

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF NEW)
MEXICO FOR APPROVAL OF RENEWABLE)
POWER AGREEMENTS AND ENERGY)
STORAGE AGREEMENTS AND)
PROPOSAL FOR DEMAND RESPONSE)
PLAN PURSUANT TO FINAL ORDER IN)
CASE NO. 19-00195-UT)
)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)
)
Applicant)
_____)**

Case No. 20-00182-UT

**DIRECT TESTIMONY
OF
THOMAS G. FALLGREN**

September 28, 2020

**NMPRC CASE NO. 20-00182-UT
INDEX TO THE DIRECT TESTIMONY OF
THOMAS G. FALLGREN**

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

I. INTRODUCTION AND PURPOSE 1

II. PROPOSED AGREEMENTS FOR REPLACEMENT RESOURCES 5

III. LOCAL TAX AND JOB IMPACTS 28

IV. ALTERNATIVE 299 MW SOLAR AND 130 MW BATTERY 29

PNM Exhibit TGF-1	Educational and Professional Summary
PNM Exhibit TGF-2	First & Second Amendments to Arroyo Solar PPA
PNM Exhibit TGF-3	First & Second Amendments to Arroyo Battery ESA
PNM Exhibit TGF-4	PPA for 200 MW Solar Project with San Juan Solar 1, LLC
PNM Exhibit TGF-5	ESA for 100 MW Battery Storage Project with SJS 1 Storage, LLC
PNM Exhibit TGF-6	PPA for 100 MW Solar Project with 201LC 8me LLC
PNM Exhibit TGF-7	ESA for 30 MW Battery Storage Project with 309SJ 8me LLC
PNM Exhibit TGF-8	First Amendment to PPA for 299 MW Solar Project with San Juan Solar 1, LLC and First Amendment to ESA for 130 MW Battery Storage Project with SJS 1 Storage, LLC

AFFIDAVIT

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1

I. INTRODUCTION AND PURPOSE

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

3 **A.** My name is Thomas G. Fallgren. I am Vice President of Generation for Public
4 Service Company of New Mexico (“PNM”). My business address is 2401 Aztec
5 Rd, NE, Albuquerque, New Mexico 87107.

6

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

8 **A.** I present the final agreements, comprised of purchase power agreements (“PPAs”)
9 and energy storage agreements (“ESAs”), for the resources included in what was
10 referred to as the CCEA 1 portfolio that were selected by the New Mexico Public
11 Regulation Commission (“NMPRC” or “Commission”) in its *Order on*
12 *Recommended Decision on Replacement Resources – Part II* (“Final Order” in Case
13 No. 19-00195-UT. The overall cost of the final agreements for the resources in
14 CCAE 1 is \$2.5 million less expensive on a net present value (“NPV”) basis over
15 twenty years than the pricing presented during the hearing in Case No. 19-00195-
16 UT. I also discuss an alternative to the specific resources in CCAE 1 that, while
17 preserving the same resource mix and resource location, could save customers
18 \$25.2 million on an NPV basis compared to CCAE 1.

19

20 I sponsor and discuss the following agreements for the Commission’s review:

- 21 • First Amendment and Second Amendment to Power Purchase Agreement –
22 Arroyo Solar Facility which were entered into to preserve the availability

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 of this agreement and resource following the NMPRC’s Final Order. These
2 executed amendments are attached as PNM Exhibit TGF-2.

3 • First Amendment and Second Amendment to Energy Storage Agreement –
4 Arroyo Energy Storage which were entered into to preserve the availability
5 of this agreement and resource, and increase the 40 MW battery size to 150
6 MW per the NMPRC’s Final Order. These executed amendments are
7 attached as PNM Exhibit TGF-3.

8 • Power Purchase Agreement - San Juan Solar 1 Solar Facility between PNM
9 and San Juan Solar 1, LLC for the 200 MW San Juan Solar 1 Solar Facility
10 (“San Juan Solar 1 Project PPA”). An executed copy of the San Juan Solar
11 1 Project PPA is attached as PNM Exhibit TGF-4.

12 • Energy Storage Agreement – SJS 1 Storage Facility between PNM and SJS
13 1 Storage LLC for the 100 MW SJS 1 Storage Project (“SJS 1 Storage
14 Project ESA”). An executed copy of the SJS 1 Storage Project ESA is
15 attached as PNM Exhibit TGF-5.

16 • Power Purchase Agreement – Rockmont Solar between PNM and 201LC
17 8me LLC for the 100 MW Rockmont Solar Project (“Rockmont Solar
18 Project PPA”). An executed copy of the Rockmont Solar Project PPA is
19 attached as PNM Exhibit TGF-6.

20 • Energy Storage Agreement – Rockmont Storage between PNM and 309SJ
21 8me, LLC for the 30 MW Rockmont Storage Project (“Rockmont Storage
22 Project ESA”). An executed copy of the Rockmont Storage Project ESA is
23 attached as PNM Exhibit TGF-7.

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 I provide most of the informational requirements for Commission review of these
2 agreements under the PPA Rule (17.9.551 NMAC). Because the Commission has
3 already selected these specific resources, not all of the elements of the PPA Rule
4 appear applicable as further address by PNM Witness Fenton.

5
6 I also present an update on the estimate for local property taxes and the number of
7 construction and permanent jobs for all of the resources included in CCAE 1,
8 including those located in the Central Consolidated School District.

9
10 Finally, I present an alternative resource scenario of 299 MW of solar resources
11 from San Juan Solar 1, LLC, and 130 MW of battery storage from SJS 1 Storage
12 LLC. This alternative has the potential to save PNM customers \$25.2 million on
13 an NPV basis compared to CCAE 1. If approved, this alternative would be
14 implemented through the approval of the San Juan Solar 1 Project PPA and SJS 1
15 Storage Project ESA, together with the First Amendments to these agreements
16 attached as PNM Exhibit TGF-8. Under this alterative, the Rockmont Solar Project
17 PPA and the Rockmont Storage Project ESA would not be approved.

18

19 **Q. PLEASE SUMMARIZE YOUR PROFESSIONAL QUALIFICATIONS AND**
20 **EDUCATIONAL BACKGROUND.**

21 **A.** I have overseen PNM's Generation since November 2016 in the roles of Managing
22 Director, and as of May 2017, as Vice President of Generation. From July 2013 to
23 November 2016, I was the Plant Manager for the San Juan Generating Station ("San

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 Juan” or “SJGS”). Before I came to PNM, I worked for various subsidiaries of
2 Xcel Energy as Plant Manager for the Tolk/Plant X Complex, a two site complex
3 consisting of two coal-fired units rated at a combined capacity of 1100 MW and a
4 four-unit natural gas-fired steam plants rated at 442 MW, and the Black Dog
5 Generating Facility, a now-retired coal-fired generating station and a one-on-one
6 combined cycle gas plant. Prior to that I served in several management positions
7 at the Sherburne County Generating Station, a three-unit 2,238 MW coal-fired
8 facility. I also have thirteen years of experience at the Monticello nuclear
9 generating facility, where I was previously qualified as a Senior Reactor Operator.
10 I have been a registered engineer in the State of Minnesota since 1994. I graduated
11 with a Bachelor of Mechanical Engineering degree with High Distinction from the
12 University of Minnesota. A copy of my Educational and Professional Summary is
13 attached as PNM Exhibit TGF-1, which includes a list of cases in which I have
14 testified before the Commission.

15
16 **Q. PLEASE DESCRIBE YOUR RESPONSIBILITIES AS VICE PRESIDENT**
17 **FOR GENERATION FOR PNM.**

18 **A.** I am responsible for the strategic direction and operation of PNM’s generating
19 resources to ensure that they continue to provide safe, reliable and cost-effective
20 electricity to customers within PNM’s service territory. The functions I oversee
21 include generation operations, maintenance, engineering, construction, fuel and
22 power procurement, wholesale power marketing, resource planning, and other
23 services related to PNM’s generation fleet. I also have executive oversight

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 responsibility for the operation of the San Juan coal plant on behalf of its various
2 owners, in conformity with the San Juan Project Participation Agreement.
3 Likewise, I have executive oversight responsibility with respect to PNM's
4 ownership interests in generation resources where PNM is not the operator,
5 specifically, the Four Corners coal plant and the Palo Verde Nuclear Generating
6 Station.

7
8 **II. PROPOSED AGREEMENTS FOR REPLACEMENT RESOURCES**

9 **Q. BEFORE ADDRESSING THE AGREEMENTS UNDER CONSIDERATION**
10 **IN THIS CASE, CAN YOU ADVISE OF THE STATUS OF THE**
11 **RESOURCES THAT WERE APPROVED UNDER THE FINAL ORDER?**

12 **A.** Yes. The Commission approved the PPA for the 300 MW Arroyo Solar Project
13 and an ESA for the associated 40 MW Arroyo Battery Storage Project. The
14 Commission also approved the PPA for the 50 MW Jicarilla Solar Project and the
15 ESA for the associated 20 MW Jicarilla Battery Storage Project.

16
17 The Jicarilla 50 MW Solar Project PPA and the 20 MW Battery Storage Project
18 ESA required amendments because a non-appealable NMPRC final order was not
19 received by April 30, 2020, as called for under these agreements. PNM and the
20 developer entered into amendments to these two agreements that extended the
21 Commercial Operation Date for the installation of these resources from November
22 2021 to April 2022 with no other material changes to price or terms. The Jicarilla

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 50 MW Solar Project and 20 MW Battery Storage Project were released to begin
2 construction as of August 31, 2020, and no further action on these agreements is
3 requested at this time. The April 2022 Commercial Operation Date for these
4 resources is possible as they are among the originally proposed projects and final
5 NMPRC approval has been granted.

6
7 The Arroyo 300 MW Solar PPA and Arroyo 40 MW Battery Storage ESA likewise
8 required modifications because a non-appealable final order was not received by
9 April 30, 2020, as required by the agreements. These agreements were first
10 amended under the First Amendments to extend the time period for which these
11 agreements would remain available. However, as a condition to extending the
12 terms of these agreements so they would remain available to serve customers, the
13 First Amendments also provided for price increases.

14

15 **Q. PLEASE DESCRIBE THE PRICE INCREASES UNDER THE FIRST**
16 **AMENDMENTS TO THE ARROYO SOLAR PPA AND THE ARROYO**
17 **SOLAR BATTERY ESA.**

18 **A.** Please recall that in the Recommended Decision in Case No. 19-00195-UT, it was
19 acknowledged that there would be a \$500,000 cost associated with extending the
20 Arroyo Solar PPA and the Arroyo Battery Storage ESA. Once the actual
21 negotiations commenced, Arroyo Solar would only agree to an extension of the
22 PPA if there was a graduated price increase from the original price of \$18.65 per
23 MWh to \$19.15 per MWh if a non-appealable NMPRC order was received after

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 July 15, 2020. Similarly, the price of the Arroyo Battery Storage PPA would
2 increase from \$7.46 per kW per month to \$8.00 per kW per month if a non-
3 appealable order was received after July 15, 2020.

4

5 **Q. HAS THE PRICING NOW INCREASED UNDER THE ARROYO SOLAR**
6 **PPA AND THE ARROYO BATTERY STORAGE ESA?**

7 **A.** No. As part of the negotiations to increase the battery capacity of the Arroyo
8 Battery Storage ESA from 40 MW to 150 MW, PNM was able to reduce the pricing
9 under these agreements to their original levels. The pricing under the Arroyo Solar
10 PPA remains at \$18.65 per MWh, and the pricing under the Arroyo Battery Storage
11 ESA remains at \$7.46 per kW per month.

12

13 **Q. IS PNM REQUESTING COMMISSION APPROVAL OF THE FIRST AND**
14 **SECOND AMENDMENTS TO THE ARROYO SOLAR PPA AND THE**
15 **ARROYO BATTERY STORAGE ESA?**

16 **A.** Yes. I previously generally described the basic terms of the First Amendments and
17 will not repeat that here. The Second Amendment to the Arroyo Battery Storage
18 ESA increases the battery storage capacity from 40 MW to 150 MW which
19 complies with the directives in the Final Order. PNM also agreed to revise the
20 security requirements under Section 19.1 in both agreements such that the
21 Development Security has been reduced from \$60,000 per MW to \$50,000 per
22 MW, and the Delivery Term Security has been reduced from \$100,000 per MW to
23 \$50,000 per MW. These adjustments were necessary to obtain an extension of these

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 agreements and maintain the original pricing. Other changes to these agreements
2 in the Second Amendments include an extension of deadline for the Commercial
3 Operation Date, should Commission approval be delayed beyond January 5, 2021,
4 to accommodate the construction schedule for these projects. There are some other
5 clarifying changes in the First and Second Amendments which do not materially
6 affect the pricing or products under the agreements. The First and Second
7 Amendments to the Arroyo Solar PPA are attached as PNM Exhibit TGF-2, and
8 the First and Second Amendments to the Arroyo Battery Storage ESA are attached
9 as PNM Exhibit TGF-3.

10
11 Because final NMPRC approval has not been obtained with respect to the First and
12 Second Amendments, PNM has not released the developer to proceed with
13 construction and the developer has indicated that it will not proceed until this
14 approval is obtained. While these resources were part of the originally selected
15 resources which has allowed the developer to conduct planning and preparation
16 activities, the added storage capacity and need for final NMPRC approval means
17 that the Commercial Operation Date for these resources will likely not occur before
18 June 30, 2022.

19
20 **Q. DO YOU HAVE ANY OTHER OBSERVATIONS ABOUT THE ARROYO**
21 **PROJECT AMENDMENTS TO SHARE WITH THE COMMISSION?**

22 **A.** Yes. Prompt approval of the amendments is critical. If a final order is not received
23 with respect to the proposed amendments by December 4, 2020, so that it is non-

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 appealable as of January 5, 2021, the expected Commercial Operation Date of the
2 projects can be expected to push out beyond the June 2022 timeframe when the San
3 Juan coal plant is retired. If a non-appealable final order is not received with respect
4 to the proposed amendments by April 5, 2021, these agreements are at the risk of
5 termination. Any delay in commercial service or termination could jeopardize
6 PNM’s ability to provide service to customers at a reasonable cost.

7

8 **Q. TURNING TO THE NEW PPAs AND ESAs, ARE THERE ALSO TIME**
9 **SENSITIVITIES ASSOCIATED WITH THE APPROVAL OF THESE**
10 **AGREEMENTS?**

11 **A.** Yes. Each of the agreements for which PNM is requesting approval requires that a
12 non-appealable Commission final order be in hand by January 5, 2020, in order to
13 achieve the June 2022, in-service dates of these resources. This means that any
14 final order needs to be obtained at least thirty days before the foregoing date or on
15 or before December 4, 2020. Failure to obtain timely approval will result in the
16 loss of the pricing, loss of the proposed June 2022 Commercial Operation Dates,
17 and potentially the loss of the resource making it difficult for PNM to provide
18 adequate resources to meet customers’ needs when the San Juan coal plant is shut
19 down in the June 2022 timeframe. We negotiated very hard to obtain the latest
20 reasonable deadline under the agreements for the necessary NMPRC approval.
21 However, due to the time necessary for permitting, procurement, contracting, and
22 construction of the energy and capacity resources under the agreements, and the
23 need that these resources be online by June 2022, the developers would not agree

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 to a later deadline. The developers have stated they are already incurring additional
2 expediting costs to shorten the construction schedule as much as possible to achieve
3 the dates within the current agreements.

4

5 **Q. ARE THE REPLACEMENT RESOURCES WHICH PNM IS PRESENTING**
6 **IN THIS CASE NEEDED TO SERVE PNM'S CUSTOMERS?**

7 **A.** Yes. These resources are needed to replace a significant portion of the 497 MW of
8 lost capacity and energy due to the approved abandonment of the San Juan coal
9 plant effective July 1, 2022. If these resources are not approved and deployed in a
10 timely manner, there is a risk that PNM will not be able to reliably serve its load.

11

12 **Q. WERE THESE RESOURCES IDENTIFIED BASED ON A COMPETITIVE**
13 **PROCUREMENT PROCESS?**

14 **A.** Yes. These proposed replacement resources were identified in the context of the
15 All Resource RFP and the Supplemental RFP that were addressed in Case No. 19-
16 00195-UT. The Commission approved these projects as part of its approval of a
17 San Juan replacement resource portfolio. The Commission further ordered PNM
18 to negotiate agreements with the chosen vendors for Commission consideration in
19 this proceeding.

20

21 **Q. HOW DOES THE PRICING AND TERMS UNDER THE PPAs AND ESAs**
22 **COMPARE WITH THOSE THAT WERE REVIEWED IN CASE NO. 19-**
23 **00195-UT?**

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 **Q. WHAT IS THE IMPACT DUE TO THE ABOVE PRICING CHANGES ON**
2 **THE OVERALL COST OF THESE RESOURCES?**

3 **A.** As noted above, the negotiated pricing outlined above represents an estimated \$2.5
4 million savings on an NPV basis compared to the pricing presented in Case No. 19-
5 00195-UT.

6

7 **Q. PLEASE DESCRIBE THE DEVELOPERS UNDER THE PPAS AND ESAS.**

8 **A.** San Juan Solar 1 LLC is the developer for the San Juan Solar 1 Project PPA, and
9 SJS 1 Storage LLC is the developer for the SJS 1 Storage Project ESA. These are
10 special purpose entities for the respective projects and agreements, and both are
11 owned by Four Corners Solar Center, LLC, a subsidiary of Photosol Development
12 US, LLC. Photosol Development US, LLC is owned by the Photosol Group which
13 is based in France and is one of the top six owners and operators of solar facilities
14 in that country. The Photosol Group currently has 412 MW of solar in operation
15 or under construction and an additional 8,200 MW in various stages of development
16 in France and the U.S.

17

18 201LC 8me LLC is the developer for the Rockmont Solar Project PPA, and 309SJ
19 8me, LLC is the developer for the Rockmont Storage Project ESA. 201LC 8me
20 LLC and 309SJ 8me LLC are special purpose entities and owned by 8minute Solar
21 Energy. 8minute Solar Energy is a nationwide leader in solar plus storage
22 development and is owned by 8minutenergy US Solar, LLC. Since the company
23 was founded in 2009, 8minute Solar Energy has placed 2,000 MW of solar projects

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 into operation and currently has over 18,000 MW of solar and storage projects
2 under development.

3

4 **Q. HOW IS YOUR TESTIMONY ORGANIZED WITH RESPECT TO THE**
5 **PROPOSED PPAS AND ESAS?**

6 **A.** My discussion of the PPAs and ESAs generally follows the applicable elements of
7 the PPA Rule. There is a fair amount of standardization to PNM’s PPA agreements
8 which has been carried over to the ESAs. Where possible, I discuss the PPAs and
9 ESAs jointly.

10

11 **Q. PLEASE BRIEFLY DESCRIBE THE PPAS AND ESAS.**

12 **A.** **San Juan Solar 1 Project PPA.** This agreement is between PNM, as buyer, and
13 San Juan Solar 1 LLC, as seller, for 200 MW_{AC} of solar energy from the San Juan
14 Solar Facility (“San Juan Solar 1 Project”).

15 **SJS 1 Storage Project ESA.** This agreement is between PNM, as buyer, and SJS
16 1 Storage LLC, as seller, for 100 MW_{AC} of four-hour energy capacity from the SJS
17 1 Storage Facility (“SJS 1 Storage Project”). As a paired storage project, the SJS 1
18 Storage Project must be charged from the associated San Juan Solar 1 Project for
19 the first 63 months of Commercial Operation to receive the benefit of the
20 Investment Tax Credit (ITC) which reduces costs for PNM customers. After that
21 time, the facility may be charged from either the grid or the paired solar facility.

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 **Rockmont Solar Project PPA.** This agreement is between PNM, as buyer, and
2 201LC 8me LLC as seller, for 100 MW_{AC} of solar energy from the Rockmont Solar
3 Facility (“Rockmont Solar Project”).

4 **Rockmont Storage Project ESA.** This agreement is between PNM, as buyer, and
5 309SJ 8me LLC, as seller, for 30 MW_{AC} of four-hour energy capacity from the
6 Rockmont Storage Facility (“Rockmont Storage Project”). As a paired storage
7 project, the Rockmont Storage Project must be charged from the associated
8 Rockmont Solar Project for the first 60 months of Commercial Operation to receive
9 the benefit of the ITC which reduces costs for PNM customers. After that time, the
10 facility may be charged from either the grid or the paired solar facility.

11

12 **Q. PLEASE DESCRIBE THE TERMS OF THE PPAs AND ESAs INCLUDING**
13 **ANY OPTIONS TO EXTEND THE AGREEMENTS (RULE 551.8(D)(2)(a)).**

14 **A. San Juan Solar 1 Project PPA.** This agreement provides that San Juan 1 Solar
15 LLC will sell to PNM the energy output from the San Juan 1 Solar Project over a
16 twenty-year term. There are no options to extend the term beyond twenty years.
17 The twenty-year term begins on the Commercial Operation Date under the PPA,
18 which is expected to be June 10, 2022. The PPA is subject to early termination for
19 Events of Default set forth in Article 12 of the PPA and discussed in more detail
20 below.

21 **SJS 1 Storage Project ESA.** This agreement provides that SJS 1 Storage LLC will
22 supply energy storage services for PNM over a twenty-year term. There are no
23 options to extend the term beyond twenty years. The twenty-year term begins on

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 the Commercial Operation Date under the ESA, which is expected to be June 10,
2 2022. The ESA is subject to early termination for Events of Default set forth in
3 Article 12 of the ESA and discussed in more detail below.

