement;
- determine the Roundtrip Efficiency (RTE) of the ESS;

ii. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:

- discharge time (minutes);
- ESS Charging Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh ("**ESS Meter Energy In**");
- ESS Discharge Energy measured at the ESS Electric Metering Device prior to any compensation, in MWh ("**ESS Meter Energy Out**");
- ESS Discharge Energy measured at the ESS Electric Metering Device including the accounting of losses from the ESS Electric Metering Device to the Point of Delivery, in MWh ("**Point of Delivery Energy Out**");
- ESS Charging Energy measured at the ESS Electric Metering Device accounting for losses from the Point of Delivery to the ESS Electric Metering Device, in MWh ("**Point of Delivery Energy In**");

iii. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.

iv. Test Elements and Sequence. Each ECT shall include the following test elements:

- starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate setpoint equal to the Guaranteed ESS Capacity;
- the determination of Point of Delivery Energy In, as measured by the Electric Metering Device, that is required to charge the ESS until a 100% State of Charge is achieved as of the commencement of the ESS Capacity Test.
- the discharging of the ESS from a 100% State of Charge at a power discharge rate setpoint equal to the Guaranteed ESS Capacity (MW);
- the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after eight (8) hours of discharging at the Guaranteed ESS Capacity;
- the determination of Point of Delivery Energy Out, as measured by the ESS Electric Metering Device, that is discharged from the ESS to the Point of

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Delivery until either a 0% State of Charge is achieved or eight (8) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by eight (8) hours shall determine the ESS Capacity. The Electric Metering Device shall be programmed to correct for losses between the Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;

v. Test Conditions.

- General. At all times during an ECT, the ESS shall be operated in compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. The ESS shall have charged and discharged at least 80% of one (1) Equivalent Full Cycle in the twenty-four (24)-hour period prior to the ECT, charged to a 100% State of Charge using Charging Energy on the day of the ECT and maintained at a 100% State of Charge for at least two (2) hours prior to commencement of the ECT. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the ESS shall otherwise be at unity (1.00) power factor.

- Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT, Seller may postpone or reschedule all or part of such ECT in accordance with Section E.1.2.F of these ESS Capacity Test Procedures.

- Weather Conditions. Ambient outside dry bulb air temperature of 25°C. Seasonal weather patterns may prevent the occurrence of an ECT. In such circumstances, Seller shall supply adjusted performance metrics for the ESS at a range of ambient conditions for Buyer's review and approval (such approval not to be unreasonably conditioned, delayed or withheld) ninety (90) Business Days prior to the scheduled ECT to determine whether the scheduled ECT is feasible.

- Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Article 5 of the agreement.

vi. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section E.1.2.E(2) of this ESS Capacity Test Procedure), Seller may, in its sole discretion: (i) accept the results up to the time the ECT was suspended; provided, however, that to the extent Buyer reasonably objects to such results, Buyer may require that the ECT be repeated or that the portion thereof that was not completed, be

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completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Seller is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.

vii. Final Report. Within ten (10) Business Days after the completion of any ECT, Seller shall prepare and submit to Buyer a written report of the results of the ECT, which report shall include:

- A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;
- the measured data for the ESS Electric Metering Device readings as well as each parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT and plant log sheets verifying the operating conditions and output of the ESS;
- The ESS Capacity as determined by the ECT, including supporting calculations; and
- Seller's statement of either Seller's acceptance of the ECT or Seller's rejection of the ECT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the ECT results or Buyer's rejection of the ECT and reason(s) therefor.

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section A(1)(b)(vi) of this ESS Capacity Test Procedure.

viii. Supplementary ESS Capacity Test Protocol. No later than one hundred eighty (180) Days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit F with additional and supplementary details, procedures and requirements applicable to ESS Capacity Tests based on the then-current design of the Project (collectively, the "**Supplementary ESS Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit F. Future modifications to the Supplementary ESS Capacity Test Protocol, as mutually agreed, shall be documented and

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maintained by the Parties.

ix. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first eight (8) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this agreement, multiplied by (ii) eight (8)hours) shall be divided by eight (8) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the Day following the completion of the ESS Capacity Test for all purposes under this agreement.

x. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh-AC) and the ESS Meter Energy In (MWh-AC) as below:

$$Roundtrip\ Efficiency(\%) = \frac{ESS\ Meter\ Energy\ Out\ (MWh_{AC})}{ESS\ Meter\ Energy\ In\ (MWh_{AC})}$$

2. ESS Response Delay Test

a. **Purpose of Test:**

i. Determine the Actual Charge Ramp Rate of the ESS

ii. Determine the Actual Discharge Ramp Rate of the ESS

b. **Test Conditions:**

The Project will be in the on-line state at between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. In the case and to the extent that Seller has not obtained authorization from the Transmission Provider to allow the ESS to accept Charging Energy from the electrical grid, this test shall not cause the ESS to charge from the grid.

c. **Test procedure:**

i. Actual Charge Ramp Rate:

- Send an active power charge command of Guaranteed PMAX to charge the batteries

- The time measured from when the ESS receives the Guaranteed PMAX charge command until the power measured at the Electric Metering Device changes from 0 MW to at least 1% of charge Guaranteed PMAX shall be

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the Charge Ramp Latency

- The time measured to ramp from 1% to charge Guaranteed PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Charge Ramp Rate

ii. Actual Discharge Ramp Rate:

- Send an active power discharge command of Guaranteed PMAX to discharge the batteries

- The time measured from when the ESS receives the Guaranteed PMAX discharge command until the power measured at the Electric Metering Device changes from 0 MW to at least 1% of discharge Guaranteed PMAX shall be the Discharge Ramp Latency

- The time measured to ramp from 1% to discharge Guaranteed PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Discharge Ramp Rate

iii. **Determination of ESS Response Delay:**

The calculation below will demonstrate the determination of the ESS Response Delay used to determine ESS Response Delay Damages according to Section 3.13.

- An "**Actual System Latency**" shall be calculated, which shall be equal to:

$$Actual\ System\ Latency = Max(Charge\ Ramp\ Latency, Discharge\ Ramp\ Latency)$$

- An "**Actual System Latency Delay**" shall be calculated, which shall be equal to:

$$Actual\ System\ Latency\ Delay = Max(Guaranteed\ System\ Latency, Actual\ System\ Latency) - Guaranteed\ System\ Latency$$

- An "**Actual Discharge Ramp Rate Delay**" shall be calculated, which shall be equal to:

$$Actual\ Discharge\ Ramp\ Rate\ Delay = Max(Guaranteed\ Discharge\ Ramp\ Rate, Actual\ Discharge\ Ramp\ Rate) - Guaranteed\ Discharge\ Ramp\ Rate$$

- An "**Actual Charge Ramp Rate Delay**" shall be calculated, which shall be equal to:

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$$Actual\ Charge\ Ramp\ Rate\ Delay = Max(Guaranteed\ Charge\ Ramp\ Rate, Actual\ Charge\ Ramp\ Rate) - Guaranteed\ Charge\ Ramp\ Rate$$

- The "**Charging ESS Response Delay**" shall be calculated, which shall be equal to:

$$Charging\ ESS\ Response\ Delay = Actual\ Charge\ Ramp\ Rate\ Delay + Actual\ System\ Latency\ Delay$$

- The "**Discharging ESS Response Delay**" shall be calculated, which shall be equal to:

$$Discharging\ ESS\ Response\ Delay = Actual\ Discharge\ Ramp\ Rate\ Delay + Actual\ System\ Latency\ Delay$$

- The "**ESS Response Delay**" shall be calculated, which shall be equal to:

$$ESS\ Response\ Delay = Max(Charging\ ESS\ Response\ Delay, Discharging\ ESS\ Response\ Delay)$$

For any instance in which the ESS Response Delay, as measured by the Electric Metering Device is a positive value during an ESS Unit Capabilities test, Seller shall pay to Buyer the ESS Response Delay Damages identified in Section 3.13.

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EXHIBIT G-1

INSURANCE COVERAGES

Seller shall obtain and maintain the following insurance coverages, at a minimum:

A. Workers' Compensation Insurance that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars ($1,000,000) per accident, One Million ($1,000,000) for disease, and One Million ($1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

B. Commercial General Liability Insurance, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars ($1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, owner's protective, products liability and completed operations.

C. Business Automobile Liability Insurance, or the equivalent, with a limit of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned, hired, or non-owned.

D. Excess or Umbrella Liability. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence of Twenty Million Dollars ($20,000,000) written on a per occurrence basis.

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

E. Network Security and Privacy Liability. If Seller or any of its contractors are providing services which provide such parties with direct access to Buyer's systems or makes them responsible for holding sensitive information of Buyer, Seller shall procure and maintain throughout the term of this agreement a policy or policies of insurance that provide coverage for damages and claims expenses resulting from covered cyber incidents due to: a) actual or alleged security breach or privacy breach such as unauthorized access to, disclosure, sale or transfer of confidential or non-public personally identifiable information, including regulatory wrongful acts associated therewith; b) actual or alleged failure to supply; c) actual or alleged media wrongful acts; d) data restoration expenses; e) business income loss and extra expenses and f) breach response services, such as legal fees, public relations costs, forensic investigation expense, notification to potentially affected parties, and where legally required, credit monitoring or identity theft monitoring and restoration services. Covered cyber incidents may include unauthorized access to or unauthorized use of data assets, enterprise systems or operational systems, infection of malicious code; unauthorized acquisition, copying, alteration, corruption, destruction, deletion, encryption, and/or damage to data assets, or denial of service, being an attack to block or prevent access to the enterprise system or operational system. Policy shall be written with minimum annual

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limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations, subject to all applicable policy terms and conditions. Such insurance must address all of the foregoing if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services as defined under this Agreement.

F. Property Insurance. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. subject to customary industry standard sublimits. Builders' risk insurance must qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to commercially available limits, with respect to facilities similar in construction, location and occupancy to the Project; and (ii) mechanical and electrical breakdown insurance covering all objects customarily subject to such insurance, in an amount equal to their probable maximum loss.

G. Technology Errors and Omissions Insurance. Contractor and/or its subcontractors at its sole cost agree to maintain technology Errors and Omissions insurance coverage with insurance carriers with a rating of no less than A rated by Best's Insurance Guide. Technology Errors & Omissions insurance providing coverage for liabilities arising from errors, omissions, or negligent acts in rendering or failing to render computer or information technology services and technology products. Coverage for violation of software copyright infringement. Technology services shall cover liabilities, punitive damages, and claim expenses arising from acts, errors and omissions, in rendering or failing to render all services and in the provision of all products in the performance of this agreement, including the failure of products to perform the intended function or serve the intended purpose. Services insured, at a minimum, include (1) systems analysis (2) systems programming (3) data processing (4) systems integration (5) outsourcing including outsourcing development and design (6) systems design, consulting, development and modification (7) training services relating to computer software or hardware (8) management, repair and maintenance of computer products, networks and systems (9) marketing, selling, servicing, distributing, installing and maintaining computer hardware or software (10) data entry, modification, verification, maintenance, storage, retrieval or preparation of data output, (11) violation of federal, state or foreign security and/or privacy laws and regulations including but not limited to investigative and notification costs regardless of whether such incurred costs were compulsory or voluntary and any other services provided by the Seller under this Agreement. No exclusion/ restriction for unencrypted portable devices/ media may be on the policy. Policy shall have minimum limits of Ten million dollars ($10,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations. Such insurance must address all of the foregoing without limitation if caused by an employee or an independent contractor working on behalf of the Seller in performing services under this Agreement. The policy shall have worldwide coverage territory and provide coverage for wrongful acts, claims, and lawsuits brought anywhere in the world. Such insurance may be written on a claims-made rather that an occurrence basis as long as the policy, (a) has a retroactive date prior to the date of project commencement, and (b) is maintained by Seller throughout the performance of services or storage of data in connection with this Agreement and for at least three (3) years thereafter either through policies in

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force or through an extended reporting period. Seller shall provide Buyer a copy of the policy providing the insurance required under this paragraph upon written request.

If Seller is providing services which provide direct access to Buyer's systems or holding sensitive information of Buyer, then the policy shall include Network Security/Privacy coverage. This policy shall include coverage for loss, disclosure and theft of data in any form; media and content rights infringement and liability, including but not limited to, software copyright infringement; network security failure, including but not limited to, denial of service attacks and transmission of malicious code. Coverage shall include data breach regulatory fines and penalties, the cost of notifying individuals of a security or data breach, the cost of credit monitoring services and any other causally-related crisis management expense for up to one (1) year.

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EXHIBIT G-2

FORM OF ATTESTATION AND BILL OF SALE

Pursuant to WREGIS, _____ ("Seller") hereby sells, transfers and delivers to Buyer the RECs and Environmental Attributes associated with the generation of Energy at the Project, as detailed in the Power Purchase Agreement between the Parties dated _____ (the "Agreement"). Terms used, but not defined herein, shall have the meaning set forth in the Agreement.

Name of Renewable Energy Facility		
Fuel Type	Maximum Power Output (MW)	Operation Date
Dates		MWh generated
_____, 20___		_____

One (1) REC represents the reporting rights associated with one (1) kWh generated from the Project.

Seller further attests, warrants and represents, to the best of its knowledge, as follows:

1. to the best of its knowledge, the information provided herein is true and correct;
2. its sale to Buyer is its one and only sale of the RECS and Environmental Attributes with respect to the energy referenced herein and no third party has claimed nor can claim any interest in such RECS and Environmental Attributes;
3. the Project identified above produced the number of MWh above during the period indicated above;
4. Seller has title to and ownership of the RECs and Environmental Attributes sold hereunder; and
5. Seller owns the _____. [Name of the Renewable Energy Facility]

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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: _____

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EXHIBIT H

ROUNDTRIP EFFICIENCY GUARANTEE

	Annual R/T Eff
1	84%
2	83.7%
3	83.4%
4	83.1%
5	82.8%
6	82.5%
7	82.2%
8	81.9%
9	81.6%
10	81.3%
11	81%
12	80.7%
13	80.4%
14	80.1%
15	79.8%
16	79.5%
17	79.2%
18	78.9%
19	78.6%
20	78.3%

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EXHIBIT I

AVAILABILITY CALCULATIONS

Section 1. Definitions.

Capitalized terms used in this Exhibit I and not defined herein shall have the meaning assigned in Article 1 of the Agreement.

"**ESS Excused Hours**" means the aggregate Seller Excused Hours to the extent that the ESS is affected during such hours, but shall not include any hours described in clause (e) of the definition of ESS Unavailable Hours. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the ESS Excused Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**ESS Unavailable Hours**" means those hours that the ESS is not available to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an ESS Excused Hour); (b) in "run" status and faulted; (c) incapable of being remotely controlled via its AGC system; (d) otherwise not operational or capable of delivering Discharge Energy or accepting Charging Energy; or (e) unavailable due to the conditions described in Section 14.4. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour, the ESS is available but for less than the full amount of the then effective ESS Capacity, the ESS Unavailable Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**Monthly ESS Availability**" means a percentage calculated as the result of (i) the sum of all Monthly ESS Available Hours divided by (ii) the Monthly Hours.

"**Monthly ESS Available Hours**" means for a relevant Month during any Commercial Operation Year, an amount of hours equal to the difference between (a) Monthly Hours, minus (b) the aggregate ESS Unavailable Hours in such Month. Any event that results in unavailability of the ESS for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the ESS is available, but for less than the full amount of the then effective ESS Capacity, the Monthly ESS Available Hours for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available ESS Capacity.

"**Monthly Hours**" means the product of (a) twenty-four (24), multiplied by (b) the number of Days in such Month.

"**Monthly Report**" has the meaning set forth in Section 3 of this Exhibit.

Section 2. Sole Remedy

The Parties agree that Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for any deficiency in the performance of the Project (excluding ESS Non-Performance Liquidated Damages pursuant to Section 3.13 of the agreement or ESS Roundtrip Efficiency deficiencies pursuant to Section 3.14 of the agreement) shall be reductions to the ESS Energy Payments due to any

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Monthly ESS Availability percentages that are less than 100%, and in each case shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default giving rise to a termination payment obligation.

Section 3. Monthly Report.

No later than the tenth (10th) Day of each Month during each Commercial Operation Year (or ten (10) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of Monthly ESS Availability for the previous Month (the "**Monthly Report**").

Section 4. Disputes.

Disputes as to any calculations under this Exhibit I shall be addressed as provided in Section 13.8 of the Agreement.

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ATTACHMENT 1 TO EXHIBIT I

EXAMPLE CALCULATION

I. Example of Monthly ESS Availability Calculation

The sample calculation set forth below is based on the following assumed facts:

The ESS had the following operating characteristics:

	Hours
Monthly Hours ("MH")	720
ESS Unavailable Hours ("EUH")	86

Given these assumed facts, the Monthly ESS Available Hours for the ESS during the specific Month would be calculated as follows:

Monthly ESS Available Hours = MH – EUH : 634 = 720 – 86

Monthly ESS Availability

Given these assumed facts, the Monthly ESS Availability for the Project during the specific Month in question would be calculated as follows:

(a) Sum of Monthly ESS Available Hours: 634 hours

(b) Monthly Hours: 720 hours

(c) Monthly ESS Availability: Sum of Monthly ESS Available Hours/Monthly Hours = 634/720 = 88.1%

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EXHIBIT J

FORM OF SELLER GUARANTY

THIS GUARANTY (this "**Guaranty**"), dated as of _____, _____ (the "**Effective Date**"), is made by [●]. ("**Guarantor**"), in favor of PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("**Counterparty**").

RECITALS:

A. WHEREAS, Counterparty and Guarantor's indirect, wholly-owned subsidiary *[INSERT OBLIGOR'S NAME IN ALL CAPS]* ("**Obligor**") have entered into, or concurrently herewith are entering into, that certain Energy Storage Agreement dated/made/entered into/effective as of _____, 20_(the "**Agreement**"); and

B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. **GUARANTY.** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the "**Obligations**"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. $_____) (the "**Maximum Recovery Amount**"), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys' fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [_____].

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above). Except as expressly payable by Obligor pursuant to the

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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.

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4. RESERVATION OF CERTAIN DEFENSES.

(a) Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

(a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

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(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*):

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TO GUARANTOR:	*TO COUNTERPARTY:*
Attn: *Treasurer*	Attn: [●]
[Tel: [●] *-- for use in connection with courier deliveries]*	*[Tel:* [●] *-- for use in connection with courier deliveries]*

Any Notice given in accordance with this *Section 9* will (x) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (y) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New Mexico, without regard to principles of conflicts of laws thereunder.

(b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.

(c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

(d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

(e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such

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prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably:

(i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and

(ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

11. THIRD PARTY BENEFICIARY RIGHTS. This Guaranty shall be construed to create a duty to, and standard of care with reference to, and liability to Retail Customer (as defined in the Agreement) as an express third party beneficiary to this Guaranty. The provisions of this Guaranty are for the benefit of Retail Customer as well as Counterparty, and shall be enforceable by Retail Customer as an express third party beneficiary hereof. No amendment to this Guaranty shall be permitted without written prior consent of Retail Customer.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

[●]

By:_____

Name:_____

Title:_____

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EXHIBIT K

COMMERCIAL OPERATION
FORM OF CERTIFICATION

This certification ("Certification") of Commercial Operation is delivered by _____("Seller") to Public Service Company of New Mexico ("Buyer") in accordance with the terms of that certain Energy Storage Agreement dated ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the agreement.

Seller hereby certifies and represents to Buyer the following:

(1) An Energy Storage System with a designed power output capability of [●] MW for [●] ([●]) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharge Energy on a sustained basis (in accordance with the ESS manufacturer's requirements and the Commissioning Tests);

(2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and Charging Energy from the Point of Delivery and is not in breach of the Interconnection Agreement; and

(3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project and that the Project meets, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this _____day of _____, 20__.

Britton Storage LLC	**[Licensed Professional Engineer]**
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
	Date: _____
	License Number and LPE Stamp: _____

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EXHIBIT L

ESS OPERATING RESTRICTIONS

Subject to the terms of this agreement, the ESS shall be operated in accordance with the following operating restrictions:

1. TBD

[*Specific ESS Operating Restrictions will be included as part of the detailed Commissioning and Test procedures to be agreed upon by Buyer and Seller as set forth in Section 10.2 of the agreement and the ESS Manufacturer's then-current operating and testing requirements*]

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EXHIBIT M

ESS FUNCTIONAL MAPPING

The Project's NERC verified ESS Generator Owner, ESS Generator Operator and Scheduling Coordinator Contact functional mapping requirements, as applicable, information as follows will be provided prior to the Commercial Operation Date:

	Entity Name	Point of Contact	E-mail	Phone
Generator Owner (GO)				
Generator Operator (GOP)				
Scheduling Coordinator Contact (SCC)				

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EXHIBIT N

INTERCONNECTION METERING STANDARD

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EXHIBIT O

PREPARATION FOR COMMISSIONING

Section 1. Purpose.

This Exhibit provides guidance to the Seller on the process and requirements for the coordination and completion of commissioning and testing activities associated with the Project leading up to the Commercial Operation Date. To the extent that Seller still lacks clarity, Seller is encouraged to coordinate and discuss these items with Buyer at least ninety (90) Days prior to the Expected Commercial Operation Date.

Seller's Project Manager will work together with Buyer's Contract Manager, Power Operations staff and Generation Engineering staff to ensure all pre-commissioning and commissioning requirements are completed in a timely manner to support the achievement of critical milestones in accordance with the timelines presented herein and others as defined in the Agreement and Project Schedule.

Throughout Project design, construction and commissioning, Seller shall configure project metering in a manner that complies with Buyer's Interconnection Metering Standard as outlined in Exhibit N of the Agreement and complete all testing as defined in Exhibit F of the Agreement.

Figure 1 is for reference purposes only.

Section 2. Identifying Key Points of Contact.

Seller's Project Manager, working with Buyer's Contract Manager, shall complete and distribute a Point of Contact List ("**POC List**") to identify leads and backups for all key roles prior to the Commissioning Kickoff Meeting which will be scheduled in accordance with Section 3.1 below. The Parties shall maintain and update the POC List throughout the duration of the Agreement.

The POC List shall clearly identify key points of contact for each Party as well as their roles and responsibilities on the Project. The format of the POC List shall include but not be limited to the information included in Table 1 below.

TABLE 1 – REQUIRED INFORMATION FOR POINT OF CONTACT LIST.

Contact	Company	Group	Address	Project Role	Office Phone	Mobile Phone	Email
Eric Meadors	PNM	Generation Contracts & Development	2401 Aztec Rd NE Albuquerque, NM 87107	Contract Manager	(505) 241-2179	(505) 801-7803	Eric.Meadors@txnmenergy.com

The POC List shall identify, but not be limited to, the following:

Buyer Team: Buyer's contract manager identified in Exhibit D ("**Contract Manager**") is the lead point of contact for Buyer and is responsible for coordinating the efforts of Buyer's teams. Buyer will support commissioning activities with personnel representing the following critical contributing roles:

- "**Generation Engineering**" – This group includes the Contract Manager who will fulfill project management duties for the Buyer's team including: organizing the Commissioning Kickoff Meeting, defining Commissioning Test requirements, reviewing and monitoring Seller's Commissioning Test

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plan and procedures, receiving and tracking Seller deliverables, and approval of Seller submittals as required for achievement of Commercial Operation.

- "**Power Operations**" or "**PowerOps**" – A team manager and a lead engineer will be assigned by PowerOps to model the Project into the Power Operations full network model and submit those changes to CAISO as well. Buyer and Seller will coordinate all control points and analog data requirements needed to integrate the Project into Buyer's Energy Management System ("**EMS**" consisting of SCADA & AGC). Buyer and Seller will complete remote telemetry unit ("**RTU**") control and data point testing and verify proper configuration in accordance with the schedule identified in Table 2 below.

- "**Transmission Engineering Protection & Controls**" – This group will define the interconnection protection and control requirements between the Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities.

- "**Transmission Engineering Telecommunications and Telemetry unit (RTU) Control Staff**" – The Buyer and Seller will coordinate telecommunication and RTU equipment requirements from the Seller's Interconnection Facilities to the Transmission Provider's Interconnection Facilities to meet Power Operations requirements for real time awareness and control. This staff will design, and coordinate installation of communications required to gather metering quality, after the fact data from Seller resources to be used by Buyer settlement processes.

- "**Wholesale Power Marketing**" or "**WPM**" – This group is responsible for peripheral component interconnect modeling for functionality required for the participating resource schedule coordination (for EIM participation) and for additional market needs, forecasting support and management for renewable resources, schedules/optimizes energy to manage within total portfolio during commissioning, facilitates availability and outage management, and is involved in CAISO resource registration.

- "**EIM Market Performance Group**" – This group contributes to the CAISO market model resource registration prior to energization and is concerned with the retrieval of, accuracy of, and appropriateness of metering data and configurations.

Seller Team: The Seller's Project Manager shall be responsible for organizing all relevant 3rd party vendors that Buyer will interface with during pre-commissioning, commissioning, and performance testing. Seller's Project Manager shall identify and make available to Buyer all key contacts including:

- **"Project Manager"** – Shall be responsible for organizing schedule and reporting progress including, but not limited to, changes to schedule, cost, or technical performance of Project. The Project Manager is also responsible for submitting the Commissioning Test plans and procedures to Buyer for review and approval.

- "**Original Equipment Manufacturer**" or "**OEM**" – means the supplier of the ESS. The OEM shall define and execute all OEM-required equipment and system testing.

- "**SCADA Engineer**" – Shall be assigned by Seller, shall be responsible for integrating the power plant controller and shall serve as Buyer's PowerOps' counterparty for SCADA testing.

- "**Control Center**" – Vendor that is responsible for 24/7 monitoring of the Seller's project.

- For commissioning and operational purposes, Seller shall identify other key entities including, but not limited to:

    - Balancing Authority (BA)
    - Transmission Owner (TO)
    - Transmission Operator (TOP)
    - Generator Owner (GO)
    - Generator Operator (GOP)
    - Scheduling Coordinator (SC)
    - Distribution System Operator (DSO)

Section 3. Process Overview.

The following is a description of activities that Seller shall participate in from pre-commissioning to the Commercial Operation Date.

Section 3.1 Commissioning Kickoff Meeting.

Buyer's Generation Engineering will schedule a kickoff meeting for Project commissioning and testing activities ("**Commissioning Kickoff Meeting**") with all stakeholders upon the Start of Project Construction as identified in the Project Schedule in Exhibit A**.** This shall serve as an opportunity to get all parties engaged, communicate planned timelines, answer questions, and involve all key stakeholders to help prevent missed pre-commissioning and commissioning requirements and/or schedule delays.

The key activities fit into 2 stages or phases: 1) pre-commissioning or 2) commissioning and performance testing. Following the completion of testing, some of the data and information generated in these stages inform the final requirements that need to be completed prior to Commercial Operation.

Section 3.2 Pre-Commissioning.

Activities in this stage begin well before commissioning (*some possibly before site construction mobilization*) to ensure that all systems and resources are ready to proceed to the next stage.

Pre-requisites to commissioning and other activities shall be completed prior to commissioning including, but not limited to those items identified in Table 2 as further represented in Figure 1:

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TABLE 2: PRE-COMMISSIONING REQUIREMENTS

Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Design Verification	Seller shall submit project design information that will enable Buyer to verify the project meets design requirements for achieving agreement obligations, including grid forming inverters, metering, etc.	**Seller**	Generation Engineering	After completion of 30% design phase of project
Seller's SCADA Controls Narrative	Controls narrative detailing items related to SCADA and telemetry planning.	**Seller**	PowerOps	120 Days after Start of Construction
	Final DB Mod file delivered to PowerOps.	**Seller**	PowerOps	10 Days prior to the scheduled Test Period
Seller's Substation Commissioning	Managed by Buyer's Project Manager, Power Operations & Seller's SCADA Engineer. Seller's Substation RTU/SCADA testing of communications and telemetry integration to demonstrate that PowerOps can issue commands to and receive feedback or data from the Project, must be completed prior to scheduled ESS performance testing.	**Seller**	Buyer's Project Manager	Prior to the scheduled performance testing
Metering	All metering installation, programming, and testing shall be complete prior to performance testing and in accordance with Buyer's Interconnection Metering Standard in Exhibit N. Programming of meters for compensation and resource separation includes the separation of retail loads when necessary.	**Seller**	PowerOps	Prior to the scheduled performance testing
CAISO Resource Registration	Draft Seller one-line diagram, meter information, communications / telemetry configuration, metering CT & PT accuracies required from the Seller for Buyer's use in CAISO resource registration.	**Seller**	PowerOps	180 Days prior to the scheduled Test Period
	A finalized one-line diagram (similar to Exhibit N) is required from the Seller for Buyer to meet CAISO full network model requirements. Delays in Seller's submission to Buyer of this information will likely result in a delay in the transmission interconnection in-service date.	**Seller**	PowerOps	120 Days prior to transmission interconnection in-service date
	Buyer EIM Market Performance Group will begin submitting resource registration documentation after CAISO model submission by PowerOps.	**PowerOps**	Seller	
	Buyer must receive the necessary information for CAISO resource registration. Including: engineer-stamped one-line diagram, meter information (make, model, accuracy), calculations required to get resource reads to the Point of Interconnection, metering CT & PT accuracies for each meter.	**Seller**	PowerOps	No later than 90 Days prior to the scheduled Test Period
Power Operations Engineering Requirements for Commissioning (Attachment 1)	This Exhibit provides additional detail on the data elements and activities required by PowerOps for commissioning and testing. Included with this set of requirements is the SCADA Points Check Out: PowerOps needs to conduct a checkout one month prior to the beginning of performance testing in order to ensure that all points have been validated between the field and Buyer's System Control Center, and resources are ready to proceed to other tests. Buyer acknowledges certain points are not available prior to Test Period given commercially reasonable restrictions on access to data.	**PowerOps**	Seller	SCADA Points Check Out: PowerOps will conduct a checkout prior to the beginning of the scheduled Test Period.

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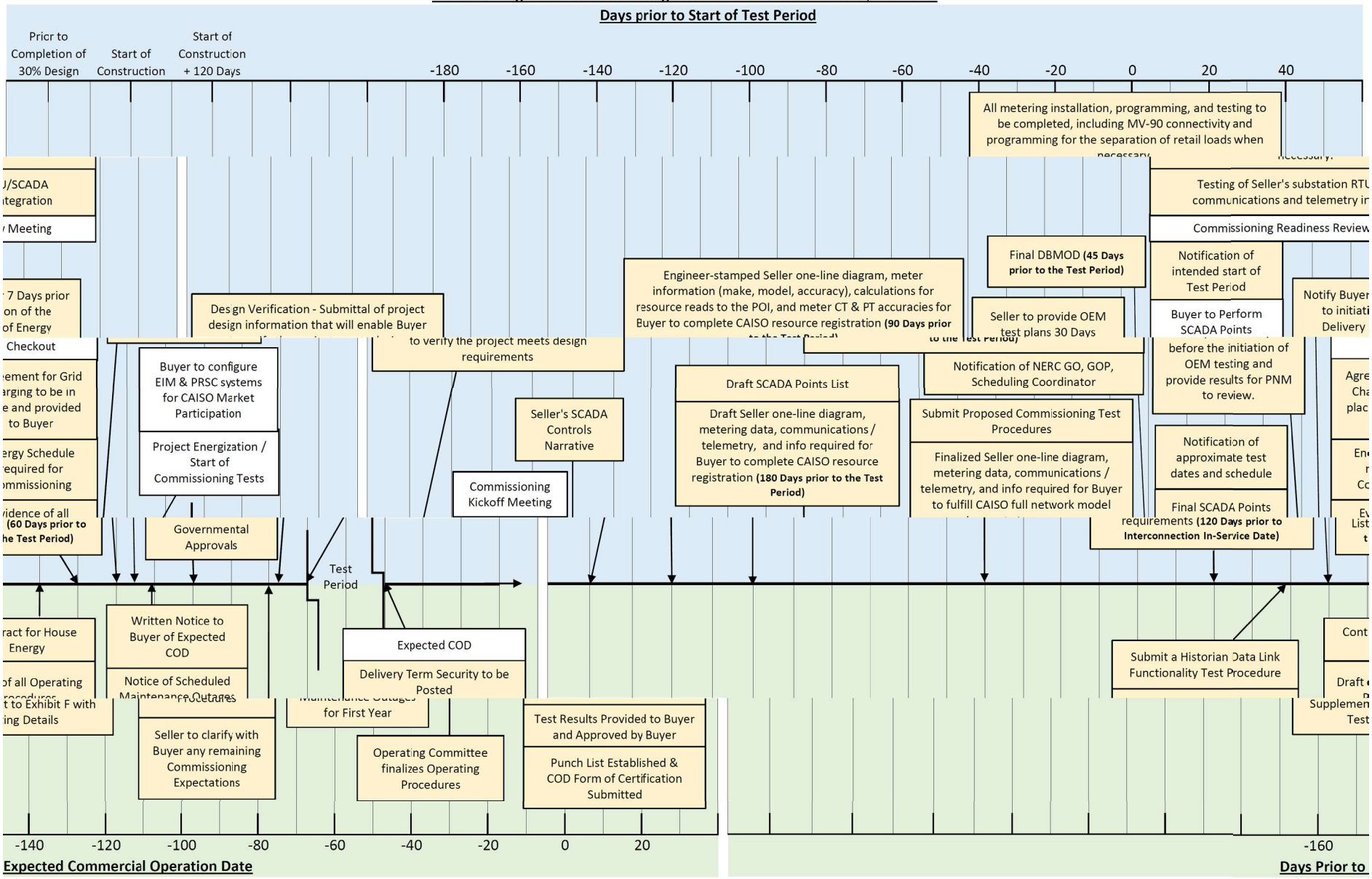
Requirement	Description	Responsible Party	Contributor(s)	Timeline for initial delivery
Power Operations & WPM Systems configuration	EIM Market Performance Group (PowerOps) & Participating Resource Scheduling Coordinator (WPM) systems are configured by Buyer teams to represent ESS resources for CAISO market participation.	**PowerOps & WPM IT Support**	Seller	Prior to the beginning of the scheduled Test Period
Agreement for Grid Charging during testing	During testing/commissioning of facilities, agreements need to be in place with a copy provided to Buyer to allow and plan for grid charging of batteries during the testing process. These agreements will clearly define WPM, GO, GOP or their SC, BA, TO and TOP.	**Seller**	Generation Engineering	Must be complete 30 Days prior to the beginning of the scheduled Test Period.
Operating Procedure	Seller is required to provide a draft of facility operating procedures. Buyer primary reviewers are Power Operations – System Operations Managers and Generation Engineering.	**Seller**	PowerOps	90 Days prior to the Commercial Operation Date
	An operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable, final written Operating Procedures for integration of the Project into Buyer's system.	**Seller/Buyer**	Seller / PowerOps / Generation Engineering	30 Days prior to the Commercial Operation Date
OEM Test Plan	The Seller and OEM are responsible for OEM equipment and system testing. These tests shall validate all physical equipment testing requirements. Seller shall provide manufacturers' test plans and provide results for Buyer to review. Buyer may be an observer for these tests and shall be provided with the results.	**Seller**	Generation Engineering	Test plans required 30 Days before the initiation of the OEM Test Plan, all OEM related testing must be completed prior to declaring COD
Test Energy Plan & Schedule	Buyer Testing requirements defined in this document and Exhibit F – Commissioning and Annual Tests of the associated agreement shall be incorporated into the Seller's testing plan. The energy schedule for commissioning and performance testing must provide hourly or sub-hourly power flow estimates associated with each test and any changes to scheduled testing in real time must be coordinated with Power Operations and WPM. It is a critical input for WPM and Power Operations to account for energy in their scheduling and operating plans.	**Seller**	Generation Engineering	Seller shall provide its planned energy schedule 30 Days before the beginning of the scheduled Test Period.
Commissioning Readiness Review Meeting	Generation Engineering will schedule a meeting with all commissioning stakeholders (Buyer & external) to confirm that all requirements have been met to advance the project to the commissioning phase. Additional details are provided in: Attachment 2: Commissioning Readiness Review	**Generation Engineering**	Seller, PowerOps	30 Days prior to the beginning of the scheduled Test Period

Exhibit O - Figure 1: Commissioning Process - Seller Submittal Requirements



accordance with the above schedule requirements

Seller shall submit and be responsible for all items indicated in gold in
Seller shall otherwise support and participate in all identified activities

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Section 3.3 Commissioning.

The commissioning phase involves sequenced testing to ensure each Project component is functioning to specification with component and system level measurement and communication ("**Communications and Telemetry Integration Testing**") and performance verification ("**Performance Testing**"). Communications and Telemetry Integration Testing demonstrates that PowerOps can issue commands to and receive feedback from the Project. Communications and Telemetry Integration Testing shall consist of the following events. Additional information on these tests is provided in Exhibit F of the Agreement.

- SCADA Functionality Test: This test will demonstrate the connectivity and functionality of Supervisory Control and Data Acquisition (SCADA) points and shall include both primary and backup sources.
- Automatic Generation Control (AGC) Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.
- Voltage Setpoint Functionality Test: This test will occur after energization and will involve on-site personnel, PowerOps engineers, and Buyer's operators.

- Historian Data Link Functionality Tests: This test will validate the functionality of the transfer of SCADA points which are used for monitoring and analysis, but not necessarily for Energy Management System control.

Seller shall perform Commissioning Communications and Telemetry Integration Tests in accordance with Exhibit F - Commissioning and Annual Tests.

Performance testing shall be performed to assess simulated and actual performance of the whole system against all expected use cases and measurable commercial requirements. Initial Commissioning Performance Tests shall be performed to verify initial capacity and provide a benchmark and repeatable test pattern to run annually (according to the Agreement) and can be instrumental in tracking capacity guarantees or addressing premature degradation.

The testing plan for this phase must be approved by Buyer (Generation Engineering, WPM, and PowerOps) prior to initiation of testing as many tests will require substantial power and energy flows, which need to be accounted for in scheduling and dispatch.

For Seller's commissioning activities that require Buyer scheduling of energy delivery, Seller's failure to advise Buyer of any change to the planned timing of commissioning activities prior to 48 hours in advance of the change may result in an inability of Seller to conduct testing. Any such delay in commissioning activities as a result of late notification will be to Seller's account.

Seller shall perform Commissioning Performance Tests in accordance with the requirements of Exhibit F - Commissioning and Annual Tests.

Section 3.4 Final Requirements Prior to COD.

Following the completion of testing, Buyer's Contract Manager will continue to track the completion of several items prior to the Commercial Operation Date. Seller shall work with

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Buyer's Contract Manager to ensure the completion of the following items:

- Completion of Interconnection Agreement requirements
- Review of Testing Results:
    - Seller shall provide testing results for Buyer's review and approval. Buyer's Contract Manager will receive and distribute testing results to internal Buyer teams.
    - Buyer teams responsible for review and approval of testing results include:
        - SCADA / Telemetry – Power Operations
        - AGC & DERMS – Power Operations
        - Capabilities Tests – Generation Engineering
        - Performance Tests – Generation Engineering
- Project Acceptance Checklist: Buyer's Contract Manager's "punch list" for contract requirements.
- Final Operating Procedures: developed by an operating committee consisting of Seller and Buyer representatives.

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ATTACHMENT 1 TO EXHIBIT O

BUYER'S ENGINEERING REQUIREMENTS FOR COMMISSIONING

The Seller shall provide all the following information to Buyer's Contract Manager and the Power Operations team in accordance with this Exhibit and the Project Schedule.

1. Resource information – required for CAISO registration and due to Buyer 90 Days prior to the beginning of the Test Period:

    a. Nameplate values: MW, MWh, round trip efficiency, etc.

    b. Capability curve: or "D-curve", 10-point curve showing reactive power capability if voltages are too high or low. This should come from the OEM, or Seller if it changes after all systems are integrated.

2. SCADA Check Out: All telemetry from Seller shall be provided from both a primary and backup data source. The primary and backup telemetry communication paths must be independent of one another with no single point of failure.

    a. Seller's SCADA team shall provide a list of available points. Buyer's PowerOps team can exchange examples from previously commissioned projects, to provide an example of expected points if needed. Seller shall make a draft SCADA points list available to Buyer by no later than 180 Days prior to the beginning of the scheduled Test Period.

    b. Additional SCADA points may be requested by Buyer's PowerOps team depending on the scope of the project. Seller shall make a final SCADA points list available to Buyer by no later than 60 Days prior to the beginning of the scheduled Test Period.

    c. Buyer's PowerOps team will perform a check out of Seller's SCADA points 30 Days prior to the beginning of the scheduled Test Period; both primary and backup communication paths shall be checked out and verified.

    d. Telemetry for Seller's substation awareness shall include:

        - Generation side switches (89-xx1) & breakers (52-Fxx) status
        - Transmission: 89-tie switch status
        - Analog values: (if available, send accumulators as an analog SCADA point)
            - Transformer high and low side measurements
            - ESS total gross values and total net values (in both MW and MVAr)

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- Gross and net values shall be provided for each resource registered with CAISO
- Point of Delivery values – MW, MVAr
- AGC setpoints for ESS and voltage setpoint. As well as the feedback for those setpoints.

- Total ESS cycle count
- Total ESS State of Charge (SOC) in both percent and MWH
- Total real power target

- Total full charge energy
- Total nominal energy
- Total energy Rem full power
- Total max charge power

e. Meteorology data: Seller shall provide meteorology data with the provided SCADA points.

3. DERMS Workbook inputs:
   a. Seller shall provide required information for the DERMS, including:
      - SCADA keys, resource characteristics, meteorology, etc.
      - Buyer's PowerOps shall be able to collect all EMS-DERMS workbook data through steps 1 & 2 above. If any gaps remain in the DERMS workbook, Seller shall be required to provide remaining data to Buyer's PowerOps team prior to the beginning of the Test Period. Buyer shall be required to provide expected DERMS workbook points prior to commencement of 2.a of this Attachment 1.

4. Testing for all AGC and voltage setpoints as defined in Exhibit F. Buyer's PowerOps team will test that the setpoints function as expected and that the units respond accordingly to a given setpoint request.