4 **Rockmont Solar Project PPA.** This agreement provides that 201LC 8me LLC
5 will sell to PNM the energy output from the Rockmont Solar Project over a twenty-
6 year term. There are no options to extend the term beyond twenty years. The
7 twenty-year term begins on the Commercial Operation Date under the PPA, which
8 is expected to be June 20, 2022. The PPA is subject to early termination for Events
9 of Default set forth in Article 12 of the PPA.

10 **Rockmont Storage Project ESA.** This agreement provides that 309SJ 8me LLC
11 will supply energy storage services for PNM over a twenty-year term. There are
12 no options to extend the term beyond twenty years. The twenty-year term begins
13 on the Commercial Operation Date under the ESA, which is expected to be June
14 20, 2022. The ESA is subject to early termination for Events of Default set forth
15 in Article 12 of the ESA and discussed in more detail below.

16

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

20 **A. San Juan Solar 1 Project PPA.** The nameplate capacity of this project is
21 approximately 200 MW and the project is expected to produce 568,244 MWh of
22 energy in its first full year of commercial operation. Under Section 8.1 of the PPA
23 for this project, PNM is required to purchase net solar energy generated prior to the

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 full project Commercial Operation from 50 MW blocks commissioned and placed
2 into early commercial operation with the full capacity being available on or before
3 the Expected Commercial Operation Date.

4 **SJS 1 Storage Project ESA.** The nameplate capacity of this project is
5 approximately 100 MW for a 4-hour storage duration, providing for up to 365
6 equivalent charge/discharge cycles per year. Under Section 8.1 of the ESA for this
7 project, PNM is required to pay a monthly capacity payment beginning on the
8 Commercial Operation Date.

9 **Rockmont Solar Project PPA.** The nameplate capacity of this project is
10 approximately 100 MW and the project is expected to produce 289,214 MWh of
11 energy in its first full year of commercial operation. Under Section 8.1 of the PPA
12 for this project, PNM is required to purchase net solar energy generated by the
13 project and delivered to PNM beginning on the Commercial Operation Date.

14 **Rockmont Storage Project ESA.** The nameplate capacity of this project is
15 approximately 30 MW for a 4-hour storage duration, providing up to 365 equivalent
16 charge/discharge cycles per year. Under Section 8.1 of the ESA for this project,
17 PNM is required to pay a monthly capacity payment beginning on the Commercial
18 Operation Date.

19
20 **Q. PLEASE DESCRIBE THE INDIVIDUAL PRICING PNM WILL PAY**
21 **UNDER THE PPAS AND ESAS, INCLUDING WHEN CHARGES BEGIN,**
22 **ANY PRICE REOPENERS AND ANY PRICE ESCALATION PROVISIONS**
23 **(RULE 551.8(D)(2)(C)).**

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 **A. San Juan Solar 1 Project PPA.** The Solar Energy Output Payment Rate over the
2 twenty-year term of this PPA is \$26.31 per MWh_{AC}, which includes payment for
3 metered energy, capacity, Ancillary Services, Environmental Attributes and RECs.
4 This price will remain fixed over the term of the PPA with no escalations and cannot
5 be reopened once the PPA has been approved by the Commission and is in effect.
6 Charges will begin on the Commercial Operation Date with the one exception -
7 prior to the Commercial Operation Date PNM will purchase test energy at the Test
8 Energy Payment Rate, which is 50% of the Solar Energy Output Payment Rate.

9 **SJS 1 Storage Project ESA.** This ESA has a monthly capacity payment over its
10 twenty-year term of \$7.70 per kw-month, which includes payment for Energy
11 Storage Services, Ancillary Services, and Environmental Attributes. This price will
12 remain fixed over the term of the ESA with no escalations and cannot be reopened
13 once the ESA has been approved by the Commission and is in effect. Charges will
14 begin on the Commercial Operation Date.

15 **Rockmont Solar Project PPA.** The Solar Energy Output Payment Rate over the
16 twenty-year term of the PPA is \$27.35 per MWh_{AC}, which includes payment for
17 metered energy, capacity, Ancillary Services, Environmental Attributes and RECs.
18 This price will remain fixed over the term of the PPA with no escalations and cannot
19 be reopened once the PPA has been approved by the Commission and is in effect.
20 Charges will begin on the Commercial Operation Date with the one exception -
21 prior to the Commercial Operation Date, PNM will purchase test energy at the Test
22 Energy Payment Rate, which is 50% of the Solar Energy Output Payment Rate.

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 **Rockmont Storage Project ESA.** This ESA has a monthly capacity payment over
2 the twenty-year term of the ESA of \$7.99 per kw-month, which includes payment
3 for Energy Storage Services, Ancillary Services, and any future Environmental
4 Attributes. This price will remain fixed over the term of the ESA with no
5 escalations and cannot be reopened once the ESA has been approved by the
6 Commission and is in effect. Charges will begin on the Commercial Operation
7 Date.

8

9 **Q. DO THE PPAs OR ESAs OBLIGATE PNM TO PAY ANY FIXED OR**
10 **VARIABLE ADMINISTRATIVE COSTS, TRANSACTIONAL,**
11 **OPERATION AND MAINTENANCE COSTS, OR ANY COSTS OTHER**
12 **THAN FOR DELIVERED ENERGY (RULE 551.8(D)(2)(D))?**

13 **A.** None of these PPAs or ESAs require PNM to pay any administrative costs,
14 transactional, or operation and maintenance costs. For the San Juan Solar 1 Project
15 PPA and the Rockmont Solar Project PPA, PNM will pay for Deemed Delivered
16 Energy which is energy that could have been delivered if the respective projects
17 were not curtailed by PNM for the purpose of achieving economic savings or due
18 to economic bidding; however, PNM does not pay for Deemed Delivered Energy
19 due to reliability curtailments, transmission curtailments or Seller curtailment.

20

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

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 **A. San Juan Solar 1 Project PPA and SJS 1 Storage Project ESA.** Default by the
2 Seller is addressed in Article 12 of the PPA and ESA, including the cure period for
3 each type of default and the remedies. The PPA and ESA have essentially the same
4 terms regarding default. A default becomes an Event of Default if not cured within
5 the applicable cure period, or immediately, if no cure period is specified. Potential
6 Events of Default by the Seller include but are not limited to: (1) dissolution or
7 liquidation of the facility; (2) failure to maintain required security; (3) bankruptcy;
8 (4) failure to maintain the interconnection to the PNM system; and (5) failure to
9 make any payment when due; (6) the Seller’s failure to achieve the Commercial
10 Operation date on or prior to the Guaranteed Start Date, and (7) the failure of the
11 San Juan Solar 1 Project to maintain, after the Commercial Operation Date, an
12 availability percentage of at least 80% over any two consecutive Commercial
13 Operation Years during the twenty-year term and (8) the failure of the SJS 1 Storage
14 Project ESA to obtain an actual ESS availability percentage of at least eighty
15 percent (80%) over any twenty-four (24) consecutive months during the twenty-
16 year term. More details are provided in Article 12 of the PPA and ESA.

17
18 Upon the occurrence of an Event of Default by the Seller, PNM may collect
19 damages incurred prior to the termination date as a result of the Event of Default,
20 as well as terminate the PPA or ESA and receive a termination payment. Such
21 damages would include the cost of replacement energy for the renewable energy
22 that the Seller failed to deliver under the terms of the PPA or energy storage costs
23 that the Seller failed to deliver under the terms of the ESA. The Seller is liable for

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 liquidated damages for certain events of non-performance. Section 3.7 provides
2 that if the Commercial Operation Date has not occurred by the Expected
3 Commercial Operation Date, the Seller will pay PNM liquidated damages in an
4 amount equal to \$75 per day per MW for delays up to 45 days, \$125 per day per
5 MW for delays of 46-90 days and \$200 per day per MW for delays of 91-180 days.
6 These liquidated damages are capped at \$60,000 per MW of delayed capacity. The
7 Seller also must pay liquidated damages if it has not caused all delayed capacity to
8 achieve Commercial Operation by the Guaranteed Start Date. The amount of
9 liquidated damages equals \$500,000 per MW of delayed capacity.

10
11 **Rockmont Solar Project PPA and Rockmont Storage Project ESA.** Default by
12 the Seller is addressed in Article 12 of the PPA, including the cure period for each
13 type of default and the remedies. The PPA and ESA have the essentially the same
14 terms regarding default. A default becomes an Event of Default if not cured within
15 the applicable cure period, or immediately, if no cure period is specified. Potential
16 Events of Default by the Seller include but are not limited to: (1) dissolution or
17 liquidation of the facility; (2) failure to maintain required security; (3) bankruptcy;
18 (4) failure to maintain the interconnection to the PNM system; and (5) failure to
19 make any payment when due; (6) the Seller's failure to achieve the Commercial
20 Operation date on or prior to the Guaranteed Start Date, and (7) the failure of the
21 Rockmont Solar Project to maintain, after the Commercial Operation Date, an
22 availability percentage of at least 80% over any two consecutive Commercial
23 Operation Years during the twenty-year term and (8) the failure of the Rockmont

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 Storage Project ESA to obtain an actual ESS availability percentage of at least
2 eighty five percent (85%) over any twenty-four (24) consecutive months during the
3 twenty-year term. More details are provided in Article 12 of the PPA and ESA.

4
5 Upon the occurrence of an Event of Default by the Seller, PNM may collect
6 damages incurred prior to the termination date as a result of the Event of Default,
7 as well as terminate the PPA or ESA and receive a termination payment. Such
8 damages would include the cost of replacement energy for the renewable energy
9 that the Seller failed to deliver under the terms of the PPA or energy storage costs
10 that the Seller failed to deliver under the terms of the ESA. The Seller is liable for
11 liquidated damages for non-performance. Section 3.7 provides that if the
12 Commercial Operation Date has not occurred by the Expected Commercial
13 Operation Date, the Seller will pay PNM liquidated damages in an amount equal to
14 \$150 per day per MW for delays up to 45 days and \$200 per day per MW for delays
15 of 46-180 days. These liquidated damages are capped at \$33,750 per MW of
16 delayed capacity. The Seller also must pay liquidated damages if it has not caused
17 all delayed capacity to achieve Commercial Operation by the Guaranteed Start
18 Date. The amount of liquidated damages equals Six Hundred Thousand Dollars
19 (\$600,000) per MW of delayed capacity.

20
21 **Q. ARE THERE ANY APPROVALS OR PERMITS REQUIRED TO**
22 **CONSTRUCT AND OPERATE THE PROJECTS THAT ARE THE**
23 **SUBJECT OF THE PPAS (RULE 551.8(D)(5)(C)(I))?**

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 **A.** The expected permits for each project are listed in Exhibit E of each of the
2 respective PPAs and the ESAs.

3

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

6 **A.** **San Juan Solar 1 Project PPA and SJS 1 Storage Project ESA.** These projects
7 are co-located in San Juan County in the CCSD. These projects are sized to supply
8 200 MW of solar and 100 MW of battery storage with a maximum instantaneous
9 supply of 200 MW to the grid. During the first 63 months the charging energy for
10 the battery project must be supplied from the San Juan Solar 1 Project in order to
11 capture the applicable ITC. A general description of the facilities is found in
12 Exhibit A to each of the Agreements.

13

14 **Rockmont Solar Project PPA and Rockmont Storage Project ESA** are co-
15 located projects also located in San Juan County in the CCSD. These projects are
16 sized to supply 100 MW solar and 30 MW of battery storage with a maximum
17 instantaneous supply of 100 MW to the grid. During the first 60 months the
18 charging energy for the battery must be supplied from the Rockmont Solar Project
19 in order to capture the applicable ITC. A general description of the facilities is
20 found in Exhibit A to each of the Agreements.

21

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

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

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

5

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

8 **A.** The San Juan Solar 1 Project and SJS 1 Storage Project will connect through a
9 common project interconnection to the PNM San Juan switchyard. The Rockmont
10 Solar Project and Rockmont Storage Project will connect through a common project
11 interconnection also to the PNM San Juan switchyard. The generation tie line to
12 each of the associated projects will be independent of each other.

13

14 **Q. PLEASE DESCRIBE THE PROVISIONS IN THE PPAs AND ESAs THAT**
15 **PROVIDE OPERATIONAL OR OTHER BENEFITS (RULE 551.8(D)(11)).**

16 **A. San Juan Solar 1 Project PPA.** This PPA includes a specific ramp rate of not
17 greater than 10 MW per minute and curtailment rights for the solar facility for
18 reasons that include transmission and system management. In addition to the
19 system benefits provided under the PPA, Article 19.1 requires the Seller to post
20 security, which increases the monetary incentive to meet its capacity and schedule
21 requirements. The Seller is required to post development security equal to \$60,000
22 per MW multiplied by the guaranteed capacity (200 MW) or \$12 million within the
23 earlier of thirty (30) days after receipt of Commission approval; and 2) the

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 commencement of construction of the project. Additionally, no later than the
2 Commercial Operation Date, the Seller will be required to post and maintain
3 security equal to \$75,000 per MW multiplied by the guaranteed capacity or \$15
4 million.

5 **SJS 1 Storage Project ESA.** This ESA includes Ancillary Services including,
6 frequency response of 30 MW per 0.1 Hertz, black start capabilities, load following,
7 and 50 MW per second charge/discharge ramping capability. Furthermore, PNM
8 will have dispatch control of the ESA within a 365 cycle per year limitation and
9 while being required to maintain an average annual battery state of charge below
10 50 percent. In addition to the system benefits provided under the ESA, Article 19.1
11 requires the Seller to post security, which increases the monetary incentive to meet
12 its capacity and schedule requirements. The Seller is required to post development
13 security equal to \$60,000 per MW multiplied by the guaranteed capacity (100 MW)
14 or \$6 million within the earlier of: 1) thirty (30) days after receipt of Commission
15 approval and 2) the commencement of construction of the project. Additionally, no
16 later than the Commercial Operation Date, the Seller will be required to post and
17 maintain security equal to \$75,000 per MW multiplied by the guaranteed capacity
18 or \$7.5 million.

19 **Rockmont Solar Project PPA.** This PPA includes a specific ramp rate of not
20 greater than 10 MW per minute and curtailment rights for the solar facility for
21 reasons that include transmission and system management. In addition to the
22 system benefits provided under the PPA, Article 19.1 requires the Seller to post
23 security, which increases the monetary incentive to meet its capacity and schedule

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 requirements. The Seller is required to post development security equal to \$60,000
2 per MW multiplied by the guaranteed capacity (100 MW) or \$6 million within the
3 earlier of: 1) thirty (30) days after receipt of Commission approval; and 2) the
4 commencement of construction of the project. Additionally, no later than the
5 Commercial Operation Date, the Seller will be required to post and maintain
6 security equal to \$75,000 per MW multiplied by the guaranteed capacity or \$7.5
7 million.

8 **Rockmont Storage Project ESA.** This ESA includes Ancillary Services
9 including, frequency response of 25 MW per 0.1 Hertz, black start capabilities, load
10 following, and 15 MW per second charge/discharge ramping capability.
11 Furthermore, PNM will have dispatch control of the ESA within a 365 cycle per
12 year limitation while being required to maintain an average annual battery state of
13 charge below 50 percent. Pricing optionality is available for up to 380 cycles per
14 year and for higher annual average state of charge. In addition to the system
15 benefits provided under the ESA, Article 19.1 requires the Seller to post security,
16 which increases the monetary incentive to meet its capacity and schedule
17 requirements. The Seller is required to post development security equal to \$60,000
18 per MW multiplied by the guaranteed capacity (30 MW) or \$1.8 million within the
19 earlier of: 1) thirty (30) days after receipt of Commission approval and 2) the
20 commencement of construction of the project. Additionally, no later than the
21 Commercial Operation Date, the Seller will be required to post and maintain
22 security equal to \$75,000 per MW multiplied by the guaranteed capacity or \$2.25
23 million.

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 **Q. WHAT IMPACT WILL THE PPAs AND ESAs HAVE ON PNM'S**
2 **FINANCIAL METRICS (RULE 551.8(D)(7))?**

3 **A.** PNM proposes to recover energy costs under the PPAs through its Fuel Purchased
4 Power Costs Adjustment Clause. Pursuant to the Final Order in Case No. 19-
5 00195-UT, PNM will seek recovery of the energy capacity charges under the ESAs
6 in its next general rate case. If these requests for recovery are granted, these
7 agreements will not have a negative impact on PNM's financial metrics. With
8 regard to imputed debt, under Section 15.1 of both ESAs, after the Commercial
9 Operation Date, no debt can be incurred or carried by the Sellers so there should be
10 no material adverse impact on PNM's financials as a result.

11
12 **Q. ARE THE PPAS AND ESAS CONSISTENT WITH THE ELECTRIC**
13 **UTILITY'S MOST RECENT COMMISSION-ACCEPTED INTEGRATED**
14 **RESOURCE PLAN (RULE 551.8(D)(8))?**

15 **A.** Yes. PNM's 2017 Integrated Resource Plan ("IRP") was accepted by the
16 Commission and the IRP Action Plan specifically contemplated that the
17 replacement resources for San Juan would be identified and procured as a result of
18 the All Resources RFP. The proposed PPAs and ESAs were selected from the
19 results of the All Resources RFP and supplemental RFP and are, therefore,
20 consistent with PNM's 2017 IRP. In addition, these resources are consistent with
21 the Final Order.

22

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 **Q. DO YOU HAVE ANY FURTHER COMMENTS ABOUT THE TWO PPAS**
2 **AND TWO ESAS?**

3 **A.** In general, the terms and conditions in the PPAs are typical in that they are market-
4 based and similar terms and conditions are generally found in any long-term PPA
5 entered into by PNM.

6

7 **Q. DOES PNM HAVE ANY CONCERNS ABOUT THE PROPOSED PPAs AND**
8 **ESAs?**

9 **A.** PNM is committed to the successful integration of these resources on its system.
10 As PNM noted in Case No. 19-00195-UT, this is an unprecedented addition of
11 renewable and battery storage on its system, particularly all at basically the same
12 time. San Juan will no longer be available and PNM's concern about whether these
13 new resources can reliably serve customer needs persists. However, PNM
14 understands the Commission's directives concerning the replacement resources for
15 San Juan and has fully complied with these directives.

16

17 Additionally, I again stress the critical importance of a Final Order being issued no
18 later than December 4, 2020, so that these resources can be available to customers
19 when the San Juan coal plant shuts down, which is scheduled for June 2022.

20

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1

III. LOCAL TAX AND JOB IMPACTS

2 **Q. DOES PNM HAVE UPDATES ON THE LOCAL TAXES AND JOB**
3 **IMPACTS ASSOCIATED WITH THE SAN JUAN REPLACEMENT**
4 **RESOURCES?**

5 **A.** Yes. Updated estimates from the PPA and ESA vendors for all of the replacement
6 resources contractors indicate that they will collectively account for an investment
7 in New Mexico of between \$1.13 and \$1.16 billion dollars. Of this amount, it is
8 estimated that investments of between \$588 and \$618 million will be located in the
9 CCSD. These investments are estimated to result in \$5.35 million in first year
10 property taxes of which \$3.1 million would be within the CCSD. For more
11 complete details about the estimated economic impacts associated with these
12 resources, see PNM Table TGF-2 below.

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

PNM Table TGF-2

Project	Technology	Size	Total Initial Capital Investment	First Year Property Taxes	Full-term Property Taxes	Construction Manhours	Permanent New Mexico Jobs
Arroyo Solar LLC	Solar	300MW	\$450M	\$1.55M	\$34M	720,000	2-4
Arroyo Storage LLC	Battery	150MW, 4hr					
Jicarilla Solar 1 LLC	Solar	50MW	\$92M	\$0.7M**	\$0.7M**	77,300	2-10
Jicarilla Storage 1 LLC	Battery	20MW, 4hr					
San Juan Solar 1 LLC Solar Project	Solar	200MW	\$400M - \$430M	\$1.9M	\$24M	660,000	8-10
SJS 1 Storage LLC Battery Storage Project	Battery	100MW, 4hr					
201LC 8me LLC Solar Project	Solar	100MW	\$188	\$1.2M	\$16M	299,000	4
309SJ 8me LLC Battery Storage Project	Battery	30 MW, 4hr					
Totals	Solar	650 MW	\$1,130M - \$1,160M	\$5.35M	\$74.7M	1,756,300	16-28
	Battery	300 MW, 4hr					

Note: Values are vendor provided estimates.

** One-time payment in lieu of property taxes.

1 **IV. ALTERNATIVE 299 MW SOLAR AND 130 MW BATTERY**

2 **Q. IS PNM PRESENTING ANY ALTERNATIVE SCENARIOS TO ACHIEVE**
3 **299 MW OF SOLAR AND 130 MW OF BATTERY STORAGE CAPACITY?**

4 **A.** Yes. San Juan Solar 1 LLC and SJS 1 Storage LLC have offered PNM an
5 alternative PPA/ESA project with favorable pricing terms for the entirety of the

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 resource projects to be presented in this case. PNM is therefore presenting a First
2 Amendment to the San Juan Solar 1 PPA which would increase the size of the San
3 Juan Solar 1 Project from 200 MW to 299 MW, and a First Amendment to the SJS
4 1 Storage Project ESA which would increase the size of the SJS 1 Storage Project
5 from 100 MW to 130 MW. The First Amendment to the San Juan Solar 1 PPA and
6 the First Amendment to the SJS 1 Storage Project ESA are attached as PNM Exhibit
7 TGF-8. If these amendments are approved, they would include approval of the San
8 Juan Solar 1 PPA and SJS 1 Storage Project ESA, but would be in lieu of the
9 Rockmont Solar Project PPA and the Rockmont Storage Project ESA.

10

11 **Q. COULD THE AMENDED SAN JUAN SOLAR 1 PROJECT AND SJS 1**
12 **STORAGE PROJECT BE ACCEPTED AS WELL AS THE ROCKMONT**
13 **PPA AND ESA PROJECTS?**

14 **A.** No. There currently only exists 300 MW of transmission service capacity from the
15 San Juan area to PNM's load center to accommodate these projects so there is
16 insufficient transmission capacity to accommodate both alternatives. Therefore,
17 Commission will need to select only one of the alternatives.

18

19 **Q. WHAT IS THE BACKGROUND ON THIS PROPOSED ALTERNATIVE?**

20 **A.** During the negotiation process for the San Juan Solar 1 Project PPA and the SJS 1
21 Storage Project ESA, PNM was presented with a proposal to increase the sizes of
22 the SJS 1 Solar Project from 200 MW to 299 MW, and the SJS 1 Storage Project
23 from 100 MW to 130 MW. With reduced pricing under for these projects, as well

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 as the cost savings for reduced interconnection facilities, it is estimated that this
2 alternative could save customers \$22.7 million on an NPV basis compared to the
3 combination of the San Juan Solar 1 Project PPA, the SJS 1 Storage Project ESA,
4 the Rockmont Solar Project PPA, and the Rockmont Storage Project ESA. As
5 noted above, the NPV savings compared to the pricing in CCAE 1 is \$25.2 million.
6 In light of this potential savings, PNM wanted to bring this alternative to the
7 attention of the Commission in this proceeding.

8

9 **Q. WOULD THE SELECTION OF THIS ALTERNATIVE CHANGE THE**
10 **TOTAL AMOUNT OF RESOURCES PROVIDED?**

11 **A.** Not materially. Whichever scenario is selected it would provide a comparable 300
12 MW solar and 130 MW battery storage, combined, from two separate project
13 vendors; or 299 MW solar and 130 MW of battery storage from a single project
14 vendor. Either scenario would still result in these resources being located in the
15 CCSD.

16

17 **Q. WHY IS THE ALTERNATIVE SIZED AT 299 MW RATHER THAN THE**
18 **FULL 300 MW?**

19 **A.** Due to the time constraints the developer for the alternative solar facility would
20 need to begin construction shortly after January 5, 2021. Therefore, the developer
21 indicated there would be insufficient time to also obtain a large generating facility
22 location approval from the NMPRC and restricted the proposed project size

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 accordingly. The differential of a 300 MW to 299 MW project on the PNM system
2 does not materially impact PNM’s ability to serve customers.

3

4 **Q. WHAT ADVANTAGES WOULD THERE BE FOR SELECTING THE**
5 **ALTERNATIVE FOR THE COMBINED 299 MW SOLAR AND 130 MW**
6 **BATTERY PROJECTS?**

7 **A.** Due to economies of scale, the pricing under an amended San Juan Solar 1 PPA for
8 299 MW would be reduced from \$26.31 per MWh to \$25.50 per MWh. The pricing
9 under an amended SJS 1 Storage Project ESA would remain the same even with
10 the increased capacity. In addition, utilizing a single project would minimize the
11 transmission interconnect costs.

12

13 **Q. WITH THE EXCEPTION OF THE SIZE OF THE PROJECTS AND THE**
14 **PRICING UNDER THE PPA, ARE THE OTHER TERMS OF THE**
15 **ALTERNATIVE PPA AND ESA THE SAME WITH THE PROPOSED**
16 **AMENDMENTS?**

17 **A.** The material terms are the same. Some of the exhibits to the PPA and ESA had to
18 be revised to account for the different project size. The revised exhibits are
19 included with the proposed First Amendments.

20

21 **Q. ARE THERE ANY CONCERNS WITH UTILIZING A SINGLE SET OF**
22 **DEVELOPERS TO PROVIDE THE FULL 299 MW SOLAR AND 130 MW**
23 **BATTERY?**

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 **A.** Yes. Utilizing a single set of developers places more “eggs in one basket.” While
2 the PPA and ESA are with two nominally different entities, PNM would essentially
3 be relying on a single developer for a significant part of its critical resource needs.
4 If this developer failed to perform, a greater percentage of PNM’s resource needs
5 would be at risk and it would be more difficult to find sufficient substitute
6 resources, if such resources will even be available.

7

8 **Q. ARE THERE ANY OTHER CONCERNS WITH UTILIZING A SINGLE**
9 **DEVELOPER?**

10 **A.** Yes. PNM continues to have concern regarding a single larger size battery
11 installation and the impact that a failure of that installation could have on PNM’s
12 system. Also, the developer for the alternative proposal, like the developer for the
13 Arroyo 150 MW Battery Storage Project, has never previously installed a large-
14 scale battery in the United States.

15

16 **Q. ASIDE FROM COMMISSION APPROVAL, ARE THERE ANY**
17 **CONTINGENCIES THAT MUST BE SATISFIED BEFORE THE PPA AND**
18 **ESA AMENDMENTS FOR THE ALTERNATIVE PROPOSAL ARE**
19 **EFFECTIVE?**

20 **A.** Yes. The developer still needs to firm up additional site control and finalize an
21 agreement with its construction contractor before it can commit to deliver the larger
22 projects in a timely manner. The Amendments provide that these contingencies

**DIRECT TESTIMONY
OF THAMAS G. FALLGREN
NMPRC CASE NO. 20-00182-UT**

1 must be satisfied by October 23, 2020, to become effective. PNM intends to
2 immediately notify the Commission if these contingencies are not satisfied.

3

4 **Q. GIVEN THAT THE COMMISSION DIRECTED PNM TO NEGOTIATE**
5 **WITH THE TWO VENDORS SELECTED IN THE PRIOR DOCKET, WHY**
6 **IS PNM PRESENTING THIS ALTERNATIVE?**

7 **A.** PNM is presenting the alternative in this case because of the significant saving to
8 customers if the contingencies are satisfied. In full transparency and consideration
9 of the Commission's directives in the prior docket, PNM advised the developer of
10 the Rockmont Solar and Rockmont Storage Projects that we would present this
11 lower cost alternative but remain neutral on which alternative should be selected,
12 and that the Commission would ultimately decide which alternative is in the best
13 interest of customers.

14

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

16 **A.** Yes, it does.

17

GCG#527171v2

Educational and Professional Summary

PNM Exhibit TGF-1

Is contained in the following 2 pages.

THOMAS G. FALLGREN

EDUCATIONAL AND PROFESSIONAL SUMMARY

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

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

Previous Positions:

PNM
Managing Director Generation – Nov 2016 to May 2017

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

Xcel Energy, Southwestern Public Service (SPS)
Director – Plant Manager Tolk/Plant X Complex - April 2011 to July 2013

Xcel Energy, Northern States Power (NSP)
Director – Plant Manager Black Dog Generating Facility - May 2008 to April 2011

Xcel Energy, Northern States Power (NSP) – Sherburne County Generating Facility 1996-
2008
Operations Manager
Engineering & Technical Services Manager
Scheduling Administrator/Outage Manager

Xcel Energy, Northern States Power (NSP) – Monticello Nuclear Generating Plant 1984-
1996
Held Senior Reactor Operator (SRO) license/certification 1989 - 1996
Supt Maintenance Engineering
Maintenance Engineer
Operations Instructor
System Operations Engineer

Professional Affiliation:
Registered Engineer, State of Minnesota since 1994

Education:
University of Minnesota, Bachelor of Mechanical Engineering – High Distinction

Testimony/Affidavits:

NMPRC Case No. 19-00195-UT
NMPRC Case No. 19-00018-UT
NMPRC Case No. 19-00159-UT
NMPRC Case No. 19-00158-UT
NMPRC Case No. 18-00261-UT
NMPRC Case No. 18-00269-UT
NMPRC Case No. 18-00009-UT
NMPRC Case No. 17-00174-UT
NMPRC Case No. 13-00390-UT

PNM SJGS Replacement Resources
PNM SJGS Abandonment & Financing
PNMs 2020 Renewable Plan
PNM Solar Direct
PNM's EIM Application
PNM's Application Facebook PPA-2
PNM's Application Facebook PPA
PNM's 2017 Integrated Resource Plan
PNM's BART 2018 Filing

First & Second Amendments to Arroyo Solar PPA

PNM Exhibit TGF-2

Is contained in the following 14 pages.

**FIRST AMENDMENT
TO POWER PURCHASE AGREEMENT – ARROYO SOLAR FACILITY**

This First Amendment to Power Purchase Agreement – Arroyo Solar Facility (this “**Amendment**”), is entered into this 2nd day of June, 2020 (“Effective Date”), by and between Public Service Company of New Mexico, a New Mexico corporation (“**Buyer**”), and Arroyo Solar LLC, a Delaware limited liability company (“**Seller**”). Buyer and Seller may be referred to in this Amendment individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Parties are party to that certain Power Purchase Agreement- Arroyo Solar Facility, dated as of June 27, 2019 (the “**Original Agreement**”);

WHEREAS, the Parties wish to amend the Original Agreement as described herein; and

WHEREAS, pursuant to Section 22.9 of the Original Agreement, the Original Agreement may be amended or modified from time to time only by a written instrument signed by each of the Parties.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. Defined Terms. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided to such terms in the Original Agreement.

2. Amendments. The Original Agreement is amended as follows:

a. Section 2.1 of the Original Agreement is amended by replacing the term “Definitive System Impact Study” with the term “Facility Study” each place that it appears in such section.

b. Section 3.1 of the Original Agreement is amended by replacing the information in the box entitled “**Solar Energy Output Payment Rate**: \$18.65 per MWh_{AC}” in its entirety with the following information:

“**Solar Energy Output Payment Rate**: either (A) \$18.65 per MWh_{AC}, in the event that the NMPRC has issued by July 15, 2020 a final written order or other regulatory determination that Buyer may procure renewable energy and associated RECs pursuant to this PPA and may recover the cost of such procurement, or (B) \$19.15 per MWh_{AC}, in any other case.”

c. Section 14.1(C)(i) of the Original Agreement is amended by replacing such clause in its entirety as follows:

“(i) inability by Seller to procure equipment for the Project or any component parts therefor, for any reason (the risk of which is assumed by Seller); provided, however, that the term Force Majeure Event shall include manufacturing or delivery interruptions for solar panels, racking, inverters, transformers, breakers, relays, control buildings or capacitor banks, to the extent directly caused, in each case, by an epidemic, pandemic or quarantine and further provided Seller can demonstrate that the event was beyond Seller’s reasonable control and was not caused by the negligence or lack of due diligence by Seller or its agents.”

d. Section 17.3(B)(3) of the Original Agreement is amended by replacing the date “April 30, 2020” therein with the date “August 31, 2020.”

3. No Other Changes. Except as modified hereby, all of the terms and provisions of the Original Agreement shall remain in full force and effect.

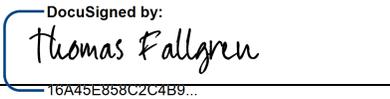
4. Counterparts; Delivery. This Amendment may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and deliveries by mail, courier, telecopy or other electronic means, 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.

5. Governing Law. The interpretation and enforcement of this Amendment 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.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the Effective Date.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By:  _____
16A45E858C2C4B9...

Name: Thomas Fallgren

Title: Vice President, Generation

Date: 6/3/2020, 2020

ARROYO SOLAR LLC

By: CRE-Arroyo New Mexico LLC,
its Manager

By: Centaurus Renewable Energy LLC,
its Manager

By:  _____
5F8B5A3F629D455...

Name: Keith Holst

Title: Manager

Date: June 2, 2020

By:  _____
30CCE89AE7A1401...

Name: Stephen H Douglas

Title: Manager

Date: 6/2, 2020

**SECOND AMENDMENT
TO POWER PURCHASE AGREEMENT – ARROYO SOLAR FACILITY**

This Second Amendment to Power Purchase Agreement – Arroyo Solar Facility (this “**Second Amendment**”), is entered into this 22nd day of September, 2020 (“Effective Date”), by and between Public Service Company of New Mexico, a New Mexico corporation (“**Buyer**”), and Arroyo Solar LLC, a Delaware limited liability company (“**Seller**”). Buyer and Seller may be referred to in this Second Amendment individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Parties are party to that certain Power Purchase Agreement- Arroyo Solar Facility, dated as of June 27, 2019 (the “**Original Agreement**”);

WHEREAS, the Original Agreement was amended by the First Amendment, dated as of June 2, 2020 (the “**First Amendment**”);

WHEREAS, the Parties wish to amend the Original Agreement and the First Amendment as described herein; and

WHEREAS, pursuant to Section 22.9 of the Original Agreement, the Original Agreement may be amended or modified from time to time only by a written instrument signed by each of the Parties.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. Defined Terms. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided to such terms in the Original Agreement.
2. Amendments. The Original Agreement is amended as follows:
 - a. The following definitions in the Original Agreement are hereby replaced in their entirety by the following:

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

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

“**Solar Energy Output**” means the Energy (in MWh) generated by the Solar Units and delivered to either (i) Buyer at the Point of Delivery, net of AC losses, or (ii) to Energy Storage System at the Solar Charging Point for subsequent delivery to Buyer

as Discharge Energy, net of estimated AC losses that would have been incurred had the Energy been delivered directly to the Point of Delivery.

b. The following definitions are added to the Original Agreement:

“Arroyo Storage” means Arroyo Energy Storage LLC, Delaware limited liability company

“Discharge Energy” means all Energy discharged from the ESS and delivered to Buyer at the Point of Delivery in accordance with Article 5 of the ESA.

“Energy Storage System” or **“ESS”** means the co-located energy storage system owned by Arroyo Storage.

“ESA” means the Energy Storage Agreement dated June 27, 2019 between Arroyo Storage and Buyer, relating to the ESS, including the Exhibits and Schedules attached thereto, as the same may be amended from time to time in accordance with the provisions thereof.

“Solar Charging Point” means the electric system points specified on Exhibit B at which Seller delivers Solar Energy Output to Energy Storage System for purposes of charging the ESS under the terms of the ESA.

c. Section 3.1 Commercial Terms, of the Original Agreement, as amended by the First Amendment is amended by replacing the information in the box entitled “Solar Energy Output Payment Rate” in its entirety with the following:

“Solar Energy Output Payment Rate: \$18.65 per MWh_{AC}”

d. Section 3.6 of the Original Agreement is hereby replaced in its entirety by the following updated provision:

Extension. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended by a number of Days, on a day-for-day basis up to a maximum of (a) one hundred eighty (180) Days, equal to the duration of any Force Majeure Event, (b) one hundred eighty (180) Days, in the event of delay associated with the interconnection of the Project in either case that delays construction or commencement of operation of the Project, except to the extent caused by the fault or negligence of Seller, or (c) ninety (90) Days for each Day that NMPRC Approval, except for location approval for large capacity plant, is delayed beyond January 5, 2021. Seller will give written notice to Buyer describing any such Force Majeure Event, interconnection delay, or NMPRC Approval delay within five (5) Business Days after the occurrence of the Force Majeure Event, interconnection delay, or NMPRC Approval delay. The number of Days of such extension is calculated from the date on which the Force Majeure Event, interconnection delay, or NMPRC Approval delay begins. If a Force Majeure Event will delay the Commercial Operation Date, or if an interconnection delay, or if an NMPRC Approval delay will, on an individual or cumulative basis, delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this PPA without liability of either Party, and Buyer shall return the Development Security less any amounts due from Seller to Buyer.

e. Section 5.1 Delivery Arrangements, of the Original Agreement is amended by

the addition of the following new provision:

(F) Seller shall deliver the Solar Energy Output to either the Point of Delivery or Solar Charging Point in accordance with Buyer's dispatch elections made from time to time, *provided, however*, notwithstanding Buyer's dispatch elections, Seller may deliver Energy to the Solar Charging Point as allowed under Section 7.4(A).

f. Section 7.2 Title and Risk of Loss, of the Original Agreement is replaced in its entirety by the following updated provision:

As between Seller and Buyer, Seller shall be deemed to be in control of the Energy Output from the Project up to delivery and receipt at the Point of Delivery and Buyer shall be deemed to be in control of such Energy Output from and after delivery and receipt at the Point of Delivery. Title and risk of loss related to the Energy Output shall transfer from Seller to Buyer at the Point of Delivery. Seller shall retain title and risk of loss related to all Energy delivered to the Solar Charging Point until such time as the Energy is delivered to Buyer as Discharge Energy.

g. Subsection (A) of Section 7.4 Scheduling, of the Original Agreement is replaced in its entirety by the following updated provision:

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with WECC operating policies and criteria, Transmission Provider OATT requirements, including CAISO EIM requirements, and any other applicable guidelines. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Metered Output in accordance with WECC operating policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines in a manner maximizing Metered Output from the Project based on the then-most-current forecast of energy provided by Seller, except for Transmission Provider Curtailments, Reliability Curtailments, Seller Forced Outages, Scheduled Maintenance Outages, Force Majeure Events, Buyer Curtailments, and Seller Curtailments. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Buyer with a good faith estimate of the quantity of Metered Output it expects to generate for the remainder of that Commercial Operation Year. By July 1 of each succeeding Commercial Operation Year, Seller shall provide Buyer with a good faith estimate of the hourly quantities of Energy Output that Seller expects to generate in the following Commercial Operation Year ("Projected Schedule"). Seller shall also provide good faith estimates of the daily quantity of Energy to be delivered to Buyer. Seller shall configure the ramp rate for the Project such that it will not generate energy at a rate that increases greater than twenty (20) MW per minute; provided if any Energy in excess of the ramp rate limit can be utilized to charge the ESS, Seller may deliver such excess Energy to the Solar Charging Point and Buyer shall pay for such Energy as Solar Energy Output in accordance with Article 8. For the avoidance of doubt, Buyer shall not be obligated to maintain available capacity in the Energy Storage System to accept excess Energy that exceeds the ramp rate limit.

h. Section 8.1(A) of the Original Agreement is replaced in its entirety by the following updated provision:

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

i. Section 17.3(ii) of the Original Agreement is amended by striking “including any requested financing or other cost recovery method, and any waivers as set forth in Buyer’s request for approval of this PPA or an associated abandonment filing;”

j. Section 17.3(B)(3) of the Original Agreement as amended by the First Amendment is hereby replaced in its entirety by the following updated provision:

(3) If the NMPRC has not, for any reason, entered a final written order that is no longer subject to appeal or further proceedings on remand for all Requested Actions by April 5, 2021 (“**Regulatory End Date**”), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

k. Section 19.1 of the Original Agreement is amended by replacing the Development Security value of “Sixty Thousand Dollars (\$60,000) per MW” therein with the value of “Fifty Thousand Dollars (\$50,000) per MW” and the Delivery Term Security value of “One Hundred Thousand Dollars (\$100,000) per MW” therein with the value of “Fifty Thousand Dollars (\$50,000) per MW”

l. Exhibits A and B to the Original Agreement are hereby replaced in their entirety by the updated respective exhibits enclosed in this Second Amendment.

m. The definition of Actual Solar Energy Output in Exhibit I of the Original Agreement is hereby replaced in its entirety by the following:

“**Actual Solar Energy Output**” means the Energy (in MWh) generated by the Project and delivered to either (i) the Point of Delivery, net of AC losses, or (ii) the Solar Charging Point, net of estimated AC losses that would have been incurred had the Energy been delivered directly to the Point of Delivery.

3. Buyer Representations and Covenants.

a. Buyer represents and warrants to Seller that Buyer has received all required board approvals, if any, for the execution, delivery and performance by Buyer of the First Amendment and this Second Amendment.

b. Buyer shall request NMPRC approval of the First Amendment and this Second Amendment by September 30, 2020 and shall use best efforts thereafter to seek NMPRC approval of the First Amendment and this Second Amendment as required under Section 22.9 of the Original Agreement.

4. NMPRC Approval of Amendments. If all Requested Actions have been approved as of the Regulatory End Date with the exception of the approval by the NMPRC, in whole or in part, of the First Amendment or this Second Amendment, Section 17.3(B)(ii) of the Original Agreement shall be deemed to apply and the Requested Actions shall be deemed to have been approved by the NMPRC in part.

5. No Other Changes. Except as modified hereby, all of the terms and provisions of the Original Agreement, as amended by the First Amendment, shall remain in full force and effect.

6. Counterparts; Delivery. This Second Amendment 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 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.

7. Governing Law. The interpretation and enforcement of this Second Amendment 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.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be
duly executed as of the Effective Date.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By: 
DocuSigned by:
16A45E858C2C4B9...

Name: Thomas Fallgren

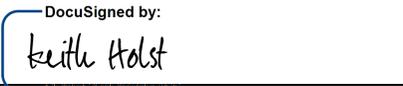
Title: Vice President, Generation

Date: 9/22/2020

ARROYO SOLAR LLC

By: CRE-Arroyo New Mexico LLC,
its Manager

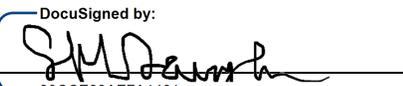
By: Centaurus Renewable Energy LLC,
its Manager

By: 
DocuSigned by:
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Name: Keith Holst

Title: Manager

Date: 9/22/2020

By: 
DocuSigned by:
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Name: Stephen H Douglas

Title: Manager

Date: 9/22/2020

EXHIBIT A
(to Purchase Power Agreement)

**DESCRIPTION OF SELLER'S GENERATION FACILITIES
AND SITE MAP**

1. Name of Seller's Project: Arroyo Solar

Location: Pueblo Pintado, McKinley County, New Mexico
2. Owner (if different from Seller): Arroyo Solar LLC
3. Operator: Arroyo Solar LLC
4. Equipment/Fuel:
 - a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Energy Storage; Biomass (including Fuel)): Solar PV
 - b. Total approximate solar units at the Project: 125
 - c. Total nameplate capacity (MWAC): 300
 - d. Total capacity at point of delivery: 300
 - e. Additional technology-specific information: Single axis trackers
5. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the PPA.