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ATTACHMENT 2 TO EXHIBIT O

COMMISSIONING READINESS REVIEW

Seller and Buyer shall participate in a Commissioning Readiness Review Meeting thirty (30) Days prior to the initiation of the Test Period to ensure that the Project is in a condition to support the planned commissioning and testing activities. The Parties shall ensure that for any test to be performed, the following are defined or established:

1. The purpose of the planned test.
    a. The parameter(s) / requirement(s) that is/are being verified/validated during the test.
    b. The procedure for validating such parameter(s) / requirement(s).
2. The equipment/system being tested (subsystem, system, a system of systems, other).
3. Verification that the configuration of the system under the test is sufficiently mature, defined, and representative to accomplish the planned test objectives and or support the defined program objectives.
4. Confirmation that everything is in place to begin testing.
    a. The configuration of the system is stabilized.
    b. All planned preliminary, informal, functional, unit level, subsystem, system, and qualification tests have been conducted with satisfactory results.
    c. Any deficiencies detected in the system have been addressed.
5. The expected result and how the test evaluation results might affect the program.
6. Proper resourcing of the planned test (people, test articles or articles, facilities, data systems, support equipment, logistics, etc.).
    a. Identification of personnel required and their roles.
    b. Identification of technical resources that are critical for testing (e.g. communication networks)
    c. Verification that technical resources have been tested prior to commissioning activities.
7. The risks associated with the tests and the associated risk mitigation measures.
    a. Identification of the hazards and risks associated with the specific testing.
    b. Necessary safety measures from the Project Manager to developmental and

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operational testers prior to any test using personnel.

8. The fallback plan should a technical issue or potential showstopper arise during testing.

    a. The test director will decide if an issue is a showstopper.

9. A test plan previously submitted by Seller with associated test procedures which have been reviewed and approved by Buyer. Such test plan and procedures should address all of the above items.

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EXHIBIT P

FORM OF LENDER CONSENT

CONSENT AND AGREEMENT

This Consent and Agreement (this "***Consent***") is made and entered into as of _____ __, 20__, by and between _____ ("***Buyer***"), and _____ ("***Lender***").

RECITALS

_____ ("***Seller***"), has entered into that certain Loan Agreement, dated as of ___ __, 20__ (as amended, restated, supplemented, or otherwise modified from time to time, the "***Loan Agreement***"), with Lender in order to finance construction of a photovoltaic wind electric energy generating facility owned by Seller and located in ____, [STATE] (the "***Project***").

Seller and Buyer have entered into that certain Environmental Attributes Purchase Agreement, dated as of ____ (as amended, restated, supplemented or otherwise modified from time to time, the "***ESA***"), relating to the energy generated by the Project.

As part of the transactions contemplated by the Loan Agreement, Lender has received a pledge of all the limited liability company interests in Seller (the "***Pledged Equity***"), and Seller has collaterally assigned all of its rights, title and interests in, to and under the ESA (the "***Pledged ESA***", collectively with the Pledged Equity, the "***Assigned Interest***") to Lender.

AGREEMENTS

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

1. Consent to Assignment. Buyer hereby consents to the collateral assignment by Seller to Lender of the Pledged ESA and the pledge to Lender of the Pledged Equity and acknowledges the right of Lender to exercise Lender's rights and remedies as a secured creditor with respect to the Assigned Interest.

2. Pledged ESA Step-In. "*Subsequent Seller Requirements*" means an entity that (a) is acceptable to Buyer; (b) is not involved, and has no Affiliate involved, in any state or federal litigation or regulatory proceeding adverse to Buyer or any Affiliate of Buyer; (c) has, or has retained, a reputable entity acceptable to Buyer that has, at least five (5) years' experience in the operation and maintenance of wind energy facilities of comparable size to the Project and the ability perform all aspects of the ESA; (d) has agreed in writing to be bound by the ESA and to assume all of Seller's obligations under the ESA; and (e) is not a Sanctioned Person. Buyer agrees that, if Lender has elected to exercise its rights and remedies to proceed against the Pledged ESA, and has so notified Buyer, then, if and only if (i) the hereinafter-defined Subsequent Seller meets all of the Subsequent Seller Requirements, (ii) Buyer is holding, and will be holding as of and after the date of assignment, the Facility Development Security Amount or the Operational Security, as

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applicable, and (iii) Buyer has not terminated this ESA pursuant to the terms thereof and of this Consent, then Lender or any assignee or designee of Lender, including Lender or any purchaser in a foreclosure sale or in lieu of foreclosure of the Pledged ESA (a "*Subsequent Seller*"), may be substituted for Seller under the ESA and Buyer shall recognize such Subsequent Seller as its counterparty under the ESA and, subject to all rights and remedies of Buyer under the ESA, continue to perform its obligations under the ESA in favor of such Subsequent Seller. Lender shall have no liability or obligation under the ESA as a result of this Consent except if Lender becomes a Subsequent Seller. Any Subsequent Seller succeeds to the interests and obligations of Seller and must comply with the ESA. The transfer of the ESA from Seller to a Subsequent Seller does not relieve or discharge Seller of its obligations and liabilities to Buyer which accrued prior to the date of such transfer.

3. Change of Control. Buyer hereby consents to both (i) the pledge of the Pledged Equity to Lender as part of the transactions contemplated by the Loan Agreement, and (ii) the transfer of such Pledged Equity, in connection with such an exercise of Lender's remedies against the Pledged Equity, to a Subsequent Seller that meets the Subsequent Seller Requirements, provided that Lender provides written notice to Buyer in advance of any such transfer.

4. Notice of Default. If Seller defaults in the performance of any of its obligations under the ESA, Lender may cure such default by the deadline provided therefor in the ESA. Buyer will not terminate the ESA before providing notice to Lender and giving Lender the opportunity to cure such default as follows: (a) with respect to payment defaults, or a default under Section 12.1(B)(1) of the ESA, before the later of (i) ten (10) business days after Buyer's delivery of notice to Lender of such default or (ii) five (5) business days plus the number of days in the applicable cure period provided Seller in the ESA, (b) with respect to a default under Section 12.1(B)(8) or 22.21(A), (B), (C) or (E) of the Agreement, five (5) days after the later of (i) Buyer's delivery of notice to Lender of such default and (ii) Seller failing to cure such default, and (c) with respect to other defaults (except those set forth in Section 12.1(A)(4), 12.1(A)(6), 12.1(A)(7), 12.1(A)(8), 12.1(A)(9), 12.1(C)(1), or 12.1(C)(6) of the ESA, for which no notice or extension is promised by Buyer herein), within the greater of (i) ninety (90) days or (ii) thirty (30) days plus the number of days in the applicable cure period provided Seller in the ESA following delivery of such notice from Buyer to Lender; provided, however, that such cure period in clause (c) may be extended by a reasonable period of time, not to exceed an additional ninety (90) days (or, with respect to an Event of Default under Section 12.1(C)(4) of the ESA, to a date that is no greater than ninety (90) days after Buyer's delivery of notice to Lender of such default), if Lender has commenced and is diligently pursuing appropriate action to cure such non-monetary default; provided further, that to the extent that such default permits Lender to foreclose on its security interests in the Assigned Interest and Lender needs to gain possession of the Project in order to perform such cure, Buyer will allow an additional reasonable amount of time, not to exceed sixty (60) days, to permit Lender to do so.

5. ESA Termination. Buyer agrees that it shall not, without Lender's prior written consent, mutually agree with Seller to a voluntary termination of the ESA; provided that notwithstanding the foregoing, Buyer may terminate the ESA without Lender consent due to an uncured Event of Default under the ESA after the expiration of Lender's rights to cure under Section 4 hereof.

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6. No Setoff. Notwithstanding any provision to the contrary set forth in this Consent, Lender may not use the Consent or any other setoff or other right set forth in the ESA as a basis for any action under, or nonperformance of, its obligations under any letter of credit naming Buyer or any affiliate as beneficiary, with respect to which the terms of such letter of credit shall control.

7. Certifications of Buyer. Buyer hereby certifies to Lender, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Consent and the ESA have been duly authorized by all necessary corporate action on the part of Buyer, (ii) each of this Consent and the ESA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the ESA and the Acknowledgment of Consent and Agreement (attached hereto) with respect to this Consent are the only agreements between Seller and Buyer, (iv) a true and correct copy of the ESA is attached hereto as *Exhibit A* and the ESA has not been further amended, (v) Buyer is not in default of any of its obligations under the ESA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, Seller is not in default of any of its obligations under the ESA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, there are no material disputes between Buyer and Seller under the ESA, (viii) Buyer has not assigned any interest it has in the ESA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the ESA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or insolvency laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, Governmental Authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the ESA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, no event of Force Majeure has occurred, and (xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the ESA, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the ESA.

8. Replacement Agreement. If the ESA is rejected or terminated by the Seller or its estate in possession as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Seller, Buyer will, at the option of Lender exercised by providing written notice thereof to Buyer within forty-five (45) days after such rejection or termination, enter into a new agreement with Lender (or its designee or assignee) having identical terms as the ESA (subject to any conforming changes (none of which may include limitation of Buyer's remedies) necessitated by the substitution of the seller entity); provided that the following conditions shall apply: (i) the seller under the new agreement must meet the Subsequent Seller Requirements; (ii) the term under such new agreement shall be equal to the remaining balance of the term specified in the ESA and (iii) Lender (or its designee or assignee) shall have cured any then-existing payment or performance defaults by Seller under the ESA (other than the bankruptcy of Seller or a transfer of the Project to Lender, or of Seller to Lender, that was in connection with Lender's foreclosure thereupon and in compliance with this Consent but that was not in compliance with Section 18.6 (Assignment to Lenders) of the ESA).

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9. Notices. All notices given under this Consent shall be in writing and shall be deemed effectively given: (a) upon personal delivery to the party to be notified; (b) one business day after deposit with a reputable overnight courier, prepaid for overnight delivery and addressed as set forth below, with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below; provided that the sending party receives a confirmation of delivery from the overnight courier service; or (c) three (3) business days after deposit with the U.S. Post Office, postage prepaid, certified with return receipt requested and addressed to the party to be notified at the address indicated for such party below with a copy of the notice simultaneously emailed to each applicable recipient at the email address shown below. The parties may designate alternative notice addresses upon ten (10) days' advance written notice to the other parties:

If to Seller:
With a copy to:
If to Buyer:
With copies to: [_____]

And a copy to:

If to Lender:
With a copy to:

10. Successors and Assigns. This Consent shall be binding upon Buyer and Seller and their permitted successors and assigns.

11. Termination. Upon the satisfaction in full of Seller's obligations under the Loan Agreement (other than contingent indemnification and reimbursement obligations that survive repayment of the loans and advances, interest fees and other amounts owed under the Loan Documents): (a) Lender shall notify Buyer of such fact and (b) this Consent shall terminate without further action of the parties hereto. Additionally, upon Lender's consummation of all of its remedies available under this Consent, this Consent shall terminate without further action of the parties hereto.

12. Waiver of Right to Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS CONSENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

13. Governing Law. This Consent will be governed by and construed in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law.

14. Severability. If any provision of this Consent or the application thereof is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining

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provisions hereof, or the application of such provision to the parties hereto or circumstances other than those as to which it has been held invalid or unenforceable, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby, so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party by the invalidity, unenforceability or nullification of the offensive provisions.

15. Amendment. This Consent may not be amended, modified, or changed in any respect except by an agreement in writing signed by Lender and Buyer. Nothing in this Consent amends or modifies the ESA.

16. Counterparts; Rules of Construction; Definitions. This Consent may be executed in one or more counterparts, each of which will be an original and all of which, when taken together, will constitute one and the same original agreement. All references made (a) in the neuter, masculine, or feminine gender are made in all such genders, and (b) in the singular or plural includes the plural or singular number as well. Any capitalized term used but not defined herein is defined in the ESA.

17. Third Party Rights. Nothing in this Consent, expressed or implied, is intended or shall be construed to confer upon, or give to any Person, other than Buyer and Lender, respectively, rights, remedies or claims, legal or equitable, under or by reason hereof, or any covenant or condition hereof; and this Consent and the covenants and agreements, here contained are and shall be held for the sole and exclusive benefit of Buyer and Lender.

18. Seller Acknowledgement of Consent and Agreement. Buyer's obligations under this Consent are conditioned upon the execution and delivery by Seller to Buyer of the Acknowledgment of Consent and Agreement attached hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be duly executed and delivered by their duly authorized signatories as of the date first above written.

[BUYER]

By: _____
Name:_____
Title:_____

[LENDER]

By _____
Its _____

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ACKNOWLEDGEMENT OF CONSENT AND AGREEMENT

Reference is made to the Consent and Agreement dated as of _____ (the "Consent and Agreement") between _____ (as "Buyer"), and _____ (as "Lender"). _____ (as "Seller" under the ESA) (as defined in the Consent and Agreement) hereby directs Buyer to pay any amounts payable by Buyer under the ESA, as and when required under the ESA, pursuant to the payment instructions delivered and effective as of or proximate to the date hereof, from Seller to Buyer, or as may otherwise be specified from time to time by Lender or Seller to Buyer in writing. Any payment made to Seller or as Buyer in good faith believes to have been directed by Seller or Lender shall discharge any obligation of Buyer to Seller with respect to the making of such payment. Seller, by its execution of this Acknowledgment of Consent and Agreement, acknowledges and agrees that, notwithstanding any term to the contrary in the ESA, Buyer and Lender may perform all acts or obligations as set forth in the Consent and Agreement, and Buyer may perform as set forth herein or as otherwise purportedly instructed by Lender, including, without limitation, the manner and place of any payments to be made by Buyer that would otherwise be required pursuant to the ESA, and further agrees and consents to the various agreements made by Buyer in the Consent and Agreement, issues or confirms the instructions contained in the Consent and Agreement or herein or as hereafter issued by Seller or Lender, agrees to indemnify Buyer for any damages or liabilities suffered in the performance of the Consent and Agreement or such instruction; and further agrees that none of the execution of the Consent and Agreement, the performance by Buyer or Lender of any of their respective obligations thereunder, the exercise of any of the rights of Buyer or Lender thereunder, or the acceptance by Buyer of performance of the ESA by any party acting at the direction of Seller, Lender, or a Subsequent Seller shall subject Buyer to liability to Seller or release Seller from any obligation of Seller under the ESA. Seller acknowledges that Buyer need not enter into any agreement in the nature of the Consent and Agreement with any of Seller's other lenders prior to the termination of the Consent and Agreement. Nothing in this Acknowledgment of Consent and Agreement or in the Consent and Agreement amends or modifies the ESA. Seller shall have no rights against Buyer, under the ESA or otherwise, arising out of or on account of the Consent and Agreement or Buyer's performance (or nonperformance) thereunder or of the instruction.

Agreed to and Accepted:

[SELLER]
By:
Its:

Date:

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EXHIBIT Q

FORM OF ESTOPPEL CERTIFICATE

ESTOPPEL CERTIFICATE

This Estoppel Certificate ("***Estoppel***") is dated _____ __, 20__. Reference is made to that certain Power Purchase Agreement, dated as of _____ (the "***ESA***"), by and between _____ ("***Buyer***"), and _____ ("***Seller***") concerning output of a energy storage facility owned by Seller and located in ____ . This certificate is delivered by Buyer to _____ ("***Investor***") and _____ as Administrative Agent ("***Administrative Agent***"). Capitalized terms used but not defined herein are defined in the ESA.

Buyer certifies, as of the date hereof, that (i) the execution, delivery and performance by Buyer of this Estoppel and the ESA have been duly authorized by all necessary action on the part of Buyer, (ii) the ESA is in full force and effect and constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles, (iii) the ESA and the Acknowledgment of Consent and Agreement dated _____ are the only agreements between Seller and Buyer, (iv) a true and correct copy of the ESA is attached hereto as *Exhibit A* and the ESA has not been further amended, (v) solely to the best of the actual knowledge of its employees responsible for administering the ESA, Buyer is not in default of any of its obligations under the ESA, (vi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, Seller is not in default of any of its obligations under the ESA, (vii) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, there are no material disputes between Buyer and Seller under the ESA, (viii) Buyer has not assigned any interest it has in the ESA, and Buyer has no notice of, and has not consented to, any previous assignment by Seller of all or any part of its rights under the ESA, (ix) there are no actions pending against Buyer as a debtor under any federal or state bankruptcy or any other similar laws, (x) there are no proceedings pending or, to Buyer's knowledge, threatened against or affecting Buyer before any court, Governmental Authority, or arbitration board or tribunal which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under the ESA, (xi) solely to the best of the actual knowledge of its employees with responsibility for administering the ESA, no event of Force Majeure has occurred, and [(xii) subject to Seller's obligation to declare the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, solely to the best of the actual knowledge of Buyer's employees with responsibility for administering the ESA]*[omit if estoppel delivered after COD]*, no event or condition exists that would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Buyer or Seller to terminate or suspend its obligations under the ESA. Buyer disclaims any obligation to advise Investor or Administrative Agent of any changes to the foregoing.

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IN WITNESS WHEREOF, the undersigned has caused this Estoppel to be signed by its authorized signatory as of the date first set forth above.

[BUYER]

By: _____
Name:_____
Title:_____

Gridworks Inc. Build-Transfer Agreement

PNM Exhibit GBB-12

Is contained in the following 144 pages.

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BUILD-TRANSFER AGREEMENT

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

GRIDWORKS INC.

dated APRIL 30, 2026

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BUILD-TRANSFER AGREEMENT

This BUILD-TRANSFER AGREEMENT is made and entered into as of this 30th day of April, 2026 (the "Effective Date"), by and between Public Service Company of New Mexico, a New Mexico corporation ("Owner") and Gridworks Inc., a New Mexico corporation ("Contractor"). Each entity is sometimes individually referred to herein as a "Party" and the entities are sometimes collectively referred to herein as the "Parties."

RECITALS

WHEREAS, Owner is developing a natural gas fueled reciprocating internal combustion engine power generation facility power generation facility with a proposed Guaranteed Capacity of forty (40) MW located in Valencia County, New Mexico, as more particularly described herein;

WHEREAS, Owner desires to engage Contractor to design, engineer, procure, install, construct, test and commission the Project for the Contract Price, and Contractor desires to provide such services, all in accordance with the terms and conditions set forth in this Agreement; and

WHEREAS, Contractor has inspected the real property on which the Project shall be constructed and performed or reviewed such other investigations, studies, and analyses which Contractor has determined to be necessary or prudent in connection with entering into this Agreement.

NOW, THEREFORE, in consideration of the sums to be paid to Contractor by Owner and of the covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS AND RULES OF INTERPRETATION

1.1. Definitions.

For the purposes of this Agreement, the following terms shall have the following meanings:

"**Abandon**" means Contractor's failure or refusal, other than in the event of or resulting from a Force Majeure Event, Change in Law, or Owner-Caused Delay, to continue to diligently pursue or substantially perform the Work for a period longer than thirty (30) consecutive Days and during which period Contractor has, in breach of its obligations under this Agreement: (a) suspended its operations at the Site; (b) reduced personnel at the Site; (c) removed required equipment from the Site; and (d) otherwise conducted its operations such that Contractor would not be capable of maintaining progress sufficient to achieve Substantial Completion of the Project by the Substantial Completion Guaranteed Date.

"**AC**" means alternating current.

"**Acceptance Tests**" means the Performance Tests, Emissions Tests, Functional 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 H.

"**Acceptance Tests Procedures**" means the written test procedures, standards, protective settings, and the testing program for the Acceptance Tests as set forth in Exhibit H.

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"**Affiliate**" means, with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is under common control with, or is controlled by such specified Person. For purposes of this definition, "control" means, with respect to any Person, the ability to control, influence or limit, directly or indirectly, the operations, business decisions or policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

"**AGC**" stands for "Automatic Generation Control" and means energy management system equipment that automatically adjusts the quantity of electric generation from the Project, including communication circuits to communicate Project operating information to Transmission Provider's representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

"**Agreement**" means this Build-Transfer Agreement, including all Exhibits and attachments hereto, as the same may be modified, amended or supplemented from time to time in accordance with the terms hereof.

"**Aggregate LD Cap**" has the meaning set forth in Section 30.2(e).

"**Ancillary Services**" means operating reserves, regulation, black-start capability, reactive supply, voltage control, frequency response, and other products associated with electric generation and Energy, each to the extent that the Project is capable of providing such services.

"**Applicable Law**" means and includes any statute, license, law, rule, regulation, code, ordinance, judgment, injunction, arbitral award, decree, writ, legal requirement or order, of any national, federal, provincial, tribal, state or local court or other Governmental Authority, and the official, written judicial interpretations thereof, applicable to (a) a Project, the Work, the Equipment, the Site or the Parties; (b) safety or the prevention of injury to persons or the damage to property on, about or adjacent to a Site or any other location where any other portion of the Work will be performed; (c) labor relations, employee relations, employment discrimination, affirmative action, employee benefits, fair labor standards, family and medical leave, immigration, payment of wages, prevailing wages, hours of employment or other terms and conditions of employment; (d) protection of human health or the environment in the performance of the Work; or (e) emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes into the environment which are generally recognized as governing the performance of the Work, the Project, or the Site, including, without limitation, ambient air, surface water, groundwater, or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, Hazardous Materials or other industrial, toxic materials or wastes, as now or may at any time hereafter be in effect.

"**Applicable Permit(s)**" means each national, state, local or other license, consent, waiver, appraisal, authorization, ruling, exemption, variance, order, judgment, decree, declaration, regulation, certification, filing, recording, permit (including, where applicable, conditional permits) or other approval with, from or of any Governmental Authority, including each and every environmental, construction, operating or occupancy permit, that is required by Applicable Law for the lawful performance of the Work by Owner or its Subcontractors as set forth in Exhibit C-1 and the Contractor-Acquired Permits set forth in Exhibit C-2.

"Apprentice Requirements" means the apprentice requirements in NMSA 1978, Section 62-13-16 (2023), summarized in Section 10.4.

"Apprenticeship Qualifying Work" means the portion of the Work (including any warranty work) that is subject to the Apprentice Requirements. For the avoidance of doubt, the Apprenticeship Qualifying Work requirements apply to any Laborers or Mechanics employed by Contractor or any of its Subcontractors engaging in construction, alteration or repair at the Project site or any secondary construction site or support site, including transportation of materials or supplies between locations within the Project site and a secondary construction site or dedicated support site and including any warranty repair work or other repair work for which Contractor is responsible under this Agreement.

"**Base Reference Conditions**" has the meaning set forth in Exhibit H-2.

"**Business Day**" means a day, other than a Saturday or Sunday or a public holiday, on which banks are generally open for the transaction of business in the City of Albuquerque, New Mexico.

"**Capacity**" means the power (expressed in MW as measured at the Point of Delivery) that can be generated and delivered from the Project, as determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit H-2.

"**Capacity Liquidated Damages**" means the amount calculated pursuant to Section 15.2.2 by multiplying the Contract Price by a fraction, the numerator of which shall be equal to the difference between the Guaranteed Capacity and the Tested Capacity and the denominator of which shall be equal to the Guaranteed Capacity.

"**Capacity Liquidated Damages Guarantee**" has the meaning set forth in Section 15.2.

"**Capacity Test**" has the meaning set forth in Exhibit H-2.

"**Change In Law**" means the enactment, adoption, promulgation, modification (including a written change in interpretation by a Governmental Authority), or repeal after the Effective Date of any Applicable Law that materially and adversely affects the Work, including, but not limited to, the imposition of, or any change in the imposition of, any export or import customs and other Taxes, tariffs and duties and other similar charges or fees levied or assessed by any jurisdiction; provided, however, that (a) a change in any national, federal, state or provincial income Tax law (or any other Tax law based on income), shall not be a Change In Law pursuant to this Agreement; and (b) the final enactment, modification, amendment or repeal of an Applicable Law prior to the Effective Date with an effective date of such action that falls after the Effective Date shall not be a Change In Law pursuant to this Agreement.

"**Change In Work**" means a change in the Work as defined in Section 16.1.

"**Change In Work Form**" means the form prepared in respect of a Change In Work in the form attached hereto as Exhibit Q.

"**Claim Notice**" has the meaning set forth in Section 23.6.

"**Commercially Reasonable Efforts**" means, with respect to any action required to be made, attempted or taken by a Party under this Agreement, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action; and (b) is consistent with Industry Standards and Applicable Law, taking into consideration the costs of such action (including whether such cost is reasonable), the amount of notice of the need to take such action, the duration and type of action and the commercial and regulatory environment in which such action occurs.

"**Commissioning Plan**" has the meaning set forth in Exhibit H-1.

"**Confidential Information**" has the meaning set forth in Section 24.1.

"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-1.

"**Contract Interest Rate**" has the meaning set forth in Section 6.8.

"**Contractor-Acquired Permits**" means the permits, approvals, consents and certifications that Contractor is required to obtain for the performance of the Work including those set forth in Exhibit C-2.

"**Contractor Credit Support**" means either the Performance Bond or the Warranty Bond or both of them, as the context requires.

"**Contractor Cure Period**" has the meaning set forth in Section 19.2.

"**Contractor Deliverable**" means all of the deliverables set forth on the Contractor Deliverables Table.

"**Contractor Deliverables Table**" means the table of Contractor Deliverables attached hereto as Exhibit B.

"**Contractor Event of Default**" has the meaning set forth in Section 19.1.

"**Contractor Financing Parties**" means (a) any and all lenders providing senior or subordinated construction, interim or long-term debt financing or refinancing to Contractor or its Affiliates or (b) any Person providing credit support to Contractor or its Affiliates, in each case, in connection with the Project or a portfolio of projects (including any other project that Contractor is developing for or on behalf of Owner or any Affiliate of Owner), and, in each case, any trustee or agent acting on Contractor's or its Affiliate's behalf.

"**Contractor Hazardous Materials**" has the meaning set forth in Section 27.1.

"**Contractor Indemnitee**" has the meaning set forth in Section 23.3.

"**Contractor Lien**" has the meaning set forth in Section 28.1.

"**Contractor's Invoice**" means an invoice from Contractor to Owner prepared by Contractor and in a form attached as Exhibit S.

"**Contractor's Project Manager**" means the project manager designated by Contractor pursuant to Section 3.4 or any other project manager appointed by Contractor, subject to the consent of Owner, which consent shall not be unreasonably denied or delayed.

"**Contractor's Safety Procedures**" means those procedures and protocols noted on Exhibit D.

"**Contract Price**" has the meaning set forth in Section 5.1.

"**Data Breach**" has the meaning set forth in Section 32.15.

"**Defect**" means, as the context requires, any Equipment, engineering, design or installation Work, in each case, that does not conform in any material respect to the standards set forth in this Agreement, the Statement of Work, Applicable Law or the Contractor Deliverables.

"**Defect Warranty**" means the warranties of Contractor under Section 17.1.1.

"**Defect Warranty Period**" has the meaning set forth in Section 17.2.1.

"**Delay LD Cap**" has the meaning set forth in Section 30.2(c).

"**Delay Liquidated Damages**" has the meaning set forth in Section 15.1.

"**Delay Notice**" has the meaning set forth in Section 8.2.1.

"**Design Warranty**" has the meaning set forth in Section 17.1.2.

"**Design Warranty Period**" has the meaning set forth in Section 17.2.2.

"Direct Costs" means, as it relates to any Work or Change in Work, the 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.

"**Disclosing Party**" has the meaning set forth in Section 24.1.

"**Dispute**" has the meaning set forth in Section 31.1.

"**Dollars**" means the lawful currency of the United States of America.

"**Effective Date**" has the meaning set forth in the preamble.

"**Energy**" means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, delivered to or received from the Project.

"**Equipment**" means all materials, supplies, apparatus, devices, equipment, machinery, tools, components, instruments and appliances (other than the Owner-Provided Facilities and Services) that are necessary for Contractor's performance of the Work and are to be incorporated into the Project, whether provided by Contractor or any Subcontractor.

"**Equipment Warranty Terms and Conditions**" means the terms and conditions set forth in Exhibit P.

"**Event of Default**" means either a Contractor Event of Default or an Owner Event of Default, as the context may require.

"**Excusable Event**" means an event that adversely affects Contractor's performance of the Work, to the extent such event is attributable to: (a) an Unforeseeable Site Condition, (b) a failure or disruption of the Project (or any system thereof) caused by an event (other than a Force Majeure Event, Change In Law or an Owner-Caused Delay) that is external to the Project and beyond the reasonable control of Contractor (such as a grid outage or disturbance), (c) the occurrence of a Change in Law, or (d) the occurrence of an Owner-Caused Delay.

"**Fence**" means the permanent fence for the Site to be provided by Contractor as set forth in Exhibit A-1.

"**FERC**" means the Federal Energy Regulatory Commission.

"**Final Completion**" means satisfaction by Contractor or waiver by Owner of all of the conditions set forth in Section 14.4 for Final Completion of the Project.

"**Final Completion Date**" has the meaning set forth in Section 14.5.

"**Final Contractor's Invoice**" has the meaning set forth in Section 6.9.

"**Final Payment**" has the meaning set forth in Section 6.9.

"**Force Majeure Event**" means any event, act, condition, or circumstance that prevents a Party from timely performing its obligations under this Agreement and that is not within the reasonable control of, or that is not the result of the negligence, willful and wanton misconduct or intentional misconduct of, the claiming Party and that, by the exercise of reasonable due diligence the claiming Party is unable to overcome or avoid or cause to be avoided. Depending on the facts and circumstances, the following may constitute such an event: including war, terrorist act, riots and public disorder, expropriation, confiscation or nationalization, customs detention or impounding, embargos, or port or canal closures, or blockage of exports of essential equipment by any Governmental authorities imposed after the Effective Date; the action or inaction of a Governmental Authority, fire, floods, explosion, epidemic, quarantine, unusually severe weather conditions that prevent or substantially hinder the safe performance of the Work at the Site or the manufacturing or delivery of equipment or supplies necessary for performance of the Work, or other acts of God including natural disasters, earthquakes, hailstorms, ice storms, tornados, typhoons, hurricanes, and landslides; provided, however, that the following shall not constitute a Force Majeure Event:

(a) with respect to Labor Disputes and labor matters, the following shall not constitute a Force Majeure Event: (i) any labor shortage affecting Contractor or any Subcontractor; (ii) any Labor Disputes involving strikes, walkouts, boycotts, or disturbances directed specifically at Contractor or any Subcontractors; or (iii) any labor disturbances, disputes, boycotts or strikes (whether primary or secondary in nature) involving Contractor or any Subcontractors taking place at the Site, or a facility of Contractor or any Subcontractors;

(b) mechanical or equipment failure (so long as such failure was not itself caused by a Force Majeure Event);

(c) normal climatic conditions based on a twenty-five (25) year daily, weekly or monthly weather event at the Site using data published by the National Oceanic and Atmospheric Administration, and with respect to frozen precipitation, the National Snow and Ice Data Center; and

(d) Owner's inability or failure to pay amounts due under this Agreement or to timely deliver any Owner-Provided Facilities and Services.

"Functional Guarantees" means those guarantees defined in Exhibit H as Functional Guarantees.

"**Functional Tests**" means the tests to evaluate guarantee compliance of the Project with the Functional Guarantees as set forth in the Functional Test Phase description in Exhibit H-2.

"**Governmental Authority**" means applicable national, federal, state, tribal, provincial, and local governments and all agencies, authorities, departments, instrumentalities, courts, tribunals, corporations, other authorities lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or other subdivisions of any of the foregoing having a regulatory interest in or jurisdiction over the Site, the Project, the Work or the Parties, including any non-governmental body administering, regulating or having general oversight over system reliability, safety, the environment, or gas, electricity, or power generation, distribution or transmission, including the North American Electric Reliability Corporation and the Western Electricity Coordinating Council.

"**Guaranteed Capacity**" has the meaning set forth in Exhibit H-2.

"**Guaranteed Heat Rate**" has the meaning set forth in Exhibit H-2.

"**Hazardous Materials**" means any chemical, substance or material regulated or governed by any Applicable Permit, or any substance, emission or material now or hereafter deemed by any Governmental Authority to be a "regulated substance," "hazardous material," "hazardous waste," "hazardous constituent," "hazardous substance," "toxic substance," "radioactive substance" or "pesticide".

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"**Heat Rate Liquidated Damages**" means the amount calculated pursuant to Section 15.3.2.

"**Heat Rate Liquidated Damages Guarantee**" has the meaning set forth in Section 15.3.

"**Indemnitee**" means an Owner Indemnitee or a Contractor Indemnitee, as the context may require.

"**Industry Standards**" means those practices, methods, techniques, standards and acts engaged in or approved by a significant portion of the regulated photovoltaic solar power generation industry in the United States, including the practices, methods, techniques, standards and acts which, in the exercise of reasonable judgment are expected to accomplish the result indicated in the Contract Documents consistent with good business practices, reliability, and safety in connection with the design, supply, construction, start-up, testing, and commissioning, or completion of similar work on projects of the same or similar size and type and at similar locations as the Project and the exercise of that degree of skill, diligence, prudence and foresight that would reasonably be expected from a skilled and experienced licensed engineer or contractor employing generally accepted professional standards with respect to the performance of the Work consistent with Applicable Laws, Applicable Permits, codes and standards, reliability, safety, environmental protection, economy and expediency, and that conform in all material respects to the design, engineering, construction, testing, and other recommendations and guidelines applicable to the Work. Industry Standards is not intended to be the optimum practice, method or acts to the exclusion of all others, but rather is intended to be any of the practices, methods or actions generally accepted in the United States that meet the foregoing standards. To the extent that the standards of construction, workmanship, Equipment and components specified in Exhibit A-1 exceed Industry Standards, then the standards imposed by this Agreement control.

"**Intellectual Property Claim**" means a claim or legal action for unauthorized disclosure or use or infringement of any trade secret, foreign or domestic patent or patent rights, copyright, trademark rights, service mark or other intellectual property (whether or not legally protected or protectable) arising out of Contractor's performance (or that of its Affiliates or Subcontractors) of the Work under this Agreement.

"**Intellectual Property Rights**" means all licenses, trade secrets, copyrights, patents, trademarks, proprietary information or other ownership rights necessary for the ownership, operation, maintenance and decommissioning of the Project.

"**Interconnection Agreement**" means the fully executed Standard Large Generator Interconnection Agreement (LGIA), including any subsequent additions and amendments, between Owner and Transmission Provider, attached hereto in Exhibit A-4.

"**Interconnection Metering Standard**" means the current metering standards approved by PNM at the start of construction.

"**Interconnection Substation**" means, as set forth in the LGIA, all facilities and equipment described in Appendix A of the LGIA, that are part of the Project and located between the Project and the Point of Interconnection, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Project to the Transmission Provider's Transmission System. With respect to the Project, this includes the generator-tie-in 115 kV transmission line and facilities that are designed, engineered, supplied, constructed, tested and commissioned as part of the Work to collect the feeds from the Equipment, to transform voltage, by means of 13.8 / 115 kVtransformer; and include the appropriate generation-tie-in protective relay equipment, fiber optical cable in conjunction with the transmission line, supporting structures, and all other components as required for electrical interconnection of the Project to the Transmission Provider at the Point of Interconnection / Change of Ownership as shown in Exhibit 3 to Appendix C to the LGIA.

"**Invention**" has the meaning set forth in Section 25.1.

"**Invoice Payment**" has the meaning set forth in Section 6.7.

"IRS" means the Internal Revenue Service or any successor agency.

"Issuer" means a United States surety or a foreign insurer with a United States branch as of the Date of Issuance and for so long as this Bond shall remain in effect, the surety has, and expects to continue to satisfy and maintain, a minimum corporate credit rating of "A-" with A.M. Best, "A-" with S&P, or "A3" with Moody's. Surety shall notify Obligee immediately if its credit rating is decreased.

"**kW**" means one or more kilowatts AC of electricity.

"**kWh**" means kilowatt hour AC.

"**Labor Dispute**" means work stoppages, slowdowns, strikes, disputes, disruptions, boycotts, walkouts and other labor difficulties.

"Laborers or Mechanics" is defined in IRS regulations at 26 C.F.R. Section 1.45-7(d)(8) as updated by any future IRS Guidance.

"Limited Notice to Proceed" or "LNTP" means any notice issued by Owner agreeable to the Parties under which Owner authorizes Contractor to commence the performance of Work prior to the Notice to Proceed Date.

"**Losses**" means, subject to Section 30, any and all actions, suits, judgments claims, demands, costs, charges, expenses, liabilities (including liabilities arising out of the application of the doctrine of strict liability), losses, penalties, injuries, interest or damages, whether arising in equity, at common law, or by statute, or under the law of contract, tort or property, of whatsoever kind and nature, including reasonable attorney fees, court or arbitration costs and fees, expert costs and fees, and expenses and costs of investigation.

"Major Subcontractor" means any Person, including any Supplier, other than Contractor or its Affiliates, that performs Work in excess of Two Hundred Fifty Thousand Dollars ($250,000) in furtherance of Contractor's obligations under this Agreement.

"**Mechanical Completion**" means that the Project is mechanically, electrically and functionally complete and ready for initial operations, adjustment and testing, except for Non-Critical Deficiencies; Mechanical Completion shall not occur before satisfaction of all the following: (a) all systems, including those required for the safe, routine and efficient operation and control have been constructed, tested, flushed, cleaned, and commissioned, (b) each of the Construction Tests has been successfully completed in the most recently run test, and (c) all systems have been placed into service for the purpose for which the Project is intended. Mechanical Completion of sequential Units will require that the above requirements be satisfied for all Equipment and systems required to support full load operation of that Unit as well as simultaneous full load operation of all other Units previously deemed as having satisfied Mechanical Completion.

"**Milestone Item**" means a discrete portion of the Work as set forth in Exhibit G.

"**Minimum Capacity Requirement**" has the meaning set forth in Section 14.2.

"**Minimum Heat Rate Requirement**" has the meaning set forth in Section 14.2.

"**Monthly Progress Report**" means a written monthly progress report prepared by Contractor in form and content consistent with Section 7.4, "Progress Reporting", or in a form and content as otherwise directed by Owner.

"**Must Meet Performance Guarantees**" means, as applicable, the Emissions Guarantees, Noise Performance Guarantees, Functional Guarantees and Facility Reliability Guarantees identified in Exhibits H-2, H-3, and V.

"**MV**" means medium voltage.

"**MW**" means megawatt or one thousand (1,000) kW AC.

"**MWh**" means megawatt hours AC.

"**NMPRC**" mean the New Mexico Public Regulation Commission or any successor agency having jurisdiction over Owner and the Project.

"**NMPRC Approval**" means the issuance of a final order by the NMPRC that (a) is no longer subject to legal or administrative appeal; and (b) approves this Contract (i) without materially excluding, limiting or delaying Owner's right to recover from its ratepayers full rate recovery of its costs incurred hereunder or thereunder, (ii) without making such approval subject to material adverse changes to either Party's ability to perform under the Agreement, and (iii) without imposing additional conditions unacceptable to either Owner or Contractor.

"**Non-Critical Deficiencies**" means an item of Work that: (a) Owner or Contractor identifies as requiring completion or containing Defects; (b) does not delay or impede the safe operation of the Project; (c) does not materially affect the capacity, efficiency, reliability, operability, safety or mechanical or electrical integrity of the Project; (d) is not material to the safe operation of the Project for the delivery of power through the Transmission Provider's Transmission System to Owner's customers; and (e) would not reasonably be expected to cost more than One Million Dollars ($1,000,000) in the aggregate to complete or remedy.

"**Notice**" or "**Notification**" means a written communication between authorized representatives of the Parties required or permitted by this Agreement and conforming to the requirements of Article 29.

"**Notice of Final Completion**" means a Notice from Contractor to Owner stating that Contractor has satisfied the requirements for Final Completion under Section 14.5.

"**Notice of Mechanical Completion**" means a Notice from Contractor to Owner stating that Contractor has satisfied the requirements for Mechanical Completion.

"**Notice of Substantial Completion**" means a Notice from Contractor to Owner stating that Contractor has satisfied the requirements for Substantial Completion under Section 14.3.

"**Notice to Proceed**" or "**NTP**" means a Notice signed by a representative of Owner to Contractor stating that NMPRC Approval and approval from the PNM Board of Directors has been received, authorizing Contractor to commence and complete all Work for the Project under this Agreement.

"**Notice to Proceed Date**" means the first Business Day after Owner provides Contractor with the Notice to Proceed for the Project.

"**Notify**" means to provide a Notice or Notification.

"**Operating 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.

"**Operating Personnel**" means the personnel designated by Owner, or by an entity providing operating services for Owner, to operate the Project, including all operators, instrument technicians, supervisors, and Owner's contractors (other than Contractor or any Affiliate of Contractor).

"**Owner**" has the meaning set forth in the preamble and shall include any of its permitted successors and assigns.

"**Owner-Caused Delay**" means, with respect to the Work, a delay in Contractor's performance of any material item of the Work or to the Work Schedule to the extent actually and demonstrably caused by the performance or failure to perform by Owner including but not limited to any failure by Owner to timely approve Contractor's submittals delivered in connection with this Agreement on or prior to the applicable date as provided in this Agreement (unless a deemed response to such notice is provided for hereunder); any interference in the Work by Owner or Owner's Separate Contractor(s); or, a delay of Owner to complete any of the Owner Critical Path Items, including the Owner-Provided Facilities and Services, such that Contractor can obtain back-feed power as required for commissioning of the Project and in compliance with the Work Schedule; or a delay of the Transmission Provider to timely perform the required work under the Interconnection Agreement necessary for Owner to timely complete and interconnect the Project, provided that such delay is not caused by Contractor.

"**Owner Critical Path Items**" means the items identified in Exhibit G as performance obligations of Owner.

"**Owner Directive**" shall have the meaning set forth in Section 16.7.

"**Owner Event of Default**" has the meaning set forth in Section 19.3.

"**Owner Financing Parties**" means (a) any and all lenders providing senior or subordinated construction, interim or long-term debt financing or refinancing to Owner; (b) any and all equity investors in Owner providing tax equity investment or leveraged lease-financing or refinancing (or any other equity investor that makes a capital contribution to Owner in cash or in kind); or (c) any Person providing credit support to Owner, in each case, in connection with the Project or a portfolio of projects and, in each case, any trustee or agent acting on Owner's behalf.

"**Owner Indemnitee**" has the meaning set forth in Section 23.2.