ARROYO SOLAR & STORAGE

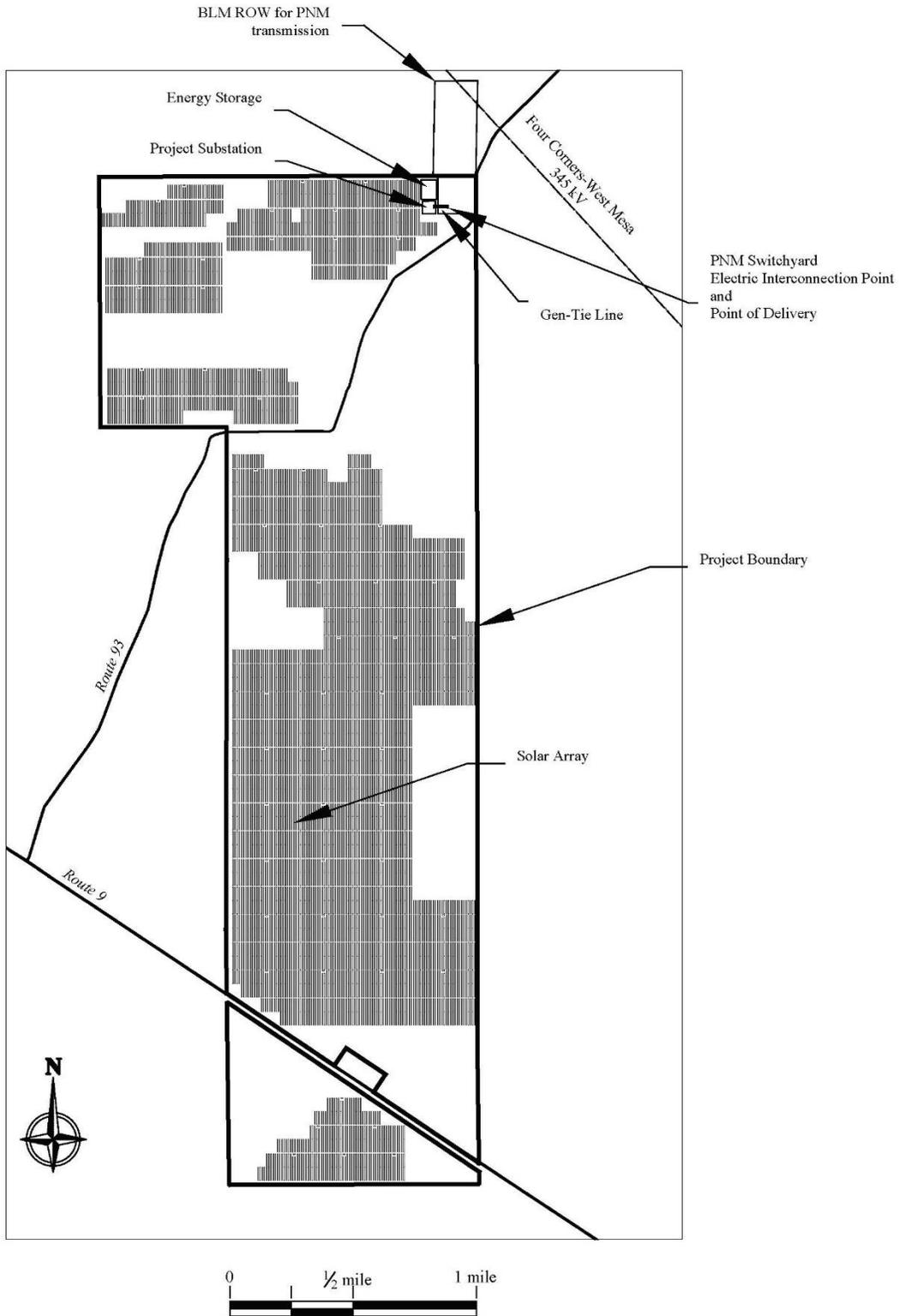
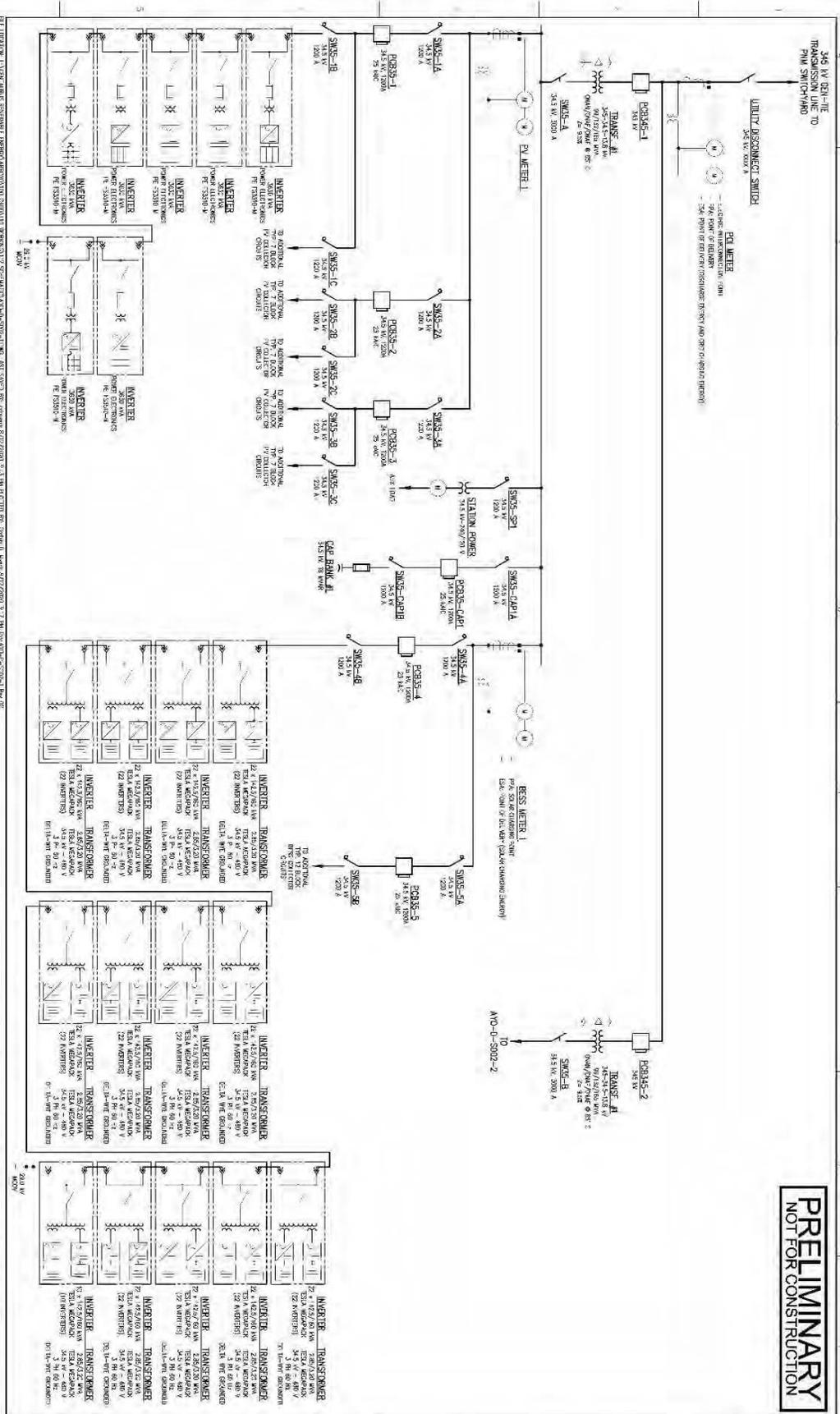


EXHIBIT B
(to Purchase Power Agreement)

ONE-LINE DIAGRAM OF PROJECT AND INTERCONNECTION FACILITIES

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

PRELIMINARY
NOT FOR CONSTRUCTION



CI ELECTRICAL CONSULTANTS, INC.

NO.	DATE	DESCRIPTION	BY	CHK
01	09/05/20	REVISED SHEET 2 & 8	AK	AK
02	07/27/20	REVISED SHEET 2 & 8	AK	AK
03	07/27/20	REVISED SHEET 2 & 8	AK	AK
04	07/27/20	REVISED SHEET 2 & 8	AK	AK

CENTAURUS RENEWABLE ENERGY

NO.	DATE	DESCRIPTION	BY	CHK
01	07/27/20	REVISED SHEET 2 & 8	AK	AK
02	07/27/20	REVISED SHEET 2 & 8	AK	AK
03	07/27/20	REVISED SHEET 2 & 8	AK	AK
04	07/27/20	REVISED SHEET 2 & 8	AK	AK

ARROYO SOLAR AND BESS
34.5 - 345 kV PROJECT
CONCEPTUAL ONE LINE DIAGRAM
A(C)-11-807-1

REVISION NO. 01

First & Second Amendments to Arroyo Battery ESA

PNM Exhibit TGF-3

Is contained in the following 17 pages.

**FIRST AMENDMENT
TO ENERGY STORAGE AGREEMENT – ARROYO ENERGY STORAGE**

This First Amendment to Energy Storage Agreement (this “**Amendment**”), is entered into this 2nd day of June, 2020 (“Effective Date”) by and between Public Service Company of New Mexico, a New Mexico corporation (“**Buyer**”), and Arroyo Energy Storage LLC, a Delaware limited liability company (“**Seller**”). Buyer and Seller may be referred to in this Amendment individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Parties are party to that certain Energy Storage Agreement, dated as of June 27, 2019 (the “**Original Agreement**”).

WHEREAS, the Parties wish to amend the Original Agreement as described herein; and

WHEREAS, pursuant to Section 22.9 of the Original Agreement, the Original Agreement may be amended or modified from time to time only by a written instrument signed by each of the Parties.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. Defined Terms. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided to such terms in the Original Agreement.

2. Amendments. The Original Agreement is amended as follows:

a. Section 2.1 of the Original Agreement is amended by replacing the term “Definitive System Impact Study” with the term “Facility Study” each place that it appears in such section.

b. Section 3.1 of the Original Agreement is amended by replacing the information in the box entitled “**ESS Capacity Payment Rate: \$7.46 per kW per month**” in its entirety with the following information:

“**ESS Capacity Payment Rate:** either (A) \$7.46 per kW per month, in the event that the NMPRC has issued by July 15, 2020 a final written order or other regulatory determination that Buyer may (i) recover the costs of ESS Capacity Payments, and (ii) procure renewable energy and associated RECs pursuant to the PPA and may recover the cost of such procurement, or (B) \$8.00 per kW per month, in any other case.”

c. Section 14.1(C)(i) of the Original Agreement is amended by replacing such clause in its entirety as follows:

“(i) inability by Seller to procure equipment for the Project or any component parts therefor, for any reason (the risk of which is assumed by Seller); provided, however, that the term Force Majeure Event shall include manufacturing or

delivery interruptions for [energy storage systems, PCSs, transformers, breakers, relays, control buildings or capacitor banks], to the extent directly caused, in each case, by an epidemic, pandemic or quarantine and further provided Seller can demonstrate that the event was beyond Seller's reasonable control and was not caused by the negligence or lack of due diligence by Seller or its agents"

d. Section 14.4 of the Original Agreement is amended by replacing such section in its entirety as follows:

"Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that Seller notifies Buyer of a Force Majeure Event that affects the ability of Seller to deliver Discharge Energy from the Project or to accept Charging Energy to the Project, during the continuance of such Force Majeure Event, the ESS Capacity Payment determined in accordance with Section 8.1 shall be reduced on a pro rata basis to reflect the duration and the percentage of charging or discharging capability affected by such Force Majeure Event. For the avoidance of doubt, to the extent that Buyer notifies Seller of a Force Majeure Event that affects the ability of the Buyer to accept Discharge Energy from the Project or to deliver Charging Energy to the Project, during the continuance of such Force Majeure Event, the ESS Capacity Payment determined in accordance with Section 8.1 shall not be adjusted to reflect such Force Majeure Event.

e. Section 17.3(B)(3) of the Original Agreement is amended by replacing the date "April 30, 2020" therein with the date "August 31, 2020."

3. No Other Changes. Except as modified hereby, all of the terms and provisions of the Original Agreement shall remain in full force and effect.

4. Counterparts; Delivery. This Amendment 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 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.

5. Governing Law. The interpretation and enforcement of this Amendment 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.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Amendment to be duly executed as of the date first written above.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By:  DocuSigned by:
16A45E858C2C4B9...

Name: Thomas Fallgren

Title: Vice President, Generation

Date: 6/3/2020, 2020

ARROYO ENERGY STORAGE LLC

By: CRE-Arroyo New Mexico LLC,
its Manager

By: Centaurus Renewable Energy LLC,
its Manager

By:  DocuSigned by:
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Name: Keith Holst

Title: Manager

Date: June 2, 2020

By:  DocuSigned by:
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Name: Stephen H Douglas

Title: Manager

Date: 6/2, 2020

SECOND AMENDMENT TO ENERGY STORAGE AGREEMENT – ARROYO ENERGY STORAGE

This Second Amendment to Energy Storage Agreement (this “**Second Amendment**”), is entered into this 22nd day of September 2020 (“**Effective Date**”) by and between Public Service Company of New Mexico, a New Mexico corporation (“**Buyer**”), and Arroyo Energy Storage LLC, a Delaware limited liability company (“**Seller**”). Buyer and Seller may be referred to in this Amendment individually as a “**Party**” and collectively as the “**Parties.**”

WHEREAS, the Parties are party to that certain Energy Storage Agreement, dated as of June 27, 2019 (the “**Original Agreement**”).

WHEREAS, the Original Agreement was amended by the First Amendment, dated as of June 2, 2020 (the “**First Amendment**”);

WHEREAS, the Parties wish to amend the Original Agreement and the First Amendment as described herein to add 110 MW of Guaranteed ESS Capacity (“**Additional Capacity**”) and to make other changes as described herein; and

WHEREAS, pursuant to Section 22.9 of the Original Agreement, the Original Agreement may be amended or modified from time to time only by a written instrument signed by each of the Parties.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. Defined Terms. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided to such terms in the Original Agreement.

2. Amendments. The Original Agreement is amended as follows:

a. The following definitions in the Original Agreement are hereby replaced in their entirety by the following:

“**Charging Energy**” means Energy supplied by Buyer or Solar Facility on behalf of Buyer, as applicable at Buyer’s cost and in accordance with Prudent Utility Practices, and delivered to Seller at the Point of Delivery to be stored at the Project for the purpose of charging the ESS and discharge at a later time, as measured by the Electric Metering Devices, net of any estimated AC losses, based on methodology agreed to by the Parties, between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

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

“**Point of Delivery**” means the electric system point at which (i) Charging Energy is

delivered to Seller, (ii) Seller delivers Discharge Energy to Buyer and (iii) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this ESA.

b. The following definitions are added to the Original Agreement:

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

“Solar Charging Energy” means Charging Energy generated by the Solar Facility and delivered to the Point of Delivery by Solar Facility on behalf of Buyer.

c. Section 3.1 Commercial Terms, of the Original Agreement, as amended by the First Amendment, is further amended by replacing the information in the box entitled “ESS Capacity Payment Rate” in its entirety with the following updated information:

ESS Capacity Payment Rate: \$7.46 per kW per month.

d. Subsection (E) of Section 3.4 General Design of the Project, of the Original Agreement is replaced in its entirety by the following updated provision:

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

e. Section 3.6 of the Original Agreement is hereby replaced in its entirety by the following updated Section 3.6:

Extension. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended by a number of Days, on a day-for-day basis up to a maximum of (a) one hundred eighty (180) Days, equal to the duration of any Force Majeure Event, (b) one hundred eighty (180) Days, in the event of delay associated with the interconnection of the Project in either case that delays construction or commencement of operation of the Project, except to the extent caused by the fault or negligence of Seller, or (c) ninety (90) Days for each Day that NMPRC Approval, except for location approval for large capacity plant, is delayed beyond January 5, 2021. Seller will give written notice to Buyer describing any such Force Majeure Event, interconnection delay, or NMPRC Approval delay within five (5) Business Days after the occurrence of the Force Majeure Event, interconnection delay, or NMPRC Approval delay. The number of Days of such extension is calculated from the date on which the Force Majeure Event, interconnection delay, or NMPRC Approval delay begins. If a Force Majeure Event will delay the Commercial Operation Date, or if an interconnection delay, or if an NMPRC Approval delay will, on an individual or cumulative basis, delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this ESA without liability of either Party, and Buyer shall return the Development Security less any amounts due from Seller to Buyer.

f. Section 3.9 Test Period, of the Original Agreement is replaced in its entirety by the following updated provision:

Test Period. During the Test Period, Seller shall have the right to direct Arroyo Solar to deliver Energy generated by the Solar Facility, such Energy purchased by the Buyer pursuant to the terms of the PPA, to the Delivery Point as Charging Energy as reasonably required for purposes of testing and commissioning the Project. Seller shall subsequently redeliver such Charging Energy to Buyer at the Point of Delivery as Discharge Energy. In accordance with Section 7.2, Arroyo Solar shall retain title of such Charging Energy until such Energy is delivered to Buyer as Discharge Energy. Seller shall notify Buyer, to the extent practicable, fifteen (15) Days prior to commencement of such Test Period.

g. Subsection (A) of Section 3.12 ESS Unit Capabilities, of the Original Agreement is hereby replaced in its entirety by the following updated provision:

(A) Guaranteed PMAX of 150 MW (unless the NMPRC does not approve the Additional Capacity in which case the Guaranteed PMAX is 40 MW) of charging and discharging capability as measured at the Point of Delivery, and as may be adjusted pursuant to Section 3.8;

h. Section 6.1 Conditions Precedent. of the Original Agreement is hereby replaced in its entirety by the following updated provision:

Conditions Precedent.

(A) The obligations of the Parties under this ESA for the initial 40 MW of Guaranteed ESS Capacity (the “**Initial Capacity**”) are subject to satisfaction of the following conditions precedent:

1. Subject to Section 17.3, receipt of NMPRC Approval;
2. NMPRC Approval of the PPA;
3. Receipt of approval of the Boards of Directors of Buyer and its parent company, as required, by July 31, 2019, unless otherwise agreed to by both parties; and
4. FERC approval, if applicable.

(B) The obligations of the Parties under this ESA for the Additional Capacity are subject to satisfaction of the following conditions precedent:

1. Satisfaction of the Conditions Precedent for the Initial Capacity under Section 6.1(A);
2. Subject to Section 17.3, receipt of NMPRC Approval in respect of the Additional Capacity;
3. FERC approval, if applicable.

i. Section 7.2 Title and Risk of Loss, of the Original Agreement is hereby replaced in its entirety by the following updated provision:

Title and Risk of Loss. Arroyo Solar shall be deemed to be in control of all Solar Charging Energy up to the Point of Delivery, Buyer shall be deemed to be in control of all Grid Charging Energy up to the Point of Delivery, Seller shall be deemed to be in control of all Charging Energy from and after delivery by Arroyo Solar or Buyer, as applicable, 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. Notwithstanding anything set forth herein to the contrary (i) Arroyo Solar shall retain title and risk of loss for Solar Charging Energy stored in the ESS until such Energy is delivered to Buyer as Discharge Energy, at which time title and risk of loss shall transfer to Buyer in accordance with the terms of the PPA, and (ii) Buyer shall retain title and risk of loss for all Grid Charging Energy stored in the ESS. Title and risk of loss related to the Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery.

j. Section 10.5(E) Operating Procedures, of the Original Agreement is hereby replaced in its entirety by the following updated provision:

For all ESS Unit Capabilities tests, Seller shall notify Buyer at least ten (10) Days prior to the initiation of a test and at least one (1) Day prior to the initiation of a re-test. Buyer shall have the option to inspect the Project during any ESS Unit Capabilities test or re-rest. A re-test after a failed ESS Unit Capabilities test shall not count toward Seller's two additional annual tests allowed under Section 10.5(C).

k. First Paragraph of Section 17.3 of the Original Agreement is hereby replaced in its entirety by the following updated provision:

NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase the associated Product at the rates specified in Article 8, shall be conditioned upon NMPRC approval in connection with (i) the execution and performance of this ESA, either as a purchased power agreement or through approval of a CCN (ii) the execution and performance of the PPA, and a final order or other regulatory determination from the NMPRC that Buyer may procure renewable energy and associated RECs pursuant to the PPA and may recover the cost of such procurement; (iii) abandonment of Buyer's ownership interests in San Juan Generating Station, and (iv) the location approval for large capacity plant. (The foregoing conditions are collectively referred to as "**Requested Actions**").

l. Section 17.3(B)(3) of the Original Agreement, as amended by the First Amendment, is hereby replaced in its entirety by the following updated provision:

(3) If the NMPRC has not, for any reason, entered a final written order that is no longer subject to appeal or further proceedings on remand for all Requested Actions by April 5, 2021 ("**Regulatory End Date**"), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the

other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

m. Section 19.1 Security, of the Original Agreement is amended by replacing the Development Security value of “Sixty Thousand Dollars (\$60,000) per MW” therein with the value of “Fifty Thousand Dollars (\$50,000) per MW” and the Delivery Term Security value of “One Hundred Thousand Dollars (\$100,000) per MW” therein with the value of “Fifty Thousand Dollars (\$50,000) per MW”

n. Exhibits A, B, H, K are hereby replaced in their entirety by the updated respective exhibits enclosed in this Second Amendment.

3. Buyer Representations and Covenants.

a. Buyer represents and warrants to Seller that Buyer has received all required board approvals, if any, for the execution, delivery and performance by Buyer of the First Amendment and this Second Amendment.

b. Buyer shall request NMPRC approval of the First Amendment and this Second Amendment by September 30, 2020 and shall use best efforts thereafter to seek NMPRC approval of the First Amendment and this Second Amendment as required under Section 22.9 of the Original Agreement.

4. NMPRC Approval of Amendments. If all Requested Actions have been approved as of the Regulatory End Date with the exception of the approval by the NMPRC, in whole or in part, of the First Amendment or this Second Amendment, Section 17.3(B)(ii) of the Original Agreement shall be deemed to apply and the Requested Actions shall be deemed to have been approved by the NMPRC in part, *provided, however*, if NMPRC approves the First Amendment and the Second Amendment in full with the exception of approving the Additional Capacity Section 17.3(B)(i) of the Original Agreement shall be deemed to apply and the Requested Actions shall be deemed to have been approved by the NMPRC in full in respect of the Initial Capacity only.

5. No Other Changes. Except as modified hereby, all of the terms and provisions of the Original Agreement as amended by the First Amendment shall remain in full force and effect.

6. Counterparts; Delivery. This Second Amendment 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 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.

7. Governing Law. The interpretation and enforcement of this Second Amendment 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.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to be duly executed as of the date first written above.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By:  _____
16A45E858C2C4B9...

Name: Thomas Fallgren

Title: Vice President, Generation

Date: 9/22/2020

ARROYO ENERGY STORAGE LLC

By: CRE-Arroyo New Mexico LLC,
its Manager

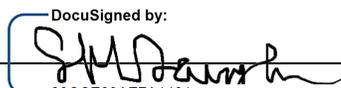
By: Centaurus Renewable Energy LLC,
its Manager

By:  _____
5F8B6A3F629D466...

Name: Keith Holst

Title: Manager

Date: 9/22/2020

By:  _____
30CCE89AE7A1401...

Name: Stephen H Douglas

Title: Manager

Date: 9/22/2020

EXHIBIT A
(to Energy Storage Agreement)

**DESCRIPTION OF SELLER'S ENERGY STORAGE FACILITIES
AND SITE MAP**

1. Name of Seller's Project: Arroyo Energy Storage Project

Location: Pueblo Pintado, McKinley County, New Mexico
2. Owner (if different from Seller): Arroyo Energy Storage LLC
3. Operator: Arroyo Energy Storage LLC
4. Equipment/Fuel:
 - a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Energy Storage; Biomass (including Fuel)): Energy Storage
 - c. Total nameplate capacity (AC): Guaranteed PMAX
 - d. Total capacity at point of delivery: Guaranteed PMAX
 - e. Additional technology-specific information: AC-connected battery energy storage system
5. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the ESA.

ARROYO SOLAR & STORAGE

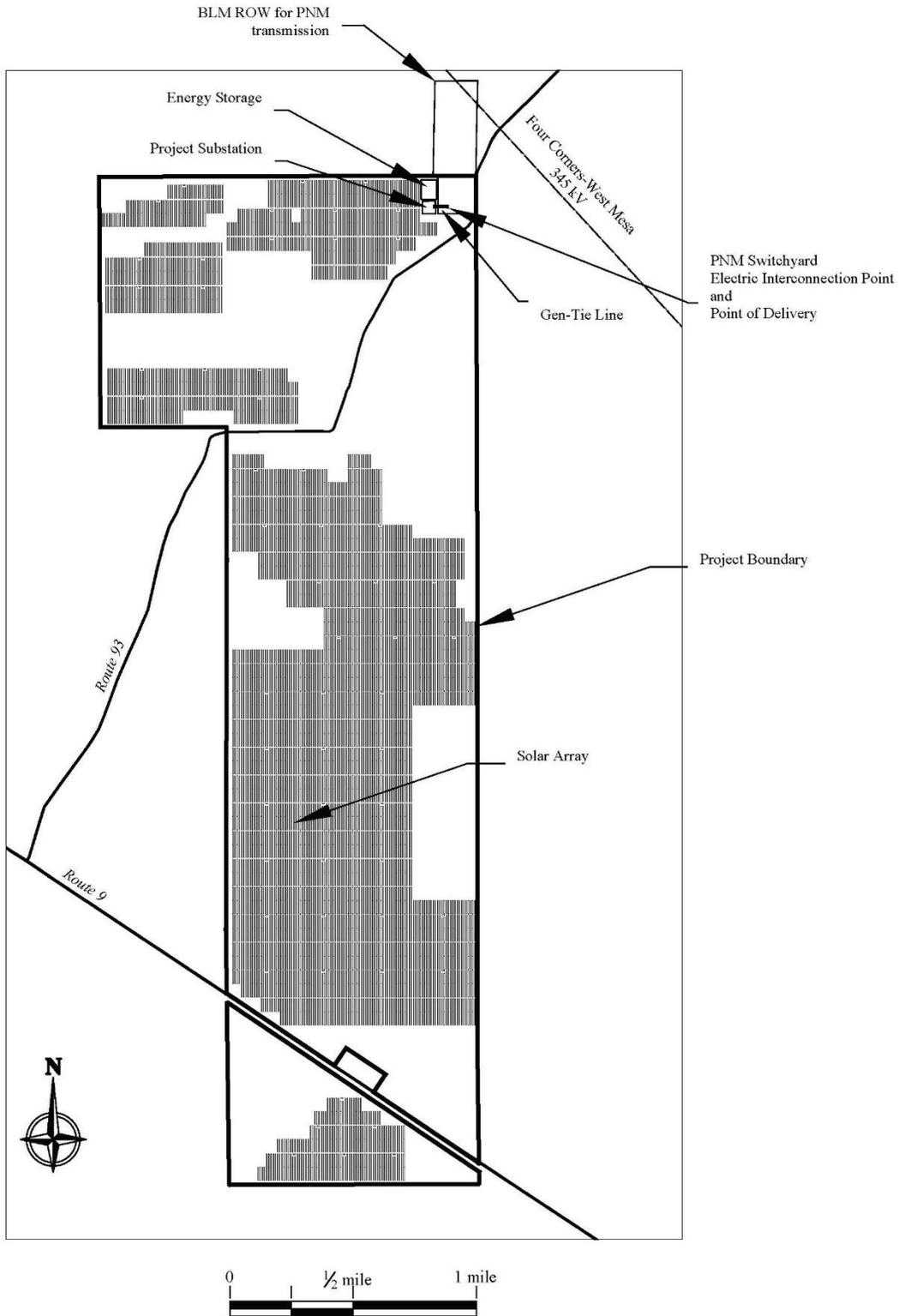
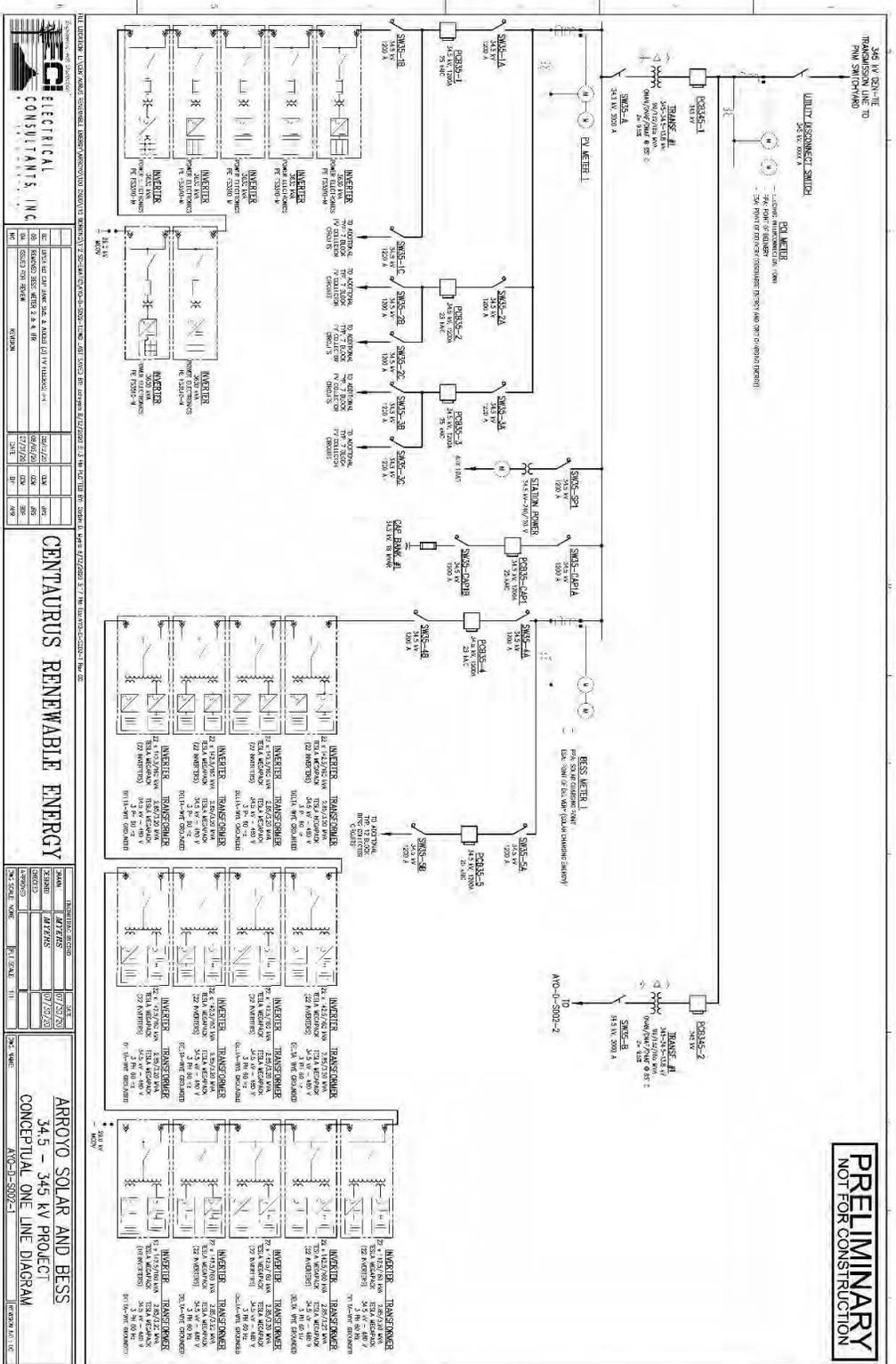


EXHIBIT B
(to Energy Storage Agreement)

ONE-LINE DIAGRAM OF PROJECT AND INTERCONNECTION FACILITIES

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



ECI ELECTRICAL CONSULTANTS, INC.

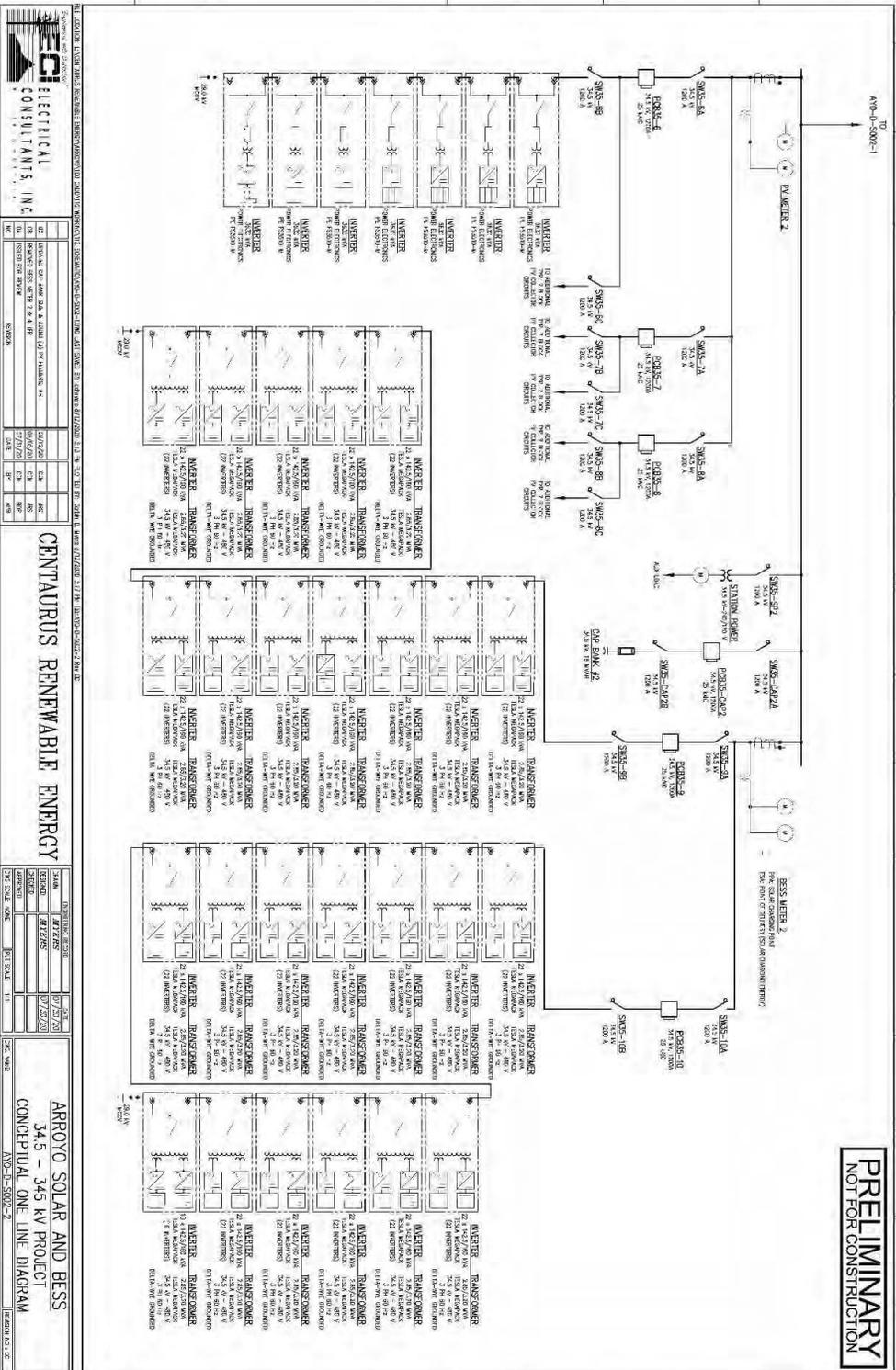
NO.	DATE	BY	CHKD.
001	07/25/20	ATY/S	ATY/S
002	07/29/20	ATY/S	ATY/S
003	07/29/20	ATY/S	ATY/S
004	07/29/20	ATY/S	ATY/S
005	07/29/20	ATY/S	ATY/S
006	07/29/20	ATY/S	ATY/S
007	07/29/20	ATY/S	ATY/S
008	07/29/20	ATY/S	ATY/S
009	07/29/20	ATY/S	ATY/S
010	07/29/20	ATY/S	ATY/S

CENTAURUS RENEWABLE ENERGY

NO.	DATE	BY	CHKD.
001	07/25/20	ATY/S	ATY/S
002	07/29/20	ATY/S	ATY/S
003	07/29/20	ATY/S	ATY/S
004	07/29/20	ATY/S	ATY/S
005	07/29/20	ATY/S	ATY/S
006	07/29/20	ATY/S	ATY/S
007	07/29/20	ATY/S	ATY/S
008	07/29/20	ATY/S	ATY/S
009	07/29/20	ATY/S	ATY/S
010	07/29/20	ATY/S	ATY/S

ARROYO SOLAR AND BESS
34.5 - 345 kV PROJECT
CONCEPTUAL ONE LINE DIAGRAM
REVISED: 8/20/21

NO.	DATE	BY	CHKD.
001	07/25/20	ATY/S	ATY/S
002	07/29/20	ATY/S	ATY/S
003	07/29/20	ATY/S	ATY/S
004	07/29/20	ATY/S	ATY/S
005	07/29/20	ATY/S	ATY/S
006	07/29/20	ATY/S	ATY/S
007	07/29/20	ATY/S	ATY/S
008	07/29/20	ATY/S	ATY/S
009	07/29/20	ATY/S	ATY/S
010	07/29/20	ATY/S	ATY/S



EFCI ELECTRICAL CONSULTANTS, INC.

NO.	DATE	BY	CHK	APP
01	11/15/23	...	...	...
02	11/15/23	...	...	...
03	11/15/23	...	...	...
04	11/15/23	...	...	...
05	11/15/23	...	...	...
06	11/15/23	...	...	...
07	11/15/23	...	...	...
08	11/15/23	...	...	...
09	11/15/23	...	...	...
10	11/15/23	...	...	...

CENTAURUS RENEWABLE ENERGY

DATE	BY	CHK	APP
11/15/23
11/15/23
11/15/23
11/15/23
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11/15/23
11/15/23

ARROYO SOLAR AND BESS
34.5 - 345 kV PROJECT
CONCEPTUAL ONE LINE DIAGRAM
 AVD-D-5002-2

EXHIBIT H

ESS USE CASE

Typical ESS dispatch (subject to Buyer operation and weather conditions)
Subject to manufacturers' operating recommendations

When charged from Solar, the BESS shall be available to:

- 1) Be available for contingency reserve upon the occurrence of a unit outage (requires minimum 8.3% SOC) (Guaranteed PMAX for 20 minutes)
- 2) Be available for reg-up and reg-down (requires maximum 96% SOC and minimum 12.5% SOC also considering contingency reserve requirement) (Guaranteed PMAX for 10 minutes) (Reg down only as can be diverted from Solar generation)
- 3) Respond to frequency events (BAL-003-1) (Response time in 20 to 50 seconds) (Currently have need for 28.8 MW per 0.1 Hz, but expect need for improved capability in future)(2-3 minute event)
- 4) Provide black start capability (10 MW for 20 minutes) (consider capacity to be held as part of the contingency reserve capacity identified in Item (1) above) (all inverters provided with grid-forming capability)
- 5) Charge to control the Solar generation ramp in the morning as the sun rises
- 6) Discharge during the morning peak, as available, to offset peak demand
- 7) Generally, charge during the mid-day hours with intermittent partial charge/discharge cycles during the day to manage load and renewable energy variability (load stabilization) (generally operating between 12.5 and 96% SOC)
- 8) Be fully charged prior to the evening peak for peak load management (fully charged by 2 hours before sunset)
- 9) Be available to charge to avoid economic curtailment of PNM's system (Need to identify typical times, capacities, and durations) (Likely shoulder months – during solar peaks)(Charging can only be as can be diverted from Solar generation)

Cycles shall not exceed 365 equivalent full cycles over the duration of a year.

When charged from the Grid, the BESS shall be available to:

- 1) Be available for contingency reserve upon the occurrence of a unit outage (requires minimum 8.3% SOC) (Guaranteed PMAX for 20 minutes)
- 2) Be available for reg-up and reg-down (requires maximum 96% SOC and minimum 12.5% SOC also considering contingency reserve requirement) (Guaranteed PMAX for 10 minutes)
- 3) Respond to frequency events (BAL-003-1) (Response time in 20 to 50 seconds) (Currently have need for 28.8 MW per 0.1 Hz, but expect need for improved capability in future) (2-3-minute event)
- 4) Provide black start capability (10 MW for 20 minutes) (consider capacity to be held as part of the contingency reserve capacity identified in Item (1) above) (all inverters provided with grid-forming capability)
- 5) Charge to control the Solar generation ramp in the morning as the sun rises

- 6) Discharge during the morning peak, as available, to offset peak demand
- 7) Generally, charge during the mid-day hours with intermittent partial charge/discharge cycles during the day to manage load and renewable energy variability (load stabilization) (generally operating between 12.5 and 95% SOC)
- 8) Be fully charged prior to the evening peak for peak load management (fully charged by 2 hours before sunset)
- 9) Be charged from excess wind or other generation during night-time hours to be available for the morning peak and to avoid curtailment (discharge to minimum 12.5% SOC at end of evening peak)
- 10) Be available to charge to avoid economic curtailment of PNM's system (Need to identify typical times, capacities, and durations) (Charging can be at any time)

Cycles shall not exceed 365 equivalent full cycles over the duration of a year.

EXHIBIT K
(to Energy Storage Agreement)

**COMMERCIAL OPERATION
FORM OF CERTIFICATION**

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

Seller hereby certifies and represents to Buyer the following:

- (1) An Energy Storage System with a designed power output capability of Guaranteed PMAX for four (4) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharge Energy on a sustained basis (in accordance with the ESS manufacturer’s requirements and the Commissioning Tests);
- (2) Arroyo Solar has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and
- (3) Seller has obtained all necessary rights under the Shared Facilities Agreement and is not in breach of the Shared Facilities Agreement; and
- (4) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

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

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

<p>[•] Signature: _____ Name: _____ Title: _____</p>	<p>[Licensed Professional Engineer] Signature: _____ Name: _____ Title: _____ Date: _____ License Number and LPE Stamp: _____</p>
---	--

PPA for 200 MW Solar Project with San Juan Solar 1, LLC

PNM Exhibit TGF-4

Is contained in the following 119 pages.