"**Owner-Provided Facilities and Services**" means, within the parameters set forth on Exhibit A-2, (a) the Transmission Provider's Interconnection Facilities, (b) the Project's rights-of-way and easements, and (c) other items to be provided by Owner pursuant to Exhibit A-2.

"**Owner-Provided Information**" means, with respect to the Project, the information or documentation provided by or on behalf of Owner as set forth in Exhibit A-3.

"**Owner Representative**" means the Owner's representative for the Project(s) designated by Owner pursuant to Section 2.1.

"**Owner's Certificate of Final Completion**" means a certificate of Owner certifying that Final Completion has occurred.

"**Owner's Certificate of Mechanical Completion**" means a certificate of Owner certifying that Mechanical Completion has occurred.

"**Owner's Certificate of Substantial Completion**" means a certificate from Owner certifying that Substantial Completion has occurred.

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"**Owner's Engineer**" means any engineering firm or firms or other engineer or engineers (which may be employee(s) of Owner) selected and designated by Owner.

"**Owner's Separate Contractors**" means each contractor or other Person that is in direct or indirect contractual privity with Owner and that performs any work in respect of the Project, but excluding Contractor and each Person in direct or indirect contractual privity with Contractor, including in such exclusion each Subcontractor.

"**Payment Schedule**" means the Payment Schedule attached hereto as Exhibit I.

"**Performance Bond**" means a bond in the form attached hereto as Exhibit M, issued by an Issuer in an amount equal to one hundred percent (100%) of LNTP amount, if applicable. Upon issuance of NTP, a Performance Bond equal to one hundred percent (100%) of the Contract Price at NTP will be provided, or such other performance security in form, amount and from an Issuer acceptable to Owner. Any performance bond issued in the amount of LNTP is solely for activities described in LNTP.

"**Performance Cure Period**" has the meaning set forth in Section 15.2, as may be adjusted under this Agreement.

"**Performance Guarantees**" has the meaning set forth in Exhibit H-2.

"**Performance LD Cap**" has the meaning set forth in Section 30.2(d).

"**Performance Tests**" means the tests for measuring the Performance Guarantees, the Minimum Performance Criteria, and other parameters as described in Exhibit H-2.

"**Performance Test Procedures**" means the written test procedures, standards, protective settings, and the testing program produced by Contractor and agreed to by Owner for the Performance Tests as set forth in Exhibit H-2.

"**Person**" means any natural person, corporation, company, voluntary association, partnership, incorporated organization, trust, limited liability company, joint venture, firm, unincorporated organization, or any other entity or organization, including any Governmental Authority. A Person shall include any officer, director, member, manager, employee or agent of such Person.

"**Point of Delivery**" or "POD" means, unless otherwise modified in accordance with Article 16 the electric system point at which (a) the Project delivers Energy to Transmission Provider, and (b) Owner makes the Ancillary Services available to Transmission Provider.

"**Point of Interconnection**" or "**POI**" means the point, as set forth in Appendix A to the LGIA, where the Project connects to the Transmission Provider's Transmission System shown in Exhibit 3 to Appendix C to the LGIA.

"**Power Plant Distributed Control System**" or "**DCS**" has the meaning set forth in Exhibit A-1.

"**Pre-Existing Contamination**" means any Hazardous Materials present at or under the Site, whether introduced before or after the Effective Date, that are not Contractor Hazardous Materials.

"**Preliminary Notice**" has the meaning set forth in Section 28.3.

"**Project**" means the complete La Luz 2 power generation facility project, high-voltage interconnection facilities, and the Interconnection Substation to be designed, procured, constructed, tested and commissioned under this Contract, together with all ancillary equipment and subsystems, all equipment, supplies and materials

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necessary to produce and deliver electric energy (including the Equipment), 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.

"**Proposed Punchlist**" has the meaning set forth in Section 14.1.1.

"**Punchlist**" has the meaning set forth in Section 14.1.1.

"**Punchlist Amount**" means the cost or estimated cost to complete any Punchlist item as approved or deemed approved by the Parties.

"Qualified Apprentice" means an individual who is employed by Contractor or any Subcontractor to perform Apprenticeship Qualifying Work at the Site or any secondary construction site or dedicated support site and who is participating in a Qualified Apprenticeship Program.

"Qualified Apprenticeship Program" means an apprenticeship program registered pursuant to the Apprenticeship Assistance Act [Chapter 21, Article 19A NMSA 1978].

"**Receiving Party**" has the meaning set forth in Section 24.1.

"**Remedial Plan**" means a plan prepared by Contractor regarding the actions to be taken and the schedule to remedy failures to meet the Performance Guarantees, Emissions Guarantees, Noise Guarantees, and Functional Guarantees for the Project, as submitted to and approved by Owner pursuant to Article 15.

"**Required Manuals**" means operation and maintenance manuals, spare parts manuals, 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 set forth in Exhibit B.

"**SCC**" has the meaning set forth in Exhibit A-1.

"**Site**" means the site of the Project, as more particularly described in Exhibit J.

"**Site Assumptions**" means the assumptions relating to the Site described in Exhibit L.

"**Site Conditions**" means the physical and other conditions at the Site and the surrounding area as a whole, including conditions relating to the environment, transportation, access, waste disposal, handling and storage of materials, the availability and quality of electric power, the availability and quality of water (including raw water), topography, ground surface conditions, subsurface geology, and nature and quantity of surface and subsurface materials (including Hazardous Materials).

"**Site Plan**" means the plan that is part of the design package for the Project to be developed by Contractor as set forth in Exhibit B.

"**Site Safety Officer**" has the meaning set forth in Section 3.12.

"**Statement of Work**" means the requirements regarding the Work set forth in Exhibit A-1.

"**Subcontractor**" means any Person, including any Supplier, other than Contractor or its Affiliates, that performs any portion of the Work in furtherance of Contractor's obligations under this Agreement.

"**Substantial Completion**" means the satisfaction of all of the conditions for the Project as set forth in Section 14.2.

"**Substantial Completion Date**" has the meaning set forth in Section 14.3.

"**Substantial Completion Guaranteed Date**" means the date which is set forth in Exhibit G as the Project Substantial Completion Date, as such date may be adjusted pursuant to the terms hereof.

"**Successfully Run**" means with respect to the Project, that (i) the Performance Tests were completed in accordance with the procedures, conditions and requirements for the proper performance of such tests set forth in Exhibit H-2, (ii) the results from the Performance Tests (taking into account any deviations from the Base Reference Conditions) demonstrate that the Project has successfully achieved at least the Minimum Guaranteed Capacity and Minimum Guaranteed Heat Rate as set forth in Exhibit H-2, (iii) the Emissions Compliance Tests were completed in accordance with the procedures, conditions and requirements for the proper performance of such tests set forth in Exhibit H-2, (iv) the results from the Emissions Compliance Tests demonstrate that each Unit and the Project have successfully achieved the Guaranteed Emissions as set forth in Exhibit H-2, and (v) the Functional Tests were completed in accordance with the provisions of Exhibit H-2 and demonstrated that the Project has satisfied the requirements of the Functional Tests.

"**Supervisory Control and Data Acquisition System**" or "**SCADA**" has the meaning set forth in Exhibit A-1.

"**Supplier**" means a Person that supplies Equipment directly to Contractor in connection with the performance of the Work.

"**Suspension for Cause**" has the meaning set forth in Section 20.3.2.

"**Suspension for Convenience**" has the meaning set forth in Section 20.3.1.

"**Taxes**" means any and all forms of taxation, charges, duties, imposts, levies and rates whenever imposed by any Governmental Authority, including sales tax, gross receipts tax, use tax, compensating tax, income tax, withholding taxes, corporation tax, franchise taxes, capital gains tax, capital transfer tax, inheritance tax, rates, water rates, value added tax, customs duties, capital duty, excise duties, betterment levy, stamp duty, stamp duty reserve tax, national insurance, payroll, social security or other similar contributions, and generally any tax, duty, impost, levy or rate or other amount and any interest, penalty, fine or other amount due in connection therewith.

"Tax Rate" means the combined statutory federal, state and local income tax rate of Owner.

"**Tested Capacity**" means the tested capacity for the Project as set forth in Exhibit H-2.

"**Third-party**" means any and all Persons that are not a party to this Agreement and in all cases excluding: (i) Owner Parties; (ii) any other contractors hired by Owner including operation or maintenance contractors of Owner; (iii) any entity (a) with an equity or security interest in Owner, or their assets or property or the Site, or (b) that seeks to claim any rights, power or privileges of Owner, or (c) that seeks to claim as a third party beneficiary of Owner; (iv) no portion of the Work is "Third-party" property for the purposes of indemnification; and (v) any individual or entity in contractual privity with Owner.

"**Transmission Provider**" has the meaning set forth in Exhibit A-1.

"**Transmission Provider's Interconnection Facilities**" or "**TPIF**" means, as set forth in the LGIA, all facilities and equipment owned, controlled or operated by the Transmission Provider from the transmission system up to the Point of Interconnection as identified in Appendix A to the LGIA and shown in Exhibit 3 to Appendix C to the LGIA, including any modifications, additions or upgrades to such facilities and equipment.

"**Unforeseeable Site Conditions**" has the meaning set forth in Section 12.1.

"**Unforeseen Protected Flora and Fauna**" means flora and fauna present at the Site which is subject to protection, restriction, special treatment or otherwise addressed under Applicable Laws, including the Endangered Species Act, the presence and specific location of which is not disclosed in the Owner-Provided Information.

"**Unit**" means a Jenbacher J624 engine, together with all associated balance of plant equipment.

"**Waiver and Release Upon Final Payment**" means a written statement of Contractor substantially in the form attached hereto as Exhibit F-1.

"**Waiver and Release Upon Progress Payment**" means a written statement of Contractor substantially in the form attached hereto as Exhibit F-2.

"**Warranty**" means the Defect Warranty or the Design Warranty, as the context requires.

"**Warranty Bond**" means a bond in the form attached hereto as Exhibit M, issued by an Issuer in an amount equal to ten percent (10%) of the Contract Price, or such other performance security in form, amount and from an Issuer acceptable to Owner.

"**Warranty Period**" means the Defect Warranty Period or the Design Warranty Period, as the context requires.

"**Work**" means all of Contractor's obligations set forth in Exhibit A-1.

"**Work Schedule**" means the work schedule for the Project, attached as Exhibit G, describing the time of completion by Contractor of the Milestone Items and describing the time of completion by Owner of the Owner Critical Path Items.

1.2. Exhibits.

This Agreement includes the Exhibits annexed hereto and any reference in this Agreement to an "Exhibit" by letter designation or title shall mean one of the Exhibits identified in the table of contents or otherwise identified in this Agreement and such references shall indicate such Exhibit herein. Each Exhibit attached hereto is incorporated herein in its entirety by this reference.

1.3. Interpretation.

(a) Terms defined in a given number, tense or form shall have the corresponding meaning when used in this Agreement with initial capitals in another number, tense or form. The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term and vice versa, and words denoting either gender shall include both genders as the context requires. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(b) The terms such as "hereof," "herein," "hereto," "hereinafter" and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole.

(c) When a reference is made in this Agreement to an Article, Section, subsection, preamble, recital, schedule or Exhibit, such reference is to an Article, Section, subsection, preamble, recital, schedule or Exhibit of this Agreement unless otherwise specified.

(d) The word "include," "includes," and "including" when used in this Agreement shall be deemed to be followed by the words "without limitation," and, unless otherwise

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specified, shall not be deemed limited by the specific enumeration of items, but shall be deemed without limitation. The term "or" is not exclusive.

(e) A reference to any Party to this Agreement or any other agreement or document shall include such Party's predecessors, successors and permitted assigns.

(f) The Parties have participated jointly in the negotiation and drafting of this Agreement. Any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any Party by virtue of the authorship of this Agreement shall not apply to the construction and interpretation hereof.

1.4. Headings.

All headings or captions contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

1.5. Conflicts in Documentation.

This Agreement, including the Exhibits hereto, shall be taken as mutually explanatory. If either Party becomes aware of an express conflict between the provisions of this Agreement or any Exhibit hereto, such Party shall immediately Notify the other Party of such conflict. In the event of a conflict between any provision within Articles 1 through 32 of this Agreement and an Exhibit, the provisions of Exhibits A and H shall take precedence over Articles 1 through 32 of this Agreement, which articles shall in turn take precedence over the remaining Exhibits.

1.6. Documentation Format.

This Agreement and all documentation to be supplied hereunder shall be in the English language and all units of measurement in the design process, specifications, drawings and other documents shall be specified in dimensions as customarily used in the United States.

2. RESPONSIBILITIES OF OWNER

Owner shall, at Owner's cost and expense:

2.1. Owner Representative.

Designate (by a Notice delivered to Contractor) an Owner Representative, who shall act as the single point of contact on behalf of Owner with respect to the prosecution and scheduling of the Work and any issues relating to this Agreement. Owner may designate a new Owner Representative from time to time by a Notice delivered to Contractor.

2.2. Operating Personnel.

Provide Operating Personnel with requisite plant operating experience to provide operating support to Contractor for the testing and commissioning of the Project as provided in Section 3.18.

2.3. Applicable Permits.

Fully comply with Applicable Laws and obtain and comply with all Applicable Permits, including those set forth in Exhibit C-1, but excluding the Contractor-Acquired Permits. Owner shall provide such reasonable non-financial assistance as Contractor may reasonably request in connection with obtaining any Contractor-Acquired Permits promptly after Contractor's request.

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2.4. Owner-Provided Information.

Provide the Owner-Provided Information and all information required to be provided by Owner pursuant to Exhibit A-3 for the Project to Contractor on or prior to the applicable date set forth on Exhibit A-3.

2.5. Owner's Separate Contractors.

Retain, at Owner's sole cost, determination and responsibility, Owner's Separate Contractors.

2.6. Access to Site.

Provide, as of the Notice to Proceed Date for the Project, reasonable access to the Site for the Work. Contractor shall comply with Contractor's Safety Procedures and with reasonable security procedures (if any) to the extent Owner has provided such security procedures to Contractor.

2.7. Cooperation.

Cooperate and cause Owner's Separate Contractors to cooperate with Contractor and the Subcontractors who may be working at or near the Site.

2.8. Interconnection.

Without limiting Contractor's responsibility for the performance of the Work hereunder, Owner shall make all arrangements with the Transmission Provider and the other parties to the Interconnection Agreement as required under the Interconnection Agreement and not included in the Work hereunder to permit the tie-in and interconnection of the Project to the applicable transmission grid**.** Contractor shall provide reasonable assistance to Owner, at no additional cost, to facilitate all arrangements with the Transmission Provider and the other parties to the Interconnection Agreement, when and as reasonably requested by Owner.

2.9. Other Owner Responsibilities.

Owner shall perform its other duties and responsibilities set forth in this Agreement, including Exhibits A-2, G and I.

3. RESPONSIBILITIES OF CONTRACTOR

Contractor shall:

3.1. General.

Perform (or cause to be performed through Subcontractors), furnish and be responsible for all of the Work. Contractor acknowledges and agrees that this Agreement constitutes a fixed price (subject to the terms hereof) obligation to engineer, design, procure, construct, test and commission the Project.

3.2. Performance of Work.

Perform and complete all of the Work in accordance with the terms of this Agreement, Applicable Law and Industry Standards. Contractor shall provide, or cause to be provided through Subcontractors, all necessary labor and supervision to perform the Work.

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3.3. Design and Construction of the Project.

Design, engineer and construct the Project so that it meets the requirements of the Contractor Deliverables, and is capable of operation in compliance with Industry Standards and Applicable Laws in effect at the time of the Substantial Completion.

3.4. Contractor's Project Manager.

Designate (by a Notice delivered to Owner within two (2) Business Days after the issuance of the Notice to Proceed under this Agreement) a Contractor's Project Manager who shall have full responsibility for the prosecution of the Work and shall act as a single point of contact in all matters on behalf of Contractor. Contractor may designate a new Contractor's Project Manager from time to time by a Notice delivered to Owner, subject to Owner's prior written consent, which consent shall not be unreasonably denied or delayed. At all times when Work is in progress at the Site, Contractor's Project Manager or its authorized nominee shall be on Site so as to properly supervise the Work in progress. Contractor's Project Manager shall be deemed to have full authority to act on behalf of Contractor. Notices given by Owner in writing to Contractor's Project Manager shall be deemed as having been given to Contractor.

3.5. Utilities and Services.

3.5.1. Provision of Services.

Install, connect and maintain at its own expense during its performance under this Agreement, all utilities, facilities and services, as set forth in Exhibit A-1 (other than the Owner-Provided Facilities and Services) required for the performance of the Work.

3.5.2. Payment.

Pay when due all construction utility usage charges and arrange with local authorities and utility companies having jurisdiction over the Site for the provision of utilities other than or in excess of the utilities provided as part of the Owner-Provided Facilities and Services.

3.5.3. Supply of Construction Facilities.

Other than the Owner-Provided Facilities and Services, obtain all supplies or services required for the performance of the Work but which do not form a permanent part of the completed Work.

3.6. Inspection.

Perform all inspection and other like services required for performance of the Work, including inspecting all Equipment.

3.7. Organization.

Maintain staff that are dedicated to the completion of the Work, and that have the technical and managerial expertise to control and execute the Work in accordance with the requirements of this Agreement. Contractor shall notify Owner prior to taking any action with respect to any Labor Dispute involving any labor union affecting Contractor's performance of the Work at the Site or surrounding area.

3.8. Contractor-Acquired Permits; Assistance with Owner-Acquired Permits.

Prepare, apply for, obtain and maintain all Contractor-Acquired Permits. Contractor shall provide such assistance as Owner may reasonably request in connection with obtaining Owner-acquired permits promptly

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after Owner's written request.

3.9. Hazardous Materials Disposal System.

To the extent required by Applicable Law, prepare and maintain accurate and complete documentation of all Contractor Hazardous Materials used by Contractor or Subcontractors at the Site in connection with the Work, and of the disposal of any such materials, including transportation documentation and the identity of all Subcontractors providing Hazardous Materials disposal services to Contractor at the Site. Copies of all documentation required under this Section 3.9 shall be timely provided to Owner upon Owner's reasonable written request.

3.10. Maintenance of Site.

Maintain the Site clear of debris, waste material and rubbish. Contractor shall dispose of such debris, waste material and rubbish in accordance with Applicable Law.

3.11. Site Security.

Until Final Completion, provide all necessary and reasonably appropriate site security at the Site for the protection of the Work.

3.12. Safety.

During the performance of the Work at the Site, be responsible for the safety oversight of the Persons at the Site and for the safe performance of the Work at the Site, in each case in accordance with Owner's and Contractor's Safety Procedures. By written Notice to Owner prior to commencement of the Work at the Site, Contractor shall designate an officer who shall be responsible for safety issues at the Site ("**Site Safety Officer**"), and Contractor shall ensure that a Site Safety Officer for the Site is designated at all times from the commencement of the Work until Final Completion.

3.13. Shipping and Storage.

Arrange for complete handling of all Equipment and Contractor's construction equipment, including quality assurance, shipping, loading, unloading, customs clearance, receiving, any storage required to be provided by Contractor hereunder and claims. In connection with the shipping and storage of all Equipment and Contractor's construction equipment, Contractor shall comply with all relevant manufacturers' requirements in respect of any applicable manufacturer's warranty. Contractor's damage reports describing any damage to Equipment and Contractor's construction equipment during shipping, loading, unloading, customs clearance, receiving and storage shall be available to Owner upon written request.

3.14. 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.

3.15. Compliance with Applicable Laws.

During and in connection with the Work, comply, and cause its Subcontractors to comply, with all Applicable Laws relating to the performance of the Work.

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3.16. Quality Assurance Programs.

Use effective quality assurance programs throughout the performance of the Work. Prior to commencement of the Work, Contractor shall provide Owner with written copies of its quality assurance programs applicable to the performance of the Work. By written Notice to Owner prior to commencement of the Work, Contractor shall designate one or more officers who shall be responsible for quality assurance/quality control issues, and Contractor shall ensure that such an officer is designated at all times from the commencement of the Work until Final Completion. Contractor quality control/quality assurance inspection reports, including reports on inspections of material delivery, shall be available to Owner upon written request, and copies of all such inspection reports shall be provided to Owner as part of the Contractor Deliverables.

3.17. Contractor Deliverables.

Issue Contractor Deliverables for Owner review in accordance with Exhibit B.

3.18. Training of Operating Personnel.

Commencing no later than two (2) weeks prior to the then anticipated Substantial Completion Date, train, or where applicable cause the Subcontractors to train, the designated Operating Personnel in the requirements for the operation of, and safety, general process understanding and procedures for the Project in accordance with the requirements set forth in Exhibit E.

3.19. Commissioning Personnel.

Provide or cause to be provided, experienced installation and commissioning representatives from the Suppliers specified in Exhibit K, together with all necessary supervising personnel, all equipment, tools, construction and temporary material and all other labor necessary for all of the Work to complete commissioning.

3.20. Contractor Performance Security.

3.20.1. Performance Bond.

Provide, or cause to be provided, a Performance Bond within ten (10) business days after Owner issues the Limited Notice to Proceed. Provide or cause to be provided at the time Owner issues the Notice to Proceed provided that Owner has provided thirty (30) days' prior written notice of the requirement to provide Contractor Credit Support, the Performance Bond to guarantee the performance of Contractor's obligations hereunder. Contractor shall maintain, or cause to be maintained, the Performance Bond until the Final Completion Date. Subject to any claims made in writing by Owner to Issuer under the Performance Bond prior to the Final Completion Date, the Performance Bond shall terminate and shall cease to be of any force or effect upon Final Completion; and

3.20.2. Warranty Bond.

Provide, or cause to be provided, no later than the Final Completion Date, the Warranty Bond to guarantee the performance of Contractor's warranty obligations hereunder. Contractor shall maintain, or cause to be maintained, the Warranty Bond until one hundred eighty (180) days after the expiry of the Defect Warranty Period. Subject to any claims made in writing by Owner to Issuer under the Warranty Bond prior to its termination, the Warranty Bond shall terminate and shall cease to be of any force or effect one hundred eighty (180) days after termination of the Defect Warranty Period, as may be extended pursuant to this Agreement.

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3.21. Other Contractor Responsibilities.

Perform its other duties and responsibilities set forth in this Agreement, including Exhibits A-1, B, C-2, D, E, G, H-1, H-2 and V.

3.22. Price Allocation Schedule.

No later than sixty (60) days prior to the anticipated achievement of Substantial Completion, provide a price allocation schedule for the Work and other information reasonably necessary for Owner to maintain segregated accounts for its tax records and fixed asset records (including any Federal Energy Regulatory Commission accounting requirements). Contractor shall provide an updated price allocation schedule for the Project prior to Final Completion.

4. COVENANTS, WARRANTIES AND REPRESENTATIONS

4.1. Representations and Warranties of Contractor.

Contractor represents and warrants as of the Effective Date that:

4.1.1. Organization, Standing and Qualification.

Contractor is a corporation duly organized, validly existing and in good standing under the laws of New Mexico, and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business it presently conducts and contemplates conducting, and is and will be duly licensed or qualified to do business and in good standing under the laws of each other jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

4.1.2. Due Authorization; Enforceability.

Contractor has taken all necessary corporate action to authorize, effect and approve this Agreement and this Agreement has been duly authorized, executed and delivered by or on behalf of Contractor and is, upon execution and delivery, the legal, valid and binding obligation of Contractor, enforceable against Contractor in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

4.1.3. No Conflict.

The execution, delivery and performance by Contractor of this Agreement will not conflict with or cause any default under: (a) its organizational documents; (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, loan or credit arrangement or other similar agreement or instrument to which Contractor is a party or by which it or its properties may be bound or affected; or (c) any Applicable Laws, and will not subject the Project or any component part thereof or the Site or any portion thereof to any lien other than as contemplated or permitted by this Agreement.

4.1.4. Government Approvals.

Neither the execution nor delivery by Contractor of this Agreement requires the consent or approval of, or the giving of notice to or registration with, or the taking of any other action in respect of, any Governmental Authority other than with respect to Contractor-Acquired Permits.

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4.1.5. No Suits, Proceedings.

There are no actions, suits, proceedings, patent or license infringements, or investigations pending against it in writing at law or in equity before any court (United States or otherwise) or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on Contractor's ability to perform its obligations under this Agreement. Contractor has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

4.1.6. Business Practices.

Neither Contractor nor any of its Representatives has made any payment or given anything of value, and Contractor covenants that it will not make any payment or give anything of value, in either case to any government official (including any officer or employee of any Governmental Authority) to influence his, her or its decision or to gain any other advantage for Owner or Contractor in connection with the Work to be performed hereunder. Contractor shall follow Contractor's Code of Business Conduct and Ethics policy with respect to all of the Work. None of Contractor nor any of its employees or agents shall intentionally take any action with respect to this Agreement or any of the Work that violates any Applicable Laws concerning corrupt practices. Contractor shall promptly Notify Owner of any violation of this covenant.

4.1.7. Owner-Provided Information.

Contractor is entitled to rely on the accuracy and completeness of the Owner-Provided Information. Contractor acknowledges that Owner shall not make any other representation or warranty with respect to the accuracy or completeness of documents or information (including oral statements) or opinions expressed by Owner. Except for the Owner-Provided Information, Contractor will not rely on Owner for any information, data, inferences or conclusions, or other information with respect to any Site Conditions, including the surface conditions of the Site and the surrounding areas.

4.1.8. Legal Requirements.

Contractor has knowledge of all of the Applicable Laws that must be followed in performing the Work, and covenants that the Work shall be performed in compliance with all Applicable Laws.

4.1.9. Licenses.

Contractor and its Subcontractors and their respective employees who will perform any portion of the Work have and will have all necessary qualifications, certifications and licenses required by Applicable Law to perform the services under this Agreement.

4.1.10. Licensing Requirement.

Contractor (a) is, and through completion of the Project will be, licensed by the Contractor's State License Board in New Mexico, and (b) is licensed by the Construction and Industries Division of the New Mexico Regulation and Licensing Department, or any successor entity.

4.1.11. Skills and Knowledge.

Contractor has performed work similar in kind, size and complexity to the Work and possesses the specific training, skills, knowledge, necessary personnel and legal right to perform the Work. Contractor shall provide, in connection with the Work, the standard of care, skill, and diligence normally provided by an experienced contractor in the performance of work similar to the Work and warrants that all such Work shall

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be performed in accordance with Industry Standards and all Applicable Laws.

4.1.12. Means and Methods.

Contractor shall be responsible for all means, methods, techniques and procedures for performing the Work, and for coordinating all portions of the Work under this Agreement.

4.1.13. Independent Contractor.

Contractor represents that it is an independent contractor, and agrees and understands that neither it nor any of its officers, directors, Affiliates, agents, employees, Subcontractors or Suppliers may act in the name of Owner.

4.1.14. Financial Condition.

Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform Contractor's obligations required under this Agreement.

4.2. Representations and Warranties of Owner.

Owner represents and warrants that:

4.2.1. Organization, Standing and Qualification

Owner is a corporation duly formed, validly existing, and in good standing under the laws of the State of New Mexico, and has full power and authority to execute, deliver and perform its obligations hereunder and to engage in the business Owner presently conducts and contemplates conducting, and is and will be duly licensed or qualified to do business and in good standing in each jurisdiction wherein the nature of the business transacted by it makes such licensing or qualification necessary and where the failure to be licensed or qualified would have a material adverse effect on its ability to perform its obligations hereunder.

4.2.2. Due Authorization; Enforceability.

Owner has taken all necessary corporate action to authorize, effect and approve this Agreement and this Agreement has been duly authorized, executed and delivered by or on behalf of Owner and is, upon execution and delivery, the legal, valid, and binding obligation of Owner, enforceable against Owner in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally and by general equitable principles.

4.2.3. No Conflict.

The execution, delivery and performance by Owner of this Agreement will not conflict with or cause any default under: (a) its organizational documents; (b) any indenture, mortgage, chattel mortgage, deed of trust, lease, conditional sales contract, loan or credit arrangement or other similar agreement or instrument to which Owner is a party or by which it or its properties may be bound or affected; or (c) any Applicable Laws.

4.2.4. Governmental Approvals.

Applicable Permits, set forth in Exhibit C-1, either have been obtained by Owner and are in full force and effect on the Effective Date or will be obtained and will be in full force and effect on or prior to the date on which they are required, under this Agreement and Applicable Law. As used in this Section 4.2.4, Applicable Permits does not include FERC or NMPRC Approvals.

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4.2.5. No Suits, Proceedings.

There are no actions, suits, proceedings or investigations pending or, to Owner's knowledge, threatened against it in writing at law or in equity before any court (United States or otherwise) or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on Owner's obligations under this Agreement. Owner has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

4.2.6. Land.

Owner holds good and valid title in fee simple in respect of the Site which is sufficient for the execution of the Work and will provide Contractor and its Subcontractors and suppliers with access necessary to the Site to perform the Work in accordance with the Work Schedule.

5. COST OF WORK

5.1. Contract Price.

Contractor hereby agrees to accept as compensation for the performance of the Work $81,769,671 (the "**Contract Price**"), which represents an all-in fixed-price budget allowance for the design, engineering, procurement, construction, testing, and commissioning of a nominal forty (40) MW generation facility to Substantial Completion no later than December 1, 2030. Neither shall the Contract Price be changed nor shall Contractor be entitled to any other compensation, reimbursement of expenses or additional payment of any kind without prior written authorization of Owner or unless otherwise specifically set forth in this Agreement. Payments shall be made at the times and in the manner provided in Article 6. For the avoidance of doubt, the Contract Price includes any New Mexico gross receipts, compensating, sales, and other similar Taxes, and any Taxes imposed under Applicable Law. In the event that Owner provides a Non-Taxable Transaction Certificate, or other suitable form of exemption from, or deduction of, New Mexico gross receipts, compensating, sales or similar Taxes, then Contractor will not collect any such taxes from Owner.

5.2. Taxes.

5.2.1. Reporting and Payment.

Contractor shall timely report and pay all Taxes and contributions for unemployment insurance, old age retirement benefits, pensions, annuities, and similar benefits, which may now or hereafter be imposed on Contractor by law or collective bargaining agreements with respect to persons employed by Contractor for performance of the Work. Subject to the following sentence of this Section 5.2.1, Contractor shall be liable for and shall pay and shall indemnify, defend, and hold harmless Owner, and its Affiliates and its or their respective Representatives from and against any and all such Taxes and contributions or any interest accrued and penalties imposed, and reasonable attorney's fees (including income, margin, franchise, withholding, gross receipts, compensating, sales, use, property and all other Taxes of whatsoever kind and whatsoever nature), excises, assessments, and other charges levied by any governmental agency or authority on Contractor with respect to its performance of the Work, or on any materials, equipment, services, or supplies furnished in the performance of the Work. On all invoices, Contractor shall separately show all New Mexico gross receipts, compensating, sales, and other similar Taxes, provided that in no event will interest or penalties on such Taxes be reimbursable by Owner. Contractor shall also separately itemize services performed outside the State of New Mexico, if any. Contractor shall utilize appropriate New Mexico Nontaxable Transaction Certificates, or similar certificates from other states, where applicable, to minimize such gross receipts, compensating, sales, and other similar Taxes. If the sale of goods or performance of services by Contractor takes place on tribal land, Contractor will comply with applicable state and tribal laws governing the reporting and payment of gross receipts Taxes on those transactions.

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5.2.2. Contractor and Owner to Cooperate.

Contractor and Owner shall reasonably cooperate with each other to minimize the Tax liability of both Parties to the extent legally permissible, including separately stating taxable charges on Contractor's Invoices and supplying resale and exemption certificates, if applicable, and other information as reasonably requested, in each case if requested by the applicable taxing authority. In addition, to the extent any exemptions, abatements, production tax credits, advanced energy tax credits, or other credits against or deferrals of any Taxes may be available to Owner or Contractor under Applicable Law, the Parties shall reasonably cooperate in order to secure any such exemptions, abatements, credits against, or deferrals of, such Taxes.

6. TERMS OF PAYMENT.

Payments to Contractor shall be made as follows:

6.1. Payment Schedule.

Contractor shall be paid in accordance with the Payment Schedule as set forth in Exhibit I.

6.2. Progress Assessment.

Representatives of Contractor and Owner shall periodically, and in any event at least semi-monthly, review the Work completed for the Project and assess the progress of all Work completed on the Site and assess the completion of the related Payment Schedule milestones

6.3. Expedited Payment.

If Owner agrees in advance to make expedited payments to Contractor, Owner shall make expedited payments for down payments and subsequent purchase payments for the Equipment, as described in Exhibit X hereto. In such case, Owner agrees to make such expedited payments per the payment schedule of the equipment invoices consistent with Exhibit X, and Contractor is authorized to submit a separate Contractor Invoice for Equipment. The Parties agree that any expedited payment made by Owner pursuant to this Section shall be treated as a partial payment of the Contract Price.

6.4. Progress Payments.

On or before the fifth (5th) Business Day of each month following the month in which Notice to Proceed is issued, Contractor shall submit to Owner completed Contractor's Invoices in accordance with Exhibit I (Payment Schedule) reflecting (a) the Work completed through the last Day of the prior month; (b) the portion of the Contract Price corresponding to such Work, as set forth in the Payment Schedule; and (c) updated cash flow. On or following the date that Contractor completes a Milestone Item identified in the Payment Schedule, Contractor may submit additional Contractor's Invoices, but Contractor shall not otherwise submit more than one Contractor's Invoice per calendar month, except as otherwise permitted pursuant to Section 6.3.

Owner may, by delivering notice thereof to Contractor within five (5) Business Days of receipt of the Contractor's Invoice, (a) reject any Contractor's Invoice that does not satisfy the requirements of this Section (including the requirement to deliver Lien waivers) or (b) dispute in good faith any charge, documentation or other information contained in such Contractor's Invoice. Owner shall include in such notice reasons for such rejection or dispute.

If Owner does not reject the Contractor's Invoice or Contractor delivers a replacement Contractor's Invoice which addresses the reasons for a previous rejection, then Owner shall, by the later of (i) twenty-one (21) Days after Owner's receipt of the original Contractor's Invoice, and (ii) ten (10)

Days after Owner's receipt of the corrected Contractor's Invoice, pay to Contractor in current funds, the amount specified therein which is undisputed, by wire transfer to the account specified in writing by Contractor or by such other means mutually agreed by the Parties. With respect to any disputed amounts, Owner shall pay such amounts no later than twenty-one (21) Days following the resolution of such dispute.

Contractor agrees that it shall not include in any Contractor's Invoice sums attributable to Work which Owner or Contractor has rejected or any warranty work performed by Contractor.

6.5. Payments Not Acceptance of Work.

No payment made hereunder for Work, nor inspection or verification by Owner of Work for purposes of payment, shall be considered as approval or acceptance of any Work. All payments shall be subject to correction or adjustment in subsequent progress reviews and payments. Contractor's acceptance of any payment, and Owner's payment of any invoiced amount, shall not be deemed to constitute a waiver of amounts that are then in dispute.

6.6. Contractor's Invoices.

Each Contractor's Invoice shall be reasonably detailed and shall be accompanied by reasonable supporting documentation with respect to any such Work completed. Contractor shall not request in any Contractor's Invoice the payment of any sum attributable to Work for which Contractor has already been paid. Each Contractor's Invoice (1) shall identify: (i) which activities described on the Payment Schedule for the Work have been completed; (ii) the related milestone payments set forth on the Payment Schedule for the Work that are then due; and (iii) any other known amounts then payable by Owner to Contractor under any provision hereof (without limiting Owner's right to dispute any amounts requested for payment); and (2) shall include (if not previously delivered) a Waiver and Release Upon Progress Payment for payments previously made by Owner pursuant to this Agreement and a conditional form of such waiver for payments to be made pursuant to such Contractor's Invoice. Contractor understands and agrees that any Contractor's Invoice that is inaccurate shall not, to the extent of such deficiency, constitute a valid request for payment.

6.7. Owner Review.

Within seven (7) days after Owner receives a Contractor's Invoice and all accompanying documentation required by Section 6.4, Owner shall Notify Contractor of the date the Invoice is no longer in dispute, or of the basis for any Dispute. If Owner does not dispute an invoice within such seven (7) day period, then, subject to the terms and conditions set forth herein, Owner shall pay Contractor the full amount of the Contractor's Invoice within twenty-one (21) days of receipt of the invoice and all waivers of liens and claims and other documents to be delivered in connection with such invoice (each an "**Invoice Payment**"); and if Owner fails to do so, then Owner shall pay interest on such amounts due and owing at the rate and for the time period specified from time-to-time in the New Mexico Prompt Payment Act. Only disputed Contractor's Invoices or portions thereof that are corrected shall be treated as a new Contractor Invoice and the following above procedures shall apply.

6.8. Payments.

All payments to be made to either Party under this Agreement shall be paid in Dollars and shall be paid electronically (by means of ACH or wire) in immediately available funds by the date due or, if such date is not a Business Day, on the immediately succeeding Business Day. All payments shall be made to such account as may be designated by such Party from time to time by Notice to the other Party in accordance with Article 29; provided, however, that banking transfer instructions have been provided by such Party to the paying Party at least five (5) Business Days before the first payment of the paying Party is due and payable. Except for amounts subject to the New Mexico Prompt Payment Act, which are due as set forth in Section 6.4

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and Section 6.7 of this Agreement, all other payments shall be due within thirty (30) days of the paying Party's receipt of the other Party's invoice and any supporting documentation and any delinquent payment, shall bear interest at the prime rate as published in "The Money Rates" Section of The Wall Street Journal (U.S. Edition) until paid, but not to exceed the maximum rate permitted by Applicable Law (the "**Contract Interest Rate**"). The payment of interest unaccompanied by payment of the delinquent amount shall not excuse or cure any Event of Default or delay in such payment. Provided that Owner has timely paid and Contractor has received amounts due and owing to Contractor under this Agreement, Contractor shall be responsible for paying all Subcontractors in connection with the Work completed by such Subcontractor.

6.9. Final Payment.

On or after the date on which Contractor delivers to Owner a Notice of Final Completion for the Project, Contractor shall submit a final Contractor's Invoice (a "**Final Contractor's Invoice**") which shall set forth all amounts due to Contractor that remain unpaid less the Punchlist Amounts of any outstanding Punchlist items. Owner shall pay to Contractor the amount due under such Final Contractor's Invoice for the Project ("**Final Payment**") in accordance with (a) Section 6.4, except that, if Owner does not dispute the Final Contractor's Invoice, Final Payment will be due ten (10) days after Owner certifies project completion and receives evidence of all waivers of liens and claims and other documents to be delivered in connection with the Final Contractor's Invoice; and (b) Section 6.7.

6.10. Disputes Regarding Payments.

Subject to Contractor's rights and remedies under Section 19.3(e), failure by Owner to pay any amount disputed in good faith until resolution of such Dispute in accordance with this Agreement shall not alleviate, diminish, modify or excuse the performance of Contractor or relieve Contractor's obligations to perform hereunder. Contractor's acceptance of any payment (including Final Payment), and Owner's payment of any amount under dispute, shall not be deemed to constitute a waiver of amounts that are then in dispute. Contractor and Owner shall use reasonable efforts to resolve all disputed amounts reasonably expeditiously and in any case in accordance with the provisions of Article 31. No payment made hereunder shall be construed to be acceptance or approval of that part of the Work to which such payment relates or to relieve Contractor of any of its obligations hereunder. If a Contractor's Invoice was properly submitted in accordance with all of the provisions of this Agreement and amounts disputed by Owner in regards to such invoice are later resolved in favor of Contractor, Owner shall pay interest on such disputed amounts due to Contractor at the Contract Interest Rate, from the date on which the payment was originally due pursuant to such invoice until the date such payment was received by Contractor. If Owner elects to pay any portion of any disputed invoice and any portion of the amounts so paid by Owner is later resolved in favor of Owner, Contractor shall refund any such payment and pay interest on such payment at the Contract Interest Rate, from the date on which the payment was originally made by Owner until such refunded payment is received by Owner.

7. COMMENCEMENT AND SCHEDULING OF THE WORK

7.1. Notice to Proceed.

On the Notice to Proceed Date of the Project, Contractor shall commence performance of the Work for the Project and shall diligently prosecute such Work in accordance with the Work Schedule; provided that Delay Liquidated Damages shall be the sole and exclusive remedies of Owner for Contractor's delays in achieving Substantial Completion by the Substantial Completion Guaranteed Date. If the Notice to Proceed Date for the Project is later than April 1, 2027, any such delay in the Notice to Proceed Date shall be an Owner-Caused Delay for purposes of this Agreement. If, however, Owner does not issue to Contractor the Notice to Proceed on or before July 1 2027,, then Contractor shall have the right to take action pursuant to Section 19.4.

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7.2. Limited Notices to Proceed.

Prior to the issuance of the Notice to Proceed, Owner shall have the right to issue one or more Limited Notices to Proceed on terms (including payment terms) mutually agreeable to Owner and Contractor directing Contractor to commence and complete any portion of the Work specified in any such Limited Notice to Proceed. Contractor acknowledges that any payments from Owner pursuant to any Limited Notice to Proceed shall be treated as partial payments of the Contract Price, and that Owner shall be given a credit of such amount against any subsequent payments owed by Owner to Contractor pursuant to this Agreement. If Owner pursues a Limited Notice to Proceed, the Parties agree to work in good faith to agree on a Limited Notice to Proceed covering engineering and procurement work to be performed in calendar year 2026 within 270 days after the Effective Date. If Owner has not issued a Limited Notice to Proceed for such work within 270 days after the Effective Date, delay in issuance of a Limited Notice to Proceed shall be an Owner-Caused Delay for purposes of this Agreement. After LNTP is issued, Owner can cancel the project if NMPRC Approval is not granted or has not been received by April 1, 2027. Within 5 days of cancellation, Owner has the right to have all of the long lead items ordered assigned to Owner or its designee. If Owner cancels the project then all payments associated with LNTP are non-refundable but no more payments will be warranted ($0). If Owner or its designee accepts the assignment of the long lead items, those contract terms will be between Owner or its designee and the supplier. Contractor will not be a part of subsequent agreement.