San Juan Solar 1 PPA 1064367

POWER PURCHASE AGREEMENT

SAN JUAN SOLAR 1 SOLAR FACILITY

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

SAN JUAN SOLAR 1, LLC

Dated as of September 24, 2020

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION.....	1
1.1 Definitions.....	1
1.2 Rules of Construction.	19
1.3 Interpretation with Interconnection Agreement.....	20
1.4 Interpretation of Arrangements for Electric Supply to the Project.....	20
ARTICLE 2 TERM AND TERMINATION	21
2.1 Execution Date and Term.	21
ARTICLE 3 PROJECT DESCRIPTION	21
3.1 Commercial Terms.....	21
3.2 Project.	22
3.3 Location.	22
3.4 General Design of the Project.	22
3.5 Expected Commercial Operation Date.	24
3.6 Extensions.....	24
3.7 Delay Damages; Guaranteed Start Date.	24
3.8 Capacity Shortfall.	24
3.9 Test Energy.....	25
3.10 Notice of Commercial Operation.....	25
3.11 Block Commercial Operation.	25
ARTICLE 4 AGC; BUYER CURTAILMENT; SELLER CURTAILMENT	25
4.1 AGC; Buyer Curtailment.	25
4.2 Seller Curtailment.....	26
ARTICLE 5 DELIVERY AND METERING	26
5.1 Delivery Arrangements.....	26
5.2 Availability Reporting.	27
5.3 Electric Metering Devices.....	27
5.4 Adjustment for Inaccurate Meters.	29
ARTICLE 6 CONDITIONS PRECEDENT.....	29
6.1 Conditions Precedent.	29
6.2 Notice.....	30
ARTICLE 7 SALE AND PURCHASE OF SOLAR ENERGY OUTPUT	30

7.1	Sale and Purchase of Solar Energy Output.....	30
7.2	Title and Risk of Loss.....	30
7.3	Future Environmental Attributes and Changes in Law.....	31
7.4	Scheduling.....	31
7.5	Forced Outages.....	32
7.6	Availability Guarantee.....	33
ARTICLE 8 PAYMENT CALCULATIONS.....		33
8.1	Billing Components.....	33
8.2	Payment Support Requirement.....	34
8.3	Survival on Termination.....	34
ARTICLE 9 BILLING AND PAYMENT PROCEDURES.....		34
9.1	Statements and Payment of Electricity Payments.....	34
9.2	Miscellaneous Payments.....	35
9.3	Currency and Method of Payment.....	35
9.4	Default Interest.....	35
9.5	Disputed Items.....	35
9.6	Statement Errors.....	36
9.7	Taxes.....	36
9.8	Setoff and Payment Adjustments.....	37
9.9	Netting.....	37
ARTICLE 10 OPERATIONS AND MAINTENANCE.....		37
10.1	Construction of the Project.....	37
10.2	Commissioning Tests.....	39
10.3	Access to and Inspection of the Project.....	39
10.4	Operating Parameters.....	39
10.5	Operating Procedures.....	40
10.6	Project Maintenance.....	40
10.7	Sales to Third Parties.....	41
10.8	Performance Tests.....	41
10.9	Annual Performance Test Guarantee Damages.....	43
10.10	Buyer-Requested Performance Tests.....	45
10.12	Weather Stations.....	45
ARTICLE 11 RECS AND ENVIRONMENTAL ATTRIBUTES.....		46
11.1	Sale of RECs and Environmental Attributes.....	46

ARTICLE 12 DEFAULT AND REMEDIES	48
12.1 Events of Default of Seller.....	48
12.2 Events of Default of Buyer.....	50
12.3 Damages Prior to Termination.....	51
12.4 Termination.....	53
12.5 Specific Performance.....	55
12.6 Remedies Cumulative.....	55
12.7 Waiver and Exclusion of Other Damages.....	55
12.8 Payment of Amounts Due to Buyer.....	55
12.9 Duty to Mitigate.....	55
12.10 Security Rights.....	55
12.11 No Duplication of Recovery.....	56
ARTICLE 13 CONTRACT ADMINISTRATION AND NOTICES	57
13.1 Notices in Writing.....	57
13.2 Representative for Notices.....	57
13.3 Authority of Representatives.....	57
13.4 Records.....	57
13.5 Provision of Real-Time Data.....	59
13.6 (Reserved).....	59
13.7 Exhibits.....	59
13.8 Resolution of Issues.....	59
ARTICLE 14 FORCE MAJEURE.....	59
14.1 Definition.....	59
14.2 Notification Obligations.....	62
14.3 Duty to Mitigate.....	62
14.4 Delay Caused by Force Majeure Event.....	62
ARTICLE 15 REPRESENTATIONS, WARRANTIES AND COVENANTS.....	62
15.1 Seller’s Representations, Warranties and Covenants.....	62
15.2 Buyer’s Representations, Warranties and Covenants.....	64
ARTICLE 16 INSURANCE.....	65
16.1 Evidence of Insurance.....	65
16.2 Term and Modification of Insurance.....	65
16.3 Endorsements and Other Requirements.....	66
ARTICLE 17 LEGAL AND REGULATORY COMPLIANCE AND GOVERNMENTAL	

APPROVAL	67
17.1 Applicable Laws.	67
17.2 Governmental Approvals.	67
17.3 NMPRC Approval.	67
17.4 Compliance with Reliability Standards.	68
17.5 Compliance Information.	69
ARTICLE 18 ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS	69
18.1 No Assignment Without Consent.	69
18.2 Conditions on Transfers.	70
18.3 Change of Control.	70
18.4 Transfer Without Consent Is Null and Void.	70
18.5 Subcontracting.	70
18.6 Assignment to Lenders.	70
ARTICLE 19 CREDIT AND SECURITY REQUIREMENTS	71
19.1 Security.	71
19.2 Form of Security.	73
19.3 Grant of Security Interest.	74
19.4 Use of Security.	74
ARTICLE 20 INDEMNITY; INSURANCE PROCEEDS.....	74
20.1 Indemnification.	74
20.2 Notice of Claims; Procedure.	76
20.3 Survival of Obligations.	76
20.4 Insurance Proceeds.....	77
ARTICLE 21 GOVERNMENTAL CHARGES	77
21.1 Allocation of Governmental Charges.	77
ARTICLE 22 MISCELLANEOUS	77
22.1 Waiver.....	77
22.2 Fines and Penalties.....	77
22.3 Standard of Review.....	78
22.4 Disclaimer of Certain Third Party Beneficiary Rights.	78
22.5 Relationship of the Parties.	78
22.6 Equal Employment Opportunity Compliance Certification.	79
22.7 Survival of Obligations.....	79
22.8 Severability.	79

22.9 Complete Agreement; Amendments..... 79

22.10 Binding Effect..... 79

22.11 Headings. 79

22.12 Counterparts..... 79

22.13 Governing Law and Choice of Forum. 80

22.14 Confidentiality. 80

22.15 Marketing Rights; Press Releases and Media Contact; Access..... 81

22.16 Right to Mortgage..... 83

22.17 Forward Contract and Master Netting Agreement..... 83

22.18 Accounting Matters..... 83

22.19 Telephone Recording. 85

EXHIBITS

- Exhibit A Description of Seller's Generation Facilities, Site Map and Project Schedule
- Exhibit B One-Line Diagrams of Project and Interconnection Facilities
- Exhibit C Description of Site
- Exhibit D Notice Addresses
- Exhibit E Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
- Exhibit F Commissioning Tests
- Exhibit G Insurance Coverages
- Exhibit H Availability Guarantee
- Exhibit I Form of Guaranty
- Exhibit J Commercial Operation Form of Certification
- Exhibit K Annual Degradation Guarantees
- Exhibit L Annual Generation Forecast

POWER PURCHASE AGREEMENT—SAN JUAN SOLAR 1 FACILITY

This Power Purchase Agreement—SAN JUAN SOLAR 1 FACILITY, as may be amended from time to time, is entered into this 24th Day of September, 2020 (“**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 SAN JUAN SOLAR 1, LLC, a Delaware limited liability company (“**Seller**”), whose principal place of business is 1633 W. Innovation Way, 5th Floor, Lehi, UT 84043. Buyer and Seller may be referred to in this PPA individually as a “**Party**” and collectively as the “**Parties**.”

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

WHEREAS, Seller desires to develop, design, construct, own and operate a solar energy electric generating facility with an expected total maximum power output of approximately two hundred (200) MW (“**Project**”), as further defined herein and in Exhibit A, which Project will be integrated with an Energy Storage System (as defined below); and

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

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

ARTICLE 1

Definitions and Rules of Interpretation

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

“**Abandonment**” means (a) a cessation of work and operations in connection with the Project for more than ninety (90) Days by Seller or Seller’s contractors without Seller’s initiation of or development and submittal to Buyer of a reasonable project impact mitigation or remediation plan but only if such cessation is not caused by a Force Majeure or not in accordance with Seller’s Project Schedule as may be updated from time to time; or (b) the relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this PPA.

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

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

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

“**Affiliate**” of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. 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 more than fifty percent (50%) of the outstanding capital stock or other equity interests of any class of voting securities, by contract, or otherwise.

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

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

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

“**Ancillary Services**” means those services as provided by this Project that are necessary to support the transmission or balancing of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider’s or Balancing Area Authority’s system. Ancillary Services may include operating reserves, regulation, black-start capability, reactive supply, voltage control, frequency response, and other services, each to the extent that the Project is capable of providing such services.

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

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

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

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

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

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

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

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

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

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

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

“**Beneficiary Party**” means a Party that is entitled to require the procurement, posting, or payment of Security from another Party pursuant to Article 19.

“**Block Commercial Operation**” means that (a) Solar Units with an aggregate capacity of at least 50 MW have been constructed, commissioned, tested and proven capable of delivering Energy on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system, (b) Seller has obtained all required consents and Governmental Approvals with respect to such portion of the Project, (c) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery with respect to such portion of the Project and is not in breach of the Interconnection Agreement, (d) Seller has satisfactorily completed the Commissioning Tests identified in Exhibit F in accordance with mutually agreed test procedures and other testing in accordance with Interconnection Agreement requirements with respect to such portion of the Project, each having been completed in accordance with Prudent Utility Practices, (e) Seller has obtained required insurance coverage in compliance with Section 16.1 and with Exhibit G, (f) Buyer has received an officer’s certificate from Seller that such portion of the Project has been completed in all material respects, (g) Seller has delivered to Buyer the Delivery Term Security with respect to such portion of the Project, and (h) Seller has provided to Buyer a certification from a Licensed Professional Engineer with respect to such portion of the Project, substantially in the form attached hereto as Exhibit J, with all fees and costs associated with the Licensed Professional

Engineer being borne by Seller.

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

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

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

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

“Buyer Economic Curtailment” means (a) any curtailment with the intended purpose of achieving economic savings by not purchasing energy available from the Project, (b) any curtailment resulting from Buyer’s economic bidding into a regional market, or (c) any curtailment that results from a breach by Buyer of Section 5.1(E). For avoidance of doubt PNM is not required to provide this Project as a participating resource in a regional market.

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

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

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

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

“Commercial Operation” means that (a) Solar Units with an aggregate capacity of at least ninety percent (90%) of the Guaranteed Solar Capacity have been constructed, commissioned, tested and proven capable of delivering Energy on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system, (b) Seller has obtained all required consents and Governmental Approvals, (c) Seller has obtained all necessary rights under the Shared Facilities Agreement, which shall include necessary rights pursuant to the Interconnection Agreement, for the interconnection and delivery of Energy to the

Point of Delivery and is not in breach of the Shared Facilities Agreement (and San Juan Solar Project, LLC is not in breach under the Interconnection Agreement), (d) Seller has satisfactorily completed the Commissioning Tests identified in Exhibit F in accordance with mutually agreed test procedures and other testing in accordance with the Shared Facilities Agreement and Interconnection Agreement requirements, (e) Seller has obtained required insurance coverage in compliance with Section 16.1 and with Exhibit G, (f) Buyer has received an officer's certificate from Seller that the Project has been completed in all material respects, (g) Seller has delivered to Buyer the Delivery Term Security, and (h) Seller has provided to Buyer a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit J, with all fees and costs associated with the Licensed Professional Engineer being borne by Seller.

“Commercial Operation Date” means the date on which all of the conditions set forth in the definition of “Commercial Operation” have been satisfied, as such date is further determined in accordance with Section 3.10.

“Commercial Operation Year” means a period of twelve (12) consecutive Months, with the first Commercial Operation Year commencing on the Commercial Operation Date and ending on the last Day of the Month that is twelve (12) full Months after the Commercial Operation Date, and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

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

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

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

“Credit Rating” means, for any Person, the respective ratings then assigned to such Person's unsecured, senior long-term debt (not supported by third party credit enhancement) by S&P or Moody's.

“Creditworthy Entity” means Person that has a Credit Rating of at least BBB- by S&P and Baa3 by Moody's.

“Day” means a calendar day and includes Saturdays, Sundays and holidays.

“DC” means direct current.

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

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

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

“**Delay Damages**” means the applicable amount set forth in the following table:

Days after the Expected Commercial Operation Date	Applicable Delay Damages Amount (\$/Day per MW of Delayed Capacity)
1-45	\$75.00
46-90	\$125.00
91-180	\$200.00

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

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

“**Delivery Term Security**” has the meaning set forth in Section 19.1(A).

“**Development Security**” has the meaning set forth in Section 19.1(A).

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

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

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

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

“**Downgrade Event**” shall mean that the applicable Person is no longer a Creditworthy Entity.

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

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

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

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

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

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

“Energy Storage Agreement” means that certain Energy Storage Agreement between Seller and Buyer dated as of September 24, 2020.

“Energy Storage System” has the meaning ascribed to it in the Energy Storage Agreement.

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

“Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and as to present a material risk under

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

“Event of Default” means an Event of Default of Seller as set forth in Section 12.1 or an Event of Default of Buyer as set forth in Section 12.2.

“Execution Date” has the meaning set forth in the Preamble.

“Expected Commercial Operation Date” has the meaning set forth in Section 3.1.

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

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

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

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

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

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

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

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

“Guarantor” means a Creditworthy Entity that is an Affiliate of the Posting Party that has delivered a Guaranty to the Beneficiary Party for the benefit of the Posting Party under Article 19.

“Guaranty” means a guaranty in substantially the form attached as Exhibit I or other form reasonably acceptable to the beneficiary Party.

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

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

“Installed Solar Capacity” means, as of a given point in time, the aggregate capacity of all Solar Units installed and commissioned at the Project measured as MW_{AC} as deliverable to the Point of Delivery.

“Interconnection Agreement” means the separate agreement between San Juan Solar Project, LLC and the Transmission Provider for interconnection of the Project to the Transmission Provider’s Transmission System, as such agreement may be amended from time to time.

“Interconnection Date” has the meaning set forth in Section 3.6.

“Interconnection Facilities” means the Transmission Provider’s Interconnection Facilities, Seller’s Interconnection Facilities, and that portion of the Seller’s Shared Facilities pertaining to the Interconnection Agreement.

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

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

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

“kWh” means kilowatt hour AC.

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

connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and the related rights from Seller; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

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

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

“**Line Losses**” means the point-to-point real power losses associated with the transmission of the Metered Output from the Project to the Point of Delivery.

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

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

“**Metered Output**” means an amount equal to (i) the Energy produced by the Project, as measured by the revenue grade meter located at the 34.5kv voltage bus of the Project collector substation that measures the aggregated power output produced by the Project, minus (ii) Line Losses with respect to such amount.

“**Model Rated Power**” has the meaning set forth in Section 10.8(D)(6).

“**Month**” means a calendar month.

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

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

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

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

“**MWh**” means megawatt hours AC.

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

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

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

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

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

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

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

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

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

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

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

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

“**Performance Test Ratio**” has the meaning set forth in Section 10.8(D)(4).

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

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

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

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

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

“**Posting Party**” means a Party who is obligated to procure, post, or pay Security for a

Beneficiary Party pursuant to Article 19.

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

“**Project**” means Seller’s solar energy generation facility with a nameplate capacity of two hundred (200) MW located in San Juan County, New Mexico which will produce the Solar Energy Output made available to Buyer under this PPA, including one or more of Seller’s Solar Units and Seller’s Interconnection Facilities, as identified and described in Article 3 and Exhibit A to this PPA, including all of the following (and any additions, modifications or replacements), the purpose of which is to produce electricity and deliver such electricity to the Electric Interconnection Point: Seller’s equipment, buildings, all of the conversion and/or generation facilities, including the Solar Units, step-up transformers, output breakers, Seller’s Interconnection Facilities and Seller’s Shared Facilities necessary to connect to the Electric Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the electric generating facilities that produce the Solar Energy Output subject to this PPA.

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

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

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

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

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

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

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

(C) preventive, routine, and non-routine maintenance and repairs are performed on a

basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

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

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

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

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

“**Qualified Operator**” is (a) a Person that has at least three (3) years’ experience with operating at least one hundred (100) MW of solar generation, or (b) any other Person reasonably acceptable to Buyer.

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

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

“**Receiving Party’s Representatives**” has the meaning set forth in Section 22.14(B).

“**Recording**” has the meaning set forth in Section 22.19.

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

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

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

on Buyer's or the Transmission Provider's Transmission System during a period of time when generating facilities connected to the Transmission Provider's Transmission System are interrupted or reduced in an equitable and non-discriminatory manner, but shall not include any curtailment for any economic purpose (including Buyer Economic Curtailments) or to accomplish least cost dispatch, which curtailment shall be deemed a Buyer Economic Curtailment. Buyer, upon reasonable notice, will provide reasonable documentation relating to any Reliability Curtailments to confirm compliance with this definition.

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

“Replacement Energy Costs” means the actual costs incurred by Buyer following an Event of Default by Seller that are reasonable and necessary to replace Energy, RECs, Environmental Attributes and Ancillary Services which Seller, in accordance with this PPA, would have generated at the Project and delivered to Buyer, but failed to so provide pursuant to this PPA. Buyer shall not have to enter into a replacement contract to establish the Replacement Energy Costs. If Buyer does not enter into a replacement contract, then the Replacement Energy Costs will be based on the market price for replacement Energy, Environmental Attributes (including RECs) and Ancillary Services (if any and only to the extent previously provided by the Project hereunder) delivered to Buyer's system, as reasonably determined by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement Energy Costs for an Event of Default also include (i) the reasonable amounts paid or incurred by Buyer for transmission or distribution of replacement of such Solar Energy Output and any associated transmission or distribution costs, (ii) the reasonable amounts paid or incurred by Buyer for the purchase of RECs associated with the replacement Solar Energy Output, and (iii) Buyer's expenses, including reasonable attorneys' fees, suffered as a result of Seller's failure to perform under this PPA.

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

“Sales Taxes” means any New Mexico state and local sales taxes, use taxes, gross receipts taxes, compensating taxes, transfer taxes, excise taxes, value added taxes, and similar taxes and charges.

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

“Scheduled Maintenance Outage” means a time during which a Solar Unit is shut down or its output reduced to undergo scheduled maintenance in accordance with this PPA, or as

otherwise agreed by Seller and Buyer.

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

“**Security**” means Development Security, Delivery Term Security or security required to be posted by Buyer in accordance with Section 19.1(B), as applicable.

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

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

“**Seller Excused Hours**” means those hours during which Seller is unable to schedule or deliver Energy to Buyer as a result of: (a) a Scheduled Maintenance Outage, (b) a Transmission Provider Curtailment, (c) a Reliability Curtailment, (d) a Buyer Curtailment, (e) a Force Majeure Event, or (f) any breach or failure by Buyer to perform any of its obligations under this PPA (other than due to a breach by Seller of its obligations under this PPA).

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

“**Seller Guarantor**” means a Creditworthy Entity that is an Affiliate of Seller that has made a Guaranty for the benefit of Buyer under Article 19.

“**Seller Permitted Transfer**” means any of the following: (a) a Change of Control of Seller’s Ultimate Parent; (b) a Change of Control of Seller where Seller’s Ultimate Parent continues to control Seller after such Change of Control or any transaction exclusively among Affiliates of Seller; or (c) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor or in connection with a Tax Equity Financing; *provided*, that in the case of (b), following such transfer (A) the entity that operates the Project is (or contracts with) a Qualified Operator, and (B) that such transfer does not have a material adverse effect on the Seller’s credit characteristics and Seller maintains the applicable Seller Security requirements.

“**Seller Termination Payment**” means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Solar Energy Output) calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, plus (b) Seller’s Costs, plus (c) if the PPA is terminated by Seller under Article 12 during the first six (6) years after the Commercial Operation Date, the actual lost value of any previously realized Tax Benefits not recoverable under a replacement contract, including those subject to recapture. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this PPA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential incidental, punitive, exemplary or indirect or business interruption damages which for the avoidance of doubt do not include the actual lost value of previously realized Tax Benefits specified in subpart (c) which Tax Benefits the Parties

agree shall be deemed direct, actual damages for purposes hereunder. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

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

“Seller’s Financial Statements” has the meaning set forth in Section 22.18(B).

“Seller’s Interconnection Facilities” includes Seller’s metering, relays, and load control equipment on the low side of the step-up transformer, as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this PPA.

“Seller’s Shared 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.

“Shared Facilities Agreement” means an agreement by and between Seller, San Juan Solar Project, LLC, and other Affiliates of Seller that are parties thereto in the future, governing the interconnection of the Project pursuant to the terms of the Interconnection Agreement, the use of Seller’s Shared Facilities, the right to occupy or use shared real property, and the ownership or governance of the rights associated with the foregoing between the parties thereto.

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

“Site” means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this PPA. For the avoidance of doubt, this PPA is Site specific.

“Solar Energy Output” means Metered Output, Environmental Attributes (including RECs) and Ancillary Services generated by the Project.

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

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

“**Supplemental State Tax Incentives**” means any state or local production tax credit or investment tax credit placed into effect after the Execution Date and determined by reference to renewable electric energy produced from renewable energy resources in effect in the state of New Mexico.

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

“**Tax Benefits**” means (a) federal and state investment and/or production tax credits (including ITCs but excluding Supplemental State Tax Incentives), and any other tax credits which are or will be generated by the Project and (b) any cash payments or outright grants of money relating 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 construction of the Project by monetizing the Tax credits, depreciation and other Tax Benefits associated with the Project.