7.3. Work Schedule.

Until Final Completion, Contractor shall update the Work Schedule in accordance with the requirements set forth in Exhibit A-1 to reflect the current status of the Work for the Project. The updates shall be performed and provided to Owner (in electronic form) on a monthly basis as part of the Monthly Progress Report for the Project. Contractor shall supply to Owner a weekly percentage completion report for major components of the Work on Tuesday of each week commencing on mobilization and continuing through Final Completion.

7.4. Progress Reporting.

From and after the Effective Date, Contractor shall prepare a Monthly Progress Report for the Project and submit it to Owner within five (5) Business Days after the end of each calendar month. In addition, Contractor shall keep, and furnish to Owner at Owner's request, such information as Owner may reasonably require to determine that the Work is progressing according to the Milestone Items in the Work Schedule and for the purpose of confirming that Invoice Payments are due hereunder. For the sake of clarity, Owner agrees that both MS Project and Oracle Primavera are acceptable project scheduling software.

8. FORCE MAJEURE; EXCUSABLE EVENT

8.1. Certain Events.

Excusable Events shall not include usual and foreseeable weather conditions, economic hardships, labor or Equipment shortages or consequences of any changes in general economic conditions, such as inflation, price escalation, interest rates, exchange rates or other factors of general application. Excusable Events also shall not include any delay to the extent resulting from causes within Contractor's or a Subcontractor's reasonable control or to the extent resulting from Contractor's or any Subcontractor's fault or neglect, or that could have been prevented by the exercise of reasonable due diligence by Contractor. Contractor's right to an extension of any Work Schedule and any milestones for an Excusable Event is expressly conditioned on Contractor's compliance with each of the requirements in Section 8.2 (Notice of Force Majeure Event and Excusable Event).

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8.2. Notice of Force Majeure Event and Excusable Event.

8.2.1. Notice of Force Majeure Event and Excusable Event (other than an Owner-Caused Delay).

If Contractor's ability to perform its obligations under this Agreement is affected by a Force Majeure Event or an Excusable Event (other than an Owner-Caused Delay, it being understood that the Notice requirements for an Owner-Caused Delay are set forth in Section 8.2.2), Contractor shall, promptly upon its knowledge of the impact of the event, and in any event no more than five (5) Business Days after Contractor's knowledge of the impact of such event, give Notice to Owner (a "**Delay Notice**") of the impact of such event, including what date Contractor became aware of the impact of such event and an estimate of the event's anticipated duration and effect upon the performance of its obligations hereunder, and any action being taken to avoid or minimize its effect. Contractor shall have a continuing obligation to deliver to Owner regular updated reports and any additional documentation and analysis supporting its claim regarding a Force Majeure Event or an Excusable Event (other than an Owner-Caused Delay) promptly after such information is available to Contractor. Contractor's failure to comply with the notice provisions of Section 8.2.1 shall constitute a waiver from relief under Section 8.4 for the period between the required date of Delay Notice and the date when Delay Notice is delivered.

8.2.2. Owner-Caused Delay Notice.

If Contractor wishes to claim an Owner-Caused Delay, Contractor shall Notify Owner of such Owner-Caused Delay within five (5) Business Days after Contractor becomes aware of such delay. Within ten (10) days after the initial Notice, Contractor shall provide Owner demonstrable evidence of the occurrence and duration of such Owner-Caused Delay and, if requested by Owner, such evidence shall be provided by an independent third party reasonably acceptable to Owner and Contractor at the sole cost and expense of Owner (if the independent third party verifies Contractor's assertions) or Contractor (in all other cases).

8.3. Scope of Suspension; Duty to Mitigate.

The suspension of, or impact on, performance due to a Force Majeure Event or an Excusable Event shall be of no greater scope and no longer duration than is required by such event. Contractor shall use Commercially Reasonable Efforts:

(a) to mitigate the duration of, and costs arising from, any suspension or delay in, or other impact to the performance of its obligations under this Agreement; and

(b) to continue to perform its obligations hereunder not affected by such event.

When Contractor is able to resume performance of its obligations under this Agreement, Contractor shall promptly give Owner Notice to that effect.

8.4. Contractor's Remedies.

8.4.1. Force Majeure Event.

As Contractor's remedy for the occurrence of a Force Majeure Event, and provided that Contractor has otherwise materially complied with the applicable obligations it may have under Sections 8.2.1 and 8.3, if a Force Majeure Event occurs: (a) the Work Schedule, Milestone Items, Substantial Completion Guaranteed Date and any related modifications to the Work shall be correspondingly adjusted by the period of time (if any) that Contractor is demonstrably delayed in the performance of the Work as a result of the impact of such Force Majeure Event, and (b) if Contractor's costs increase despite Contractor's efforts to mitigate any such increases pursuant to Section 8.3(a), the Contract Price shall be increased by the

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actual and reasonably substantiated costs incurred by Contractor (including any reasonable costs incurred by Contractor in connection with the mitigation measures implemented by Contractor pursuant to Section 8.3(a)).

8.4.2. Excusable Event.

As Contractor's remedy for the occurrence of an Excusable Event and provided that Contractor has otherwise materially complied with the applicable provisions of Section 8.2, if an Excusable Event occurs:

(a) the Work Schedule, Milestone Items, Substantial Completion Guaranteed Date and any related modifications to the Work shall be correspondingly adjusted by the period of time (if any) that Contractor is demonstrably delayed in the performance of the Work as a result of the impact of such an Excusable Event, and

(b) if Contractor's costs increase despite Contractor's efforts to mitigate any such increases, pursuant to Section 8.3(a), the Contract Price shall be increased by the sum of the actual and reasonably substantiated costs incurred by Contractor (including any (i) reasonable costs incurred by Contractor in connection with the mitigation measures implemented by Contractor pursuant to Section 8.3(a); and (ii) any builder's all-risk deductible that Contractor will be liable for).

8.4.3. Changes In Work.

Upon the occurrence of a Force Majeure Event or an Excusable Event for which Contractor is entitled to a change in the Contract Price, the Work Schedule, the Milestone Items, the Substantial Completion Date or modifications to the Work, Contractor and Owner shall prepare a Change In Work Form in accordance with Article 16.

8.5. Contractor's Right to Terminate.

If the Work for the Project is suspended, prevented or delayed, in each case in the aggregate, for more than one hundred and eighty (180) days by reason of Force Majeure Events, or without prejudice to Section 19.3, Excusable Events, Contractor may terminate this Agreement by Notice to Owner. Upon any such termination, Contractor shall be entitled to receive the payments as set forth in Section 19.4(a), and Owner shall be entitled to payments due from Contractor, if any, in accordance with the terms of this Agreement.

8.6. Owner's Right to Terminate.

If the Work for the Project is suspended, prevented or delayed, in each case in the aggregate, for more than one hundred and eighty (180) days by reason of Force Majeure Events or Excusable Events (other than an Owner-Caused Delay), Owner may terminate this Agreement by Notice to Contractor. Upon any such termination, Contractor shall be entitled to receive the payments as set forth in Section 19.4(a), and Owner shall be entitled to payments due from Contractor, if any, in accordance with the terms of this Agreement.

9. SUPPLIERS AND SUBCONTRACTORS

9.1. Project Suppliers and Subcontractors.

Contractor may subcontract the performance of portions of the Work. Contractor may only subcontract the performance of portions of the Work to with the Major Subcontractors listed in Exhibit K for the types of services or equipment listed. Should Contractor propose to add a Major Subcontractor after the Effective Date, Contractor shall provide Notice to Owner of such proposed Major Subcontractor and the specific Work the proposed Major Subcontractor will provide. Within fifteen (15) days of such Notice, Owner shall Notify Contractor of its approval or rejection of such proposed Major Subcontractor. If Owner approves, or does not

object to, such proposed Major Subcontractor within such fifteen (15) day period, the proposed Major Subcontractor shall be deemed approved and added to Exhibit K. Contractor shall update and amend Exhibit K by Notice to Owner from time to time as necessary to reflect additions or changes thereto. Upon Notice to Contractor, Owner may direct Contractor to remove a Major Subcontractor from Exhibit K if Owner determines that such Major Subcontractor is creating an adverse material impact on the Project. If applicable, Contractor shall employ apprentices as set forth in, and at levels required by, the New Mexico Public Utility Act.

9.2. Assignment.

No subcontract or purchase order shall bind or purport to bind Owner, but each subcontract and purchase order with a Subcontractor or Supplier shall provide for assignment of such subcontract or purchase order to Owner or, at Owner's request, to the Owner Financing Parties upon the termination of this Agreement due to a Contractor Event of Default.

10. LABOR RELATIONS

10.1. General Management of Employees.

Notwithstanding the provisions of Section 10.2, Contractor shall preserve its rights to exercise and shall exercise its management rights in performing the Work. Such management rights shall include the rights to hire, discharge, promote and transfer employees; to select and remove persons or supervision; to establish and enforce reasonable standards of production; to determine the number of craftsmen necessary to perform a task, job or project; and to establish, maintain and enforce rules and regulations conducive to efficient and productive operations.

10.2. Labor Disputes.

Contractor shall use reasonable efforts to adopt policies and practices designed to avoid Labor Disputes, and to minimize the risk of labor-related delays or disruption of the progress of the Work. Contractor shall advise Owner promptly, in writing, of any actual Labor Dispute of which Contractor has knowledge that might materially affect the performance of the Work by Contractor or by any of its Subcontractors or Suppliers, and in accordance with Section 3.7, Contractor shall notify Owner prior to taking any action with respect to any Labor Dispute involving any labor union affecting Contractor's performance of the Work at the Site or surrounding area. Notwithstanding the foregoing, the settlement of Labor Disputes shall be at the discretion of the Party having the difficulty.

10.3. Personnel Documents.

Contractor shall ensure that at the time of hiring, all its personnel and personnel of any Subcontractors performing the Work on the Site are in possession of all such documents required by Applicable Laws.

10.4. Apprentice Requirements

(a) Pursuant to the New Mexico Apprentice Requirements found at NMSA 1978, Section 62-13-16, in the event that Contractor or any of its Subcontractors employs four (4) or more Laborers and Mechanics to perform any portion of the Apprenticeship Qualifying Work, Contractor will, and will require such Subcontractors to, (i) employ at least one (1) Qualified Apprentice to perform such Apprenticeship Qualifying Work, (ii) comply with whatever apprentice-to-journey worker ratios are imposed by the apprentice programs supplying Qualified Apprentices, and in the absence of such ratios, by the U.S. Department of Labor or state apprenticeship agency, and (iii) cause no fewer than seventeen and one-half percent (17.5%) for on-site construction beginning prior to January 1, 2026, or twenty-five percent (25%) for on-site construction beginning on or after January 1, 2026, of the total labor hours of Apprenticeship

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Qualifying Work performed by Contractor and its Subcontractors to be performed by Qualified Apprentices.

(b) Contractor will notify Owner promptly if Contractor or any of its Subcontractors if there are no available qualified apprentices. In any such event, Contractor will provide Owner with all of the following:

(i.) A copy of the written request submitted to the registered apprenticeship program, including evidence of the date of receipt of such request by such program, such as an email acknowledgment by the apprentice program or a registered mail or courier service delivery receipt, and

(ii.) written evidence that the request was denied or a certificate from Contractor or any affected Subcontractors that the registered apprenticeship program failed to respond to the request for Qualified Apprentices within five (5) Business Days after receiving the request.

(iii.) This exception applies only for up to 365 days at a time and Contractor or the affected Subcontractor must repeat the effort to find Qualified Apprentices by the end of each 365-day period.

10.5. Compliance, Reporting and Cooperation

(a) Contractor will ensure each Subcontractor helping with the Apprenticeship Qualifying Work will comply with the same requirements that this Section 10.5 imposes on it.

(b) If New Mexico, the IRS, Treasury, or U.S. Department of Labor issues new or revised regulations or other guidance about the Apprentice Requirements, the Parties will work in good faith to amend Sections 10.4, 10.5, and 10.6 to conform to any new or revised regulations or interpretations or other guidance, but only to the extent that such new or revised regulations or other interpretations or other guidance requires changes to Contractor's obligations hereunder in order for Owner to comply with the Apprentice Requirements.

(c) Contractor will, and will cause its Subcontractors performing Apprenticeship Qualifying Work to, provide records to Owner containing all the information required to verify compliance with Section 62-23-16 of the New Mexico Public Utility Act (the **"Apprenticeship Records")** and will retain the Apprenticeship Records for at least five (5) years and sixty (60) days after Final Completion of the Project. Apprenticeship Records shall include: (1) the total number of Laborers and Mechanics employed in the construction, alteration or repair of the Project; (2) identifying information, including the name, last 4 digits of Social Security or tax identification number, telephone number, and email address of each Laborer or Mechanic; (3) the location and description of the Project; (4) the labor classification that was applied to the Laborer or Mechanic; (5) the total number of employees who are apprentices, and in which labor classification; (6) records to support wages paid to any Qualified Apprentices, including records to support the registration of the apprentices with a registered apprenticeship program and applicable wage rates and apprentice-to- journeyman ratios prescribed by the program; and (10) the amount and timing of any correction payments. Contractor will provide such Apprenticeship Records to Owner at least on a quarterly basis. Such documentation shall be treated as Confidential Information that is only permitted to be shared pursuant to this Agreement.

(d) If at any time Owner reasonably believes that Contractor has not fulfilled the requirements of Section 10.4, Owner will notify Contractor promptly in writing.

10.6. Apprentice Indemnities

(a) To the extent due to Contractor's or its Subcontractor's failure to comply

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with Section 10.4 or 10.5, Owner must make cure payments (including penalties) for failure to comply with the Apprentice Requirements, then Contractor will reimburse Owner for all such cure payments (the "**Apprentice Indemnity**").

(b) Owner will: (i) provide Contractor with advance notice in writing of the need to make cure payments with a sufficiently reasonable amount of time for Contractor to provide the Apprenticeship Records and any other evidence Owner requires to prove Contractor's and its Subcontractors' compliance with the Apprentice Requirements, and (ii) provide Contractor an opportunity to review and comment on any correspondence and attend any substantive meetings and calls with any Governmental Authority about the alleged failure of Contractor or its Subcontractors to comply with the Apprentice Requirements. Contractor will pay Owner the Apprentice Indemnity amount within fifteen (15) Business Days after written notice from Owner and accompanying documentation of the Apprentice Indemnity amount. However, in the event Contractor disagrees about the need for Owner to make payments, the disagreement will be submitted to a nationally-recognized independent counsel or accounting firm, selected jointly by Contractor and Owner, for an opinion. Any opinion that particular Services are not subject to the Apprentice Requirements must be at a "will" level.

(c) Owner expects any Apprentice Indemnity to have to be reported by the Owner as income, and Contractor will gross up the amount of the Apprentice Indemnity for federal, state and local income taxes by dividing the Apprentice Indemnity amount by one minus the Tax Rate, unless an independent counsel, selected jointly by the Parties, opines at least at a "should" level that the Apprentice Indemnity is not income to the Owner and is not a reduction in the tax basis that the Owner has in the Project.

(d) Contractor's obligations under this Section 10.6 will survive for at least five (5) years and sixty (60) days after Final Completion of the Project.

(e) Notwithstanding any other provision of this Agreement, Contractor is not obligated to reimburse or indemnify Owner for damages associated with compliance with the Apprentice Requirements (including any asserted loss of tax credits) other than Contractor's Apprentice Indemnity obligation to make cure payments.

11. INSPECTION

11.1. Right to Reject Work.

At any time prior to Substantial Completion, regardless of whether payment has been made therefor, Owner shall have the right to reject by written notice to Contractor any portion of the Work for the Project that contains any Defect unless the same constitutes a Non-Critical Deficiency, in which case it shall be included on the Punchlist. Upon such rejection, Contractor shall remedy, at its sole cost and expense (subject to the provisions of Article 8), any such Defect that is identified by Owner in writing as giving rise to such rejection.

11.2. Inspection.

Owner and its Representatives shall have the right to observe and inspect the Project and the Work at the Site in a manner that does not interfere with Contractor's performance of the Work. If requested by Owner, Contractor shall arrange for Owner to inspect the facilities of Suppliers, and Contractor shall provide access for Owner to witness the Functional Tests of Equipment at the Site, such inspections to be arranged at reasonable times and with reasonable advance Notice, at Owner's cost. Owner shall have the right, but not the obligation, to inspect any item of Equipment, including Equipment under fabrication, material, design, construction, service, workmanship or any portion of the Work, provided that disassembly of any completed Work that does not contain Defects shall be at Owner's cost. Owner shall not be responsible for Contractor's or Subcontractor's costs to perform any tests elected to be performed by Contractor or Subcontractor or otherwise required by this Agreement. No inspection performed, witnessed, or failed to be performed or

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witnessed, by Owner, or any recommendation or lack of recommendation from Owner in connection therewith, shall be a waiver of any of Contractor's obligations hereunder or be construed as an approval or acceptance of any Work.

12. SITE CONDITIONS

12.1. Unforeseeable Site Conditions.

It shall be an Excusable Event, and Contractor shall be entitled to request a reasonable Change In Work, to the extent that the actual Site Conditions (including the existence of any Hazardous Materials, any religious, historical or archeological resources, the existence of liens and encumbrances, the presence of endangered or threatened species on the Site, including Unforeseen Protected Flora and Fauna, or any unknown physical conditions at, above or below the surface of the ground) vary materially from the Site Assumptions (such Site Conditions or variance being "**Unforeseeable Site Conditions**"). Contractor shall exercise due care in carrying out the Work to monitor and make itself aware of Site Conditions as the Work progresses, and shall promptly provide Notice to Owner of the discovery of the existence of any conditions at the Site that may create a safety hazard or pose a risk of harm to Owner or any of Owner's Separate Contractors' operations. Contractor shall, promptly upon the discovery of any such condition, cause the Work to be performed in a manner that accounts for such condition while still achieving the quality and safety standards set forth in this Agreement and implement all safety measures reasonably necessary to assure the safety of all persons at or near the Site and to prevent damage to property and bodily injury that might otherwise result as a consequence of continued performance of the Work in a manner that fails to account for such condition.

13. MECHANICAL COMPLETION AND ACCEPTANCE TESTS

13.1. Mechanical Completion

After satisfaction by Contractor or waiver by Owner of the requirements to Mechanical Completion for any Unit or 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 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 each Unit and 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 each Unit and the Project in accordance with the Acceptance Test Procedures and Exhibits H and V. Contractor shall have overall control over the Project during the performance of the Acceptance Tests and shall direct the operation of each Unit and of the Project during the Acceptance Tests in accordance with the Acceptance Tests Procedures and Exhibits H and V. The Owner shall have the right to be present during any Acceptance Tests performed by Contractor under this Article 13.

13.2. Guaranteed Performance and Other Requirements.

Subject to Sections 15.2 and 15.3, Contractor shall perform the Work so that the Project satisfies its

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Performance Guarantees, Emissions Guarantees, Noise Guarantees, and Functional Guarantees as set forth in Exhibits H-2, H-3 and V.

13.3. Commissioning Plan.

Contractor shall provide for Owner's review and approval a Commissioning Plan within sixty (60) days prior to commissioning of the Project in accordance with the requirements of Exhibit H-1. If Owner fails to Notify Contractor in writing of its approval or disapproval of any Commissioning Plan within fifteen (15) Business Days after Owner's receipt of such Commissioning Plan from Contractor, then Owner shall be deemed to have approved such Commissioning Plan.

13.4. Acceptance Test Procedures.

Contractor shall develop Acceptance Test Procedures in accordance with Exhibit H-2 and shall provide the Acceptance Test Procedures to Owner for Owner's review and approval not less than ninety (90) days prior to the date on which Contractor anticipates commencing any Acceptance Test. If Owner fails to Notify Contractor in writing of its approval or disapproval of the Acceptance Test Procedures within thirty (30) Business Days after Owner's receipt of the Acceptance Test Procedures from Contractor, then Owner shall be deemed to have approved the Acceptance Test Procedures.

13.5. Acceptance Test Schedules.

Contractor shall agree on the Acceptance Test schedule with Owner and shall give advance Notice to Owner of each Acceptance Test at least seven (7) days prior to commencing any such test. If Owner fails to Notify Contractor in writing of its approval or disapproval of the Acceptance Test schedule within twenty-four (24) hours after Owner's receipt of such schedule from Contractor, then Owner shall be deemed to have approved the schedule. Contractor shall keep Owner Representative reasonably apprised of the schedule for the Acceptance Tests and changes in the schedule, the commencement and performance of any Acceptance Test, and shall give Owner Representative at least one (1) Business Day advance Notice of the re-performance of any Acceptance Test; provided, however, that any such period of advance Notice may be eliminated if Owner Representative is at the Site and is reasonably informed of re-performance of the Acceptance Test. If Owner, or Owner's Engineer, as applicable, fails to be present after Contractor has provided notice of such Acceptance Test in accordance with this paragraph, then Contractor shall have the right to proceed with such testing.

13.6. Testing

13.6.1. Functional Testing.

Contractor shall conduct the Functional Tests in accordance with Exhibit H-2. Contractor must submit a test report for the Functional Tests within five (5) Business Days after the completion of each Functional Test as set forth in Exhibit H-2 providing a summary of the Functional Test results.

13.6.2. Performance Testing.

Contractor shall conduct the Capacity Test and Heat Rate Test in accordance with the approved Performance Test Procedures and Exhibit H-2. Representatives of Owner, including Owner's Engineer, shall have the right to be present during the Performance Test performed by Contractor under this Article 13.

13.6.3. Emissions Testing.

Contractor shall conduct the Emissions Tests in accordance with the approved Emissions Test

procedures in Exhibit H-2. Representatives of Owner, including Owner's Engineer, shall have the right to be present during the Emissions Testing.

13.7. Non-Conforming Work.

At any time during and promptly after completion (whether or not successful) of the Acceptance Tests (or any re-performance of the Performance Tests or pursuant to the Remedial Plan), Owner shall advise Contractor in writing of any Defect that was discovered by Owner during the Acceptance Tests. Contractor shall, at Contractor's sole cost and expense (subject to Article 8), correct any Defect (except if such Defect is a Non-Critical Deficiency, in which case it shall be included on the Punchlist) and promptly provide Notice to Owner that such corrective measures have been completed. Any Dispute regarding the existence or correction of any such Defect shall be resolved pursuant to Article 31.

14. SUBSTANTIAL COMPLETION AND FINAL COMPLETION

14.1. Punchlist

14.1.1. Creation of Punchlist.

When Contractor believes that the Project is ready for testing and commissioning, Contractor and Owner shall jointly walk-down the Project, and confer together as to the items which should be included on the finalized Punchlist. Contractor shall then prepare and deliver the list of Defects to Owner for its review and approval, ("**Proposed Punchlist**") for the Project. Such Proposed Punchlist shall include a proposed completion, correction or repair schedule and Punchlist Amount for the completion, correction or repair of such Defects. If Owner does not deliver any changes to the Proposed Punchlist to Contractor within five (5) Business Days after the later to occur of (a) Contractor's submission to Owner of such Proposed Punchlist; and (b) the day that the joint walk-down occurred, then such Proposed Punchlist shall be deemed approved. The Proposed Punchlist that is ultimately approved or deemed to have been approved by Owner for the Project shall be referred to as the "**Punchlist**" for the Project. Neither Owner's approval of a Punchlist, nor Owner's failure to identify Defects to be added to the Punchlist, shall relieve Contractor of sole and complete responsibility for Defects in the Work or Equipment. If the Punchlist for the Project is not finalized by the Substantial Completion Date, the Proposed Punchlist as modified by Owner shall be deemed the Punchlist for the Project for all purposes hereunder until the Parties resolve such Dispute and otherwise finalize the Punchlist for the Project. Contractor shall note on such Punchlist the items under dispute.

14.1.2. Completion of Punchlist.

Contractor shall proceed promptly to complete and correct all items on the Punchlist for the Project. On a weekly basis after Substantial Completion, Contractor shall revise and update the Punchlist for the Project to include the date(s) that items listed on such Punchlist are completed by Contractor and accepted by Owner. Notwithstanding any of the foregoing, the items listed on the Punchlist for the Project shall not be considered complete until Owner shall have inspected such Non-Critical Deficiencies and acknowledged, by notation on the updated Punchlist, that such item of Work is complete. If Owner does not so inspect and deliver such notations on the updated Punchlist to Contractor within seven (7) days after Contractor submits the updated Punchlist containing such Punchlist item to Owner, such Punchlist item for the Project shall be deemed completed on such seventh (7^{th}) day.

14.2. Substantial Completion.

The following are the conditions precedent for the Project to achieve Substantial Completion:

(a) the Project has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-seven percent (97%) of the Guaranteed Capacity on a sustained basis

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("**Minimum Capacity Requirement**") (in accordance with Industry Standards) in accordance with the applicable requirements set forth in Exhibit H-2 on any interconnected system;

(b) the Project has been constructed, commissioned, tested, and proven capable of delivering a maximum net electrical heat rate of one-hundred three percent (103%) of the Guaranteed Net Heat Rate on a sustained basis ("**Minimum Heat Rate Requirement**") (in accordance with Industry Standards) in accordance with the applicable requirements set forth in Exhibit H-2 on any interconnected system;

(c) Contractor has completed three (3) successful start-ups of the Project in accordance with the applicable requirements set forth in Exhibit V and has been available to dispatch continuously for a period of ten (10) days with controls in auto and synchronized to the Transmission Provider's system;

(d) the Project Functional Guarantees have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit V or by another method acceptable to Owner;

(e) Contractor has satisfactorily completed the Commissioning Tests identified in Exhibit V in accordance with mutually agreed test procedures and other testing in accordance with interconnection agreement requirements;

(f) Owner has received an officer's certificate from Contractor that the Project has been completed in all material respects;

(g) the Project has achieved Mechanical Completion;

(h) all Acceptance Tests for each Unit and the Project, including the Performance Tests and production requirements contained in Exhibit H-2 have been Successfully Run;

(i) Contractor shall have paid all undisputed Delay Liquidated Damages calculated and due pursuant to Section 15.1; provided that the amount of disputed Delay Liquidated Damages that is ultimately determined to be due and owing shall accrue interest from the Substantial Completion Date at the Contract Interest Rate;

(j) Owner has received all Contractor Deliverables (if any) for the Project as required to be delivered by the Substantial Completion Date pursuant to the Contractor Deliverables Table, including all Required Manuals identified therein, other than final as built drawings;

(k) Owner has received copies of all Contractor Acquired Permits required to be obtained by Contractor including those set forth in Exhibit C-2 (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 Agreement 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;

(l) Contractor has certified by a Notice to Owner that all training of Operating Personnel is complete;

(m) all Work other than Non-Essential Contractor Deliverables and other Non-Critical Deficiencies has been completed;

(n) all Liquidated Damages due pursuant to Section 15 have been paid (or credited

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against the Contract Price) and all of the other requirements set forth in Section 15 have been satisfied, as applicable;

(o) 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;

(p) Substantial Completion of the Project will require that all balance of plant Equipment and systems required to support simultaneous full load operation of all Units be proven capable of supporting the total cumulative plant load. Substantial Completion of the Project shall additionally require that with all Units in operation, the Project satisfies the Minimum Capacity Requirement, the Minimum Heat Rate Requirement, and the Must Meet Performance Guarantees for the Project as further set forth in Exhibit H-2;

(q) other than Non-Essential Contractor Deliverables, all spare parts to be purchased by Contractor have been delivered or purchased for delivery to Owner free and clear of liens and all special tools included as part of the Equipment and Materials have been turned over to Owner;

(r) Contractor has delivered to Owner the Warranty Bond in accordance with Section 3.20.2;

(s) the Punchlist for the Project shall be in final form or be deemed approved as provided for in Section 14.1.1 and only Non-Critical Deficiencies remain on the approved Punchlist; and

(t) Contractor shall have delivered all applicable Waivers and Releases Upon Progress Payment from Contractor required to be delivered pursuant to Section 6.6 and a Conditional Waiver and Release Upon Progress Payment dated no later than the proposed Substantial Completion Date.

14.3. Notice of Substantial Completion.

When Contractor believes that it has satisfied the provisions of Section 14.2, Contractor shall deliver to Owner a Notice of Substantial Completion certifying that all Agreement requirements for Substantial Completion have been met and specifying the date Contractor believes Substantial Completion occurred. Within ten (10) Business Days after receipt of such Notice, Owner shall inspect all Work hereunder and either (a) accept that Substantial Completion has occurred and deliver to Contractor an Owner's Certificate of Substantial Completion for the Project dated to reflect the Substantial Completion Date, in which case the Substantial Completion Date shall be the date stated in the Notice of Substantial Completion (which date shall not be earlier than the date such certificate was delivered to Owner); or (b) Notify Contractor in writing that Substantial Completion has not been achieved, stating in detail the reasons therefore. Such procedure shall be repeated as necessary until Substantial Completion has been achieved. If Contractor receives a notice under clause (b) above, Contractor shall take the necessary steps to achieve Substantial Completion and the procedures set forth under this Section shall be repeated (but with the period for Owner to respond to Contractor's notice reduced to two (2) Business Days) until such time as the applicable Certificate of Substantial Completion has been signed by Owner. Owner's failure to provide notice under clauses (a) or (b) above within the ten(10) or two (2) Business Day period (as applicable) after notice from Contractor shall be considered Owner-Caused Delay. The "**Substantial Completion Date**" shall be the date determined in accordance with this Section 14.3.

14.4. Final Completion.

Final Completion shall be deemed to have occurred only if all of the following have occurred:

(a) Substantial Completion has been achieved and all conditions precedent to Substantial

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Completion continue to be satisfied;

(b) All Acceptance Tests for the Project have been Successfully Run and, to the extent that the Guaranteed Capacity and Guaranteed Heat Rate have not been satisfied, Performance Liquidated Damages have been paid on the most recent performance thereof;

(c) Contractor shall have completed all items on the Punchlist for the Project;

(d) All Contractor's and Subcontractors' personnel, equipment, surplus materials, waste materials, rubbish and construction facilities other than those to which Owner holds title shall have been removed from the Site, and any permanent facilities used by Contractor and the Site shall have been restored to the same condition that such permanent facilities and the Site were in on the Notice to Proceed Date of the Project, ordinary wear and tear excepted;

(e) Owner shall have received all Contractor Deliverables for the Project as set forth on the Contractor Deliverables Table to the extent not already delivered (including final as-built drawings and a supply and listing of spare parts and inventory appropriate for the operation and maintenance of the Project in a manner consistent with Industry Standards);

(f) Contractor shall have assigned to Owner, or provided Owner, all warranties or guarantees that Contractor received from Subcontractors to the extent Contractor is obligated to do so under this Agreement;

(g) Contractor shall have delivered such other documents and certificates to Owner in compliance with this Agreement and all Applicable Laws;

(h) Contractor shall have delivered to Owner a Waiver and Release by Contractor Upon Final Payment and a Waiver and Release Upon Final Payment for all Subcontractors for the Project;

(i) Contractor shall have delivered to Owner a Notice of Final Completion that meets the requirements set forth in Section 14.5 of this Agreement;

(j) In cooperation with Owner Representative, Contractor shall have restored the Site, at Contractor's cost, as required to comply with requirements for filing an EPA Notice of Termination of Coverage under NPDES General Permit. This will include drill reseeding areas disturbed by Contractor, including laydown areas. Contractor shall not be responsible for restoring areas disturbed by Owner; and

(k) All other of Contractor's obligations under this Agreement shall have been performed or waived by agreement of the Parties.

14.5. Notice of Final Completion.

When Contractor believes that it has achieved Final Completion, Contractor shall deliver to Owner a Notice of Final Completion stating that Contractor believes it has satisfied the provisions of Section 14.4 for the Project. Within ten (10) Business Days after receipt of the Notice of Final Completion for the Project, Owner may inspect all Work hereunder and either (a) accept that Final Completion has occurred and deliver to Contractor an Owner's Certificate of Final Completion for the Project, in which case the Final Completion Date shall be the date stated in the Owner's Certificate of Final Completion (which date shall not be earlier than the date such Notice was delivered to Owner); or (b) notify Contractor in writing that Final Completion has not been achieved, stating in detail the reasons therefore. If Owner does not so respond to Contractor's Notice of Final Completion within such ten (10) Business Day period, then the Notice of Final Completion shall be deemed approved and the Final Completion Date shall be the date stated in the Notice of Final Completion. If Owner determines that Final Completion has not been achieved and delivers the Notice under

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the preceding clause (b), Contractor promptly shall take such action, including the performance of additional Work as will achieve Final Completion, and upon completion of such actions shall issue to Owner another Notice of Final Completion pursuant to this Section 14.5 and the provisions of this Section 14.5 shall apply with respect to the new Notice and each subsequent Notice thereafter in the same manner as they applied to the original Notice. The "**Final Completion Date**" of the Project shall be the date determined in accordance with this Section 14.5. Upon Final Completion, Contractor shall deliver the Warranty Bond to Owner and Owner shall simultaneously deliver the Performance Bond to Contractor (if such Performance Bond has not been previously called upon by Owner).

14.6. Contractor's Access After Substantial Completion and Final Completion.

Following Substantial Completion, Owner shall provide Contractor with reasonable and timely access to the Project, subject to procedures necessary for the operation of the Project, to: (a) complete all items on the Punchlist for the Project, and (b) satisfy the other requirements for Final Completion. The Parties expect that Contractor shall accomplish any necessary modification, repairs or additional work with minimal interference with commercial operation of the Project and that reductions in and shut-downs of the Project or any portion of the Project's operations will be required only when necessary, taking into consideration the length of the proposed reduction or shut-down, and Owner's obligations and liabilities to customers or others. Provided that the correction of Non-Critical Deficiencies on a Punchlist does not require a shut-down of the Project or any portion of such Project, Owner agrees to permit Contractor reasonable access to the Project to perform such Work. Notwithstanding the foregoing, should a reduction in or shut-down of the Project's operations be required to complete any items on a Punchlist, then such reduction or shut-down shall be scheduled at the sole discretion of Owner, and Contractor shall complete such Work during such Owner scheduled reduction or shut-down. Contractor acknowledges that Owner may schedule such reduction or shut-down at any time including off peak hours, nights, weekends and holidays.

14.7. Consequences of Acceptance.

In no event shall (a) Owner's payment for or acceptance of the Work or any Equipment be construed as or constitute having satisfied the conditions of Substantial Completion or Final Completion; nor (b) the execution of any accompanying Owner's Notice as set forth in this Article 14 be construed as or constitute a waiver of Owner's rights or Contractor's obligations under this Agreement.

15. LIQUIDATED DAMAGES

15.1. Delay Liquidated Damages.

Contractor understands that if Substantial Completion for the Project does not occur by the Substantial Completion Guaranteed Date, as may be adjusted under this Agreement, Owner will suffer substantial damages, including the loss of operating revenue, incurring costs to purchase replacement power for its customers, additional interest and financing charges on funds obtained by Owner to finance the Work, reduction of return on Owner's equity investment in the Project, penalties and other operating and construction costs and charges. In that event, Contractor shall, subject to the Delay LD Cap and Aggregate LD Cap, be liable for and shall pay to Owner liquidated damages ("**Delay Liquidated Damages**"). Any undisputed amount Contractor is obligated to pay to Owner under this Section 15.1 shall be due and payable within twenty-five (25) calendar days after Owner has invoiced Contractor for such amounts.

15.1.1. Delay Liquidated Damages.

If the Project fails to meet the requirements for Substantial Completion per Section 14.2 by the Substantial Completion Guaranteed Date, as may be adjusted under this Agreement, Delay Liquidated Damages shall be equal to One Thousand Dollars ($1,000) per Day per each MW of Delayed Capacity that Contractor fails to achieve Substantial Completion after such Substantial Completion Guaranteed Date, as may

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be adjusted. "**Delayed Capacity**" is an amount equal to the difference between the Guaranteed Capacity and the Capacity as of the determination date.

15.2. Capacity Liquidated Damages Guarantee; Performance Cure Period.

If based on the results from the most recent Performance Test that has been Successfully Run prior to Substantial Completion, the Project has not satisfied its Guaranteed Capacity: (a) Contractor shall exclude from the Substantial Completion invoice, as set forth in the Payment Schedule, an amount equal to One Million Five Hundred Thousand Dollars ($1,500,000) per MW of shortfall in the Guaranteed Capacity ("**Capacity Liquidated Damages Guarantee**") as liquidated damages for failure to satisfy its Guaranteed Capacity; (b) within thirty (30) days after the Substantial Completion Guaranteed Date, Contractor shall submit the Remedial Plan to Owner, which shall specify the corrective actions Contractor will take and the commencement date of such corrective actions, for Owner's approval, which shall not be unreasonably withheld; and (c) Contractor shall continue to attempt to satisfy the Guaranteed Capacity for the Project in accordance with the Remedial Plan, until the date that is the one hundred sixtieth (160^{th}) day after such Substantial Completion Guaranteed Date (such period, the "**Performance Cure Period**").

15.2.1. Achievement of Guaranteed Capacity.

If Contractor achieves the Guaranteed Capacity on or prior to the expiration of the applicable Performance Cure Period, as may be adjusted under this Agreement, Contractor may invoice Owner the amount of the Capacity Liquidated Damages Guarantee excluded from the Substantial Completion invoice for the Project within five (5) Business Days after the date on which such Guaranteed Capacity was achieved.

15.2.2. Failure to Achieve Guaranteed Capacity.

If, however, Contractor fails to achieve the Guaranteed Capacity prior to the expiration of the Performance Cure Period, as may be adjusted under this Agreement, Contractor shall be deemed to have elected to have no further obligation to try to achieve such Guaranteed Capacity for the Project. Contractor shall calculate the Capacity Liquidated Damages based on the results from the most recent Performance Test that has been Successfully Run and Contractor shall deliver to Owner a Notice of such amount. If such amount of Capacity Liquidated Damages is less than the Capacity Liquidated Damages Guarantee, Contractor shall invoice Owner the amount equal to such difference within five (5) Business Days after the date of such Notice. If the Capacity Liquidated Damages calculated by Contractor are greater than the Capacity Liquidated Damages Guarantee, Contractor shall pay to Owner an amount that is equal to the difference between the Capacity Liquidated Damages Guarantee and the Capacity Liquidated Damages calculated by Contractor pursuant to this Section 15.2.2, subject always to the Performance LD Cap and the Aggregate LD Cap. For the avoidance of doubt, Performance Liquidated Damages equal the sum of the Capacity Liquidated Damages (Section 15.2.2) and the Heat Rate Liquidated Damages (Section 15.3.2). Any undisputed amount Contractor is obligated to pay to Owner under this Section 15.2.2 shall be due and payable within twenty-five (25) calendar days after Owner has invoiced Contractor for such amounts.

15.3. Heat Rate Liquidated Damages Guarantee; Performance Cure Period.

If based on the results from the most recent Performance Test that has been Successfully Run prior to Substantial Completion, the Project has not satisfied its Guaranteed Heat Rate: (a) Contractor shall exclude from the Substantial Completion invoice, as set forth in the Payment Schedule, an amount equal to Two Hundred Fifty Dollars ($250) per Btu/kWh (HHV) of shortfall in the Guaranteed Heat Rate ("**Heat Rate Liquidated Damages Guarantee**") as liquidated damages for failure to satisfy its Guaranteed Heat Rate; (b) within thirty (30) days after the Substantial Completion Guaranteed Date, Contractor shall submit the Remedial Plan to Owner, which shall specify the corrective actions Contractor will take and the commencement date of such corrective actions, for Owner's approval, which shall not be unreasonably withheld; and (c) Contractor shall continue to attempt to satisfy the Guaranteed Heat Rate for the Project in

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accordance with the Remedial Plan, until the end of the Performance Cure Period.

15.3.1. Achievement of Guaranteed Heat Rate.

If Contractor achieves the Guaranteed Heat Rate on or prior to the expiration of the applicable Performance Cure Period, as may be adjusted under this Agreement, Contractor may invoice Owner the amount of the Heat Rate Liquidated Damages Guarantee excluded from the Substantial Completion invoice for the Project within five (5) Business Days after the date on which such Guaranteed Heat Rate was achieved.

15.3.2. Failure to Achieve Guaranteed Heat Rate.

If, however, Contractor fails to achieve the Guaranteed Heat Rate prior to the expiration of the Performance Cure Period, as may be adjusted under this Agreement, Contractor shall be deemed to have elected to have no further obligation to try to achieve such Guaranteed Heat Rate for the Project. Contractor shall calculate the penalty for shortfall in achieving the Guaranteed Heat Rate ("**Heat Rate Liquidated Damages**") based on an amount equal to Two Hundred Fifty Dollars ($250) per Btu/kWh (HHV) of shortfall in the Guaranteed Heat Rate and the results from the most recent Performance Test that has been Successfully Run and Contractor shall deliver to Owner a Notice of such amount. If such amount of Heat Rate Liquidated Damages is less than the Heat Rate Liquidated Damages Guarantee, Contractor shall invoice Owner the amount equal to such difference within five (5) Business Days after the date of such Notice. If the Heat Rate Liquidated Damages calculated by Contractor are greater than the Heat Rate Liquidated Damages Guarantee, Contractor shall pay to Owner an amount that is equal to the difference between the Heat Rate Liquidated Damages Guarantee and the Heat Rate Liquidated Damages calculated by Contractor pursuant to this Section 15.3.2, subject always to the Performance LD Cap and the Aggregate LD Cap. Any undisputed amount Contractor is obligated to pay to Owner under this Section 15.3.2 shall be due and payable within twenty-five (25) calendar days after Owner has invoiced Contractor for such amounts.

15.4. Access During Performance Cure Periods.

Upon Substantial Completion, Owner shall assume care, custody and control of the Project. Notwithstanding the foregoing, during the Performance Cure Period and upon approval of the Remedial Plan, Owner shall provide Contractor with reasonable access to the Project. Contractor shall be granted such access, subject to Section 15.5, for purposes of achieving the Guaranteed Capacity or Guaranteed Heat Rate and for the period as set forth in the Remedial Plan, to:

(a) perform corrective actions pursuant to the Remedial Plan; and

(b) perform the Performance Test, as provided in such Remedial Plan.

15.5. Operations During Performance Cure Periods.

During the Performance Cure Period, Owner shall have the right to operate the Project, including the right to maximize the economic benefits of the Project. Any failure by Owner to provide Contractor with access to the Project as set forth in this Section 15.5 shall not be considered a breach of any covenant, condition, representation or warranty of Owner, and shall not be construed as an Owner Event of Default. Contractor's only remedy for a failure by Owner to provide Contractor with access to the Project as set forth in this Section 15.5 shall be an equitable extension of the Performance Cure Period until such reasonable access is provided.

15.6. Sole Remedy; Liquidated Damages Not a Penalty.

The amounts payable by Contractor or withheld by Owner under this Article 15, as limited by Article 30, and the other remedies provided for in this Article 15, shall be the sole and exclusive remedies of

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Owner for Contractor's delays in achieving Substantial Completion by the Substantial Completion Guaranteed Date, for failure to achieve its Guaranteed Capacity, or for failure to achieve its Guaranteed Heat Rate, except to the extent arising from a Contractor Event of Default. The Parties agree that Owner's actual damages in the event of such delays or failures would be extremely difficult or impracticable to determine. After negotiation, the Parties have agreed that the Delay Liquidated Damages, the Capacity Liquidated Damages, and the Heat Rate Liquidated Damages are in the nature of liquidated damages and are a reasonable and appropriate measure of the damages that Owner would incur as a result of such delays or failures, and do not represent a penalty.

15.7. Enforceability.

The Parties explicitly agree and intend that the provisions of this Article 15 shall be fully enforceable by any court or arbitration proceeding exercising jurisdiction over any Dispute between the Parties arising under this Agreement. Contractor hereby irrevocably waives any defenses available to it under law or equity relating to the enforceability of the liquidated damages provisions in this Article 15 and other provisions relating thereto. If, notwithstanding the express agreement of the Parties that such provisions of this Article 15 are enforceable at law and equity as between themselves, Contractor attempts to avoid the application of the remedies relating to the liquidated damages in this Article 15 in any Dispute between the Parties and it is determined by any court or arbitrator that Contractor's liability for liquidated damages pursuant to this Article 15 is unenforceable, then the Parties agree that Owner shall have the right to avail itself of any right or remedy available to it in law or equity, including the right to pursue Contractor for actual damages resulting from a breach by Contractor of its contractual obligations, subject to the limitations on liability set forth in Article 30.

16. CHANGES IN THE WORK

16.1. Change In Work.

A "**Change In Work**" shall result from one of the following:

(a) changes in the Work required by Owner and permitted by Section 16.2;

(b) the occurrence of a Force Majeure Event or an Excusable Event (as and only to the extent permitted by Sections 8.4.1 or 8.4.2, respectively);

(c) an Owner Directive, in accordance with Section 16.7;

(d) an Owner requested delay in the Work pursuant to Section 20.3.1;

(e) any reduction or increase in the Guaranteed Capacity of the Project requested by Owner, subject to Section 16.2; or

(f) any other event or circumstance specifically identified in this Agreement as constituting a Change In Work or entitling either Party to seek a Change In Work or Change In Work Form.

16.2. By Owner.

Subject to Section 16.4, Owner shall have the right to make modifications, deletions, accelerations, alterations, suspensions, or additions to the Work; provided, however that, in no event may Owner, without Contractor's prior written consent, make a change in the Work that would (a) affect, or could affect, the performance of the Project under the Performance Guarantees ; (b) accelerate, or could accelerate, the Project Schedule; or (c) increase, or could increase, the costs of the Contractor. All such changes shall be made in accordance with this Article 16, shall be documented in accordance with Section 16.4 and shall be considered, for all purposes of this Agreement, as part of the Work.

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16.3. Adjustment to Work Schedule Due to Force Majeure Events or Excusable Events.

If a Force Majeure Event or an Excusable Event occurs, the Work Schedule, the Milestone Items, the Substantial Completion Guaranteed Date and the Contract Price shall be modified as and to the extent provided in Section 8.4.1 or 8.4.2, as the case may be, and as set forth in the Change In Work Form accepted by Owner.

16.4. Preparation of Change In Work Form

16.4.1. Due to Owner Initiated and Other Changes In Work.

Upon the occurrence of any of the events set forth in Section 16.1(a), (d), (e), or (f), Owner or Contractor, as applicable, shall provide the other Party with a Notice of the occurrence of such event, and Contractor shall, as soon as practicable, prepare and submit to Owner a preliminary written estimate relating to the proposed Change In Work, including (a) any projected change in the cost of the performance of the Work and any projected modification of the Contract Price, occasioned by such Change In Work; (b) the effect such Change In Work could be expected to have on the Work Schedule); and (c) the potential effect of such Change In Work on Contractor's ability to comply with any of its obligations hereunder, including Contractor's warranties, Performance Guarantees and Emissions Guarantees. Contractor's cost of any Change shall include and identify all elements of cost and a total lump sum cost using the following guidelines: (i) in the case of any Change (other than a Change resulting from the events set forth in Section 16.1(e), the actual and reasonably substantiated costs incurred by Contractor, and (ii) in the case of any Change resulting from the events set forth in Section 16.1(e) to a maximum percentage change of ten percent (10%), an amount equal to the pro rata portion of the Contract Price corresponding to each MW of reduction or increase in the Guaranteed Capacity. The adjustment in the Contract Price specified in this Section 16.4.1 and the Work Schedule shall be the sole adjustment related to such specific Change In Work (to the exclusion of other theories of recovery such as cumulative impact). If the Parties cannot agree to a lump sum adjustment for such Change In Work, then Owner may direct Contractor to perform such Work in accordance with Section 16.7 on a time and materials basis.

16.4.2. Due to Excusable Event or an Event of Force Majeure.

If a Force Majeure Event or an Excusable Event occurs for which Contractor is entitled to an adjustment to either the Work Schedule or the Contract Price pursuant to Section 8.4.1 or Section 8.4.2, as applicable, then Contractor shall, as soon as practicable, prepare and submit to Owner in accordance with Section 8.4.3 a proposed Change In Work Form, which shall include (a) any projected change in the Contract Price, occasioned by such Change In Work; and (b) the effect such Change In Work could be expected to have on the Work Schedule, or any other schedule or dates for performance by Contractor hereunder, in each case all as and to the extent provided in Section 8.4.1 (with respect to a Force Majeure Event) and Section 8.4.2 (with respect to an Excusable Event) and as set forth in the Change In Work Form accepted by Owner. The adjustment in the Contract Price specified in this Section 16.4.2 and the Work Schedule shall be the sole adjustment related to the applicable Force Majeure Event or Excusable Event addressed in such specific Change In Work as and to the extent expressly described in the Change In Work. If the Parties cannot reach agreement on the matters listed in the Change In Work Form submitted pursuant to this Section 16.4.2, then such matter shall be referred to dispute resolution under Article 31.

16.5. Execution of Change In Work Form.

If Contractor and Owner reach agreement on the matters that constitute the Change In Work, then the Parties shall execute a Change In Work Form. If the Parties cannot reach agreement on the matters listed in the Change In Work Form submitted pursuant to this Section 16.5, then such matter shall be referred to dispute resolution under Article 31, unless Owner directs Contractor to perform the Change In Work pursuant to an Owner Directive pursuant to Section 16.7.

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16.6. No Obligation or Payment Without Executed Change In Work Form.

Contractor shall not be obligated to undertake a Change In Work until Contractor has received (a) a Change In Work Form submitted by Contractor and accepted by Owner, except as set forth in Section 16.7, or if immediate action is reasonably required to address an emergency which endangers human health or property; or (b) received a written Owner Directive; or (c) received Notice from Owner indicating that Owner does not believe that Contractor is entitled to a Change in Work with respect to the matters that are the subject of Contractor's Notice of a change or claim, and directing that Contractor proceed with the disputed Work. In the absence of such executed Change In Work Form, except as set forth in Section 16.7 or in the event of such emergency, if Contractor undertakes any changes in the Work, or performs extra work or otherwise incurs added costs, then Contractor shall make any such changes at Contractor's risk and expense and shall not be entitled to any schedule modification or payment hereunder for undertaking such changes (subject to Contractor's right to a Change In Work in the circumstances specified in Sections 8.4.1, 8.4.2 and 8.4.3). Nothing in this Section 16.6 shall be deemed to waive Contractor's or Owner's right to avail itself of the dispute resolution procedures pursuant to Article 31 with respect to disputed Change In Work Forms.

16.7. Owner Directives.

If Contractor and Owner are unable to agree on whether a Change In Work has occurred or on the matters described in a Change In Work Form, regardless of whether such Change In Work Form was initiated by Contractor or by Owner, Contractor shall perform the Work as Owner so directs in writing (provided that such work is subject to the limitations set forth in Section 16.2 (an "**Owner Directive**")) on a monthly time-and-materials basis, plus a fee of ten percent (10%) for overhead and general and administrative costs and profit, in accordance with the following procedures:

(a) Contractor shall, as soon as practicable, prepare and submit to Owner a preliminary written estimate relating to the Owner Directive;

(b) the Parties shall then promptly mutually agree on the schedule and other changes in terms and conditions associated with work under the Owner Directive, including the estimate described in clause (a) of this Section 16.7;

(c) Owner shall assign a "Pending Item Claim Number" to the Work in question and shall issue Contractor a separate Notice to proceed;

(d) Contractor shall proceed to perform the Work identified therein;

(e) Using the "Pending Item Claim Number" to identify the Work identified in the Owner Directive, Contractor shall submit on a monthly basis a Contractor's Invoice to Owner for payment of an amount equal to the sum of the time and materials costs, which may include reasonable allowances for overhead and profit; and

(f) Upon Owner's request, Contractor shall prepare and provide reasonable calculations of any such charges and Subcontractor invoices, time sheets and such other reasonable documents to support such Contractor's Invoice.

Contractor expressly waives any other compensation or relief as a result of such Owner Directive.

16.8. Disputed Changes In Work.

Any Disputes regarding a Change In Work Form or whether a Change In Work has occurred or that are otherwise related to a Change In Work shall be subject to the dispute resolution provisions of Article 31.

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16.9. No Suspension.

Contractor shall not suspend or stop the Work pending resolution of any alleged or proposed Change In Work unless directed by Owner in writing to suspend the Work.

17. WARRANTIES CONCERNING THE WORK

17.1. Defect and Design Warranties.

With respect to the Project, Contractor warrants and guarantees to Owner:

17.1.1. Defect Warranty.

That all Work, including the supply of Equipment furnished by Contractor (and any of its Subcontractors or Suppliers) for the Project shall:

(a) be free from Defects in material, manufacture and workmanship;

(b) be new and unused (when installed) unless the Parties agree otherwise in advance and in writing;

(c) be of good quality and good condition (when installed);

(d) conform to the applicable requirements of the Statement of Work;

(e) be in compliance with Applicable Law and Industry Standards; and

(f) with respect to Equipment, be free from any charge, lien, security interest or other encumbrance to the extent Contractor has received payment therefore.

(the "**Defect Warranty**").

17.1.2. Design Warranty.

That the design of the Project shall conform to Section 1.3 of the Statement of Work, Industry Standards and Applicable Law (the "**Design Warranty**").

17.2. Warranty Periods

17.2.1. Defect Warranty Period.

Contractor shall provide the Defect Warranty for a period ending twelve (12) months after the Final Completion Date (the "**Defect Warranty Period**"); provided, however, that the warranty period for any Equipment for the Project required to be re-performed, repaired, corrected or replaced following discovery of a Defect or other non-compliance with the Defect Warranty during the Defect Warranty Period shall continue until the end of the later of (a) the expiration of the Defect Warranty Period and (b) one (1) year from the date of completion of such repair or replacement. Notwithstanding any other provision of this Section 17.2, the Defect Warranty Period (as the same may be extended pursuant to clause (b) of this Section 17.2.1) shall end no later than twenty-four (24) months after the Final Completion Date.

17.2.2. Design Warranty Period.

Contractor shall provide the Design Warranty applicable to the Project for a period of twelve

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(12) months commencing on the Final Completion Date (the "**Design Warranty Period**").

17.3. Exclusions

17.3.1. Defect Warranty and Design Warranty.

The Defect Warranty and Design Warranty shall not apply to:

(a) damage to or failure of any Work or Equipment to the extent such damage or failure is directly caused by:

(i) a failure by Owner or its representatives, agents or contractors to maintain or operate such Equipment in accordance with Industry Standards or in accordance with the recommendations set forth in the Required Manuals but only if such failure occurs after the Substantial Completion Date;

(ii) operation of such Equipment by Owner or its representatives, agents or contractors in excess of operating specifications for such Equipment as set forth in the Required Manuals but only if such failure occurs after the Substantial Completion Date;

(iii) a Force Majeure Event or an Excusable Event; and

(b) items that require replacement due to normal wear and tear, normal erosion or corrosion or casualty loss.

17.3.2. Operating Personnel.

Notwithstanding the foregoing, prior to the training of the Operating Personnel provided by Contractor pursuant to Section 3.18, any adverse stress or damage to the Equipment caused by Operating Personnel while under the direction of Contractor shall be the responsibility of Contractor, except to the extent such Operating Personnel's acts or omissions constitute negligence or willful misconduct.

17.4. Enforcement by Owner; Subcontractor Warranties; Supplier Warranties.

All Subcontractors', manufacturers', and Suppliers' warranties and guarantees respecting any part of the Work, any Equipment, and any materials used therein shall be deemed obtained by Contractor for the benefit of Owner without the necessity of separate transfer or assignment thereof.

17.4.1. Owner's Right to Enforce Warranties.

Commencing on the expiration of the Defect Warranty Period, Owner shall be entitled to enforce all applicable, unexpired original warranties from Subcontractors, and Contractor shall use Commercially Reasonable Efforts, at Owner's cost, to assist Owner in enforcing such warranties, when and as reasonably requested by Owner in writing. In addition, prior to the expiration of such Defect Warranty Period, Owner, at its option and upon prior Notice to Contractor, may enforce the Defect Warranty against any Subcontractor if a Contractor Event of Default exists and this Agreement has been terminated in accordance with Article 19.

17.4.2. Assignment of Warranties by Contractor.

If a Contractor Event of Default exists and this Agreement has been terminated in accordance with Article 19, or otherwise at the end of the Defect Warranty Period, Contractor shall assign all applicable, unexpired and assignable original warranties of all Suppliers to Owner, subject to the terms and conditions of

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any such remaining warranties of all Suppliers; provided, however, that, notwithstanding such assignment, Contractor shall be entitled to enforce each such warranty through the end of such Defect Warranty Period. Contractor shall use Commercially Reasonable Efforts to cause Owner to be an express third-party beneficiary of all such warranties of the Supplier (but at no additional cost to Contractor or Owner for such warranties). At Owner's request, Contractor shall deliver to Owner, at the end of such Defect Warranty Period, copies of all subcontracts containing such assignable warranties (with reasonable redactions to keep commercial and economic terms confidential).

17.5. Correction of Defects

17.5.1. Notice of Warranty Claim.

Promptly upon Owner's Notice to Contractor of the discovery of any failure of the Work to meet the Defect Warranties or Design Warranties, which failure shall have arisen prior to the expiration of the Defect Warranty Period or Design Warranty Period, as applicable, Contractor shall promptly (at Contractor's option and expense), correct, repair or replace the Defect. Any remediation or repair performed by Contractor shall be performed to the standards set forth in this Agreement. Additionally, Contractor shall pay the cost of removing any Defect and the cost of 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 or other Work as necessary to give access to improper, defective or non-conforming Work and correction, removal or repair of any damage to other work or property that arises from the Defect as shall be necessary to cause the Work to conform to the Warranty. The timing of and the work to be completed with respect to any such remediation or repair shall be subject to Owner's approval, such approval not to be unreasonably withheld or delayed. Notwithstanding the foregoing and subject to Section 17.5.3, if any of the Work shall fail to satisfy the Warranty during the Warranty Period, and such failure endangers human health or property or materially and adversely affects the operation of the Project, Contractor shall correct the failure as soon as is practicable. Notwithstanding anything to the contrary herein, Contractor shall have a right to dispute any Defect Warranty claim.

17.5.2. Failure of Contractor to Perform Warranty Work.

Contractor shall be given a reasonable opportunity to perform any Work under its Defect Warranty or Design Warranty under this Article 17. If Contractor does not use its reasonable efforts to promptly proceed to complete the warranty work for the Project, or cause any relevant Subcontractor to proceed to complete such warranty work, required to satisfy any warranty claim properly asserted under the terms of this Article 17, Owner shall, after giving Contractor at least three (3) Business Days' prior Notice of Owner's intent to perform the remedy itself, have the right to perform the necessary warranty work to remedy the warranty claim, or have third parties perform the necessary warranty work and Contractor shall bear the reasonable costs thereof.

17.5.3. Chronic Failure.

If a chronic failure of any component occurs during the Defect Warranty Period, Contractor will investigate the root cause of the failure and repair, replace or adjust to correct the root cause of the chronic failure in accordance with Industry Standards. For the purpose of this Section 17.5.3, chronic failure shall mean a substantially similar failure to: (a) ten percent (10%) where the number of such components is thirty (30) or more; or (b) thirty-five percent (35%) where the total number of such components is less than thirty (30) but more than two (2).

17.5.4. Acceptance Tests.

If, during the Warranty Period, Contractor shall change, repair or replace any Work or Equipment, Owner, in its reasonable discretion, may require Contractor to conduct and satisfactorily complete

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any Acceptance Test with respect to the affected Equipment; provided, however, in connection with any re-performance of an Acceptance Test pursuant to this Section 17.5.4, an appropriate degradation allowance with respect to the performance of such Equipment shall be made for the fact that such Equipment may have operated prior thereto. If after running a Performance Test pursuant to this Section, the results of such Performance Test indicate a degradation in the performance (as measured against the test results used to satisfy the Performance Guarantees prior to Substantial Completion and adjusted consistent with the degradation allowed) or fails to satisfy any other Acceptance Test, then Contractor shall repair, correct or replace such affected Work or Equipment and re-run such Acceptance Test until the performance is at a level consistent with the performance on the Substantial Completion Date (as adjusted consistent with the degradation allowed).

17.6. Limitations On Warranties.

EXCEPT FOR THE EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN ARTICLE 4, THIS ARTICLE 17 AND SECTION 18.2.1, CONTRACTOR DOES NOT MAKE ANY OTHER EXPRESS WARRANTIES OR REPRESENTATIONS, OR ANY IMPLIED WARRANTIES OR REPRESENTATIONS, OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE. THE REMEDIES PROVIDED FOR IN THIS ARTICLE 17 WITH RESPECT TO ANY WORK WHICH FAILS TO SATISFY THE DEFECT OR DESIGN WARRANTY DURING THE APPLICABLE WARRANTY PERIOD SHALL BE THE SOLE AND EXCLUSIVE REMEDIES OF OWNER AS A RESULT OF SUCH FAILURE.

18. EQUIPMENT IMPORTATION; TITLE

18.1. Importation of Equipment.

Contractor or its Subcontractors, at Contractor's own cost and expense, shall make all arrangements, including the processing of all documentation, necessary to import into the United States the Equipment and any other equipment and other items necessary to perform the Work and shall coordinate with the applicable Governmental Authorities in achieving clearance of United States customs for all such Equipment and other items and, to the extent available under Applicable Laws of the United States but without limiting Contractor's liability, for any and all Taxes as specified in Section 5.2.

18.2. Title

18.2.1. Condition.

Subject to Section 18.2.2, Contractor warrants good and marketable title, free and clear of all liens, claims, charges, security interests, and encumbrances whatsoever (to the extent Owner's payments to Contractor are made and received by Contractor in accordance with this Agreement and other than those created by Owner or any Owner's Separate Contractor), to all Work, Equipment and other items furnished by Contractor or any of its Subcontractors and that (x) become part of the Project or (y) are to be used for the operation, maintenance or repair thereof.

18.2.2. Transfer.

Title to all Equipment and all Work provided hereunder for the Project shall pass in accordance with Section 18.2.1 to Owner upon the earlier of payment for such Equipment or incorporation of such Equipment or Work into the Project (other than to the extent set forth in Section 19.4(a)); provided, however, that the vesting of title to Owner shall not impose any obligations on Owner or relieve Contractor of any of its obligations hereunder.

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18.2.3. Custody During Performance.

The transfer of title shall in no way affect Owner's rights as set forth in any other provision of this Agreement. Contractor shall have care, custody, and control of all Equipment for the Project and exercise due care with respect thereto until the earlier of the Substantial Completion Date or the termination of this Agreement.

18.3. Transfer of Care, Custody and Control.

On and after the Substantial Completion Date or the termination of this Agreement, Owner shall take complete possession and control and shall assume and bear the risk of loss and responsibility for the Project.

19. DEFAULTS AND REMEDIES

19.1. Contractor Events of Default.

Contractor shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, a "**Contractor Event of Default**"):

(a) Contractor becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors, or Contractor commences any case, proceeding or other action seeking reorganization or receivership, or adopts an arrangement with creditors, under any bankruptcy, insolvency, reorganization or similar law of the United States or any state thereof for the relief of creditors or affecting the rights or remedies of creditors generally;

(b) insolvency, receivership, reorganization, or bankruptcy or similar proceedings are commenced against Contractor and such proceeding shall remain undismissed or unstayed for a period of thirty (30) days;

(c) any material representation or warranty made by Contractor herein was false or misleading when made;

(d) Contractor purports to assign or transfer this Agreement or any right or interest herein except in accordance with Article 26;

(e) Contractor fails to maintain any insurance coverages required of it in accordance with Article 21;

(f) Contractor fails to discharge or remove any lien or claim filed against Owner, the Project or the underlying property, or against any improvements thereof, as and when required by this Agreement;

(g) Contractor fails to make prompt payments due and owing to any Subcontractor, as required by this Agreement or Applicable Law;

(h) Contractor submits a fraudulent claim in an effort to unfairly obtain additional compensation from Owner;

(i) Contractor fails to perform any provision of this Agreement providing for the payment of money to Owner, except for any disputed amounts;

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(j) The Must Meet Performance Guarantees for any Unit or the Project has not been achieved by the Substantial Completion Guaranteed Date;

(k) the Substantial Completion Date has not occurred by the one hundred sixtieth (160^{th}) day after the Substantial Completion Guaranteed Date of the Project, as such date may be extended pursuant to the provisions of this Agreement;

(l) except as a result of an Owner Event of Default or a Force Majeure Event, (i) Contractor Abandons the Work and Contractor fails to remedy such breach within ten (10) Business Days after the date on which Contractor first receives a Notice from Owner with respect thereto, or (ii) Contractor fails to commence performance of the Work for the Project within ten (10) Business Days after the Notice to Proceed Date of the Project;

(m) if Contractor Credit Support is invalid for any reason, is no longer in effect or is unenforceable at any time at which Contractor Credit Support is required to be in force; or

(n) Contractor fails to perform any material provision of this Agreement not otherwise addressed in this Section 19.1.

19.2. Owner's Rights and Remedies.

If a Contractor Event of Default occurs, subject to Article 30, Owner shall give Contractor Notice and a fourteen (14) days cure period unless a longer or shorter cure period is set forth for a particular Contractor Event of Default in Section 19.1 (each a "**Contractor Cure Period**"). If such breach cannot be remedied within the applicable Contractor Cure Period, such period shall be extended if: (i) curing such failure reasonably requires more than the Contractor Cure Period; and (ii) Contractor commences such cure within such Contractor Cure Period and diligently prosecutes such cure to the satisfaction of Owner. Where an extension is warranted, Owner and Contractor shall use their Commercially Reasonable Efforts to agree upon an appropriate Contractor Cure Period in good faith, provided that the failure to so agree shall not affect the rights and obligations of the Parties hereunder. If Contractor fails to cure the Contractor Event of Default within the applicable Contractor Cure Period or agreed-upon extension, Owner or its assignees shall have the following rights and remedies and may elect to pursue any or all of them, in addition to any other rights and remedies that may be available to Owner hereunder, and Contractor shall have the following obligations:

(a) (i) Owner may terminate this Agreement by giving Notice of such termination to Contractor;

(ii) if Owner terminates this Agreement in accordance with the provisions hereof, Contractor shall withdraw from the Site, shall assign (to the extent such subcontract may be assigned) to Owner (without recourse to Contractor) such of Contractor's subcontracts as Owner may request in writing, and shall license, in the manner provided herein, to Owner all Intellectual Property Rights of Contractor related to the Work reasonably necessary to permit Owner to complete or cause the completion of the Work, and in connection therewith Contractor authorizes Owner and its respective agents to use such information in completing the Work, shall remove such materials, equipment, tools, and instruments used by and any debris or waste materials generated by Contractor in the performance of the Work as Owner may direct, and Owner may take possession of any or all Contractor Deliverables necessary for completion of the Work (whether or not such Contractor Deliverables are complete); and

(iii) if Owner terminates this Agreement, Owner may seek damages as provided in Section 20.1;

(b) Owner may proceed against the Contractor Credit Support in accordance with its terms;

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(c) Subject to the dispute resolution procedures set forth in Article 31, Owner may seek equitable relief solely to cause Contractor to take action, or to refrain from taking action, pursuant to this Agreement, or make restitution of amounts improperly received under this Agreement;

(d) Owner may pursue the dispute resolution procedures set forth in Article 31 to enforce the provisions of this Agreement;

(e) Owner may make such payments as are reasonably required to cure any monetary-related Contractor Event of Default and either offset the cost of such payment against payments otherwise due to Contractor under this Agreement or Contractor shall be otherwise liable to pay and reimburse such amounts plus interest at the Contract Interest Rate to Owner promptly;

(f) Owner may suspend the Work by giving Notice of such suspension to Contractor; or

(g) Without exercising Owner's termination for default rights, Owner may perform the obligation in respect of which Contractor is in default, all at Contractor's expense, using Owner's own forces or by engaging other contractors.

19.3. Owner Event of Default.

Owner shall be in default of its obligations pursuant to this Agreement upon the occurrence of any one or more events of default set forth below (each, an "**Owner Event of Default**"):

(a) Owner becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors, or Owner commences any case, proceeding or other action seeking reorganization or receivership, or adopts an arrangement with creditors, under any bankruptcy, insolvency, reorganization or similar law of the United States or any state thereof for the relief of creditors or affecting the rights or remedies of creditors generally;

(b) insolvency, receivership, reorganization, or bankruptcy or similar proceedings are commenced against Owner and such proceeding shall remain undismissed or unstayed for a period of thirty (30) days;

(c) any material representation or warranty made by Owner herein was false or misleading when made;

(d) Owner purports to assign or transfer this Agreement or any right or interest herein, except in accordance with Article 26;

(e) Owner fails to perform any provision of this Agreement requiring Owner to pay money to Contractor and such failure continues for ten (10) days after Owner has received a Notice from Contractor with respect thereto;

(f) An Owner directed suspension of the Work in excess of 180 days;

(g) Owner fails to perform any material provision of this Agreement not otherwise addressed in this Section 19.3.

19.4. Contractor's Rights and Remedies.

If an Owner Event of Default occurs, subject to Article 30, Contractor shall give Owner Notice of such Owner Event of Default and a fourteen (14) day period in which to cure the Owner Event of Default unless a shorter or longer cure period is set forth for a particular Owner Event of Default in Section 19.3 (and

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which notice, for the avoidance of doubt, is in lieu of, and not in addition to, the cure period set forth in Section 19.3, if any). If the Owner Event of Default is not cured within such cure period, and subject to Article 30, Contractor shall have the following rights and remedies:

(a) to seek equitable relief solely to cause Owner to take action, or refrain from taking action, pursuant to this Agreement, or make restitution of amounts improperly received under this Agreement;

(b) to pursue the dispute resolution procedures set forth in Article 31 to enforce the provisions of this Agreement; or

(c) suspend the Work by giving Notice of such suspension to Owner; or

(d) if the Owner Event of Default is not cured within thirty (30) days of Notice of Owner Event of Default, Contractor may give notice of its intent to terminate this Agreement by giving Notice thereof to Owner, and Contractor may terminate this Agreement, in which case such termination shall be deemed to be a termination for Owner's convenience pursuant to Section 20.2.

20. TERMINATION OR SUSPENSION

20.1. Termination and Damages for Contractor Event of Default.

20.1.1. Consequences of Contractor Event of Default.

In the event of a Contractor Event of Default, and Contractor's failure to cure the Contractor Event of Default as provided by Section 19.2, Owner may terminate Contractor's Work by Notice to Contractor, and without limiting Contractor's right to assert any defenses with respect to such actions or costs Contractor shall be liable to Owner for any and all actual costs and damages to Owner as a result of such Contractor Event of Default, it being understood that, to the extent that the actual costs of completing the Work, including out-of-pocket costs paid by Owner in obtaining a replacement contractor, replacement Equipment or services, or otherwise to perform the Work or for professional services required as a consequence of such Contractor Event of Default, exceed those costs that would have been payable to Contractor but for such Contractor Event of Default, Contractor shall be obligated to pay the difference to Owner, provided, however, that the Parties acknowledge and agree that nothing in this Section 20.1 is intended to, and shall not, increase or otherwise affect Contractor's aggregate limit of liability set forth in Section 30.2(a). Subject to the proviso in the immediately preceding sentence, Contractor shall, in addition to such actual costs, remain liable for Delay Liquidated Damages under Article 15 to the extent accrued prior to the date of termination. In addition, in the event of a Contractor Event of Default, no additional payments to Contractor shall be deemed amounts due or owing until the liability of Contractor is determined in accordance with this Agreement, if any, under this Section 20.1. Upon determination of the total cost of the Work, and costs and damages caused by Contractor Event of Default, Owner shall Notify Contractor in writing of the amount, if any, that Contractor shall pay Owner subject to Contractor's right to assert any defenses with respect to such actions or costs. Contractor acknowledges, subject to Contractor's aggregate limit of liability set forth in Section 30.2(a), that in the event of such a termination, Owner may enter into a contract for the completion of the Project with substantially the same deliverables, completion deadlines and liquidated damages as are provided for in this Agreement, taking into account additional time required to procure such contract and to allow for transition to a new contractor when determining completion deadlines that may be different from those set forth in this Agreement, and that the cost to complete the Project in such event may greatly exceed the cost hereunder, including amounts paid to induce any replacement contractor to keep substantially similar completion deadlines, deliverables and liquidated damages as provided for in this Agreement and/or warrant any Work performed by Contractor prior to termination.

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20.2. Termination for Convenience.

20.2.1. Termination for Convenience; General.

Owner may in its sole discretion terminate the Work or this Agreement in whole or in part without cause at any time by giving Notice of termination to Contractor, to be effective upon such Notice by Owner or upon such other termination date specifically identified by Owner therein. If Owner terminates such Work without cause or for any cause other than a Contractor Event of Default specified in Section 20.1, then Owner and Contractor shall have the following rights, obligations and duties:

(a) Cancellation Charge.

If such Work is terminated pursuant to this Section 20.2, as total compensation for such Work performed through the effective date of such termination and demobilization of such Work, Owner shall pay to Contractor only: (x) any amount owing under any unpaid, undisputed invoice prior to the effective date of such termination; and (y) after the effective date of termination, an amount equal to Contractor's actual, demonstrable and reasonable Direct Costs (plus five percent (5%) of such costs for overhead and profit) incurred in the demobilization of such Work, plus actual, documented, reasonable and unavoidable non-recoverable third-party costs incurred by Contractor as a direct result of such termination plus five percent (5%) of such costs, including costs of materials for which the Contractor is liable to take delivery of and which could not be disposed and excluding any such cancellation fees of any Affiliates of Contractor, plus or as a direct result of such termination, plus two and one half percent (2.5%) of the Contract Price, as may be adjusted under this Agreement, minus any portion of the Contract Price otherwise paid pursuant to this Agreement, but less salvage value of materials or Equipment which Owner elects not to accept.

(b) Contractor Cooperation.

Contractor shall cooperate with Owner reasonably and in good faith to minimize Contractor's expenses associated with a termination under this Section 20.2, including taking reasonable action requested by Owner to reduce Suppliers' or Subcontractors' cancellation charges in connection with such termination. Promptly upon receipt of the Notice of termination pursuant to this Section 20.2, Contractor shall cease all operations, or cease those operations specified by Owner in the Notice. Contractor shall place no further subcontracts or orders for materials, services, Equipment or facilities, except as necessary to complete any portion of the Work that is not terminated. Contractor shall assign to Owner, if requested, all right, title and interest of Contractor under any subcontracts that Owner elects in writing to accept. Contractor shall terminate all subcontracts that relate to the terminated Work, and that Owner does not elect in writing to accept by assignment. As requested in writing by Owner, Contractor shall, upon termination under this Section 20.2, grant title and, upon Owner's payment of any amount owing under any unpaid, undisputed invoice prior to the effective date of such termination, deliver to Owner the Work in progress, completed Work, supplies, Equipment and material produced or acquired for the terminated Work, and any completed or partially completed plans, drawings, as-built drawings, construction information and other property that, if the Work had been completed, would be required to be delivered to Owner. In relation to the foregoing, Contractor shall take any action that may be reasonably necessary, or that Owner may reasonably direct in writing, in each case at Owner's cost, for the protection and preservation of the Work. Upon any such termination Owner shall return to Contractor all Contractor Credit Support that Owner then holds to the extent that such Contractor Credit Support has not as of the termination date been previously called upon by Owner.

20.2.2. Claims for Payment.

All claims for payment by Contractor under this Section 20.2 must be made within sixty (60) days after the effective date of termination hereunder. Owner shall make payments under this Section 20.2 in accordance with and subject to the requirements of Article 6.

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20.3. Suspension by Owner

20.3.1. Suspension for Convenience.

Owner may suspend performance of the Work at any time for its convenience by giving five (5) Business Days' advance Notice thereof to Contractor ("**Suspension for Convenience**"). Such Suspension for Convenience shall continue for the period specified in the suspension Notice. The Contract Price shall be adjusted and Contractor shall be entitled to such other relief as provided in Section 20.3.4 to reflect any additional increased costs of and delays to the Work Schedule that Contractor actually and demonstrably suffers or incurs from any such suspension. At any time after the effective date of the suspension, Owner may require Contractor to resume performance of the Work on ten (10) Business Days' Notice.

20.3.2. Suspension for Cause.

(a) Stop Work Suspension for Cause.

Owner may (i) order Contractor to stop performance immediately of that portion of the Work that causes an imminent danger to life or damage to property or (ii) by giving ten (10) Business Days' advance Notice thereof to Contractor, suspend performance of all or a portion of the Work due to a Contractor Event of Default (each a "**Suspension for Cause**"). If the Work is suspended as a result of a Suspension for Cause, then, without limiting Contractor's right to assert any defenses with respect to such suspension, Contractor shall not be entitled to any schedule extensions or change in the cost of the performance of the Work, pursuant to Article 16, for the associated impact of such Suspension for Cause, except to the extent a Suspension for Cause identified in part (i) above arises as a result of a Force Majeure Event or an Excusable Event. Owner's right to suspend performance of the Work under this Section 20.3.2(a) shall be without prejudice to any other right or remedy Owner may have under this Agreement.

(b) Resumption of Work.

In the case of a Suspension for Cause pursuant to Section 20.3.2(a) once the cause of such Suspension for Cause has been resolved by Contractor in accordance with the instructions of Owner in its Notice of Suspension for Cause as provided above or by other reasonable means identified by Contractor and agreed to by Owner, such agreement not to be unreasonably conditioned, delayed, or withheld, and if this Agreement is still in effect, then if Owner does not re-order the resumption of the suspended portion of the Work after five (5) Business Days' Notice, any further delay to the resumption of the Work shall be considered an Owner-Caused Delay. In the event that any such Suspension for Cause is subsequently determined not to have been properly issued in accordance with the provisions of Section 20.3.2(a), then such suspension shall be deemed to have been a Suspension for Convenience ordered pursuant to Section 20.3.1, and Owner shall make any payments due as a result of the same under such Section.

20.3.3. Contractor's Termination Right.

If, at the end of the suspension period specified pursuant to Section 20.3.1, Owner has not requested a resumption of the Work or has not Notified Contractor of any extension of the suspension period (but in no event beyond one hundred eighty (180) days in the aggregate for all such suspensions), Contractor may, upon ten (10) days' advance Notice to Owner, terminate this Agreement, and such termination shall be deemed to be a termination for Owner's convenience pursuant to Section 20.2, and Contractor's sole and exclusive remedies whether in tort, contract or otherwise against Owner shall be the same as, and shall be strictly limited to, those afforded in Section 20.2.

20.3.4. Extension of Time and Compensation Rights.

In the case of any suspension under Section 20.3.1:

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(a) the Work Schedule, Milestone Items and the Substantial Completion Guaranteed Date shall be extended by a period no less than the suspension period, plus a reasonable period for demobilization and remobilization, as mutually agreed upon by Contractor and Owner;

(b) Owner shall pay Contractor for those reasonable costs and cost increases, plus five percent (5%) of such costs, actually incurred during the suspension period that are documented by Contractor to the reasonable satisfaction of Owner, to the extent directly attributable to the suspension, and that are incurred:

(i) for the purpose of safeguarding or storing the Work and the Equipment at the point of fabrication, in transit, or at the Site;

(ii) for personnel, Subcontractors or Equipment, the payments for which are continued during the suspension period;

(iii) for costs of demobilization and remobilization of Contractor and its Subcontractors, including suspension costs set forth in any subcontract, purchase order or other agreement;

(iv) for rescheduling the Work (including penalties or additional payments to Subcontractors for the same) which may include reasonable allowances for overhead and profit.

20.4. Claims for Payment.

All claims by Contractor for compensation or extension of time under Sections 20.3.2 and 20.3.4 must be made within sixty (60) days after Notice from the Owner that the Work has been terminated or the suspension period has ended, respectively.

21. INSURANCE

21.1. General.

21.1.1. Contractor Insurances.

Contractor shall procure at its own expense and maintain in full force and effect for the Project the minimum insurance coverages and limits as required under Section 21.2 of this Agreement, with responsible insurance companies authorized to do business in the United States and the State of New Mexico.

21.1.2. Owner Insurances.

Owner shall procure at its own expense and maintain in full force and effect for the Project as required under this Agreement, with responsible insurance companies authorized to do business in the United States, the types and limits of insurance as set forth in Section 21.3.

21.1.3. Financial Strength of Insurance Providers.

Such insurance companies shall have an A.M. Best Insurance financial strength rating of A VIII or better in the latest edition of A.M. Best.

21.1.4. Capitalized Terms.

Capitalized terms used in this Article 21 and not otherwise defined in this Agreement shall have the meanings generally ascribed to them in the commercial insurance industry in the United States.

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21.1.5. Additional Insurances.

Each Party, at its own cost, may purchase any additional insurance it believes necessary to protect its interests, but these costs cannot be passed on to the other Party.

21.2. Contractor's Insurance.

Contractor's obligations to obtain and maintain in full force and effect the insurance policies specified in this Article 21 shall be subject to the specified coverage being available on commercially reasonable terms. If any such coverage is not available, the Parties shall work together to find a mutually acceptable alternative.

21.2.1. Workers' Compensation and Employer's Liability Insurance.

Contractor shall maintain workers' compensation insurance and such other forms of insurance which Contractor is required to maintain in order to comply with statutory limits under workers' compensation laws of any applicable jurisdiction in the United States (and any other location in which the Work is to be performed), where applicable, and employer's liability (including occupational disease) coverage with limits of at least One Million Dollars ($1,000,000) per accident, One Million Dollars ($1,000,000) for disease, and One Million Dollars ($1,000,000) for each employee, which shall cover all of Contractor's employees, whether full-time, leased, temporary or casual, who are engaged in the Work.

21.2.2. Commercial General Liability Insurance

Contractor shall maintain commercial general liability insurance written on an occurrence basis and with a combined single limit of at least One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) per project annual aggregate and Two Million Dollars ($2,000,000) products and completed operations per project annual aggregate. Aggregate limits shall reinstate annually, be on a per project basis, dedicated entirely to the project or location for which Work is to be provided under this Agreement, and shall not be shared with any other obligations of Contractor. Such insurance shall include coverage for premises/operations liability, for products/completed operations, broad form contractual liability for written contracts, broad form property damage and personal injury liability, and independent contractors liability for Work performed on the Site and off the Site. With respect to the performance of construction activities for the Project, Contractor shall maintain extended completed operations coverage, for at least ten (10) years after Owner's final acceptance of the Work for the Project either through policies in force or through an extended reporting period endorsement. Contractor shall certify that such coverage is in place for up to ten (10) years after the Project is completed within thirty (30) days after Contractor's receipt of a written notice from Owner requesting such certification. Such insurance shall provide severability of interests or cross liability provisions permitting one insured to bring a claim against another insured, and shall be endorsed to include Owner and its Affiliates and their respective directors, officers, managers, representatives, agents and employees or any other parties that are related to the Project and that Owner is contractually obligated to include as additional insureds prior to loss, limited only to the extent required, if applicable, by NMSA 1978 § 56-7-1, as amended. Such additional insured status shall apply regardless of the enforceability of the indemnity provisions in this Agreement. Such insurance maintained by Contractor shall be primary with respect to the interest of Owner, and any other insurance or self-insurance maintained by Owner or its Affiliates is in excess and not contributory to Contractor's insurance in all instances regardless of any like insurance that Owner or any of its Affiliates may have. Minimum insurance can be satisfied through a combination of primary and umbrella/excess liability insurance policies.

21.2.3. Commercial Automobile Liability Insurance.

Contractor shall maintain commercial automobile liability insurance (including coverage for owned, non-owned and hired automobiles) covering vehicles used by Contractor in connection with the Work in an amount of at least One Million Dollars ($1,000,000) combined single limit per occurrence for bodily

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injury and property damage. Contractor's automobile liability insurance coverage shall contain appropriate no-fault insurance provisions or other endorsements in accordance with Applicable Laws. Such insurance shall be endorsed to include Owner and its Affiliates and their respective directors, officers, managers, representatives, agents, employees or any other parties that are related to the Project and that Owner is contractually obligated to include as additional insureds prior to a loss, limited only to the extent required, if applicable, by NMSA 1978 § 56-7-1, as amended. Such additional insured status shall apply regardless of the enforceability of the indemnity provisions in this Agreement. Such insurance maintained by Contractor shall be primary with respect to the interest of Owner, and any other insurance or self-insurance maintained by Owner or its Affiliates is in excess and not contributory to Contractor's insurance policies in all instances regardless of any like insurance coverage that Owner or any of its Affiliates may have. Minimum insurance can be satisfied through a combination of primary and umbrella/excess liability insurance policies.