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

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

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

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

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

“**Test Period**” means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider’s Transmission System and delivers metered Energy to the Point of Delivery and ending on the Block Commercial Operation Date or the Commercial Operation Date, with respect to the relevant capacity, as applicable; provided, however, in no event shall the Test Period for any portion of the Project achieving a Block Commercial Operation Date or the final portion of the Project to achieve Commercial Operation be longer than ninety (90) Days.

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

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

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

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

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

“Transmission Provider” means the Person, designated agent, or third party acting in its capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable. For purposes of this PPA, no party to the Shared Facilities Agreement nor the owner of the Seller’s Shared Facilities shall be considered or deemed to be a Transmission Provider.

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

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

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

“Ultimate Parent” means Four Corners Solar Center, LLC.

“**Weather Stations**” has the meaning set forth in Section 10.11.

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

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

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

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

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

1.2 Rules of Construction.

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

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

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

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

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

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

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

(H) The word “or” is not exclusive.

(I) 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.

1.3 Interpretation with Interconnection Agreement. Buyer 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. If and to the extent Seller becomes subject to the FERC Standards of Conduct for Transmission Providers, Seller shall conduct its operations in a manner intended to comply with the FERC Standards of Conduct for Transmission Providers.

(A) The Parties acknowledge and agree that the Interconnection Agreement and the Shared Facilities Agreement shall be separate and free-standing contracts and that the terms of this PPA are not binding upon the Transmission Provider or Seller’s Affiliates under the Shared Facilities Agreement. The Shared Facilities Agreement shall be maintained for the Term of this PPA and will not restrict or limit Buyer’s ability to dispatch the Project or otherwise have an adverse impact on Seller’s performance of its obligations under this PPA or the Energy Storage Agreement.

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

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

1.4 Interpretation of Arrangements for Electric Supply to the Project. This PPA does not provide for the supply of retail electric power or natural gas to the Project, for any purpose (“House Energy”). Seller shall contract with the local utility in whose retail service territory the Project is located (“Local Provider”) for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement.

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

(B) Notwithstanding any other provision in this PPA, nothing in Seller’s arrangements for the supply of House Energy to the Project shall alter or modify Seller’s or Buyer’s

rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Seller shall have the right to consume energy concurrently generated by the Project for House Energy and to co-locate additional facilities designed to supply House Energy; provided, however, that excess energy produced from such additional facilities shall not be delivered by Seller to Buyer under this PPA. House Energy shall be real time measured by either (i) separate Electric Metering Devices for Metered Output and House Energy or (ii) a single Electric Metering Device that separately measures Metered Output and House Energy. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

ARTICLE 2 Term and Termination

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

ARTICLE 3 Project Description

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

COMMERCIAL TERMS

Buyer: Public Service Company of New Mexico	Seller: San Juan Solar 1, LLC
Project: San Juan Solar 1	
Point of Delivery: The point at which Seller makes available to Buyer and delivers to Buyer the Metered Output and Ancillary Services being provided under this PPA, as further identified on <u>Exhibit B</u> .	
Contract Term: 20 years following the Commercial Operation Date	Guaranteed Solar Capacity (MW_{AC}): 200 MW _{AC} subject to degradation in accordance with <u>Exhibit K</u>
Product Type: Bundled Energy, Ancillary Services and RECs	Solar Energy Output Payment Rate: \$26.31/MWh

Day(s) of week: Monday through Sunday, including NERC holidays	Hours: Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Prevailing Time (“MPT”)
Guaranteed Start Date: 6 months after the Expected Commercial Operation Date	
Expected Commercial Operation Date: June 10, 2022 as may be adjusted pursuant to Section 3.6	

3.2 Project. Exhibit A provides a detailed description and implementation schedule (“**Project Schedule**”) of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed material changes in the Project or the 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, the material Electric Metering Devices, and the location of the Interconnection Facilities is included in Exhibit A to this PPA. Exhibit A also contains a preliminary indication of the location of the Solar Units at the Site. Seller will provide notice to Buyer of the final proposed location of the Solar Units at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller’s contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes.

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

- (A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, generator telemetering equipment and communications equipment;
- (B) be equipped for and capable of AGC by Buyer;
- (C) use communication circuits from the Project to Buyer’s System Control Center for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for AGC by Buyer;
- (D) supply Energy in compliance with the requirements of the Shared Facilities Agreement and in compliance with the Interconnection Agreement and Prudent Utility Practices;
- (E) deliver Energy to the Point of Delivery, at the frequency specified by Buyer;
- (F) be capable of being remotely started, stopped and disconnected by Buyer’s System Control Center; and
- (G) to the extent applicable, comply with Presidential Executive Order 13920, “Securing the United States Bulk-Power System” issued on May 1, 2020. Within sixty (60) Days

of the Execution Date, Seller shall provide to Buyer a notification defining Seller's approach to complying with the Executive Order. Seller shall provide the final equipment suppliers and places of origin for all bulk-power system electric equipment (as defined in the Executive Order) procured for the Project and shall address the methodology for evaluating the full supply chain for components of such equipment and devices.

Within one-hundred eighty (180) Days following the Execution Date, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's Supervisory Control and Data Acquisition ("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 control of the ESS. These controls shall include the following MESA-ESS modes or equivalent: (i) Active Power Smoothing, (ii) Automatic Generation Control, and (iii) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE-1547.1: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with PNM's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with PNM's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements, (iii) production change management, and (iv) CIP governance requirements.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth herein, Seller shall cause the Commercial Operation Date to occur no later than the Expected Commercial Operation Date as defined in Section 3.1.

3.6 Extensions. The Expected Commercial Operation Date shall be extended by a number of Days, up to (a) a maximum of one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to the duration in Days of any Force Majeure Event that delays construction or commencement of operation of the Project, or (b) a maximum of one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to the duration in Days of any delay in the occurrence of the in-service date of the Transmission Provider's Interconnection Facilities after February 10, 2022 ("**Interconnection Date**") not resulting from a default of Seller under the Shared Facilities Agreement or the Interconnection Agreement or any act or omission of Seller. Seller will give written notice to Buyer describing any such Force Majeure or interconnection delay within five (5) Business Days after determining the occurrence of such an event. The number of Days of such extension is calculated from the date on which the Force Majeure Event or interconnection delay, as applicable, begins. If a Force Majeure Event or interconnection delay will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then, unless the Parties have agreed to extend such period, Buyer will have the right to terminate this PPA without liability of either Party upon notice to Seller delivered prior to the earlier of the Commercial Operation Date or sixty (60) Days following the end of such one hundred eighty (180) Day period.

3.7 Delay Damages; Guaranteed Start Date. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller will use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages to Buyer in an amount equal to the Delay Damages per Day per each MW of Delayed Capacity for each Day after the Expected Commercial Operation Date until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date; provided Seller's aggregate liability for Delay Damages shall not exceed an amount equal to the Development Security. "**Delayed Capacity**" is an amount equal to the difference between the Guaranteed Solar Capacity and the Installed Solar Capacity.

3.8 Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed Solar Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed Solar Capacity to achieve Commercial Operation. If Seller has not caused all Delayed Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Five Hundred Thousand Dollars (\$500,000) per MW of Delayed Capacity, ("**Capacity Shortfall Damages**"). Upon payment by Seller of the Capacity Shortfall Damages, the Guaranteed Solar Capacity shall be reduced to the Installed Solar Capacity.

3.9 Test Energy. Not less than thirty (30) Days prior to the date upon which Seller expects to begin delivering Test Energy, Seller shall give written notice to Buyer of such expected deliveries. During the Test Period, Buyer agrees to accept and purchase all Test Energy generated at the Project and delivered by Seller to Buyer at the Point of Delivery at a rate equal to fifty percent (50%) of the Solar Energy Output Payment Rate. Seller shall notify Buyer seven (7) Days prior to the initial delivery of Test Energy to Buyer subject to PNM approval. Scheduling for subsequent deliveries of Test 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. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date. Seller shall deliver to Buyer a notice of Commercial Operation no later than three (3) Business Days after all of the conditions in the definition of "Commercial Operation" have been satisfied or waived by the Parties, together with reasonable supporting evidence of the satisfaction of such conditions. Buyer shall diligently review such notice and shall use good faith efforts to review and accept or reject in writing such notice within ten (10) Days following Buyer's receipt of such notice. If Buyer rejects Seller's notice of Commercial Operation, then Seller shall either dispute Buyer's rejection or take such steps as are necessary to correct the deficiencies identified in Buyer's rejection notice following which the Parties will repeat the process set forth in this Section 3.10 until Buyer has accepted Seller's notice of Commercial Operation, and the Commercial Operation Date shall be the date specified in the accepted notice or such date as otherwise agreed by the Parties.

3.11 Block Commercial Operation. Upon thirty (30) days' notice to Buyer, Seller may, at its sole option, elect to achieve commercial operation in phases with a nameplate capacity of no less than 50 MW. If Seller elects to achieve commercial operation in phases, not less than thirty (30) Days prior to the date upon which Seller expects to achieve a Block Commercial Operation, Seller shall give written notice to Buyer of such expected Block Commercial Operation. Seller shall deliver to Buyer a notice of Block Commercial Operation no later than three (3) Business Days after all of the conditions in the definition of "Block Commercial Operation" have been satisfied or waived by the Parties, together with reasonable supporting evidence of the satisfaction of such conditions. Buyer shall diligently review such notice and shall use good faith efforts to review and accept or reject in writing such notice within ten (10) Days following Buyer's receipt of such notice. If Buyer rejects Seller's notice of Block Commercial Operation, then Seller shall either dispute Buyer's rejection or take such steps as are necessary to correct the deficiencies identified in Buyer's rejection notice following which the Parties will repeat the process set forth in this Section 3.11 until Buyer has accepted Seller's notice of Commercial Operation, and the Block Commercial Operation Date shall be the date specified in the accepted notice or such date as otherwise agreed by the Parties.

ARTICLE 4

AGC; Buyer Curtailment; Seller Curtailment

4.1 AGC; Buyer Curtailment.

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

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to curtail the Project by use of the AGC system to effect its curtailment rights pursuant to this Section 4.1(B) (“**Buyer Curtailment**”). Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer’s energy set point margin of error. Seller shall ensure that the Project’s AGC Remote/Local status is in “Remote” set-point control during normal operations. Buyer Curtailment shall be allowed for (i) any **Buyer Economic Curtailment** or (ii) any other curtailment as required for the protection of the Buyer’s systems that is effectuated in a non-discriminatory manner given the operational circumstances at the time. Such Buyer Curtailment rights do not provide the Buyer with any rights to direct the operation of the Project. For each Buyer Economic Curtailment Buyer shall: (i) pay Seller an amount equal to the sum of the Solar Energy Output Payment Rate multiplied by the Deemed Energy associated with the number of Buyer Economic Curtailment MWh. For purposes of this Section 4.1(B), “**Deemed Energy**” shall mean the amount of Energy that was not delivered to Buyer by Seller but would have been so delivered but for the Buyer Economic Curtailment as follows: Deemed Energy (MWh) shall be reasonably calculated by Seller taking into account weather and pyranometer data from the meteorological station(s), via a mutually agreed upon method, at the Site for all or a portion of the Solar Units taken out of service due to the Buyer Economic Curtailment but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review and approve Seller’s calculations of Deemed Energy.

(C) Seller shall reduce Solar Energy Output from the Project during and to the extent of any Reliability Curtailment, Transmission Provider Curtailment, Seller Curtailment or Buyer Curtailment. Buyer shall pay for Deemed Energy during a Buyer Economic Curtailment as specified above. With the exception of a Buyer Economic Curtailment, Buyer shall not be required to pay Seller for any curtailed Energy during any Reliability Curtailment, Buyer Curtailment, Seller Curtailment, or Transmission Provider Curtailment.

4.2 Seller Curtailment. A Seller Curtailment occurs any time the Project is unable to deliver otherwise available Energy to the Point of Delivery as a result of transmission limitations prior to the Point of Delivery, including as a result of Seller’s scheduling practices, or indirectly, by the Transmission Provider pursuant to the OATT or transmission service arrangements (“**Seller Curtailment**”). A Seller Curtailment does not include any inability to deliver Energy to Buyer as a result of the terms of or performance under the Shared Facilities Agreement.

ARTICLE 5 Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall secure any gen-tie capacity or transmission rights necessary to

deliver the Energy to the Point of Delivery. Seller shall diligently negotiate and execute a Shared Facilities Agreement that complies with the requirements of the Transmission Provider's Interconnection Agreement. As between Seller and Buyer, Seller shall be responsible in accordance with the Interconnection Agreement for the costs of interconnection and costs, including those related to scheduling and imbalances, if any, required to deliver the Solar Energy Output from the Project to Buyer at the Point of Delivery,. Notwithstanding the foregoing or anything in this PPA to the contrary, Seller shall not be obligated to modify the Project or the operation of the Project to provide any Ancillary Services unless mutually agreed, and to the extent the provision of Ancillary Services hereunder reduces the amount of Energy that could have been produced and delivered to Buyer hereunder, Buyer shall compensate Seller as if such Energy had been produced and delivered to Buyer at the Point of Delivery hereunder.

(B) Buyer shall be responsible for costs required to deliver the Solar Energy Output from and beyond the Point of Delivery. Buyer shall be responsible for costs and charges related to scheduling and imbalances.

(C) On a Day-ahead basis, and no later than 4:00 a.m. MPT, Seller, or Seller's agent, shall make available to Buyer a good faith 24-hour forecast of the Metered Output to be delivered to Buyer. At least three (3) Days prior to the beginning of each week, and no later than 12:00 noon MPT, Seller shall provide Buyer a weekly good faith Project generation forecast for the following week (Sunday through Saturday) based on equipment availability. In addition, Seller, or Seller's agent, shall establish and maintain (and shall use commercially reasonable efforts to include any necessary future technological improvements) an interface with Buyer via a web-based file transfer protocol for the purpose of transferring to Buyer real-time forecasting data related to the Project (or any alternative transfer mechanism mutually agreed to by the Parties).

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

(E) Buyer shall obtain and maintain throughout the Term designation of this PPA as a Network Resource for purposes of serving network load.

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

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Energy sold and delivered pursuant to this PPA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point. Seller shall ensure that Electric Metering Devices are installed at or near the Electric Interconnection Point that measures the output of the Project before such Energy is commingled with the energy from any other project.

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

Agreement or the Interconnection Agreement, as applicable, shall govern.

(C) All Electric Metering Devices used to measure the Energy made available to Buyer by Seller under this PPA and to monitor and coordinate operation of the Project shall be owned, installed, and maintained in accordance with the Shared Facilities Agreement and the Interconnection Agreement, as applicable, at no cost to Buyer under this PPA. Calibration records shall be maintained by Seller for a period not less than two (2) years and shall be provided to Buyer promptly within forty-five (45) Days following their availability. Electric Metering Devices shall be installed at the Point of Delivery. The design of the Electric Metering Device system shall be subject to Buyer approval prior to commencement of construction of the Project. The Seller 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 Buyer upon completion of the testing. Subject to Section 10.3(A), Seller shall provide or arrange with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices for all purposes necessary to perform under this PPA and shall provide Buyer the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted. Buyer shall also have the right to conduct its own tests of the Electric Metering Devices in Buyer's reasonable discretion upon prior notice to Seller. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including obtaining any consent or other agreement from the Transmission Provider necessary to allow Buyer such access. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Buyer.

(D) Seller shall install and maintain, at its own expense, backup metering devices ("**Back-Up Metering**") in addition to the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Buyer. Seller, at its own expense, shall inspect and test Back-Up Metering upon installation and at least annually thereafter and provide all test results to Buyer upon completion of the testing. Subject to Section 10.3(A), Seller shall provide Buyer with reasonable advance notice of, and permit Buyer to witness and verify, such inspections and tests. Upon written request, Seller shall perform additional inspections or tests of Back-Up Metering and, subject to Section 10.3(A), shall permit a qualified representative of the Buyer to inspect or witness the testing of Back-Up Metering. The actual expense of any such requested additional inspection or testing shall be borne by the Buyer, unless, upon such inspection or testing, Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the Seller. If requested in writing, the Seller shall provide copies of any inspection or testing reports to the Buyer.

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

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

(A) In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering to determine the amount of such inaccuracy, provided, however, that Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. If Back-Up Metering is installed on the low side of Seller's step-up transformer, the Back-Up Metering data shall be adjusted for losses in the same manner as for the Electric Metering Devices. In the event that Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Metered Output from the Project to the Point of Delivery during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

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

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

ARTICLE 6 Conditions Precedent

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

- (A) Subject to Section 17.3, Buyer has received NMPRC Approval; and
- (B) Buyer has received approval of the Boards of Directors of Buyer and its parent company, as required, which approval has been received.

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

ARTICLE 7 Sale and Purchase of Solar Energy Output

7.1 Sale and Purchase of Solar Energy Output. In accordance with and subject to the terms and conditions of this PPA, commencing on the first Block Commercial Operation Date, if applicable, or Commercial Operation Date and continuing through the end of the Term (“**Delivery Term**”), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Solar Energy Output made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that Buyer shall not be required to receive and purchase Solar Energy Output when and to the extent that (a) a Party’s performance is excused by a Force Majeure Event, (b) a Transmission Provider Curtailment is continuing, (c) a Reliability Curtailment is continuing, (d) a Seller Forced Outage is continuing, (e) a Seller Curtailment is continuing, or (f) a Buyer Curtailment other than a Buyer Economic Curtailment is continuing. Furthermore, Buyer shall not be required to receive or purchase Solar Energy Output that corresponds to instantaneous generation that exceeds the Guaranteed Solar Capacity.

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

7.3 Future Environmental Attributes and Changes in Law. The Parties acknowledge and agree that (a) additional Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this PPA all right and title to such additional Environmental Attributes is included in the Solar Energy Output Payment Rate as Solar Energy Output and (c) such additional Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this PPA. If in order for Buyer to receive the benefit of any additional Environmental Attributes Seller must incur any third-party costs or costs associated with modifying the Facility or the operation thereof not otherwise provided for in this PPA, or if any change in law or regulation relating to such future Environmental Attributes occurs after the Execution Date that causes Seller to incur any third-party costs not otherwise provided for in this PPA in order to deliver the additional Environmental Attributes, then such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly upon occurrence of such costs to Seller by Buyer. Seller shall use commercially reasonable efforts to deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; provided that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such additional Environmental Attributes. For the avoidance of doubt, Buyer shall remain liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such additional Environmental Attributes. Notwithstanding the foregoing, the Parties must reach mutual agreement prior to incurring any additional costs or proceeding with modifications of the Facility or the operation thereof to provide any additional Environmental Attributes.

7.4 Scheduling.

(A) Seller and Buyer shall work together to arrange all scheduling services necessary to ensure compliance with WECC operating policies and criteria, Transmission Provider OATT requirements, and any other applicable guidelines. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Metered Output, on a Day-ahead basis, in accordance with WECC protocols, operating policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines in a manner maximizing Metered Output from the Project based on the then-most-current forecast of energy provided by Seller, except for Transmission Provider Curtailments, Reliability Curtailments, Seller Forced Outages, Scheduled Maintenance Outages, Force Majeure Events, Buyer Curtailments, and Seller Curtailments. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Buyer with a good faith estimate of the quantity of Metered Output it expects to generate for the remainder of that Commercial Operation Year. By July 1 of each succeeding Commercial Operation Year, Seller shall provide Buyer with a good faith estimate of the hourly quantities of Metered Output that Seller expects to generate in the following Commercial Operation Year ("**Projected Schedule**"). Seller shall also provide estimates of the daily quantity of Energy to be delivered to Buyer. Seller shall configure the ramp rate for the Project such that it will not generate energy at a rate that increases greater than ten (10) MW per minute; provided if any Energy in excess of the ramp rate limit can be utilized to charge the Energy Storage System, Buyer shall receive and purchase such Energy at the Solar Energy Output Payment Rate. For the avoidance of doubt, Buyer shall not be

obligated to maintain available capacity in the Energy Storage System to accept excess Energy that exceeds the ramp rate limit.

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

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

(D) If, at any time following submission of a good faith estimate as described in Sections 5.1(C) and 7.4(C), Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Forced Outages.

(A) Buyer and Seller shall promptly advise one another of events that may form the basis for a declaration of the existence or termination of Buyer Curtailment, Transmission Provider Curtailment, Reliability Curtailments, Seller Excused Hours or a Seller Forced Outage. Buyer or Seller (as appropriate) shall at the earliest practicable date provide the other Party notice (“**Outage Notice**”) of the declaration of the existence of a Buyer Curtailment, Transmission Provider Curtailment, Reliability Curtailment, Seller Excused Hours or a Seller Forced Outage not available to Buyer through the SCADA system. Seller shall provide such notice, if applicable, to Buyer’s System Control Center. An Outage Notice provided by either Party shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Metered Output, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Buyer or Seller (as appropriate) shall keep the other Party informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

(B) Within five (5) Business Days after the end of the Month, Seller shall prepare, maintain and deliver to Buyer a schedule that identifies all Scheduled Maintenance Outages, deratings and Seller Forced Outages that occurred during the Month. The data reported must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

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

ARTICLE 8 Payment Calculations

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

(A) Monthly Solar Energy Output Payment. Subject to the provisions of this PPA, Buyer shall accept and pay for Metered Output generated at the Project. Buyer shall pay Seller an amount equal to the product of (a) the aggregate amount of Metered Output (MWh) plus the Deemed Energy resulting from any Buyer Economic Curtailment multiplied by (b) the Solar Energy Output Payment Rate. Notwithstanding the foregoing, prior to declaring the Commercial Operation Date for the Project, Buyer shall not be obligated to compensate Seller for any Buyer Economic Curtailments unless and until more than twenty five percent (25%) of the Facility's capacity or potential output is curtailed by Buyer for those portions of the Project that achieve early Block Commercial Operation. As used herein, the "**Solar Energy Output Payment Rate**" is the rate of \$26.31 per MWh for the Solar Energy Output delivered for Buyer to the Point of Delivery from the Project. For the avoidance of doubt, the Solar Energy Output Payment Rate also compensates Seller for the associated Environmental Attributes, RECs and Ancillary Services, in any Monthly Billing Period. The Solar Energy Output Payment Rate includes all Taxes other than as provided in Section 9.7(A).