21.2.4. Umbrella or Excess Liability Insurance.

Contractor shall maintain umbrella/excess insurance on an occurrence basis covering claims in excess of the underlying insurance described in Sections 21.2.2 and 21.2.3, in the amount of at least Twenty Million Dollars ($20,000,000) per occurrence in excess of the primary commercial general liability, commercial automobile liability, and employer's liability insurance (with coverage for completed operations for the Project to be in place throughout the performance of the Work for the Project and for ten (10) years after Final Completion of the Project either through policies in force or through an extended reporting period endorsement). Contractor shall certify that such coverage is in place for up to ten (10) years after the Project is completed within thirty (30) days after Contractor's receipt of a written notice from Owner requesting such certification. Insurance coverages and limits required herein should not in any way limit the extent of Contractor's responsibilities and liabilities specified elsewhere in this Agreement. Such insurance shall be written as follow-form or with an insurance coverage form that provides coverage that is at least as broad as the primary insurance policies and shall satisfy the maintenance of the required limits either through a single umbrella liability insurance policy or a combination of umbrella liability and excess liability insurance policies.

21.2.5. Professional Liability Insurance.

If the Work includes engineering, architectural, design or other professional services, Contractor shall secure and maintain, professional liability insurance (errors and omissions), with no exclusions for bodily injury or property damage, with a minimum single limit of Five Million Dollars ($5,000,000), per claim and per annual aggregate with coverage remaining in place throughout the performance of the Work. Such insurance may be written on a claims made basis rather than an occurrence basis as long as the policy (a) has a retroactive date prior to the date of Work commencement and (b) is maintained by Contractor throughout the performance of the Work for the Project and for at least three (3) years after Final Completion of the Project either through ongoing policy renewals or an extended reporting period.

21.2.6. Pollution Liability Insurance.

Contractor shall maintain pollution liability insurance or the equivalent, with a minimum limit of One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) annual aggregate. Such insurance shall include coverage for pollution losses, including but not limited to bodily injury, property damage, and financial loss arising out of Contractor's operations and completed operations and for sudden and gradual pollution arising out of Contractor's performance under this Agreement. Such insurance shall add Owner and its Affiliates and their respective directors, officers, managers, representatives, agents, employees or any other parties that are related to a Project and that Owner is contractually obligated to include as additional insured prior to a loss as an additional insured with respect to Work performed under this Agreement, limited only to the extent required, if applicable, by NMSA 1978§ 56-7-1, as amended.

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21.2.7. Technology Errors and Omissions Insurance.

Contractor shall provide insurance coverage for professional, intellectual property infringement, and data protection (cyber) liability coverage in connection with financial loss arising from any of the following liabilities: 1) intellectual property infringement arising out of software and/or content (excluding patent infringement and misappropriation of trade secrets); 2) any negligent act, error, or omission, or any unintentional breach of contract (a) in the rendering or the failure to render technology based services or (b) that results in the failure of software provided to perform the function or serve the purpose intended; 3) violation of federal, state, or foreign security and/or privacy laws or regulations including but not limited to investigative and notification costs regardless of whether such incurred costs were compulsory or voluntary; 4) breaches of security; 5) data theft, damage, destruction, deletion, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of any personally identifiable or confidential information; 6) transmission of a computer virus or other type of malicious code; 7) participation in a denial of service attack on a third party; 8) privacy infringement; 9) advertising and content offenses; and 10) defamation. No exclusion/ restriction for unencrypted portable devices/ media may be on the policy. Policy shall have minimum limits of five million dollars ($5,000,000) each and every claim and in the aggregate with no sublimit for loss arising from violations of privacy laws and regulations. Such insurance must address all of the foregoing without limitation if caused by an employee or an independent contractor working on behalf of the Contractor in performing Services under this contract. The policy shall have a 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 Agreement and for at least three (3) years thereafter either through policies in force or through an extended reporting period. Contractor shall provide PNM a copy of the policy providing the insurance required under this paragraph upon written request.

21.2.8. Equipment, Supplies and Materials.

All equipment, supplies and materials (a) belonging to Contractor or to any of its Subcontractors or (b) used by or on behalf of Contractor or any of its Subcontractors for its performance hereunder which is not intended to become a permanent part of the completed Work shall be brought to and kept at the Site at the sole cost, risk and expense of Contractor or such Subcontractor, and Owner shall not be liable for loss or damage thereto.

21.3. Owner's Insurance.

Owner's obligation to obtain and maintain in full force and effect the insurance policies specified in this Article 21 shall be subject to the specified coverage being available on commercially reasonable terms. If any such coverage is not available, the Parties shall work together to find a mutually acceptable alternative.

21.3.1. Workers' Compensation Insurance and Employer's Liability Insurance.

In accordance with the laws of the State of New Mexico, Owner shall maintain in force workers' compensation insurance for all of its employees. Owner shall also maintain employer's liability coverage in an amount of not less than One Million Dollars ($1,000,000) per accident and per employee for disease. In lieu of such insurance, Owner may maintain a self-insurance program meeting the requirements of the State of New Mexico along with the required employer's liability insurance.

21.3.2. Commercial General Liability Insurance

Owner shall maintain commercial general liability insurance written on an occurrence basis and with a combined single limit of One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) annual aggregate. Such insurance shall include coverage for products/completed operations,

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broad form contractual liability for written contracts, broad form property damage and personal injury liability, and independent contractor liability. In lieu of the insurance described in this Section 21.3.2, Owner may maintain a self-insurance program or alternative insurance program structure, including a combination of insured/self-insured.

21.3.3. Commercial Automobile Liability Insurance.

Owner shall maintain commercial automobile liability insurance (including coverage for owned, non-owned, and hired automobiles) covering vehicles used by Owner, including the loading or unloading of such vehicles, in an amount of One Million Dollars ($1,000,000) combined single limit per occurrence for bodily injury, and property damage. Owner's automobile liability insurance coverage shall contain appropriate no-fault insurance provisions or other endorsements in accordance with Applicable Laws. In lieu of the insurance described in this Section 21.3.3, Owner may maintain a self-insurance program.

21.3.4. Umbrella or Excess Liability Insurance.

Owner shall maintain umbrella/excess insurance on a claims-made basis covering claims in excess of the underlying insurance described in Sections 21.3.2 and 21.3.3 in the amount of Ten Million Dollars ($10,000,000) per occurrence in excess of the primary commercial general liability, automobile liability, and employer's liability insurance.

21.4. Builder's All-Risk Insurance.

A minimum of thirty (30) days prior to Contractor's commencement of its performance of the Work on the Site, Contractor shall obtain and thereafter at all times during performance of the Work for the Project expiring upon Substantial Completion of the Project, maintain, or cause to be maintained, builder's all-risk insurance. The completed value form shall specify the estimated completed value of the Project at the end of construction. The Builder's Risk Policy shall be endorsed to include: (A) named insured status for Owner and Contractor; (B) replacement cost coverage; (C) coverage for materials, supplies and equipment to be incorporated into the Project while such are located on-Site, in transit or while temporarily located off-Site for the purpose of repair, adjustment or storage at the risk of one of the insured parties; (D) permission for partial occupancy or use of the premises; (E) ordinance or law coverage, including (i) coverage for loss to the undamaged portion of the building, (ii) demolition cost coverage, and (iii) increased cost of construction; and (F) a loss payable endorsement naming as loss payees Contractor and Owner as their interests may appear. Such insurance shall provide for a waiver of the insurer's right to subrogate against Owner and Contractor where contractually required. Contractor shall be responsible for payment of any deductible to the extent the loss arises from the negligence of Contractor or its Subcontractors. Owner shall furnish to Contractor prior to commencement of the Project evidence of such coverage being in place including the following as applicable: (i) insurance company name, (ii) policy number, (iii) policy period, (iv) per occurrence and aggregate limits, and (v) deductibles.

21.5. Loss Payable

Losses if any, covered by builder's all-risk shall be payable to Owner, Contractor, or any other parties that are related to the Project and that Contractor is contractually obligated to include as loss payees prior to a loss, as their respective interests may appear. Any insurance claim proceeds shall be applied to the restoration of the Project unless mutually agreed to otherwise by the Owner and Contractor. Any insurance proceeds remaining after payment of all restoration costs shall be applied to the Owner's account.

21.6. Subcontractor Insurance

Contractor shall require each of its Major Subcontractors performing work at the Site to obtain, maintain and keep in force during the time during which they are involved in performance of the Work,

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insurance coverage in accordance with the insurance requirements of Contractor set forth in Sections 21.2.1, 21.2.2, 21.2.3 and 21.2.4; provided, however, that the limits of any such Major Subcontractors' Umbrella Excess Liability Insurance policies otherwise maintained in accordance with the requirements under Section 21.2.4, shall not be less than Two Million Dollars ($2,000,000).

21.7. Contractor Certificates.

On or prior to the date that is thirty (30) days after the Notice to Proceed Date of the Project, Contractor shall furnish to Owner certificates of insurance from each insurance carrier showing that the above required insurance for the Project is in full force and effect, the amount of the carrier's liability thereunder, copies of all applicable additional insured and waiver of subrogation endorsements, and copies of endorsements from the applicable insurer, further providing that the insurance will not be canceled, materially changed or not renewed until the expiration of at least thirty (30) days (or ten (10) days in the case of cancellation due to non-payment of premiums) after notice of such cancellation, material change or non-renewal has been received by Owner. Contractor shall also be responsible for obtaining certificates of insurance for the insurances required to be maintained by such Major Subcontractor in accordance with Section 21.6 from each of the Major Subcontractors before such Major Subcontractor is allowed to commence Work and provide such certificates to the Owner upon request. Certificates of insurance submitted under this Section 21.7 shall be in form and content reasonably acceptable to Owner and shall provide that Owner and any Owner Financing Parties shall timely receive copies of any notices to Owner or Contractor under such policies of any default or other act or omission by Owner, Contractor or other insured parties that might invalidate, render unenforceable or result in a lapse of such policy in whole or in part. Certificates of each renewal of the insurance should also be delivered to Owner and any Owner Financing Party promptly after receipt.

21.8. Owner Certificates.

On or prior to Contractor's commencement of its performance of the Work on the Site, Owner shall furnish to Contractor certificates of insurance from each insurance carrier, showing that the above required insurance is in full force and effect and the amount of the carrier's liability thereunder.

21.9. Cost of Premium.

It is expressly agreed and understood that:

(a) the cost of premiums and deductibles for insurance required to be maintained by Contractor as set forth in this Article 21 and all Taxes thereon shall be borne by Contractor, and shall be endorsed to provide that Owner shall have no liability for the payment of any premium thereon; and

(b) that the cost of premiums and deductibles for insurance required to be maintained by Owner as set forth in this Article 21 and all Taxes thereon shall be borne by Owner.

21.10. Owner's Rights to Provide Insurances.

If Contractor fails to provide or maintain any insurance required of it hereunder, Owner shall have the right, but not the obligation, to provide or maintain any such insurance, and to deduct the cost thereof from any amounts due and payable to Contractor (including from any amounts due and payable to Contractor in respect of the Contract Price), or, if there are no such amounts due and payable to Contractor, Contractor shall reimburse Owner for such costs on demand. Should any of the policies required to be maintained by Contractor become unavailable or be canceled for any reason during the period of this Agreement, Contractor shall immediately procure replacement coverage. The failure of Contractor to procure and maintain such replacement coverage (so as to provide continuous coverage) shall constitute a material breach hereunder.

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21.11. No Limitation of Liability.

The insurance coverages required of Contractor set forth in this Article 21 shall in no way affect, nor are they intended as a limitation of, Contractor's liability with respect to its performance of the Work. Insurance requirements in this Agreement are independent of Contractor's liability under this Agreement. The insurance coverages required of Owner set forth in this Article 21 shall in no way affect, nor are they intended as a limitation of, Owner's liability with respect to its performance of its obligations hereunder.

21.12. Other Terms and Provisions.

21.12.1.Omissions; Errors.

It is hereby understood and agreed that the coverages afforded by the insurance policies required of either Party set forth in this Article 21 shall not be invalidated or affected by any unintentional omissions or errors.

21.12.2.Notification.

Contractor and Owner shall Notify the other Party of any and all incidents giving rise to an insurance claim, and otherwise keep the other Party timely apprised of insurance claim proceedings. Contractor shall timely Notify Owner of a builders risk claim and each Party shall provide reasonable assistance in the investigation of any known accident or occurrence involving injury to any person or loss or damage to property, and reasonably cooperate with the companies involved in adjusting any claim by securing and giving evidence, and obtaining the participation and attendance of witnesses, in each case, reasonably required for the investigation or defense of any claim or lawsuit.

22. RISK OF LOSS OR DAMAGE

22.1. Care, Custody and Control.

Until the Substantial Completion Date, Contractor shall have care, custody and control of the Project; provided that upon Substantial Completion or the earlier termination of this Agreement and transfer of title to Owner pursuant to Article 18, Owner shall have care, custody and control of the Project to the extent of such transfer of title.

22.2. Risk of Loss.

Until the Substantial Completion Date or the early termination of this Agreement as provided in Article 19 or 20, subject to the provisions of this Article 22, Contractor assumes risk of loss, and, without limitation of its right to make claims for relief pursuant to Article 8, full responsibility, for the cost of replacing or repairing any damage to the Project and the applicable Work (including the Equipment) and assumes risk of loss, and full responsibility, for the cost of replacing or repairing any damage to, any maintenance equipment (including temporary materials, equipment and supplies) which is purchased by Contractor for permanent installation in, or for use during the construction of, the Project (other than, for the avoidance of doubt, the Transmission Provider's Interconnection Facilities.

22.3. Risk of Loss After Substantial Completion.

Owner shall bear the risk of loss for, and full responsibility for, the cost of replacing or repairing any damage to the Project from and after its Substantial Completion Date or upon earlier termination of this Agreement.

23. INDEMNIFICATION

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23.1. Comparative Fault.

Notwithstanding anything to the contrary herein, and to the extent permitted by Applicable Law, it is the intent of the Parties that where fault is determined to have been joint or contributory, principles of comparative fault will be followed and each Party shall bear the proportionate cost of any loss, damage, expense and liability attributable to such Party's fault.

23.2. By Contractor.

Subject to Section 23.1, to the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless, Owner and its employees, agents, partners, Affiliates, shareholders, members, directors, officers, managers and permitted assigns (each, an "**Owner Indemnitee**"), from and against the following:

(a) all Losses arising from third-party claims for property damage, personal injury or bodily injury or death to the extent caused by any negligent, willful, reckless or otherwise tortious act or omission (including strict liability) of Contractor or any Subcontractor during the performance of the Work or from Contractor or any Subcontractor failing to perform any of its obligations under this Agreement, or any curative action under any warranty following performance of the Work, of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts such Person may be liable;

(b) all Losses that directly arise out of or result from:

(i) all claims for payment of compensation for Work performed hereunder, whether or not reduced to a lien or mechanics lien, filed by Contractor or any Subcontractors, or other persons performing any portion of the Work, including reasonable attorneys' fees and expenses incurred by any Owner Indemnitee in discharging any Contractor Lien, except to the extent of a breach by Owner in relation to any obligation it has to make a payment under this Agreement;

(ii) employers' liability or workers' compensation claims filed by any employees or agents of Contractor or any of its Subcontractors; and

(iii) all outstanding claims for payment of compensation for Work performed hereunder filed by any Subcontractors that are listed in the Waiver and Release Upon Final Payment, whether or not reduced to a lien or mechanics lien, including reasonable attorneys' fees and expenses incurred by any Owner Indemnitee in discharging any Contractor Lien, except to the extent that any such claims relate to a good faith Dispute between Contractor and Owner;

(c) all Losses arising from third-party claims, including claims by Subcontractors and claims for property damage, personal injury or bodily injury or death that directly or indirectly arise out of or result from the failure of Contractor or any of its Subcontractors to comply with the terms and conditions of Applicable Laws during their performance of the Work;

(d) all fines or penalties issued by any Governmental Authority that directly arise out of or result from the failure of the Project, as designed, constructed and completed by Contractor or any Subcontractor, to be capable as of the Final Completion Date, of operating in compliance with all Applicable Laws or the conditions or provisions of all Applicable Permits (to the extent such Applicable Permits relate to the Work), in each case, as in effect as of the Final Completion Date;

(e) any and all fines, penalties or assessments issued by any Governmental Authority that Owner may incur as a result of executing any applications at Contractor's request;

(f) all Losses arising from claims by any Governmental Authority that directly or

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indirectly arise out of or result from the failure of Contractor to pay, as and when due, all Taxes, fees or charges of any kind imposed by any Governmental Authority for which Contractor is obligated to pay pursuant to the terms of this Agreement;

(g) all Losses arising from claims by any Governmental Authority claiming Taxes based on gross receipts or on income of Contractor, any of its Subcontractors, or any of their respective agents or employees with respect to any payment for the Work made to or earned by Contractor, any of its Subcontractors, or any of their respective agents or employees under this Agreement; and

(h) all Losses, including claims for property damage or bodily injury or death, whether or not involving damage to the Project, or the Site, that arise out of or result from the use of Contractor Hazardous Materials (other than arising as a result of unlawful releases or spills described in Section 23.3(e)(ii), whether lawful or unlawful). Such use of or contamination by Contractor Hazardous Materials include:

(i) the storage, transportation, processing or disposal of such Contractor Hazardous Materials; and

(ii) any environmental condition caused by such Contractor Hazardous Materials that is prohibited by Governmental Authorities.

23.3. By Owner.

Subject to Section 23.1, Owner shall defend, indemnify and hold harmless Contractor and its employees, agents, partners, Affiliates, shareholders, members, directors, officers, members, managers and permitted assigns (each, a "**Contractor Indemnitee**") from and against the following:

(a) all Losses arising from third-party claims for property damage, personal injury or bodily injury or death to the extent caused by any negligent, willful, reckless or otherwise tortious act or omission (including strict liability) during the performance by Owner of its obligations or failing to perform any of its obligations under this Agreement or any Affiliate, or anyone directly or indirectly employed by either of them, or anyone for whose acts such Person may be liable;

(b) all Losses arising from third-party claims, including claims for property damage, personal injury or bodily injury or death that directly or indirectly arise out of or result from the failure of Owner or any of Owner's Separate Contractors or anyone directly or indirectly employed by any of them (other than Contractor or its Subcontractors), or anyone for whose acts such Person may be liable, to comply with the terms and conditions of Applicable Laws or Applicable Permits;

(c) all Losses arising from claims by any Governmental Authority that directly or indirectly arise out of or result from the failure of Owner to pay, as and when due, all Taxes, fees or charges of any kind imposed by any Governmental Authority for which Owner is obligated to pay pursuant to the terms of this Agreement;

(d) all Losses that directly arise out of or result from employers' liability or workers' compensation claims filed by any employees or agents of Owner; and

(e) all Losses, including claims for property damage or personal injury or death (including emotional distress) that directly or indirectly arise out of or result from:

(i) the presence or existence of Hazardous Materials (including any Pre-Existing Contamination) at the Site (A) brought onto or generated at the Site on or before the Effective Date; (B) brought onto or generated at the Site by Owner or any of Owner's Separate Contractors (other than Hazardous

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Materials that were brought onto the Site by or delivered to Contractor or any Subcontractor to be handled by the same in the course of performing the Work); or (C) which migrated onto the Site from another location (other than such Hazardous Materials that were previously in the care, custody or control of Contractor or any Subcontractor), except to the extent the remediation of any such Hazardous Materials is part of the Work; or

(ii) the unlawful release or spill by Owner or its Affiliates or any of Owner's Separate Contractors of Hazardous Materials, such Hazardous Materials otherwise having been brought onto the Site by Contractor or any Subcontractor in accordance with the terms of this Agreement and all Applicable Laws.

23.4. Patent Infringement and Other Indemnification Rights.

Contractor shall defend, indemnify, and hold harmless the Owner Indemnitees against all Losses arising from any Intellectual Property Claim. If Owner provides Notice to Contractor of the receipt of any such claim, Contractor shall, at its own expense, settle or defend any such Intellectual Property Claim and pay all damages and costs, including reasonable attorneys' fees, awarded against Owner Indemnitees and at Contractor's option either: (a) procure for Owner, or reimburse Owner for procuring, the right to continue using the infringing service, Equipment or other Work, as the case may be; (b) modify the infringing service, Equipment, or other Work, as the case may be, so that the same becomes non-infringing; or (c) replace the infringing service, Equipment or other Work with non-infringing service, Equipment or other Work, as the case may be. If Owner or Contractor is temporarily or permanently enjoined from completing the Project or any part thereof, or from the use, operation, or enjoyment of the Project or any part thereof, as a result of such claim or legal action or any litigation based thereon, then Contractor shall promptly use its Commercially Reasonable Efforts to have such injunction removed and to take one or more of the actions under the preceding clauses (a), (b) or (c), provided, that in no case shall Contractor take any action that adversely affects Owner's continued use and enjoyment of the applicable service, Equipment, or other Work, as the case may be, without the prior written consent of Owner. Owner's acceptance of the Contractor Deliverables, supplied materials and equipment, or other component of the Work shall not be construed to relieve Contractor of any obligation hereunder. Notwithstanding any provision of this Agreement to the contrary, no Milestone Item completion date or other key date shall be extended due to any injunction described in this Section 23.4. However, notwithstanding anything in this Agreement to the contrary, Contractor shall not have such indemnity obligations or any other liability hereunder for any Intellectual Property Claim to the extent arising from or in connection with any modification of the Work by Owner or any third party, including Owner's Separate Contractors, Owner's variation from Contractor's recommended procedures for using the Work, or Work manufactured to designs and specifications of Owner. Owner shall indemnify, defend and hold harmless Contractor and the Contractor Indemnitees from and against any and all Losses arising from any Intellectual Property Claim. If any such item is held to constitute an infringement, and the use of such item is required to perform Contractor's work and is enjoined, Owner shall, at its own expense (in addition to owner's indemnification obligation described above and any other remedies Contractor may have under this agreement), either procure the right for Contractor to use the infringing item, or replace the same with a substantially equal but non-infringing item, or modify the same to be non-infringing, provided, however, that any substitute or modified item shall meet all the requirements and be subject to all the provisions of this Agreement.

23.5. Electronic Data Files.

Except where any Contractor Deliverable shall be in the form of an electronic data file, any other electronic data files furnished to Owner pursuant to this Agreement are provided only for the convenience of Owner. Owner recognizes that such electronic data files not provided to Owner as a Contractor Deliverable may not be adequate or appropriate for Owner's needs. In the case of any discrepancies between the Contractor Deliverable represented by electronic data files and the plotted hardcopy of such files bearing the seal of Contractor's registered professional engineer, the sealed hardcopy shall govern.

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23.6. Claim Notice.

An Indemnitee shall provide Notice to the indemnifying Party, within ten (10) days after receiving Notice of the commencement of any legal action or of any claims or threatened claims against such Indemnitee in respect of which indemnification may be sought pursuant to the foregoing provisions of this Article 23 or any other provision of this Agreement providing for an indemnity (such Notice, a "**Claim Notice**"). The Indemnitee's failure to give, or tardiness in giving, such Claim Notice will reduce the liability of the indemnifying Party only by the amount of damages attributable to such failure or tardiness, or to the extent the indemnifying Party is prejudiced by such failure or delay, but shall not otherwise relieve the indemnifying Party from any liability that it may have under this Agreement. In case any such claim or legal action shall be made or brought against an Indemnitee and such Indemnitee shall Notify (by sending a Claim Notice) the indemnifying Party thereof, the Indemnitee may by such Claim Notice require the indemnifying Party to assume and control the defense of the claim (other than any Intellectual Property Claim, which shall be controlled by Contractor unless otherwise agreed by the Parties) that is the subject of such Claim Notice, including the employment of counsel reasonably acceptable to the Indemnitee, and the indemnifying Party shall pay all expenses of the conduct of such defense. The Indemnitee shall have the right to employ separate counsel in any such proceeding and to participate in (but not control) the defense of such claim, but the fees and expenses of such counsel shall be borne by the Indemnitee unless the indemnifying Party agrees otherwise; provided, however, that if the named parties to any such proceeding (including any impleaded parties) include both the Indemnitee and the indemnifying Party, and the indemnifying Party requires that the same counsel represent both the Indemnitee and the indemnifying Party, and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them, then the Indemnitee shall have the right to retain its own counsel at the cost and expense of the indemnifying Party. If the indemnifying Party fails to assume or diligently prosecute the defense of any claim in accordance with the provisions of this Section 23.6, then the Indemnitee shall have the absolute right to control the defense of such claim and the fees and expenses of such defense, including reasonable attorneys' fees of the Indemnitee's counsel and any reasonable amount determined to be owed by Indemnitee pursuant to such claim, shall be borne by the indemnifying Party, provided that the indemnifying Party shall be entitled, at its expense, to participate in (but not control) such defense. Subject to all of the foregoing provisions of this Section 23.6, as between the Parties, (a) the indemnifying Party shall control the settlement of all claims, in coordination with any insurer as required under the applicable insurance policies in Article 21 as to which it has assumed the defense; provided, however, that to the extent the indemnifying Party, in relation to such insurer, controls settlement: (i) such settlement shall include a dismissal with prejudice of the claim and an explicit release from the party bringing such claim or other proceedings of all Indemnitees; and (ii) the indemnifying Party shall not conclude any settlement without the prior approval of the Indemnitee, which approval shall not be unreasonably withheld or delayed; and (b) except as provided in the preceding sentence concerning the indemnifying Party's failure to assume or to diligently prosecute the defense of any claim, no Indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnifying Party, settle, compromise, consent to the entry of any judgment in or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless such Indemnitee reasonably believes that the matter in question involves potential criminal liability against such Indemnitee. The Indemnitee shall provide reasonable assistance to the indemnifying Party when the indemnifying Party so requests, at the indemnifying Party's expense, in connection with such legal action or claim, including executing any powers-of-attorney or other documents required by the indemnifying Party with regard to the defense or indemnity obligations.

23.7. Survival of Indemnity Obligations.

The indemnities set forth in this Article 23 relating to the Project shall survive the Final Completion Date or the earlier termination of this Agreement for a period expiring two (2) years following the Final Completion Date or said termination, whichever first occurs. All Claim Notices must be delivered, if at all, to the applicable Party prior to the expiration of such two (2) year period. If any Claim Notice is made within such two (2) year period, then the indemnifying period with respect to all claims identified in such Claim

Notice (and the indemnity obligation of the Parties hereunder with respect to such claim) shall extend through the final, non-appealable resolution of such claims. For purposes of clarification hereunder, without limiting the other rights granted hereunder to either Party, a Party may enforce the indemnity provisions hereunder pursuant to the provisions of Article 31 without having to declare an Owner Event of Default or a Contractor Event of Default, as applicable.

23.8. Limitations on Indemnification Obligations.

Notwithstanding anything to the contrary in this Agreement, no claim for indemnity shall be brought pursuant to this Article 23 until the Losses incurred or suffered by the indemnified Person hereunder exceed Twenty-Five Thousand Dollars ($25,000) in the aggregate, exclusive of Taxes. Once such Losses exceed the threshold set forth in the preceding sentence, the indemnifying Party shall be responsible for all Losses, not merely those Losses in excess of such threshold.

24. CONFIDENTIAL INFORMATION

24.1. Confidential Information.

As used in this Agreement, "**Disclosing Party**" refers to Contractor whenever it is disclosing information to Owner and to Owner whenever it is disclosing information to Contractor. "**Receiving Party**" refers to Contractor whenever it is receiving information from Owner and to Owner whenever it is receiving information from Contractor. Each Party shall, and shall use its Commercially Reasonable Efforts to cause its Representatives, as hereinafter defined, and Affiliates to, keep confidential all information marked as "Confidential" in advance of disclosure, as well as proprietary, non-public or confidential information (in any form) concerning the business, operations and assets of Owner or Contractor (as the case may be), or their respective Affiliates provided to the other Party, including the terms and conditions of this Agreement or any related agreement, information or materials prepared in connection with the performance of the Work under this Agreement, or any related subsequent agreement, designs, drawings, specifications, techniques, models, data, documentation, manuals, source code, object code, diagrams, flow charts, research, development, processes, procedures, know-how, manufacturing, development or marketing techniques and materials, development or marketing timetables, strategies and development plans, business plans, customer, supplier or personnel names and other information related to customers, suppliers or personnel, pricing policies and financial information, and other information of a similar nature, whether or not reduced to writing or other tangible form, and any other trade secrets (collectively, "**Confidential Information**"). Confidential Information shall not include information that:

(a) is known to Receiving Party prior to obtaining the same from Disclosing Party as reflected by the written records of Receiving Party;

(b) is in the public domain at the time of disclosure by Disclosing Party;

(c) becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party, provided that, to Receiving Party's knowledge, such source is not prohibited from transmitting such information by a contractual, legal, or other obligation;

(d) can be shown by Receiving Party to have been independently developed by its employees, officers, directors, attorneys, auditors, advisors and/or consultants (collectively, "**Representatives**") without access to the Confidential Information;

(e) is necessary to be disclosed to auditors, taxing authorities, or accountants preparing tax reports and filings;

(f) is required to be disclosed under Applicable Law, stock exchange requirements or by

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Governmental Authorities, including in connection with any approval sought from, filing with, request for information from, or compliance obligation imposed by, any Governmental Authority; or

(g) is approved for public release by express prior written consent of an authorized officer of Disclosing Party.

24.2. Use of Confidential Information.

(a) Receiving Party hereby agrees that it shall use the Confidential Information solely for the purpose of performing its obligations under this Agreement and not in any way detrimental to Disclosing Party, or its Affiliates. Receiving Party agrees to use the same degree of care Receiving Party uses with respect to its own proprietary or confidential information, which in any event shall result in a reasonable standard of care to prevent unauthorized use or disclosure of the Confidential Information. Except as otherwise provided herein, Receiving Party shall keep confidential and not disclose the Confidential Information. Owner and Contractor shall cause each of their Representatives and Subcontractors to become familiar with, and abide by, the terms of this Section 24.2.

(b) Notwithstanding the provisions of this Section 24.2, Receiving Party may disclose any of the Confidential Information if, but only to the extent that, based upon reasonable advice of counsel, Receiving Party is required to do so by the disclosure requirements of any Applicable Law. Prior to making or permitting any such disclosure, Receiving Party shall provide Disclosing Party with prompt written Notice of any such requirement so that Disclosing Party (with Receiving Party's assistance if and to the extent reasonably requested) may seek a protective order or other appropriate remedy, at Disclosing Party's sole cost and expense, unless such Notice is prohibited by any Applicable Law.

(c) Subject to Section 24.2(b), Receiving Party shall not, without the prior written consent of Disclosing Party, disclose to any third party the fact that such Confidential Information has been made available to Receiving Party. Further, and notwithstanding the foregoing, (i) Contractor may provide any and all information required by (x) its Representatives, Affiliates or then existing Subcontractors and insurance agents that is necessary to complete the Work to such Subcontractors and insurance agents and (y) Contractor Financing Parties and their representatives to the extent necessary to obtain financing for the Work, in each case without the consent of Owner; provided that Contractor shall be responsible for any breaches of any Subcontractors, insurance agents or Contractor Financing Parties of the confidentiality provisions of this Section 24.2; and (ii) Owner may provide any and all information (x) to its Representatives or then existing or prospective successors or assigns; (y) required by its other contractors and insurance agents or insurers that is necessary to perform Owner's obligations under this Agreement; and (z) required by Owner Financing Parties and their representatives, in each case without the consent of Contractor.

24.3. Return of Confidential Information.

(a) At any time upon the request of Disclosing Party, Receiving Party shall promptly deliver to Disclosing Party or destroy at Receiving Party's option (with such destruction to be certified by Receiving Party) all documents (and all copies thereof, however stored) furnished to or prepared by Receiving Party that contain Confidential Information and all other documents in Receiving Party possession that contain or that are based on or derived from Confidential Information; provided, however, that the Receiving Party may retain one copy of such Confidential Information solely for the purpose of complying with its audit and document retention policies, and provided, further, that all such retained Confidential Information shall be held subject to the terms and conditions of this Agreement.

(b) Notwithstanding the return or destruction of all or any part of the Confidential Information relating to the Project, the confidentiality provisions set forth in this Agreement shall nevertheless remain in full force and effect with respect to such specific Confidential Information until the date that is three (3) years after the earlier of (i) the Final Completion Date or (ii) the termination of this Agreement.

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24.4. Confidential Information Remedy.

The Parties acknowledge that the Confidential Information is valuable and unique, and that damages would be an inadequate remedy for breach of this Article 24 and the obligations of each Party under this Article 24 are specifically enforceable. Accordingly, the Parties agree that a breach or threatened breach of this Article 24 by either Party shall entitle the other Party to seek an injunction preventing such breach, without the necessity of proving the inadequacy of damages or posting any bond. Any such relief shall be in addition to, and not in lieu of, monetary damages or any other legal or equitable remedy available to such Party.

25. INVENTIONS AND LICENSES

25.1. Invention, License.

Any idea, invention, work of authorship, drawing, design, formula, algorithm, utility, tool, pattern, compilation, program, device, method, technique, process, improvement, development or discovery (collectively, "**Invention**"), whether or not patentable, copyrightable or entitled to legal protection as a trade secret or otherwise, that Contractor may conceive, make, develop, create, reduce to practice or work on, in whole or in part, in the course of performing the Work, shall be owned and retained by Contractor. Contractor hereby grants, and shall require its Subcontractors to grant, to Owner a paid-up, irrevocable, perpetual, non-transferable (other than to transferees of the Project), nonexclusive, royalty-free license to use all Inventions, Confidential Information or other proprietary rights, intellectual property and specialized knowledge of Contractor that, in each case, form a part of the Work for Owner's use to the extent reasonably necessary for the operation, maintenance, repair, or decommissioning of the Project or components thereof, at any time. Notwithstanding the foregoing, Owner can use any Affiliate of Owner or subcontractor or other agent retained by Owner to the extent reasonably necessary to exercise these rights solely on behalf of Owner. Contractor shall, prior to directing any Subcontractor to produce any design or engineering work in connection with the Project, obtain a valid license of any such Inventions, specialized knowledge or other proprietary property from such Subcontractor in terms substantially similar to those that obligate Contractor to Owner as expressed in this Section 25.1. Except as specifically stated herein, no other license in such patents and proprietary information is granted pursuant to this Agreement.

25.2. Suitability of Contract Design, Engineering and Computer Programming Information.

All Contractor Deliverables and computer software for the Project prepared by Contractor pursuant to this Agreement are instruments of service in respect of the Project. They are not intended or represented to be suitable for reuse by Owner or others on extensions of the Project or on any other project. Without any limitation on the provisions set forth in Article 24, any such unauthorized reuse without prior written verification or adaptation by Contractor for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Contractor.

25.3. Contractor Deliverables.

Subject to Section 25.1, the Contractor Deliverables accumulated or developed by Contractor, its employees or any Subcontractors shall become the property of Owner upon Contractor's receipt of payment of the Contract Price as provided in this Agreement, whether or not delivered by Contractor. Contractor will maintain ownership of all copyrights and other intellectual property contained within the Contractor Deliverables.

25.4. Software Licenses.

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To the extent Contractor purchases any software to be incorporated into the Project, which software is necessary or otherwise desirable for the operation of the Project after Substantial Completion, Contractor shall register Owner as the licensee of such software with the applicable Subcontractor.

26. ASSIGNMENT

26.1. Assignment to Other Persons.

Except as otherwise provided in this Section 26.1, neither Party may assign or otherwise transfer this Agreement to any third party without the prior written consent of the other Party; which consent shall not be unreasonably withheld or delayed; provided, however, that nothing in this Agreement shall prevent either Party from engaging Affiliates or subcontractors in connection with the performance of its obligations under this Agreement (other than its respective payment obligations). Notwithstanding the foregoing, (a) Owner may (i) collaterally assign its rights, title and interest under this Agreement to any Owner Financing Party, who may further assign such rights, title and interest under this Agreement in accordance with the foregoing upon foreclosure or (ii) assign its rights, title and interest under this Agreement in connection with a synthetic lease, sale-leaseback or other similar financing arrangement for the Project and, in each case, in connection therewith, Contractor shall execute and deliver any usual and customary consents, legal opinions or other documents reasonably requested by Owner (which shall include customary additional cure periods for the benefit of Owner Financing Parties (not to exceed, in the aggregate, ten (10) additional Business Days)); provided, however, that (x) Contractor shall not be obligated without a Change in Work to accept any undertaking imposed by any such Owner Financing Party which will increase Contractor's obligations under this Agreement and, (y) if Owner requests that Contractor provide one or more legal opinions, each such opinion will be provided at Owner's cost; and (b) Owner may assign this Agreement to any Affiliate of Owner, provided that such assignment does not impair the applicability or impact of Owner's Parent Guaranty.

26.2. Indemnitees; Successors and Assigns.

Upon any assignment by either Party hereunder, the definition of Owner Indemnitee or Contractor Indemnitee, as applicable, shall be deemed modified to include the assignor and permitted assignee under such assignment and each of their respective employees, agents, partners, Affiliates, shareholders, officers, directors, members, managers, successors and assigns.

27. HAZARDOUS MATERIALS

27.1. Use by Contractor.

Contractor shall not and shall not permit any of its Subcontractors, directly or indirectly, to permit the manufacture, storage, transmission or presence of any Hazardous Materials on the Site, and Contractor shall not and shall not permit any of its Subcontractors to release, discharge or otherwise dispose of any Hazardous Materials on the Site, in each case, except in accordance with Applicable Law; provided, however, that Contractor or its Subcontractors may bring onto the Site such Hazardous Materials as are necessary to perform the Work ("**Contractor Hazardous Materials**") so long as the same is done in compliance with Applicable Laws. Contractor shall remain responsible and strictly liable for all such Contractor Hazardous Materials brought on to or generated at the Site, unless such release or generation is caused by Owner, any Person for which Owner is responsible, or any third party including Owner's Separate Contractors (each an "Owner Party" and together, the "Owner Parties"), including the management, transportation, storage, labeling, treatment and disposal of all such Contractor Hazardous Materials. Contractor shall notify Owner prior to bringing any Contractor Hazardous Materials onto the Site and shall provide Owner, on Site, the following information with respect to any Contractor Hazardous Materials: (a) material safety data sheet; (b) quantity (volume/mass); (c) length of time on the Site; (d) container type; and (e) disposal location if disposed or otherwise managed. Contractor shall require all Subcontractors to provide the information required under this Section 27.1 to Owner before bringing any Contractor Hazardous Materials to the Site. Contractor shall

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exclude the use of lead paint and minimize the use of acetone and chlorinated solvents and similar substances at the Site and shall require all Subcontractors to do likewise.

27.2. Remediation by Contractor.

At Contractor's sole cost and expense, Contractor shall conduct and complete all investigations, studies, sampling, testing and remediation of the Site in connection with the release, discharge or presence of Contractor Hazardous Materials unless such release or generation is caused by Owner or any Person for which Owner is responsible, or any third party including Owner's Separate Contractors. Contractor shall promptly comply with all lawful orders and directives of all Governmental Authorities regarding Applicable Laws relating to the use, transportation, storage, handling, presence or release by Contractor, any Subcontractor or any Person acting on its or their behalf or under its or their control of any Contractor Hazardous Materials, except to the extent any such orders or directives are being contested in good faith by appropriate proceedings in connection with the Work. For the avoidance of doubt, Contractor shall have no obligation to transport, store, remediate or otherwise handle any Pre-Existing Contamination or Hazardous Materials brought onto the Site by an Owner Party. Disposal or remediation of any Pre-Existing Hazardous Materials or Hazardous Materials brought on to the Site by an Owner Party and discovered during the course of construction is not included in the Contract Price and Contractor shall be entitled to cost and schedule relief, via Change in Work, to the extent the existence or removal of any such Pre-Existing Hazardous Materials or Hazardous Materials delays or otherwise increases the cost or time of Contractor's performance of the Work. Contractor will promptly notify Owner if any such Pre-Existing Hazardous Materials or Hazardous Materials brought onto the Site by an Owner Party are discovered in the course of the Work. All costs associated with removal and proper disposal of Pre-Existing Hazardous Materials or Hazardous Materials brought onto the Site by an Owner Party will be the responsibility of Owner and Contractor shall have no obligations with respect to such conditions.

27.3. Notice of Hazardous Materials.

(a) If Contractor discovers, encounters or is notified of the existence of any contaminated materials or Hazardous Materials at the Site, Contractor shall promptly Notify Owner thereof and restrict access to the area containing such contaminated materials or Hazardous Materials;

(b) If Contractor discovers, encounters or is notified of any spill or release of any Hazardous Materials at the Site:

(i) if such Hazardous Materials are Contractor Hazardous Materials, Contractor shall promptly remove such Hazardous Materials from the Site and remediate the Site in accordance with all Applicable Laws and Applicable Permits (to the extent the Applicable Permits relate to the Work) in each case at Contractor's sole cost and expense, except where such materials were released or spilled by Owner, its Affiliates, or any third party including Owner's Separate Contractors; and

(ii) if such Hazardous Materials are Contractor Hazardous Materials, Contractor shall not be entitled to any extension of time or additional compensation hereunder for any delay or costs incurred by Contractor as a result of the existence of such Contractor Hazardous Materials, except where such materials were released or spilled by Owner, its Affiliates, or any third party including Owner's Separate Contractors.

28. LIEN FILINGS AND CLAIMS

28.1. Project Liens.

To the extent Owner has timely paid and Contractor has received amounts due and owing to Contractor under this Agreement, Contractor shall at all times promptly pay for all materials, Equipment, services and labor used in the performance of the Work and shall maintain all Work, materials, Equipment, structures,

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premises, and other property free and clear from all liens, security interests, attachments and other encumbrances created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Contractor or any Supplier or Subcontractor, or other Person providing materials, Equipment, services or labor in the performance of the Work, including common law, contractual, statutory and constitutional mechanic's liens, materialman's liens and labor liens (each a "**Contractor Lien**"). Contractor shall promptly bond, pay or discharge and discharge of record, within twenty (20) days (or such additional time as the Parties agree may reasonably be required) of Contractor's receipt of written notice of a filing of any Contractor Lien. Contractor shall indemnify, defend and hold harmless Owner Indemnitees from and against any and all Losses asserted or awarded against or incurred by such Indemnitees arising out of, resulting from, or relating to, such Contractor Liens. Contractor shall provide Owner upon its written request with reasonable evidence (including executed Lien waivers in form acceptable to Owner) showing that all claims for materials, Equipment, labor, and Suppliers and Subcontractors have been paid in full, or will be paid in full, to the extent Contractor has received amounts due and owing to Contractor under this Agreement.

28.2. Contractor Failure to Remove Liens.

If Contractor does not act so as to remove, discharge, bond, cancel or otherwise satisfy a Contractor Lien against Owner Indemnitee(s), the Site, the Project or the improvements thereon within the stated twenty (20) day period (or such additional time as the Parties agree may reasonably be required), then Owner at its sole option may: (1) take by way of offset funds from the Agreement balance sufficient to satisfy the Contractor Lien and to pay all Owner Losses and costs incurred by reason thereof; (2) transfer the Contractor Lien to a bond, at Contractor's expense, including all Owner Losses and costs thereby incurred; or (c) Pay directly to the Contractor Lien claimant, from the Agreement balance, the amount reasonably necessary to cause the removal and discharge of the Contractor Lien, with all costs and attorneys' fees thereby incurred chargeable to Contractor. Contractor shall have the right to contest any such Contractor Lien.

28.3. Preliminary Notices.

Contractor shall provide Owner, within fifteen (15) days of receipt thereof, copies of all Preliminary Notices received from potential Contractor Lien claimants in accordance with the Preliminary Notice requirement under New Mexico law intended to preserve Contractor Lien rights in connection with the Project ("**Preliminary Notice**"). With respect to any such Preliminary Notice filed or received in connection with the Work, Owner shall be entitled to request and receive conditional Supplier/Subcontractor interim Waivers and Releases, and Supplier/Subcontractor Waivers and Releases Upon Final Payment, from any Supplier or Subcontractor filing or serving any such Preliminary Notice.

28.4. Request for Information.

If any mechanic or materialmen submits a request for information to Owner or Contractor, seeking to obtain information necessary to comply with the Preliminary Notice requirement under New Mexico law, Contractor shall, within five (5) days after such a request is made, provide the requesting mechanic or materialmen with the information required to be included in a Preliminary Notice, and simultaneously provide Owner with Contractor's reply.

29. NOTICES AND COMMUNICATIONS

29.1. Requirements.

Any Notice made pursuant to the terms and conditions of this Agreement shall be in writing and deemed effective as follows: (a) if delivered personally, upon delivery; (b) if sent by certified mail, return receipt requested, upon certified receipt; (c) if sent by a recognized overnight mail or courier service, with delivery receipt requested, upon receipt; or (d) if sent by email, upon confirmation in one of the accepted methods in parts (a), (b), and (c) of this Section 29.1. To be effective, Notice must be addressed to and sent to

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the following addresses or to any alternative address which a Party shall identify by means of Notice in accordance with this Agreement:

If to Contractor:	GRIDWORKS, INC. 3900 Singer Blvd NE Albuquerque, NM 87109 Attn: Kevin Bassalleck
With a copy to:	GRIDWORKS, INC. 3900 Singer Blvd NE Albuquerque, NM 87109 Attn: General Counsel
If to Owner:	PUBLIC SERVICE COMPANY OF NEW MEXICO 2401 Aztec Rd. NE Albuquerque, NM 87107 Attention: Director of Strategic Energy Planning and Development
With a copy to:	PUBLIC SERVICE COMPANY OF NEW MEXICO 414 Silver Avenue SW Albuquerque, NM 87102 Attention: General Counsel

Nothing contained herein shall preclude the transmission by electronic communication (such as electronic mail) of any communication in the normal course of business and any such transmission may be distributed solely by and between Contractor's Project Manager and the Owner Representative.

29.2. Representatives.

Any technical or other communications pertaining to the Work shall be with the Parties' designated representative. Each Party shall Notify the other in writing of the name of such representatives. Contractor's Project Manager and the Owner Representative each shall have knowledge of the Work and be available at all reasonable times for consultation. Each Party's representative shall be authorized on behalf of such Party to administer this Agreement, agree upon procedures for coordinating the efforts of the Parties, and, when appropriate, to furnish information to or receive information from the other Party in matters concerning the Work.

30. LIMITATIONS OF LIABILITY AND REMEDIES

30.1. Limitations on Damages.

Except (a) for liquidated damages as expressly set forth in this Agreement, (b) to the extent a termination payment made pursuant to Article 20 constitutes consequential damages, (c) to the extent damages claimed by third parties (*i.e.*, persons which are not Affiliates of Owner or Contractor, respectively) for which Contractor or Owner has a duty to indemnify hereunder as expressly provided in Article 23 are shown to be consequential in nature, and (d) to the extent that a Party has breached any of its obligations set forth in Article 24, notwithstanding anything else in this Agreement to the contrary, no Party (nor that Party's subcontractors) shall be liable to any other Party hereto for any loss, damage or other liability otherwise equivalent to or in the nature of any indirect, incidental, consequential, exemplary, punitive or special damages

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arising from performing or a failure to perform any obligation under this Agreement, whether such liability arises in contract (including breach, indemnity or warranty), tort (including fault, negligence or strict liability), or otherwise, including for any loss of actual or anticipated profits, loss of revenue, or loss of use or productivity of Equipment or the Project, downtime costs or revenues or product loss by reason of shutdown or non-operation, increased expense of operation or maintenance of the Equipment or the Project, loss of opportunity, reputation, or goodwill, cost of purchased or replacement power, equipment or systems, increased expense of borrowing or financing and increased cost of capital, claims of customers for such damages, or any governmental fines, penalties or sanctions imposed.

30.2. Limitations on Contractor's Liability.

(a) Subject to clause (b) of this Section 30.2, Contractor's liability to Owner and/or Owner Indemnitees under this Agreement, whether such liability arises in contract, tort, warranty or otherwise, shall in no event be greater in the aggregate than an amount equal to one hundred percent (100%) of the Contract Price.

(b) Contractor's limit of liability set forth in Section 30.2(a) shall not apply to (i) Contractor's indemnification obligations under this Agreement with respect to any claim by a third-party (*i.e.*, a person not Affiliates of Owner or Contractor, respectively) for bodily injury, death and property damage; or (ii) any insured claim to the extent that such claim is covered by insurance proceeds actually received from the insurance required to be maintained under this Agreement.

(c) In no event shall Contractor's liability under this Agreement for Delay Liquidated Damages exceed in the aggregate an amount equal to ten percent (10%) of the Contract Price (the "**Delay LD Cap**").

(d) In no event shall Contractor's liability under this Agreement for aggregate Capacity Liquidated Damages and Heat Rate Liquidated Damages exceed in the aggregate an amount equal to fifteen percent (15%) of the Contract Price (the "**Performance LD Cap**").

(e) Unless otherwise agreed by Contractor in its sole and absolute discretion, in no event shall the aggregate amount of Delay Liquidated Damages plus Capacity Liquidated Damages exceed in the aggregate an amount equal to twenty percent (20%) of the Contract Price (the "**Aggregate LD Cap**").

30.3. Limitation on Remedies.

Except as otherwise provided herein, the rights and remedies of each Party as set forth in this Agreement shall be the exclusive rights or remedies of the Parties.

30.4. Limitations on Owner's Liability.

(a) Subject to clause (b) of this Section 30.4, Owner's liability to Contractor and/or Contractor Indemnitees under this Agreement, whether such liability arises in contract, tort, warranty or otherwise, shall in no event be greater in the aggregate than an amount equal to one hundred percent (100%) of the Contract Price.

(b) Owner's limit of liability set forth in Section 30.4(a) shall not apply to (i) Owner's indemnification obligations under this Agreement with respect to any third-party claim; (ii) to Owner's obligation to pay the Contract Price; or (iii) any insured claim to the extent that such claim is covered by insurance proceeds actually received from the insurance required to be maintained under this Agreement.

31. DISPUTES

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31.1. Dispute Resolution.

Any dispute or matter in question between the Parties arising out of or related to this Agreement (a "**Dispute**") shall be resolved pursuant to the procedures set forth in this Article 31, including whether a particular question is the proper subject of arbitration.

31.1.1. Dispute Resolution.

Initially, Owner and Contractor shall attempt to resolve any Dispute that may arise in connection with this Agreement. If they are unable to resolve the Dispute within twenty (20) days, either Party may, by Notice, refer the Dispute to the senior management of the Parties for resolution. As used in this Article 31, "senior management" means Senior Vice President or other executive officer with comparable management duties and authority. Senior management representatives shall confer or meet to discuss the Dispute within twenty (20) days of the Notice. If the senior management of the Parties is unable to resolve the Dispute within sixty (60) days of the initial Notice, the Dispute may be submitted to mediation upon the demand of either Party.

31.1.2. Arbitrable Disputes.

If the Parties do not agree to mediate the Dispute or are unable to resolve the Dispute through mediation and the aggregate amount of the claim (including counterclaims) is One Hundred Thousand Dollars ($100,000) or less, then the Dispute shall be resolved by binding arbitration. Such arbitration shall be governed by the then-prevailing Construction Industry Rules of the American Arbitration Association. A Party electing to submit a Dispute to arbitration shall give the other Party a timely demand for arbitration and shall file the demand and the requisite fee with the American Arbitration Association. Such demand for arbitration shall describe the nature of the Dispute and the amount in controversy. The Parties shall then jointly select an arbitrator in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association; or, if the Parties cannot agree, there shall be three selected pursuant to the applicable rules. Such arbitrator(s) shall be familiar with the construction and electric generation industries. The arbitration shall be held in Albuquerque, New Mexico. Discovery shall be by agreement of the Parties or as ordered by the arbitrator(s), provided that the Parties shall comply with the following minimum discovery requirements: at least one hundred twenty (120) calendar days prior to the arbitration, the Parties shall exchange copies of all exhibits to be used at the arbitration, all Project documents in any way related to the Dispute, a list of witnesses and a summary of the matters as to which each witness is expected to testify. A reasonable number of depositions may be taken. The arbitrator(s) shall decide the Dispute in strict accordance with the Agreement documents and by providing a reasoned award within thirty (30) days of the conclusion of the hearings. The award entered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with Applicable Law in any court having jurisdiction thereof. All costs of mediation and arbitration (including the fees of the mediator and arbitrator(s)) shall be split equally by the Parties, except that the Parties shall be responsible for payment of their own attorney fees, expert fees, preparation fees, travel costs, witness fees, photocopying and similar costs. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law of the State of New Mexico. Indemnity claims are not subject to mandatory arbitration.

31.1.3. Litigation of Larger Disputes.

If the aggregate amount of the claims in dispute exceeds One Hundred Thousand Dollars ($100,000), then the Parties may agree in writing to submit the matter to binding arbitration; however, failing such a written agreement to arbitrate in accordance with the terms of Section 31.1.2 above, either Party may bring an action in the federal or state courts of New Mexico. This Article 31 shall have no application to claims, or requests for additional compensation or time, if those requests have not been properly preserved for submission to the dispute resolution procedures set forth herein. An arbitration demand shall include all related

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claims and Disputes then ripe for the dispute resolution procedures set forth herein.

31.1.4. Work Continuation.

Contractor agrees that it can be fully compensated by money damages for any breach of this Agreement which may be committed by Owner (other than a breach of confidentiality, in respect of which Contractor shall, in addition to any monetary damages, be entitled to seek specific performance, injunction or any other equitable remedy available to Contractor), and Contractor agrees that no default, act or omission of Owner shall entitle Contractor to terminate or rescind this Agreement, or to suspend, delay, stop or Abandon performance of the Work, except as expressly set forth in this Agreement. Subject to the foregoing, Contractor agrees that it will continue to diligently pursue the Work during the pendency of any Dispute, including any Dispute over payments claimed due and owing by Contractor, provided that Owner continues to timely make payments of undisputed amounts as required under this Agreement.

31.2. Waiver of Jury Trial.

EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES, AND AGREES TO CAUSE EACH OF ITS RESPECTIVE AFFILIATES TO WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF OWNER OR CONTRACTOR.

32. MISCELLANEOUS

32.1. Severability.

The invalidity or unenforceability of any portion or provision of this Agreement shall in no way affect the validity or enforceability of any other portion or provision hereof. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision. If any such provision of this Agreement is so declared invalid, the Parties shall promptly negotiate in good faith new provisions to eliminate such invalidity and to restore this Agreement as near as possible to its original intent and effect.

32.2. Governing Law.

This Agreement shall be governed by the internal laws of the State of New Mexico, excluding its conflict of laws provisions. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE TERMS AND CONDITIONS OF THIS AGREEMENT HAVE BEEN FREELY, FAIRLY AND THOROUGHLY NEGOTIATED.

32.3. No Oral Modification.

No oral or written amendment or modification of this Agreement by any officer, agent, member, manager or employee of Contractor or Owner, either before or after execution of this Agreement, shall be of any force or effect unless such amendment or modification is in writing and is signed by a duly authorized representative of the Party to be bound thereby.

32.4. No Waiver.

A Party's waiver of any Event of Default, breach or failure to enforce any of the terms, covenants,

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conditions or other provisions of this Agreement at any time shall not in any way affect, limit, modify or waive that Party's right thereafter to enforce or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade notwithstanding. All waivers must be in writing and signed on behalf of Owner and Contractor in accordance with Section 32.3.

32.5. Review and Approval.

Notwithstanding Owner's review or Owner's approval of any items submitted to Owner for review or approval, neither Owner nor any of its representatives or agents reviewing such items, including the Owner's Engineer, shall have any liability for, under or in connection with the items such Person reviews or approves, and Contractor shall remain responsible for the quality and performance of the Work. Owner's review or approval of any items, including the Contractor Deliverables, shall not constitute a waiver of any claim or right that Owner may then or thereafter have against Contractor. Any inspection comment, review or approval of any Contractor Deliverable shall be performed in Owner's sole discretion. The review or approval by Owner of any Subcontractor shall not constitute any approval of the Work undertaken by any such Person, cause Owner to have any responsibility for the actions, the Work, or payment of such Person or to be deemed to be in an employer-employee relationship with any such Subcontractor, or in any way relieve Contractor of its responsibilities and obligations under this Agreement.

32.6. Third Party Beneficiaries.

The provisions of this Agreement are intended for the sole benefit of Owner and Contractor and there are no third-party beneficiaries hereof (other than the Contractor Indemnitees and the Owner Indemnitees).

32.7. Further Assurances.

Owner and Contractor will each use its reasonable efforts to implement the provisions of this Agreement, and for such purpose each, at the reasonable request of the other, will, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assistance (including in connection with any financing involving the Project by either Party), or assignments, consents or other instruments in addition to those required by this Agreement, in form and substance satisfactory to the cooperating Party, as the requesting Party may reasonably deem necessary or desirable to implement any provision of this Agreement provided, however, that the Contractor shall not be obligated without a Change in Work to accept any undertaking which will increase the Contractor's obligations under this Agreement and that if Owner requests that Contractor provide one or more legal opinions, each such opinion will be provided at Owner's cost.

32.8. Record Retention.

Contractor agrees to retain for a period of three (3) years from the Final Completion Date all material records relating to its performance of the Work for the Project or Contractor's warranty obligations herein related to the Project.

32.9. Binding on Successors, Etc.

Subject to Article 26, this Agreement shall be binding on the Parties hereto and on their respective successors, heirs and assigns.

32.10. Merger of Prior Contracts.

This Agreement supersedes any other agreements, whether written or oral, that may have been made or entered into between Owner and Contractor or by any office or officer of such Party relating to the Project or the Work. This Agreement and the Exhibits and other attachments attached hereto constitute the entire

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agreement between the Parties with respect to the engineering, procurement and construction of the Project, and there are no other agreements or commitments with respect to each the Project except as set forth herein and therein.

32.11. Counterparts.

This Agreement may be executed in any number of counterparts, and any Party hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. The Parties agree that the delivery of this Agreement may be effected by means of an exchange of facsimile or emailed signatures with original copies to follow by mail or courier service.

32.12. Announcements; Publications

32.12.1.Prior Approval.

Subject to Section 24.2, neither Party shall (either directly or indirectly), and neither Party shall permit any of its Affiliates to, issue or make any public release or announcement with respect to or concerning any matter the subject of, or contemplated by, this Agreement without reasonable prior consultation with the other Party and affording such other Party a reasonable opportunity to provide comments on such proposed release or announcement; provided, however, that, subject to the provisions of Section 32.12.2, nothing in this Agreement shall prevent either Party from independently making such public disclosure or filing as it determines in good faith is required by Applicable Law.

32.12.2.Marketing; Advertising.

Notwithstanding anything to the contrary in Section 32.12.1, except as may be restricted or prohibited by Applicable Law, Contractor or any of its Affiliates shall be permitted to show, by photograph or otherwise, in any marketing, advertising or other materials, the Project under construction or as completed (including any related Equipment), without first obtaining the prior consent of Owner. Owner and any Affiliate of Owner shall be permitted to videotape or otherwise record any of the Work, including the installation and/or construction work performed by Contractor hereunder, or show to any other Person any photographs (or similarly recorded images) of such construction or installation Work, without first obtaining the prior written consent of Contractor.

32.13. Independent Contractor.

Contractor is an independent contractor, and nothing contained herein shall be construed as constituting any relationship with Owner other than that of owner and independent contractor, except as expressly provided in this Agreement pursuant to which Owner appoints Contractor as Owner's agent, or as creating any relationship whatsoever between Owner and Contractor's employees. Neither Contractor nor any of its employees is or shall be deemed to be an employee of Owner.

32.14. Audit.

Contractor shall maintain, in accordance with generally accepted accounting principles consistently applied, records and books of account with respect to all Equipment incorporated into, together with all labor utilized in the performance of, the Work. With respect to any Change In Work performed by Contractor on a reimbursable cost or time and materials basis pursuant to an Owner's Directive, or any claim asserted or investigation commenced by the Taxation and Revenue Department of the State of New Mexico with respect to the Project, Owner, Owner's Engineer, the Owner Financing Parties, and their authorized representatives shall be entitled to inspect and audit such records and books of account of the Project related to such costs or claims, as applicable, during normal business hours and upon reasonable advance Notice during the course of

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the Work and for a period of three (3) years after Final Completion; provided, that the purpose of any such audit shall be only for verification of such costs and Contractor's compliance with and adherence to the provisions of this Agreement and all Applicable Laws; provided, further, that Contractor shall not be required to provide access to those of its costs covered by the fee, allowances, fixed rates, unit prices, lump sum amounts, or of costs which are expressed in terms of percentages of other costs, except to the extent required by a claim asserted or investigation commenced by the Taxation and Revenue Department of the State of New Mexico. Contractor shall retain all such records and books of account for a period of at least three (3) years after the Final Completion Date. Audit data shall not be released by the auditor to parties other than Contractor, Owner, Owner's Engineer, and their respective officers, directors, members, managers, employees, and agents in connection with any such audit, subject to the provisions of Article 24. If, as a result of any audit conducted pursuant to this Section 32.14, the results of such audit indicate that Contractor received more or less than the amount to which it was entitled under this Agreement, either Owner shall pay the additional amount owed to Contractor or Contractor shall refund any overpayment to Owner, as applicable, in either case within ten (10) days of a written request therefor. Owner shall be responsible for all costs and expenses of such audit.

32.15. Notification of Data Breach.

Contractor shall immediately, but in no event later than within seventy-two (72) hours of discovery, notify Owner of any suspected or known unauthorized access, disclosure, misuse, or misappropriation of Owner's Confidential Information ("**Data Breach**") that comes to Contractor's attention. Such notification shall be made to Owner no more than seventy-two (72) hours after Contractor suspects or knows of the Data Breach. Contractor shall also take the following actions in the event of a Data Breach: (a) designate a single individual employed by Contractor who must be available to Owner twenty-four (24) hours per day, seven (7) days per week as a primary contact regarding Contractor's obligations under this Section 32.15; (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Owner or any of its Affiliates without first obtaining prior written approval from Owner; (c) cooperate with Owner in investigating, remedying, and taking any other action Owner deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Owner 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 Owner of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Contractor may disclose information relating to a Data Breach as required by applicable law or by proper legal or governmental authority. Contractor shall give Owner prompt notice of any such legal or governmental demand and reasonably cooperate with Owner in any effort to seek a protective order or otherwise to contest such required disclosure.

32.16. Data Protection Obligations of Contractor.

Without limiting any of the liabilities or other obligations of Contractor under this Agreement, including but not limited to Section 24 "Confidential Information," Section 32.15 "Notification of Data Breach," and any Exhibits to this Agreement, Contractor shall, at all times from the Effective Date forward, maintain at least the following systems and controls in effect to protect Confidential Information:

(a) Contractor shall utilize one or more Minimum Acceptable Security Controls ("**MASC**") for each system that handles or stores any Confidential Information, and Contractor shall provide appropriate evidence to Owner to demonstrate such MASC.

(b) Contractor shall handle, transmit, and store Confidential Information only on electronic equipment and communications devices that are physically located within the United States. Contractor shall not aggregate Confidential Information or alter any Confidential Information unless and until Owner has provided its specific prior written approval.

(c) All Confidential Information shall be protected via physical segmentation or logical segmentation from data of Contractor or data of any of Contractor's other customers. Contractor shall not

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aggregate Confidential Information or alter any Confidential Information unless and until Owner has provided its specific prior written approval.

(d) Contractor shall promptly notify Owner of any negative changes to Contractor's compliance with the requirements of any of Sections 32.16 (a) through (c) above, including, but not limited to, (a) any deterioration or reduction in an independent third-party's rating or certification previously provided to Contractor or (b) any loss of such independent third-party rating or certification.

(e) If Contractor contemplates or becomes the subject of any proposed or completed transaction involving a merger, sale of assets, or other change of ownership, Contractor or its successor or assignee shall promptly notify Owner of such transaction (irrespective of whether this Agreement requires any notice to Owner or consent by Owner regarding the transaction itself) and confirm to Owner in writing whether or not such transaction has resulted or may result in any deterioration of Contractor's continuing compliance with Contractor's obligations under this Section 32.16.

(REMAINDER OF PAGE **INTENTIONALLY** LEFT BLANK; SIGNATURE PAGE(S) FOLLOW.)

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: DocuSigned by: Laurie Williams B87ED845D25E4D9...

Name: Laurie A Williams
Title: Senior Vice President

GRIDWORKS, INC.

By:

Name: Kevin Bassalleck
Title: President

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EXHIBIT A-1
CONTRACTOR'S STATEMENT OF WORK

1. Project Overview

Contractor shall design, engineer, procure, construct, test, and commission a nominal forty (40) MW natural gas-fired reciprocating internal combustion engine (RICE) power generation facility (the "Project") at the La Luz 2 site in New Mexico. The Project shall utilize the INNIO Jenbacher J624 containerized genset platform, consisting of ten (10) containerized generator sets, each rated at approximately 4.191 MW electrical output at site reference conditions.

33. 1.1 Generation Technology

Technology: Reciprocating Internal Combustion Engine (RICE)

Equipment Manufacturer: INNIO Jenbacher GmbH & Co OG

Engine Model: J 624 GS-L101 (4-stroke, V-60° configuration, 24 cylinders)

Genset-Container Model: JMC 624 GS-N.L

Genset Configuration: Grid Parallel with Island Operation

Number of Units: Ten (10) containerized generator sets

Generator Voltage: 13,800V (13.8 kV)

Plant Nominal Gross Capacity: 41.91 MW (10 × 4.191 MW per unit)

34. 1.2 Site Reference Conditions

The ratings in the INNIO Jenbacher technical specification are valid for full load operation at the following site conditions:

Parameter	Value
Site Elevation	5,310 ft (1,620 m)
Ambient Temperature (T0)	104°F (40°C)
Engine Air Intake Temperature (T1)	< 113°F (45°C)
Engine Room Outlet Temperature (T2)	122°F – engine stop
Barometric Pressure (ISO Reference)	14.5 psi (1000 mbar)

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Relative Humidity	30%
Deration Above T1 > 113°F	0.69%/°F (1.25%/°C)

35. 1.3 Per-Unit Technical Specifications (at Site Conditions)

Parameter	100% Load	75% Load	50% Load
Power Input	31,628 MBTU/hr	24,402 MBTU/hr	17,991 MBTU/hr
Gas Volume	34,491 SCFH	26,611 SCFH	19,619 SCFH
Mechanical Output	5,771 bhp	4,328 bhp	3,080 bhp
Electrical Output	4,191 kW el.	3,142 kW el.	2,225 kW el.
Spec. Fuel Consumption (elec.)	7,546 BTU/kWh	7,767 BTU/kWh	8,085 BTU/kWh
Spec. Fuel Consumption (mech.)	5,481 BTU/bhp.hr	5,638 BTU/bhp.hr	5,841 BTU/bhp.hr
Electrical Efficiency	45.2%	43.9%	42.2%
Total Efficiency	71.0%	69.6%	68.3%
Fuel Gas LHV	917 BTU/scft		

36. 1.4 Engine Technical Data

Parameter	Value
Manufacturer	JENBACHER (INNIO)
Engine Type	J 624 GS-L101
Working Principle	4-Stroke Spark Ignited Gas Engine
Configuration	V 60°
Number of Cylinders	24
Bore	7.48 in

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Stroke	8.66 in
Piston Displacement	9,135 cu.in
Nominal Speed	1,500 rpm
Mean Piston Speed	433 in/s
Engine Length	375 in
Engine Width	83 in
Engine Height	101 in
Engine Weight (dry)	37,699 lbs
Engine Weight (filled)	39,904 lbs
Fuel Type	Natural Gas (MN 90, Min 80)
ISO Standard Fuel Stop Power	5,771 bhp
Starter Motor	20 kW / 24V

37. 1.5 Generator Technical Data

Parameter	Value
Manufacturer	TDPS
Type	TD125 F1R9
Type Rating	6,360 kVA
Driving Power	5,747 bhp
Rating at p.f. = 1.0	4,191 kW
Rating at p.f. = 0.8	4,163 kW
Frequency	60 Hz
Voltage	13.8 kV

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Speed	1,800 rpm
Efficiency at p.f. = 1.0	97.8%
Efficiency at p.f. = 0.8	97.1%
Power Factor (lagging)	0.8 - 0.9
Insulation Class	F
Mass	41,447 lbs

38. 1.6 Gearbox Technical Data

Parameter	Value
Manufacturer	EISENBEISS
Gearbox Ratio	1:1.2
Efficiency	99.59%
Mass	6,834 lbs

39. 1.7 Container Dimensions and Weights

Component	Dimension	Weight (Approx.)
Engine Container (with gearbox)	728" L x 236" W x 393" H	114,094 lbs
Infra Container		45,223 lbs
Ventilation Container		32,384 lbs

40. 1.8 Operational Characteristics

Characteristic	Value / Capability
AGC Controllable	Yes
Lowest AGC Control Point	2.2 MW / unit
Highest AGC Control Point	4.4 MW / unit
Minimum Off-Line Duration	0.5 minutes

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Maximum Starts Per Day	5
Start Duration to Full Load	2 min + Sync
MECL (Min Emissions Compliance Load)	0.5 MW / unit
AGC Ramp Rate (up)	1.6 MW/min/unit (37.5%/min)
Emergency Ramp Rate (up)	2.2 MW/min/unit (50%/min)
Black Start Capable	Yes
Remote Start Capable	Yes
Island Operation	Yes (Auto Re-sync)
Expected Annual Forced Outage Rate	3.5%
Expected Annual Planned Maintenance	304 hours/year
Expected Annual Availability	96% per unit
H2 Ready	Yes (up to 100 vol% H2, project-specific)

41. 1.9 Scope of Work Summary

Contractor's Work shall include, but not be limited to, the following:

- Detailed engineering and design of the complete facility
- Procurement of ten (10) INNIO Jenbacher JGC 624 L101 containerized genset modules
- Site civil and structural work including foundations per Jenbacher foundation plans
- Mechanical installation: fuel gas system (>500 mbar / 7.3 psi gas train), cooling systems (hot water and low-temperature circuits), lube oil systems, exhaust systems with silencers
- Emissions control systems: SCR catalytic converters with oxidation catalyst, 19% aqueous ammonia system per Appendix L-5 requirements
- Electrical systems: 13.8 kV collection system, generator step-up transformer(s), 115 kV interconnection substation, protective relaying
- DIA.NE XT4 engine control system per unit with MODBUS-TCP remote messaging
- Plant-wide distributed control system (DCS) / SCADA with AGC capability
- Grid monitoring per Standard 60Hz Profile 1 (dyn. GC Profile 1, 150ms/30%)

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- Site fencing, lighting, access roads, and drainage
- Pre-commissioning, commissioning, start-up, and performance testing
- INNIO Jenbacher factory supervision during installation and commissioning
- All documentation, as-built drawings, O&M manuals, and operator training

42. 1.10 Design Life and Standards

The Project shall be designed for a minimum operational life of 30 years, per PNM Appendix L-5 RICE Technical Specifications. All equipment shall be suitable for operation over the extreme ambient temperature range of -20°F to 110°F with full range of relative humidity. The RICE equipment supplier (INNIO Jenbacher) is ISO 9000 certified.

43. 1.11 Carbon Compliance

Per PNM RFP requirements and the Energy Transition Act, the Jenbacher J624 platform is designated as "Ready for H2," meaning a possible adaptation to up to 100 vol% H2 operation. Performance data, timeline, and costs for full hydrogen conversion can be determined on a project-specific basis. H2 admixtures in the range of 3–5 vol% into the natural gas network are generally regarded as non-critical per INNIO's published specifications.

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EXHIBIT A-2
OWNER-PROVIDED FACILITIES AND SERVICES

[To be populated – Per base BTA agreement terms. Owner to provide: site access, Transmission Provider Interconnection Facilities, rights-of-way and easements, gas interconnection to property boundary, and other items per negotiated agreement.]

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EXHIBIT A-3
OWNER-PROVIDED INFORMATION

[To be populated – Owner to furnish: geotechnical reports, environmental studies, survey data, interconnection studies, gas supply analysis, site-specific meteorological data, and LGIA documentation.]

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EXHIBIT A-4
INTERCONNECTION AGREEMENT

[To be populated – Fully executed Standard Large Generator Interconnection Agreement (LGIA) between PNM and Transmission Provider to be attached.]

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EXHIBIT B
CONTRACTOR DELIVERABLES TABLE

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EXHIBIT C-1
APPLICABLE PERMITS (OWNER)

Permit/Approval/Surveys	**Agency**
All other Applicable Permits/approvals/ surveys as required by Governmental Authorities not listed under Exhibit C-2 to the Agreement. These may include: • Air permits • Land use/zoning approvals • Clean Water Act permits, including National Pollutant Discharge Elimination System (NPDES) permits associated with construction activities (Owner coverage) • Fugitive dust permits (Owner coverage) • National Environmental Policy Act compliance • Water use permit	As required

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EXHIBIT C-2
CONTRACTOR-ACQUIRED PERMITS

Permit/Approval	**Agency**
Required Permits/Approvals: • National Pollutant Discharge Elimination System (NPDES) permits associated with construction activities (Contractor coverage) • Fugitive dust permit (Contractor coverage) • Grading permits • Fence permits • Building permits (if applicable) • Access permits • Trailer permits, and associated drinking water and wastewater permit (if necessary) • New Mexico Contractor's license number • Fuel storage tank permit (Contractor coverage) • OSHA permit (Contractor coverage) • Archaeological and biological surveys • Noise level limits verification	As required

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EXHIBIT D
CONTRACTOR'S SAFETY PROCEDURES

[For brevity, Gridworks' full EMS documentation will be included separately.]

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EXHIBIT E
OPERATION PERSONNEL TRAINING PROGRAM

Training shall include Jenbacher DIA.NE XT4 control system operation, local HMI operation, myPlant remote monitoring platform, engine start/stop procedures, emissions system operation, and routine maintenance procedures. INNIO Jenbacher to provide commissioning representatives and training support per TS Section 4.05.]

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EXHIBIT F-1
WAIVER AND RELEASE UPON FINAL PAYMENT OF CONTRACTOR

Each Contractor's Invoice shall be reasonably detailed and shall be accompanied by reasonable supporting documentation with respect to the Work completed which shall include a lien waiver upon final payment in the following form:

FINAL PAYMENT AFFIDAVIT, WAIVER, AND RELEASE[1]

Project Description: The engineering, procurement, and construction of a 40 MW Minimum Gross Capacity natural gas ("**Gas**") power plant ("**Gas Power Plant**") and the facilities and equipment for the Gas Power Plant that are owned by **PUBLIC SERVICE COMPANY OF NEW MEXICO**, a New Mexico corporation ("**Owner**") and located between (and including) the Interconnection Switchgear which is designed, engineered, procured and constructed by Owner and the point where the Gas Power Plant and Interconnection Switchgear are physically and electrically interconnected with the applicable electric system ("**Transmission Provider's Interconnection Facilities**") (collectively the "**Project**") to be owned by Owner, and the designing, installation, testing and commissioning of the Gas Power Plant, pursuant to the terms of that certain Build-Transfer Agreement, dated [●], 2026, (the "**Agreement**") between **[●]**, and Owner.

In accordance with Section 6.6 of the Agreement and for the purpose of Final Completion of the Project, the undersigned, for and in consideration of the payments made to it by Owner for the Work performed in connection with the Project pursuant to the Agreement, hereby certifies as follows:

1. The undersigned has requested final payment, in full for all deliveries of the Equipment and for all Work performed in connection with the Project ("**Final Payment**") and, upon receipt of such Final Payment, the undersigned hereby warrants that there are no outstanding claims for payment by the undersigned or any of the undersigned's Subcontractors against Owner in connection with the Project, except as specifically enumerated on the Schedule attached to this Final Payment Affidavit, Waiver and Release ("**Final Payment Release**").

2. Upon receipt of Final Payment, the undersigned does hereby waive, release, and quitclaim in favor of Owner, its Affiliates, each and every Person acquiring title to and/or making a loan on the Project, and any and all of their successors and assignees, all rights that presently exist or hereafter may accrue to the undersigned to assert a lien or encumbrance upon the land, improvements, labor, materials, equipment and Work comprising the Project or relating to the Project.

3. Upon receipt of Final Payment, the undersigned does hereby forever release, waive, and discharge the Project and Owner and its Affiliates from any and all liens, right to establish a lien, causes of action, suits, debts, accounts, damages, encumbrances, judgments, claims, and demands which the undersigned and/or its successor and/or assignees ever had, now have or ever will have against Owner, its Affiliates and the Project, by reason of delivery of the Equipment and performance of Work in connection with the Project for the Equipment delivered and Work performed.

4. The undersigned has not assigned any claim against Owner or the Project, nor any lien or right to perfect a lien against Owner, the Site or the Project, and the undersigned has the right, power, and authority to execute this Final Payment Release.

5. The undersigned warrants that all laborers and Subcontractors employed by it, all Suppliers

[1] To be delivered by Contractor following receipt of Final Payment under Section 6.6.

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or materialmen from which it has acquired material or equipment incorporated into the Work or the Project, and any lien or bond claimant relating to the undersigned's work has been paid in full, and that none of such laborers, Subcontractors, Suppliers, materialmen or claimants has any claim, demand or lien against Owner, the Work, the Site, the Equipment or the Project. The undersigned further warrants that all applicable taxes, fees, and benefits relating directly or indirectly to the undersigned's work have been paid in full, except for those contested in good faith which do not affect the Project or Owner.

6. No security interest has been given or executed by the undersigned for or in connection with any materials, equipment, appliances, machinery, fixtures, or furnishings placed upon or installed on the Project or the Site.

7. This Final Payment Release shall be an independent covenant, subject to the foregoing exceptions and clarifications, and shall operate and be effective with respect to Work performed and on the Equipment furnished, on the Project. This Final Payment Release shall survive Final Completion of the Project, as defined, and to the extent provided for, in the Agreement.

This Final Payment Affidavit, Waiver and Release is effective upon receipt by the undersigned of Final Payment from Owner. Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, this Final Payment Release has been executed on this _____ day of _____, _____.

[•]

By: _____

Name: _____

Its: _____

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EXHIBIT F-2
WAIVER AND RELEASE UPON PROGRESS PAYMENT OF CONTRACTOR

Each Contractor's Invoice shall be reasonably detailed and shall be accompanied by reasonable supporting documentation with respect to the Work completed which shall include a lien waiver upon progress payment in the following form:

PROGRESS AFFIDAVIT, WAIVER, AND RELEASE

Project Description: The engineering, procurement, and construction of a 40 MW Minimum Gross Capacity natural gas ("**Gas**") power plant ("**Gas Power Plant**") and the facilities and equipment for the Gas Power Plant that are owned by PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (**"Owner"**) and located between (and including) the Interconnection Switchgear which is designed, engineered, procured and constructed by Owner and the point where the Gas Power Plant and Interconnection Switchgear are physically and electrically interconnected with the applicable electric system ("**Transmission Provider's Interconnection Facilities**") (collectively the "**Project**") to be owned by Owner, and the designing, installation, testing and commissioning of the Project, pursuant to the terms of that certain Build-Transfer Agreement, dated _____, 20___ (the "**Agreement**") between [●] ("**Contractor**"), and Owner.

In accordance with Section 6.3 of the Agreement, the undersigned, for and in consideration of the payments made to it by Owner for the Work completed pursuant to the Agreement, hereby certifies as follows:

1. Upon receipt of the sum of $_____, the undersigned will have received payment in full for all deliveries of the Equipment and for all Work performed in connection with the Project through the _____ day of _____, 20___, as specified in the relevant invoice, and, except for receipt of said payment and as an inducement to Owner to make same, the undersigned hereby affirms that there are no outstanding claims by the undersigned or any of the undersigned's Subcontractors against Owner in connection with the Project, except as specifically enumerated on the Schedule attached to this Progress Affidavit, Waiver, and Release ("**Progress Release**").

2. The undersigned does hereby waive, release, and quitclaim in favor of Owner, its Affiliates, each and every Person acquiring title to and/or making a loan on the Project, and any and all of their successors and assignees, all rights that presently exist or hereafter may accrue to the undersigned to assert a lien or encumbrance upon the land, improvements, labor, materials, equipment and Work comprising the Project or relating to the Project furnished through the _____ day of _____, 20___.

3. The undersigned does hereby forever release, waive, and discharge the Project and Owner and its Affiliates from any and all liens, right to establish a lien, causes of action, suits, debts, accounts, damages, encumbrances, judgments, claims, and demands which the undersigned and/or its successor and/or assignees ever had, now have or ever will have against Owner, its Affiliates and the Project, by reason of delivery of the Equipment and performance of Work in connection with the Project, for Project Hardware delivered and Work performed through the _____ day of _____, 20___.

4. The undersigned has not assigned any claim against Owner or the Project, nor any lien or right to perfect a lien against Owner or the Project, and the undersigned has the right, power, and authority to execute this Progress Release.

5. The undersigned warrants that all laborers and Subcontractors employed by it, all Suppliers or materialmen from which it has acquired material or equipment incorporated into the Work or the Project,

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and that any lien or bond claimant relating to the undersigned's work has been paid in full, and that none of such laborers, Subcontractors, Suppliers, materialmen or claimants has any claim, demand, or lien against Owner, the Work, the Site, the Equipment or the Project through the _____ day of_____, 20___, of Work performed on the Project except as described in the attached document. The undersigned further warrants that all applicable taxes, fees, and benefits relating directly or indirectly to the undersigned's work have been paid in full to the extent due and payable as of the date of this Progress Release, except for those contested in good faith.

6. No security interest has been given or executed by the undersigned for or in connection with any materials, equipment, appliances, machinery, fixtures, or furnishings placed upon or installed on the Project or the Site.

7. This Progress Release, subject to the foregoing exceptions and clarifications, shall be an independent covenant and shall operate and be effective with respect to Work performed and on Project Hardware furnished, through the _____ day of _____, 20___, on the Project.

Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF, this Progress Release has been executed on this _____ day of _____, _____.

[•]

By: _____

Name: _____

Its: _____

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EXHIBIT G
WORK SCHEDULE

The preliminary Work Schedule milestone dates are as follows (referenced from NTP Date). Detailed CPM schedule to be provided within thirty (30) days of NTP.

Month	Milestone	Status
0	NTP / Engineering Commencement	
0-2	Detailed Engineering & Long-Lead Procurement	
2-6	Major Equipment Procurement (Jenbacher J624 units)	
6-12	Remaining Procurement & Civil Work Commencement	
12	Mobilization to Site	
12-23	Construction, Mechanical Installation, Electrical	
23	Mechanical Completion (MC)	
23-28	Commissioning & Performance Testing	
28	Substantial Completion (SC)	NLT December 1, 2030
30	Final Completion (FC)	

Substantial Completion Guaranteed Date: No later than December 1, 2030 (per Section 5.1)

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EXHIBIT H-1
COMMISSIONING PROCESS

The commissioning process shall follow INNIO Jenbacher's standard commissioning protocol as documented in TS Section 4.00 (Delivery, Installation, and Commissioning) and shall include the following phases:

44. Phase 1: Pre-Commissioning

- Site readiness verification per INNIO Start-Up Checklist for Site Readiness (DEEN document)
- Mechanical and electrical installation verification
- System flushing, cleaning, and pre-operational checks
- Fuel gas system pressure testing and purging
- Control system (DIA.NE XT4) configuration and communication verification

45. Phase 2: Initial Start-Up and Commissioning

- Sequential unit start-up with INNIO Jenbacher commissioning representative present
- Engine tests per TS Section 5.02.01
- Generator tests per TS Section 5.02.02
- Module tests per TS Section 5.02.03
- Trial run and emission measurements per TS Section 4.06-4.07

46. Phase 3: Performance Testing

See Exhibit H-2 for detailed performance testing procedures.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT H-2
PERFORMANCE TESTING

1. Performance Guarantees

Performance Guarantee	Guaranteed Value
Guaranteed Capacity (at POD)	40.0 MW (net, at site conditions)
Guaranteed Net Heat Rate	7,546 BTU/kWh (at 100% load, per unit)
Minimum Guaranteed Capacity	36 MW
Minimum Guaranteed Heat Rate	8,385 BTU/kWh

2. Base Reference Conditions

Parameter	Value
Site Elevation	5,310 ft (1,620 m)
Ambient Temperature	104°F (40°C)
Engine Air Intake Temperature	113°F (45°C)
Barometric Pressure	14.5 psi (1000 mbar)
Relative Humidity	30%
Fuel Gas LHV	917 BTU/scft

3. Emissions Guarantees

Based on the INNIO Jenbacher Emissions Letter dated August 6, 2025 (Project: PNM Reeves J624 L101 Raw Engine Out), the following raw engine-out emissions are guaranteed as “Not To Exceed” values per engine:

Species	Unit	Value	Testing Method
NOx (as NO2)	g/bhp-hr	0.95	EPA method 7E, or EN 14792 (CLD)
CO	g/bhp-hr	2.0	EPA method 10, or DIN EN 15058 (NDIR)

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NMHC	g/bhp-hr	0.25	GC-WLD or GC-FID
NMNEHC (VOC)	g/bhp-hr	0.2	GC-WLD or GC-FID
CO2	g/bhp-hr	323	Theoretical (100% fuel conversion)

Post-combustion emissions control (SCR + oxidation catalyst) shall further reduce NOx and CO emissions to meet all applicable air permit requirements. SCR catalyst shall carry a sixty (60) month warranty per Appendix L-5 requirements.

4. Sound / Noise Guarantees

Source	Unit	Level
Aggregate Sound Power (Engine)	dB(A) re 1pW	126
Exhaust Gas Sound Power	dB(A) re 1pW	131
Aggregate Sound Pressure (at 3.28 ft)	dB(A) re 20µPa	103

Engine tolerance: ± 3 dB. Far-field noise guarantees to be established based on final site layout and acoustic modeling.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT H-3
PRODUCTION OUTPUT SPECIFICATION

Parameter	Value
Number of Units	10
Gross Capacity per Unit (at site conditions)	4,191 kW
Total Gross Plant Capacity	41,910 kW (41.91 MW)
Net Heat Rate per Unit (100% load)	7,546 BTU/kWh
Fuel Gas Consumption per Unit (100%)	34,491 SCFH
Total Plant Fuel Consumption (100%)	344,910 SCFH (10 units)
Plant Electrical Efficiency	45.2% (at 100% load)
Minimum Stable Load per Unit	~50% (2,225 kW)
Minimum Emissions Compliance Load	0.5 MW per unit

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT I
MILESTONE PAYMENT SCHEDULE

Total La Luz Contract Price: $81,769,671 (includes tariffs and NMGRT)

Month	Milestone	% Invoiced	Cumul. %	Invoice Amount
0	Engineering	4.59%	4.59%	$3,752,853
2	Long-Lead Procurement	21.28%	25.87%	$17,398,846
6	Remaining Procurement	31.92%	57.79%	$26,098,269
12	Mobilization to Site	17.22%	75%	$14,079,329
23	Mechanical Completion	15%	90%	$12,264,224
28	Substantial Completion	5%	95%	$4,088,075
30	Final Completion	5%	100%	$4,088,075

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT J
SITE DESCRIPTION

Project: La Luz 2

Location: La Luz, New Mexico

Site Elevation: Approximately 5,310 ft (1,620 m) above sea level

[Full site legal description, coordinates, and boundary survey to be attached per Appendix N-2 La Luz Site Information from PNM RFP package.]

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT K
SPECIFIED SUPPLIERS AND SPECIFIED SUBCONTRACTORS

Supplier/Subcontractor	Scope	Equipment/Service
INNIO Jenbacher GmbH & Co OG	Prime Mover Supply	10x JGC 624 L101 Containerized Gensets
INNIO Jenbacher	Commissioning Services	Factory rep for installation & commissioning
TDPS / ABB	Generator Supply	TD125 F1R9 Generators (included in module)
EISENBEISS	Gearbox Supply	Speed-increasing gearbox (1:1.2 ratio)
[TBD]	SCR / Emissions Control	SCR catalytic converters, oxidation catalyst
[TBD]	GSU Transformer	Generator Step-Up Transformer(s)
[TBD]	Electrical BOP	Switchgear, cables, protection
NEI	Engineering Support	Detailed design engineering

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT L
SITE ASSUMPTIONS

Assumption	Value
Site Elevation	5,310 ft (1,620 m)
Design Ambient Temperature Range	-20°F to 110°F
Performance Rating Temperature (T0)	104°F
Engine Air Intake Temperature (T1)	< 113°F
Fuel Gas	Natural gas, MN ≥ 80 (pipeline quality)
Fuel Gas LHV	917 BTU/scft
Fuel Gas Pressure at Site	87.02 – 116.03 psi (at gas train inlet)
Seismic Zone	Per site-specific geotech report
Soil Conditions	Per Reeves Local Conditions Summary

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT M
FORM OF BONDS

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Bond No.

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Performance Bond

CONTRACTOR:
(Name, legal status and address)

,

SURETY:
(Name, legal status and principal place of business)

,

Mailing Address for Notices

,

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:
(Name, legal status and address)

, US

CONSTRUCTION CONTRACT
Date:

Amount: $

Description:
(Name and location)

BOND
Date:
(Not earlier than Construction Contract Date)

Amount: $

Modifications to this Bond: [X] None [ ] See Section 16

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*

Signature: _____
Name
and Title:

SURETY
Company: *(Corporate Seal)*

Signature: _____
Name
and Title:

(And additional signatures appear on the last page of this Performance Bond.)

AGENT or BROKER:

,

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

,

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

§ 1The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

.1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner docs not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

.2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

.3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section *5* with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section *5*.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

.2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and

.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or *5.4,* the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that arc unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law-bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

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§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company	*(Corporate Seal)*	Company	*(Corporate Seal)*
Signature: _____		Signature: _____	
Name and Title:		Name and Title:	
Address:		Address:	

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Bond No.

Document A312™ – 2010

Conforms with The American Institute of Architects AIA Document 312

Payment Bond

CONTRACTOR:
(Name, legal status and address)

SURETY:
(Name, legal status and principal place of business)

Mailing Address for Notices

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

OWNER:
(Name, legal status and address)

CONSTRUCTION CONTRACT
Date:

Amount: $

Description:
(Name and location)

BOND
Date:
(Not earlier than Construction Contract Date)

Amount: $

Modifications to this Bond: [X] None [ ] See Section 18

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*

SURETY
Company: *(Corporate Seal)*

Signature: _____
Name
and Title:

Signature: _____
Name
and Title:

(And additional signatures appear on the last page of this Performance Bond.)

AGENT or BROKER:

OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and

.2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections *5.1* or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.l or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that arc unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service w s performed by anyone or the last materials or equipment were

furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph arc void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 16 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

.1 the name of the Claimant;
.2 the name of the person for whom the labor was done, or materials or equipment furnished;
.3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
.4 a brief description of the labor, materials or equipment furnished;
.5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
.6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
.7 the total amount of previous payments received by the Claimant; and
.8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL		**SURETY**	
Company	*(Corporate Seal)*	Company	*(Corporate Seal)*
Signature: _____		Signature: _____	
Name and Title:		Name and Title:	
Address:		Address:	

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

WARRANTY BOND

KNOWN ALL BY THESE PRESENTS: That we _____, as Principal, and _____, a corporation organized and existing under the Laws of the State of _____, as Surety, are held and firmly bound unto _____, as Obligee, in the total sum of _____ U.S. Dollars (_____) for the payment whereof said Principal and Surety bind themselves, jointly and severally, as provided herein.

WHEREAS, the Principal entered into a contract with the Obligee dated _____ for _____
_____ ("Work").

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall maintain and remedy said Work free from defects in materials and workmanship for a period of _____ year(s) commencing on (the "Warranty Period"), then this obligation shall be void; otherwise it shall remain in full force and effect.

PROVIDED, HOWEVER, that any suit under this bond shall be commenced no later than one (1) year from the expiration date of the Warranty Period; provided, however, that if this limitation is prohibited by any law controlling the construction hereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law, and said period of limitation shall be deemed to have accrued and shall commence to run on the expiration date of the Warranty Period.

SIGNED this _____ day of _____, _____.

(Principal)

By: _____

By: _____
Attorney-in-Fact

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

EXHIBIT N
SMALL BUSINESS SUBCONTRACTING PLAN

Note: To be prepared prior to execution Full Notice to Proceed

(All elements of the below plan are developed specifically for this contract and applicable for the full term of this contract, including any option periods.)

Name of Supplier:

Address:

Telephone:

Facsimile:

E-mail:

Contract Number/Purchase Order: _____

Contract Name: _____

Service/Material: _____

Total Amount or Contract/Purchase Order (Including options) $ _____

Period of Contract/Purchase Order Performance (DAY, MO. & YR.) _____

1. **Goals**

State separate dollar and percentage goals, expressed in terms of percentages of total subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business as subcontractors.

Description	$ Dollar Value	%
Total estimated dollar value and percent of planned subcontracting with small businesses (include veteran-owned small, service-disabled veteran-owned small, HUB Zone small, small disadvantaged, and women-owned small businesses) *No double counting is permitted, the percentages of the mentioned categories are independent and calculated based on the total estimated dollar value and percent of all planned subcontracting with large businesses and small businesses.*		
Total estimated dollar value and percentage of planned subcontracting with **large businesses**		
Total estimated dollar value and percentage of all planned subcontracting with **large businesses and small businesses**		**100%**
Total estimated dollar value and percentage of planned subcontracting with **veteran-owned small businesses**		

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Total estimated dollar value and percentage of planned subcontracting with **service-disabled veteran-owned small businesses**		
Total estimated dollar value and percentage of planned subcontracting with **HUB Zone small businesses**		
Total estimated dollar value and percentage of planned subcontracting with **small disadvantaged businesses**		
Total estimated dollar value and percentage of planned subcontracting with **women-owned small businesses**		

2. **Description of materials or services to be subcontracted**

Provide a description of all the materials and/or services to be subcontracted under this contract, and indicate the types of businesses supplying them:

Subcontracted Items	SB	VOSB	SDVOSM	HUB Zone	SDB	WOSB

(Check all that apply and attach additional sheets if necessary)

3. **Description of the Method Used to Develop the Subcontracting Goals**

4. **Description of the Method Used to Identify Potential Sources** (the Central Contractor Registration (CCR), veterans service organizations, New Mexico Small Business Development Centers, Women's Economic Self-Sufficiency Team, ACCION New Mexico, The Loan Fund, Office of Veterans Business Development, New Mexico Native American Business Enterprise Center, etc)

(Attach additional sheets if necessary.)

5. **Indirect costs have not been included in the dollar and percentage subcontracting goals stated above.**

6. **Program Administrator**

Name:

Title:

Address:

Telephone:

Facsimile:

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E-mail:

7. **Duties of the Program Administrator**

_____
_____
_____
_____
_____

8. **Describe the efforts to ensure that small, veteran-owned small, service-disabled veteran-owned small, HUB Zone small, small disadvantaged and women-owned small businesses will have an equitable opportunity to compete for subcontracts. These efforts include, but are not limited to, the following activities:**

_____
_____
_____
_____
_____

9. **Reporting and Cooperation**

The contractor gives assurance of: (1) cooperation in any studies or surveys that may be required; and (2) submission of the subcontracting plan.

10. **Recordkeeping**

Type of records the contractor will maintain to demonstrate the procedures adopted to comply with the requirements and goals in the subcontracting plan. These records will include, but not be limited to, the following:

(a) Organizations contacted in an attempt to locate small, veteran-owned small, service-disabled veteran-owned small, HUB Zone small, small disadvantaged and women-owned small business sources.
(b) On a contract-by-contract basis, records on each subcontract solicitation resulting in an award of more than $100,000 indicating: (1) whether small businesses were solicited, and if not, why not; and (2) if applicable, the reason why the award was not made to a small business.
(c) Records to support other outreach efforts.

This subcontracting plan was submitted by:

Signature:

Typed Name:

Title:

Phone Number:

Facsimile Number:

Email:

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EXHIBIT O
SPARE PARTS LIST

The following list of spare parts shall be provided to the Owner upon Substantial Completion of the Project.

• Spare Parts shall be delivered to an Owner-designated storage facility.

• Cost of Spare Parts shall be the responsibility of the Contractor.

• "%" as the Unit shall mean a given percentage of the installed quantity of the referenced material. Any values that equate to less than one (1) physical unit shall have one (1) spare part purchased.

Item/Equipment	**Unit**	**Qty. Required**
[*List TBD*]		

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EXHIBIT P
EQUIPMENT WARRANTY TERMS AND CONDITIONS

[*To be provided after approved design*]

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EXHIBIT Q
CHANGE IN WORK FORM

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

CHANGE IN WORK FORM

Project: Natural gas fueled reciprocating internal combustion engine power generation facility with a proposed Minimum Gross Capacity of 40 MW, located in Valencia County, New Mexico

Contract: Engineering, Procurement and Construction Agreement by and between PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation ("Owner") and GRIDWORKS INC. ("Contractor")

Change In Work #: [●]

Date of Change In Work: [●]

The undersigned agree to the following change to the Build-Transfer Agreement, dated as of [●], [●], (the "Agreement"), by and between Owner and Contractor. Initially capitalized terms used but not defined herein shall have the respective meanings given in the Agreement.

The changes to the Agreement that are described below (collectively the applicable Change In Work) are considered an amendment to the Agreement. With the exception of the Change In Work, this Change In Work Form does not relieve Owner or Contractor of their responsibilities and obligations described in the Agreement or otherwise modify the rights of Owner or Contractor under the Agreement. The below adjustments to the Agreement terms will constitute a full and complete settlement for the Change In Work which is the subject of this Change In Work Form, unless otherwise provided in the detailed description below.

Detailed description of the requested Change In Work and reason for request:

_____

_____

_____

_____

Detailed description of the effect of the Change In Work on the Agreement:

_____

_____

_____

_____

Description of attached documentation establishing the Change In Work cost of performing the work other than a change in the Contract Price. If there is no change in cost, state "none":

_____

_____

_____

_____

Description of the change in the Contract Price:

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The original Contract Price is: $ [●]

The change in the Contract Price is: $ [●]

The revised Contact Price (including the Change In Work set forth herein) is: $ [●]

The method used in determining the change in Contract Price is indicated on the attached Schedule 1.

Changes to the Work Schedule, Milestone Items and Substantial Completion Guaranteed Date are set forth below. If there is no change in the Work Schedule, Milestone Items and Substantial Completion Guaranteed Date, state "none":

_____

_____

_____

_____

The revised Substantial Completion Guaranteed Date (taking into consideration the Change In Work set forth herein and all other prior Changes In Work) is: [●]

Requested By:	Accepted and Agreed To:
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

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Schedule 1 to Change In Work Form

Method used in determining the change in Contract Price

[●]

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EXHIBIT R
DATA POINTS

[*To be provided after approved design*]

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EXHIBIT S
FORM OF CONTRACTOR'S INVOICE

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Gridworks, Inc.

CONTINUATION

Page: 2

APPLICATION AND CERTIFICATE FOR PAYMENT, containing
Contractor's signed Certification is attached.
In tabulation below, amounts are stated to the nearest cent.
Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NUMBER:
APPLICATION DATE: INVOICE NO.:
PERIOD TO:
PROJECT NO:

A	B	C	D	E	F		G		H	I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED (D+E)		MATERIAL PRESENTLY STORED	TOTAL TAXES TO DATE	TOTAL COMPLETED AND STORED TO DATE	PER-%(G/C)	BALANCE TO FINISH	RETAINAGE
			FROM PREVIOUS APPLICATION	THIS PERIOD						
1012	NTP									
1014	Mobilization									
1016	Storage Canopy Construction									
1017	Module Delivery									
1020	Mechanical Completion									
1025	Substantial Completion									
1027	Final Completion									
1030	Change Orders									
1031	Change Orders - Non-Taxable									
	Project Total:									

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EXHIBIT T
INSTALLATION MANUAL

[*To be provided after approved design*]

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EXHIBIT U
FENCING SPECIFICAITON

Docusign Envelope ID: 85E81793-6E55-8EC4-811D-414CFEF0E6E8

Contractor shall perform installations identified as:

Perimeter Fence

Contractor shall install perimeter fencing 1-foot inside property boundaries per Owner's specifications:

a. Installation of 8' Galvanized Chain Link Fence topped with 3 Strands of Barbed Wire

   i. Fabric - The chain link fence fabric shall be helically woven into a 2-inch diamond mesh using #9 gauge wire. Fabric shall have standard finish with either a) twisted and barbed selvage at top and bottom or b) knuckle selvage at top and barbed selvage at bottom. Fence fabric shall be installed with a ground clearance not to exceed two (2) inches at any point. Where required to meet ground clearance requirements, fill materials must be compacted or stabilized as to not allow for degradation by other than natural water shedding.

   ii. Top and Brace Rails – Size of pipe shall be 1-5/8" in diameter, Schedule 40. Brace rails located at all corners and ends. Top rail to be along the entire perimeter.

   iii. Line Posts - Size of pipe shall be 2-inch diameter, Schedule 40, with OD being 2-3/8" and a minimum wall thickness of 0.130". Line posts shall be spaced 10 feet apart and set in 10"x36" cement footings.

   iv. Terminal Posts (End, Corner and Pull Posts) - Posts shall be 3-1/2", Schedule 40 pipe with OD being 4" and a minimum wall thickness of 0.226". Terminal posts shall be set in 12"x36" cement footings. Posts shall be set back 1 foot from property boundary.

   v. Barbed Wire - Three strands of barbed wire on top of fence around entire perimeter including gates. Barbed wire should slope outward, except for gates, where it will rise vertically.

b. Installation of 12' Double Swing Gate (24' total opening)

   i. Gates – Gates shall be 8' chain link topped with three (3) strands barbed wire. Gates shall be swing type, hinged to swing 180 degrees from closed to open, complete with frames, latches, stops, keepers, hinges, fabric, braces and three strands of barbed wire. They shall have a 1-1/2 inch, Schedule 40 (1.90" OD) pipe frame.

   ii. Grate frames shall be of welded construction or shall be assembled using fittings. When fittings are used as the construction method for gate frames, the frames shall be fitted with 5/16-inch, minimum, diameter truss rods. The frames shall be galvanized or be zinc-coated by the hot dip or metal spray method after fabrication. When frames are not galvanized or zinc-coated after fabrication, a zinc rich paint shall coat all welds.

   iii. All gates shall be constructed so that one person may operate them and include a permanent "hold open" device, such as a "duckbill" catch.

   iv. Gates will be held in the closed position by an attached drop rod entering into center stop secured in a concrete base. Gate will also include a 3/8" or thicker chain, permanently attached to one gate, of sufficient length to encircle both gate frames and be secured with a padlock.

Exclusion Area Fence

If specified, Contractor shall install exclusion area fencing per Owner specifications:

a. Installation of 4' T-Post Single Wire Fence

   i. T-Posts – Size of steel T-bar shall be at least 1-1/2" x 1-1/2" x 6', not weighing less than 1.25 pounds per linear foot. T-posts shall be spaced no more than 30 feet apart and vertically driven, at a minimum, 24" into the ground, leaving 4' visible. T-posts shall be studded to prevent clips from slipping and shall incorporate an anchor plate, welded near the base, to minimize sideways and rotational movement. T-posts shall be galvanized or coated with rust-resistant enamel for corrosion protection. Ends and

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corners shall be braced for stability as needed. Reflective markers shall be attached at least every 150 feet to increase visibility.

ii. Wire – A single strand of aluminum or galvanized steel wire attached to T-Bar near the second stud from the top using either aluminum or galvanized steel clips.

Entryway Barbed Wire Fence

If specified, Contractor shall install a section entryway barbed wire fencing per Owner specifications:

a. Installation of 4' Three Strand Barbed Wire Fence

i. T-Posts – Size of steel T-bar shall be at least 1-1/2" x 1-1/2" x 6', not weighing less than 1.25 pounds per linear foot. T-posts shall be spaced 10 feet apart and vertically driven, at a minimum, 24" into the ground, leaving 4' visible. T-posts shall be studded to prevent clips from slipping and shall incorporate an anchor plate, welded near the base, to minimize sideways and rotational movement. T-posts shall be galvanized or coated with rust-resistance enamel for corrosion protection. Reflective markers shall be attached at least every 20 feet.

ii. Barbed Wire - Three strands of barbed wire, spaced in roughly 16" intervals, measured from ground.

Grounding (minimum requirement)

Where fences or gate pass under or run parallel to overhead power lines, appropriate grounding should be used. Grounding typically consists of 5/8" x 10' copper jacketed grounding rods, #2 solid copper conductor, and necessary grounding clamps and crimpets.

Copper conductor should be woven through the chain link mesh and attached with 3 – 4 crimpets. Where topped with barb wire, conductor should also be attached to each strand with a crimpet.

a. Traversing Overhead Lines

i. One ground should be centered below the overhead wires, and another should be place 20ft apart on each side.

b. Running Parallel to Overhead Lines

ii. Grounds should be placed at 50ft intervals for as long as fencing runs less than 100ft from the centerline of the overhead power lines.

Site Cleaning

The Contractor shall perform site cleaning:

a. Remove excess fencing and other construction material and haul to the designated off-site disposal area.

i. Procurement of an off-site disposal area shall be the responsibility of the Contractor.

The Contractor will provide all permits, materials, labor and equipment necessary to fence the perimeter of the property. Owner will work with Contractor to determine the locations of any needed entryway or exclusion area fencing and the gate location. Prior to installation, the Contractor and an Owner representative will conduct a site visit.

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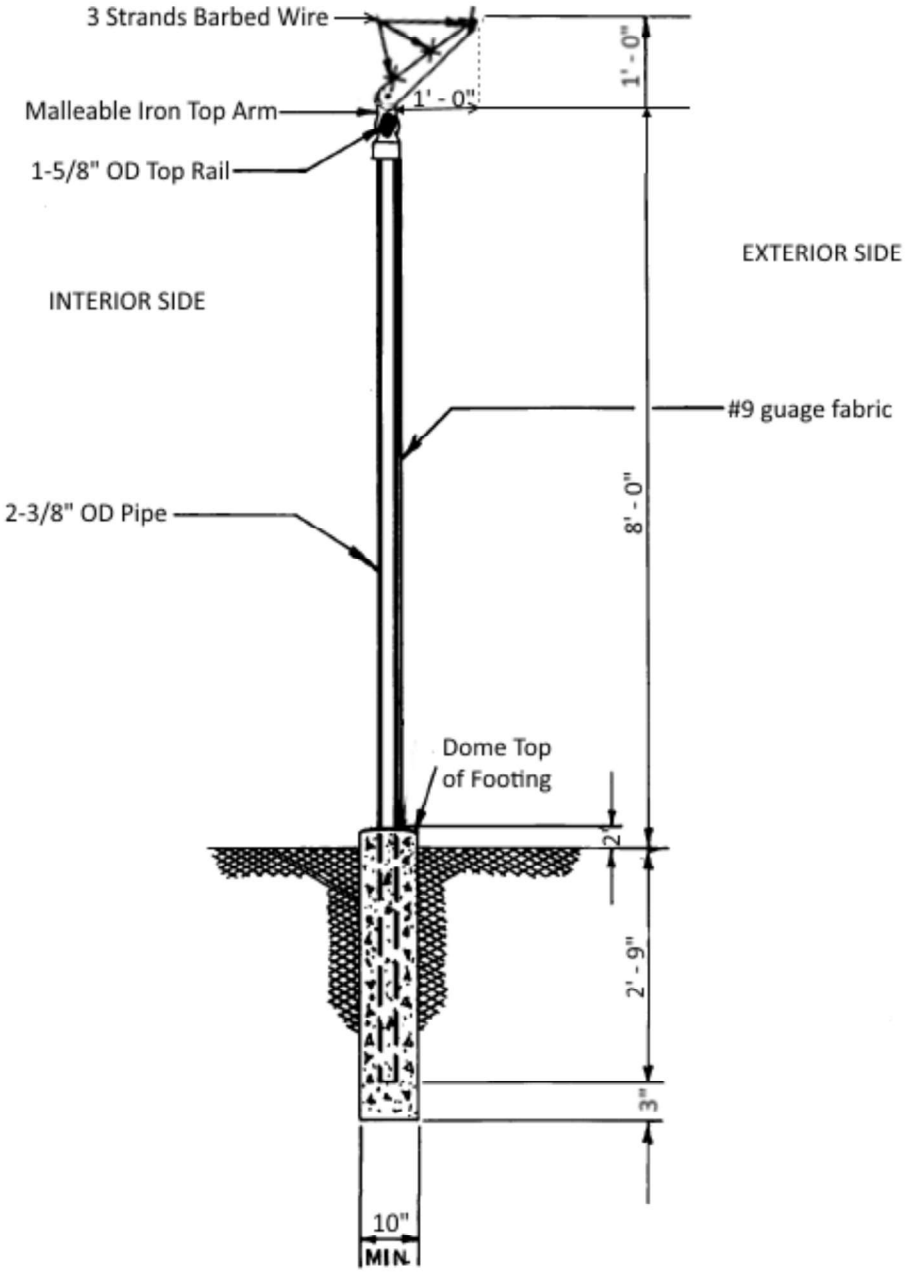
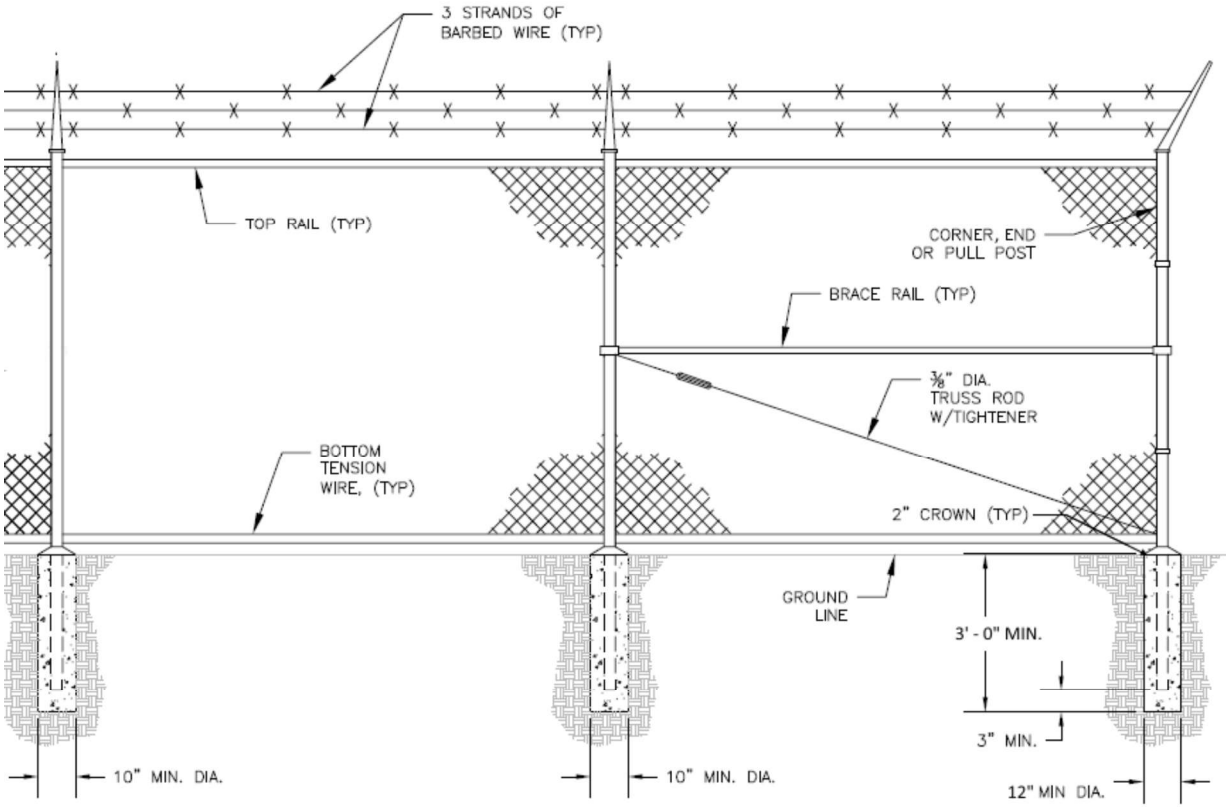
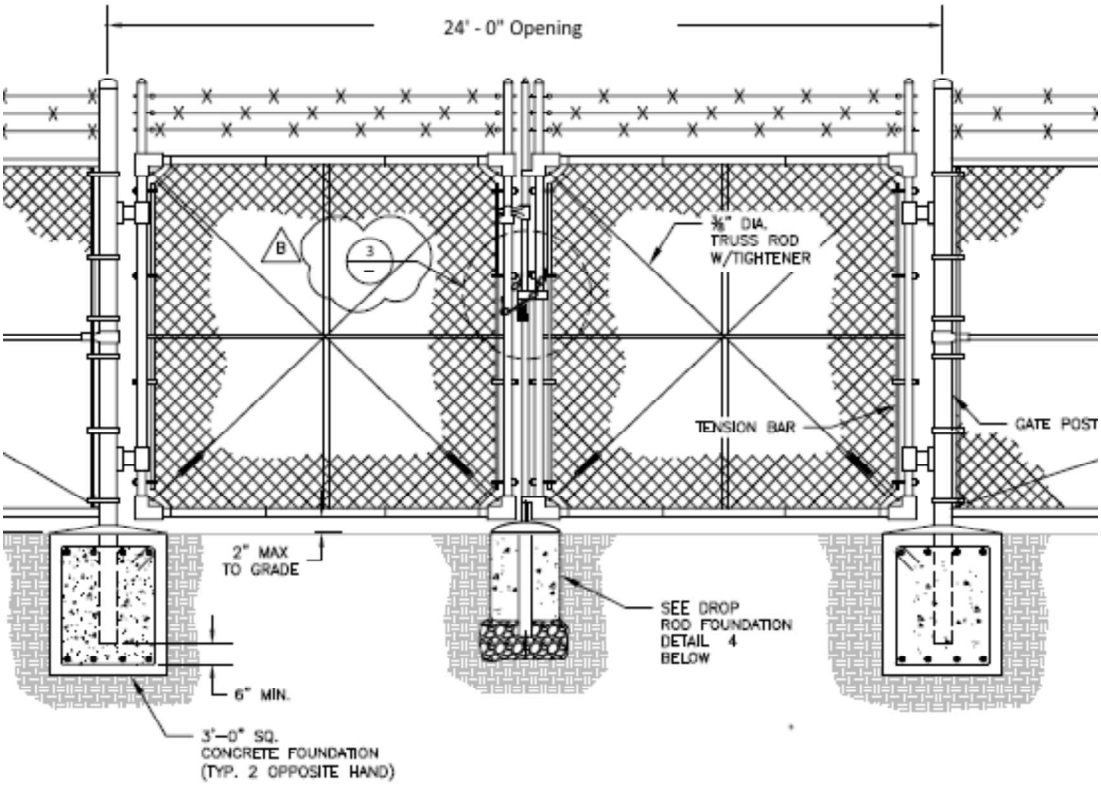
TYPICAL LINE POST



LINE AND TERMINAL POSTS

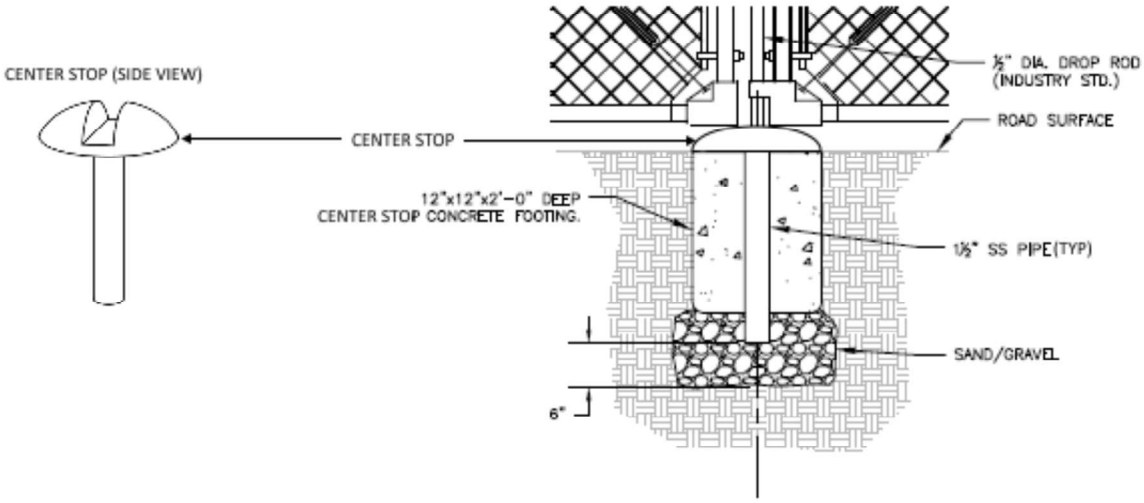


GATE



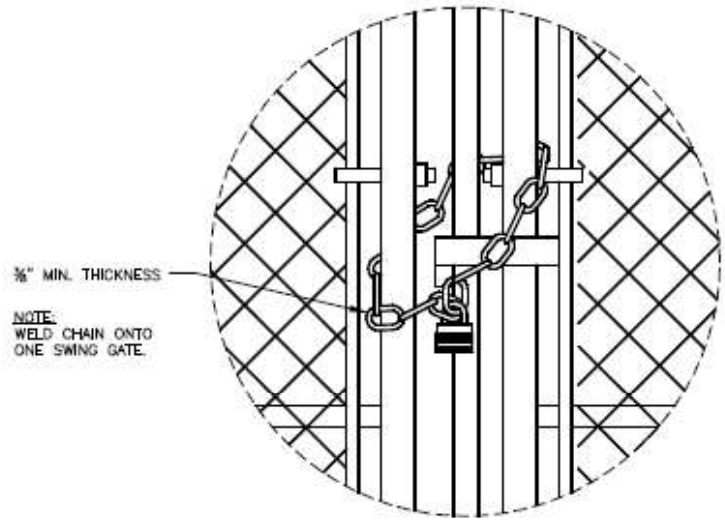
DOUBLE – SWING GATE DETAIL (1)

SCALE: NTS



DOUBLE GATE DROP ROD FOUNDATION DETAIL (3)

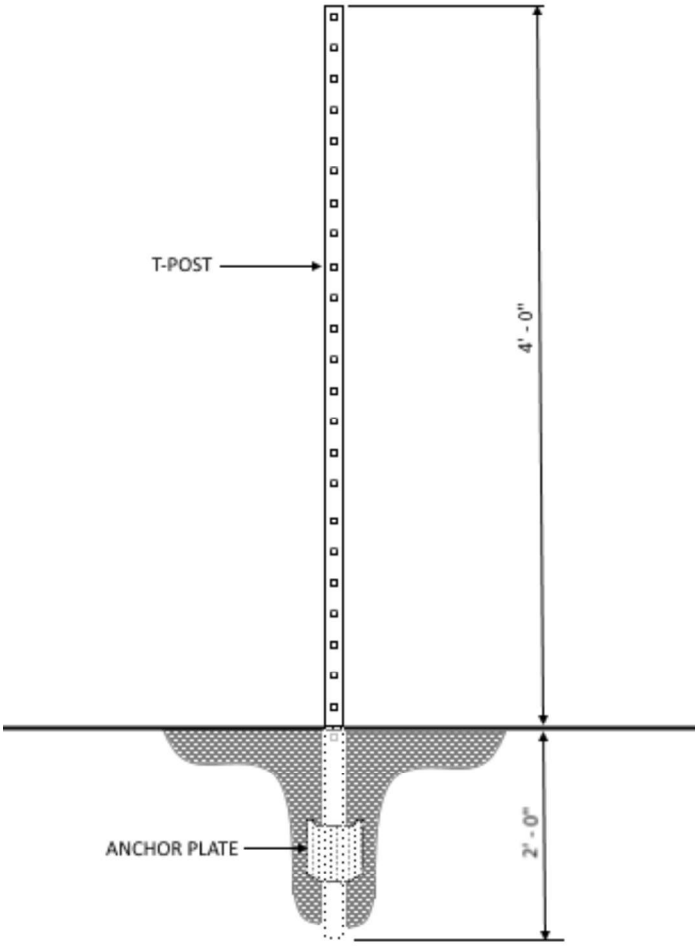
SCALE: NTS



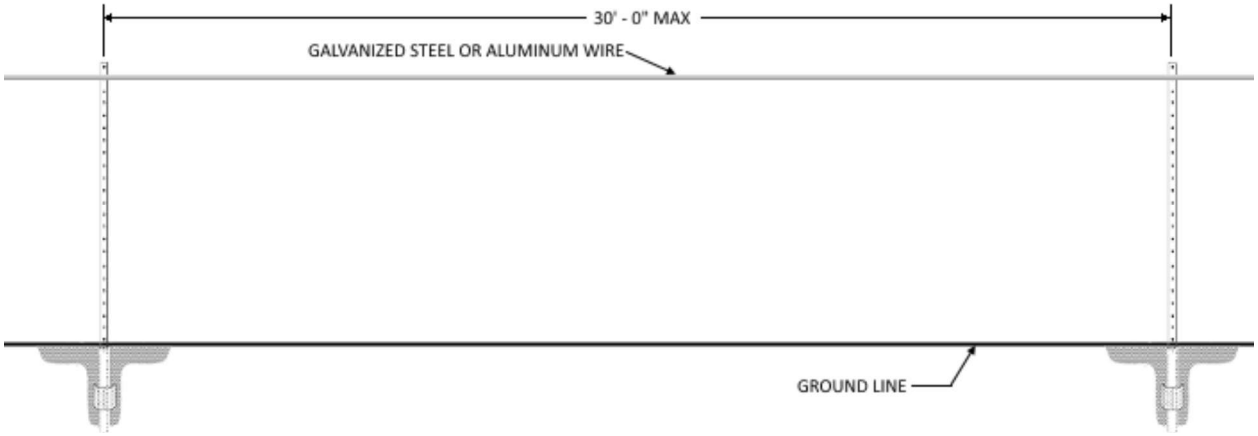
DOUBLE – SWING GAGE AND LOCK (4)

SCALE: NTS

TYPICAL T-POST



EXCLUSION AREA FENCE



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ENTRYWAY BARBED WIRE FENCE

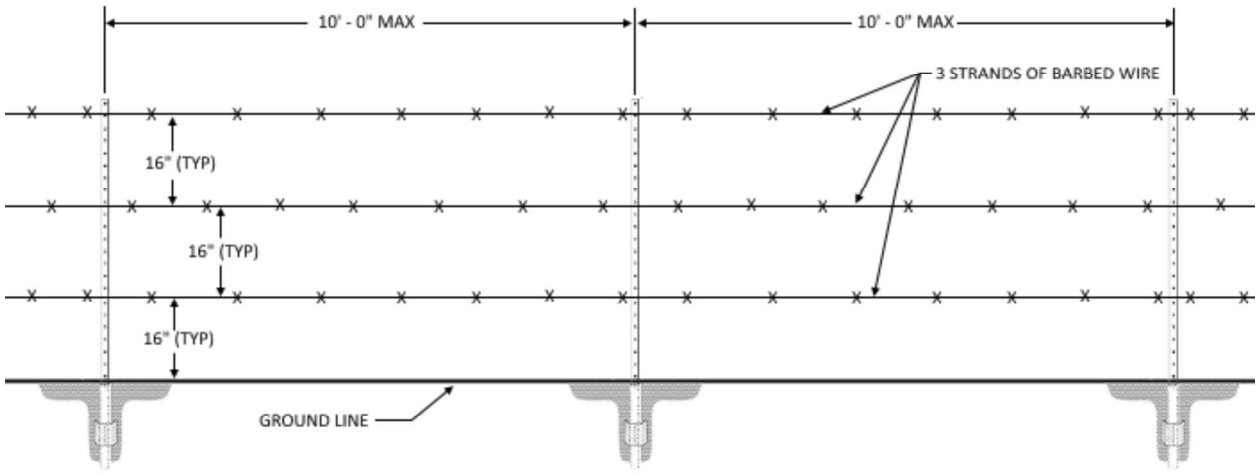

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EXHIBIT V
COMMISSIONING TESTS

[*To be provided after approved design*]

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EXHIBIT X
EXPEDITED PAYMENT

[RESERVED]

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EXHIBIT Y
LIMITED NOTICE TO PROCEED AGREEMENT

This LIMITED NOTICE TO PROCEED for the **La Luz 2 Generating Station** ("LNTP") is issued as of **XXXX XX, 202X** (the "Effective Date"), by PUBLIC SERVICE COMPANY OF NEW MEXICO ("Owner"), to GRIDWORKS INC. ("Contractor") pursuant to the Build-Transfer Agreement of the same date.

This LNTP authorizes Contractor to:

LNTP Amount. The amount authorized by this LNTP shall not exceed $_____M. The payment schedule will follow the payments in Exhibit I of the Build-Transfer Agreement (the "Payment Schedule"). Supply agreements obtained under this LNTP will be shared with Owner as soon as executed and will be assignable to Owner or its designee. No additional expenditures are authorized until Owner issues full Notice to Proceed.

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, ENERY STORAGE AGREEMENTS, AND CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR 2029-2032 SYSTEM RESOURCES AND THE ABANDONMENT OF THE FOUR CORNERS POWER PLANT	)	**Docket No. 26-0000___**
PUBLIC SERVICE COMPANY OF NEWMEXICO	)	
Applicant.	)	

AFFIDAVIT

STATE OF NEW MEXICO)
) ss
COUNTY OF BERNALILLO)

GARY B. BARNARD, Executive Director, Renewable Generation and Contracts, PNMR Services Company, upon being duly sworn according to law, under oath, deposes and states: I have read the foregoing **Direct Testimony of Gary B. Barnard,** and it is true and accurate based on my own personal knowledge and belief.

DATED this 29th day of May, 2026.

/s/ Gary B. Barnard___
GARY B. BARNARD

GCG #535000