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

(C) In the event that Seller, an Affiliate of Seller or Tax Equity Investor actually receives, by means of lower tax rates, tax credits or otherwise, any Supplemental State Tax Incentives with respect to the Project, the actual monetary value of such Supplemental State Tax Incentives received by Seller or its Affiliates will be shared between the Parties; provided that any gross receipts abatement up to 50% in connection with the Project shall not be construed as a Supplemental State Tax Incentive. No later than thirty (30) Days after receipt or utilization of any such actual monetary value of Supplemental State Tax Incentives by Seller, an 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.

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

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

ARTICLE 9 Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

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

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

(C) On or before the fifteenth (15th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this PPA (in Dollars) payable to Seller for the preceding Month (and with respect to the first billing Month, any preceding Month including and following the Test Period). Each such invoice shall show information and calculations, in reasonable detail.

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

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

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

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

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

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

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

9.5 Disputed Items.

(A) Either Party (“**Disputing Party**”) may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall promptly (and no later than sixty (60)) Days after the delivery of the invoice or statement by the other Party, give written notice to 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 13.7. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

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

9.6 Statement Errors. In the event that either Party becomes aware of any error in any statement, including following an audit or review of records in accordance with Section 13.4, such Party shall, promptly 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 with interest at the Default Rate; provided no adjustment shall be made hereunder if an error is not addressed within three hundred and sixty-five (365) Days of such error.

9.7 Taxes.

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

(B) Other than as provided in Section 9.7(A), Seller shall be responsible and shall pay when due all income, gross receipts, compensating, use, valued added, excise, transfer, employment, ad valorem, personal or 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 Section 8 are inclusive of such Taxes discussed in this Section 9.7(B), allowances and credits 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 and does remit payment of such Taxes on behalf of the other Party, such Party for which Taxes were paid on its behalf shall promptly reimburse the other Party for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer

this PPA and implement the provisions in this PPA in a manner that will minimize Taxes due and payable by all Parties.

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

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

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

9.9 Netting.

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

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

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

ARTICLE 10 Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Shared Facilities Agreement and the Interconnection Agreement, the PPA, Applicable Law and other applicable requirements and standards. Seller will be solely responsible for, and the Solar Energy Output Payment Rate will not be adjusted to accommodate, increased costs or any failure to obtain any Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and

construction updates. During the construction phase of the Project, if Seller employs apprentices in accordance with the New Mexico Public Utility Act, Seller shall reasonably report on such employed apprentices to Buyer. Nothing in this PPA shall be construed as imposing additional requirements requiring Seller to employ such apprentices.

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15th of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include a schedule and list known or reasonably expected cost / or schedule risks. If Seller becomes aware of any critical milestone that will not be achieved by the required date, Seller must provide Buyer written notice and a recovery plan to minimize any delay in the construction schedule. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Subject to Section 10.3(A), Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer, except (i) as required by Prudent Utility Practices or Applicable Law; or (b) for modifications, alterations, expansions or other changes that would not be expected to materially alter the Guaranteed Solar Capacity, annual performance, or availability of the Project or to materially and adversely impact the capabilities of the Project.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date) a Project Manager who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer. Seller's Project Manager shall be deemed to have authority to act on behalf of Seller with respect to day-to-day operations matters with respect to the Project (provided such Project Manager shall not have any authority to execute or approve any amendment of this PPA), and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller.

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

10.2 Commissioning Tests. Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and of the proposed tests scheduled relating to the commissioning of the Project ("**Commissioning Tests**") as described in Exhibit F. Subject to Section 10.3, Representatives of Buyer shall have the right to be present at all such testing. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities and Seller's Shared Facilities, for the purposes set forth herein; provided that, in connection with any access to the Project pursuant to this Section 10.3 or as otherwise permitted in this PPA, Buyer shall (i) not unreasonably interfere with or disrupt the activities of Seller or other parties to the Shared Facilities Agreement, (ii) comply with all applicable safety and security standards and requirements of Seller, and (iii) indemnify the Seller, and its related persons specified in and pursuant to Section 20.1(B), for Losses (as defined in Section 20.1(A)) arising in connection with Buyer's or Buyer's representatives' or agents' exercise or use of the access rights granted hereunder. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with all of Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

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

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this PPA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this PPA, and (ii) comply with reasonable requirements of Buyer regarding day-to-day or hour-by-hour communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Solar Energy Output delivered by Seller will meet all requirements of the Transmission Provider and this PPA and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this PPA. Seller shall provide Buyer with all real time measurement parameters of the Project including individual inverter data available to Buyer via a PI historian interface.

Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers and all other industry standards. Seller shall have qualified independent, third party personnel test, calibrate and certify in writing the proper functioning of all protective equipment at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices.

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

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this PPA. At least sixty (60) days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, no later than September 1 of each Commercial Operation Year, Seller shall provide Buyer with a non-binding notice of the annual Scheduled

Maintenance Outages for the following Commercial Operation Year and a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's generation, including the duration of such event. Each annual Scheduled Maintenance Outage for the Commercial Operation Year will be subject to approval by Buyer. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule and Seller will use commercially reasonable efforts to make such modifications. Seller may not schedule any interruption or reduction to the Project's generation for any reason during daytime hours 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 and Seller shall use commercially reasonable efforts to accommodate such requests. Seller may not make any changes to any annual maintenance schedule without Buyer's prior written approval. Seller must give Buyer no less than ninety (90) Days' advance notice of any proposed change. Notwithstanding the foregoing, Seller may, in its sole discretion, perform scheduled maintenance on any components of the Project, so long as such maintenance is performed during nighttime hours. Any changes in the schedule by Seller shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change. Notwithstanding the foregoing, Seller may, in its reasonable discretion, shut down or interrupt the Project in order to perform emergency maintenance or address an Emergency Condition.

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

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

10.8 Performance Tests. "**Performance Tests**" means the Commissioning Performance Test, the Annual Performance Tests, and Buyer-Requested Performance Tests as described in this Section 10.8 and in Sections 10.9, and 10.10. Performance Tests shall be performed to verify compliance of the solar photovoltaic plant net AC capacity at the Point of Delivery with the Guaranteed Solar Capacity.

(A) Seller shall conduct a performance test prior to the Commercial Operation Date in accordance with applicable provisions of this Section 10.8 (the "**Commissioning Performance Test**").

(B) Seller shall conduct a performance test in accordance with this Section 10.8 in each Commercial Operation Year after the Commercial Operation Date (each, an "**Annual Performance Test**"). Each Annual Performance Test shall be performed no earlier than nine (9) months and no later than fifteen (15) months from the completion of the previous Annual

Performance Test or Commissioning Performance Test as mutually agreed by the Parties.

(C) Annual degradation rates included in Exhibit K will be used in the Annual Performance Test PVSYST Model for the purpose of Annual Performance Tests described in this Section 10.8. Annual degradation rates identified in Exhibit K shall be applied as incremental to the actual degradation experienced and measured through the prior Commercial Operation Year's Performance Test.

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

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

(2) The Performance Test period will include at least five (5) days of data and at least fifty (50) filtered data points.

(3) Model Rated Power and Test Rated Power shall account for losses to the Point of Delivery.

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

(5) “**Test Rated Power**” shall be the value produced by the regression of filtered site measured power and site measured weather data evaluated at the RC, adjusted by Seller for any unavailable equipment during the Performance Test.

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

(7) The Model Rated Power will be calculated using the Annual Performance Test PVSYST Model. Site measured POA irradiance will be used as the irradiance input to the Annual Performance Test PVSYST Model.

(8) The PVSYST model utilized by Seller to predict the annual generation forecasts included in Exhibit L will be used as the PVSYST model for initial comparison to the actual site performance during the Commissioning Performance Test. Such PVSYST model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer at least two (2) months prior to initiation of the Commissioning Performance Test. Should any modifications to this

PVSYST model be proposed by Seller after completion of the Commissioning Performance Test, Seller shall provide to Buyer the proposed modifications to the draft PVSYST model for review and approval. Any modifications to the PVSYST model mutually accepted by the Parties will be incorporated and the resulting modified PVSYST model together with a schedule of annual degradation will be the “**Annual Performance Test PVSYST Model**”.

(9) The Annual Performance Test PVSYST Model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer within one (1) month of the completion of the Commissioning Performance Test. The Annual Performance Test PVSYST Model will annually account for actual degradation through the prior Performance Test with incremental annual degradation added as previously agreed to by the Parties. This mutually accepted Annual Performance Test PVSYST Model will be utilized without modification, unless agreed to by both Parties, in all Annual Performance Tests and Buyer-Requested Performance Tests as well as determination of any Annual Performance Test Guarantee Damages as defined in Section 10.9.

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

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

(G) For all Performance Tests and re-tests, Seller shall provide a “**Performance Test Report**” that includes all performance data, model simulations, calculations, and test reports to the Buyer for analysis and review. Seller shall maintain records of performance testing for a minimum of five (5) years following the date the test was performed.

(H) Proposed terms associated with the guarantee, the required irradiance conditions, degradation allowances, modeling software inputs, and the methodology to be utilized for validation of the Guaranteed Solar Capacity shall be provided by the Seller and subject to mutual agreement of the Parties.

10.9 Annual Performance Test Guarantee Damages.

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

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

$$ES = E_n \times SF$$

$$SF = 1 - \frac{\frac{1}{2}(PTR_n + PTR_{n-1})}{APTGR}$$

Where,

ES = Energy Shortfall

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

SF = Shortfall Factor

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

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

APTGR = Annual Performance Test Guarantee Ratio

(C) Seller shall pay Annual Performance Test Guarantee Damages in accordance with this Section 10.9. Liquidated damages associated with failure to meet the Annual Performance Test Guarantee shall be paid in the amount equal to (x) the Solar Energy Output Payment Rate multiplied by (y) the Energy Shortfall as determined using the above calculation (the resulting amount is the “**Annual Performance Test Guarantee Damages**”), but in no event in excess of the Annual Solar Capacity Guarantee Damages Cap and the Aggregate Solar Capacity Guarantee Damages Cap.

(D) The following is an example (for illustrative purposes only) of the Energy Shortfall calculation: A Performance Test is conducted and results in an average Performance Test Ratio of 0.930 (the average of the Performance Test Ratios of the most recently completed Commercial Operation Year and the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year). The Solar Energy Output Payment Rate is \$26.31/MWh and the total annual Energy delivered by the Project in the most recently completed Commercial Operation Year is 130,000 MWh. Annual Performance Test Guarantee Damages shall be paid as a result of the Performance Test Ratio being less than the Annual Performance Test

Guarantee Ratio of 0.950. The amount of Annual Performance Test Guarantee Damages is calculated to be $[\$26.31/\text{MWh}] \times [130,000 \times (1 - 0.930 / 0.950)] = \$72,006.32$.

(E) The total Annual Performance Test Guarantee Damages payable by Seller for failure to meet the Annual Performance Test Guarantee in any Commercial Operation Year shall be capped annually at a value equivalent to Eleven Thousand Dollars (\$11,000) per MW of Guaranteed Solar Capacity (“**Annual Solar Capacity Guarantee Damages Cap**”). The total Annual Performance Test Guarantee Damages payable by Seller shall be capped in the aggregate at a value equal to Thirty-Three Thousand Dollars (\$33,000) per MW of Guaranteed Solar Capacity (“**Aggregate Annual Solar Capacity Guarantee Damages Cap**”) over the Term of the PPA.

(F) Notwithstanding anything to the contrary in this PPA, the Parties agree that Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for any failure of Seller to meet the Annual Performance Test Guarantee or the Annual Performance Test Guarantee Ratio (including in the event of any Buyer-Requested Performance Tests), shall be the payment of Annual Performance Test Guarantee Damages as and when required in this Section 10.9, up to the Annual Solar Capacity Guarantee Damages Cap and the Aggregate Annual Solar Capacity Guarantee Damages Cap. Any such failures shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default under this PPA.

10.10 Buyer-Requested Performance Tests. In the event of a material adverse change in expected Solar Energy Output based on monthly billing, Seller shall perform additional tests as requested by Buyer (“**Buyer-Requested Performance Tests**”), limited to the conditions described in this Section 10.10. Buyer-Requested Performance Tests will be conducted as described in Section 10.8, for Buyer-Requested Performance Tests performed within the second and subsequent Commercial Operation Years.

(A) If the results of a Buyer-Requested Performance Test fail to meet the Annual Performance Test Guarantee Ratio, Annual Performance Test Guarantee Damages would apply for the time period following the Buyer-Requested Performance Test until such time as a subsequent retest confirms that corrective actions have resolved deficiencies.

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

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

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

10.11 Weather Stations.

Seller shall, at Seller’s cost and no later than thirty (30) days prior to the estimated Commercial Operation Date, provide, install, own, operate and maintain a minimum of four (4) stand-alone meteorological stations (“**Weather Stations**”) at the Project Site to monitor and report weather

data. The Weather Stations shall be appropriately spaced on the Site as determined by the engineer in order to provide representative conditions for the Project and to provide real time information on changing weather conditions. The Weather Stations shall be of a grade equivalent to or better than those used in large-scale, utility solar facility installations and shall include the capability for measuring, indicating, and recording PV cell temperature, wind speed and direction (instantaneous and average), barometric pressure, solar radiation, rainfall (daily and monthly plus rate), temperature and humidity. The weather system control and monitoring panel shall include provisions for computation of wind chill, heat indices and dew point, and maintaining daily minimums and maximums. The system shall be interconnected with the SCADA system to provide indication of all measured parameters to Buyer. Seller shall submit to PNM for review and approval, such approval not to be unreasonably withheld, Seller's site plan showing the location of the station(s) (GPS coordinates), the location of all solar generating units, photovoltaic modules, current inverters, and other prominent features, as applicable. The system shall be interconnected via a web-based file transfer protocol, or other mutually agreed protocol, to provide indication of all measured parameters to PNM and the data shall be available to PNM via a PI historian interface. Seller shall provide to Buyer, and shall maintain during the Term, a data link or unrestricted real time access into the weather forecast modeling.

(A) No later than three (3) months prior to the estimated Commercial Operation Date, the Parties shall agree on the locations of the Weather Stations and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Stations.

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

ARTICLE 11 RECs and Environmental Attributes

11.1 Sale of RECs and Environmental Attributes.

(A) Other than as specified in Section 11.1(D) below, and considering the prior actions that must be completed as specified in Section 11.1(E) below, effective from the date on which the Project first delivers Energy for sale to Buyer at the Point of Delivery, Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description (other than those granted by or through Buyer), all right, title and interest in and to RECs and Environmental Attributes associated with the generation of Energy. Seller shall make the RECs available to Buyer promptly and no later than ten (10) Business Days after the RECs are created in WREGIS and available to the Parties. Seller shall be liable for Buyer's costs to replace the RECs if Seller fails to deliver RECs within ten (10) Days after written notice from Buyer of Seller's failure to comply with this Section 11.1(A). The RECs and Environmental Attributes transferred under this PPA shall be bundled with the associated Energy, and Buyer shall pay Seller for the bundled RECs and Environmental Attributes and Energy as set forth in this PPA.

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

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

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

(E) Seller shall, at its sole expense and before commencement of the Test Period, take all actions and execute all documents or instruments necessary to ensure that the Project is registered as a generating unit in WREGIS for the purpose of tracking all Renewable Energy Certificates corresponding to all Metered Output, and that all associated WREGIS Certificates are issued and tracked and transferred in a timely manner to Buyer. Seller shall comply with all Applicable Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller’s WREGIS account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller’s WREGIS account to Buyer’s WREGIS account.

(F) Seller shall register the Project, as necessary, so that the Project is compliant with reporting requirements related to RECs and Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law. Notwithstanding the foregoing, Seller shall not be required to expend in excess of Five Thousand Dollars (\$5,000) per calendar year or Twenty Thousand (\$20,000) in the aggregate to maintain compliance due to regulatory changes relating to RECs except to the extent such costs are necessary to maintain Seller’s registration with the existing program or to register the Project with any replacement program upon the cessation or other termination of the original program.

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

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

ARTICLE 12
Default and Remedies

12.1 Events of Default of Seller.

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

- (1) Seller's dissolution or liquidation;
- (2) Seller's assignment of this PPA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 or in any consent to collateral assignment with any Lender;
- (3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller voluntarily taking advantage of any such law by answer or other affirmative action;
- (4) The sale by Seller to a third party, or diversion by Seller for any use, of Energy, RECs or Ancillary Services committed to Buyer by Seller, except in compliance with Section 12.9;
- (5) [Reserved];
- (6) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer or the entity providing such Security;
- (7) The failure of any Guarantor delivering a Guaranty to secure Seller's obligations hereunder to (i) make, when due, any payment required under such Guaranty, or (ii) meet the criteria as set forth in the definition of Guarantor, in each case if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt of notice of such failure;
- (8) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date or other date mutually agreed to by the Parties;
- (9) Seller's assignment of this PPA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18, unless remedied within ten (10) Days of receipt of notice of such failure;
- (10) Seller's failure to make any payment due to Buyer under or in connection with this PPA (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of

offset that Seller may have pursuant to this PPA) shall constitute an Event of Default upon the failure of Seller to cure within twenty (20) Days of written notice from Buyer to Seller; or

(11) Seller's failure to deliver RECs in accordance with the terms of this PPA and Seller's failure to pay damages for RECs deliverable to Buyer as required by Section 11.1(A), unless remedied within fifteen (15) Business Days of receipt of notice of such failure.

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

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

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

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

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

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

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

(7) The Project fails, after the Commercial Operation Date, to obtain an Actual Solar Availability Percentage of at least eighty percent (80%) over any two (2) consecutive Commercial Operation Years during the Term.

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

(1) Any representation or warranty made by Seller in this PPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such breach or 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 other than as set forth below:

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

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

(3) Buyer's assignment of this PPA, except as permitted in accordance with Article 18, unless Buyer remedies such Event of Default within ten (10) Days of receipt notice thereof;

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

(5) The failure of any Guarantor delivering a Guaranty to secure Buyer's obligations hereunder to (i) make, when due, any payment required under such Guaranty, or (ii) meet the criteria as set forth in the definition of Guarantor, in each case if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt of notice of such failure; or

(6) 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 other affirmative action.

(B) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this PPA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer.

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

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

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

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

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

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

12.3 Damages Prior to Termination.

(A) Upon and following the occurrence of an Event of Default that has not been subsequently cured by the defaulting Party under this PPA, and subject in each case to the limitation on damages set forth in Section 12.7, and the duty to mitigate damages set forth in Section 12.9, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this PPA from the Defaulting Party as set forth in Section 12.3(B), (ii) exercise its rights pursuant to Section 12.5, (iii) suspend performance, (iv) with respect to an Event of Default of Seller, exercise its rights pursuant to Section 12.10 with respect to any Security, and (v) exercise its rights to terminate this PPA pursuant to Section 12.4.

(B) For all Events of Default, subject to Section 12.9, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, that if an Event of Default has occurred and has continued uncured for a period of one hundred eighty (180) Days, the Non-Defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this PPA as provided for in Section 12.4. If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include an amount of cover damages equal to Replacement Energy Costs minus the product of (x) the quantity of Solar Energy Output so replaced and (y) the Solar Energy Output Payment Rate. Further, Seller acknowledges and agrees that in addition to the foregoing, Seller shall be obligated to pay Buyer

any such damages associated with replacement of Solar Energy Output notwithstanding the availability or prices of electric energy from other fuel sources, such as natural gas. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any RECs and any Environmental Attributes pursuant to this PPA, provided that Buyer has used commercially reasonable efforts to avoid, minimize or mitigate the same. Seller acknowledges that Buyer entered into this PPA for the procurement of Solar Energy Output, which includes RECs and Environmental Attributes. If Buyer is the Defaulting Party, the Parties agree that damages recoverable by Seller hereunder on account of an Event of Default of Buyer shall include costs and losses incurred by Seller due to such Event of Default, including, to the extent applicable, an amount of cover damages equal to the quantity of Solar Energy Output produced by Seller following such Event of Default, plus, to the extent that Seller is unable to produce Solar Energy Output due to the Event of Default of Buyer or in Seller's compliance with Section 12.9, an additional quantity equal to the amount of Solar Energy Output that would have been produced by Seller absent such Event of Default of Buyer, each multiplied by the Solar Energy Output Payment Rate; provided that the foregoing amount shall be reduced by an amount equal to (A) the amount of any revenues that Seller, using commercially reasonable efforts, is able to obtain by selling Solar Energy Output to a third party or into the market, less (B) Seller's costs and expenses incurred to effectuate any such sales.

12.4 Termination. Upon and following the occurrence of an Event of Default that has not been subsequently cured by the defaulting Party under this PPA, the Non-Defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and sixty (60) Days after the notice thereof, upon which this PPA shall terminate (“**Early Termination Date**”). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this PPA, except that Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this PPA. Upon the termination of this PPA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment, and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller). If Buyer elects to terminate this PPA for an Event of Default under Section 12.1(A)(8), the Buyer Termination Payment shall be capped at an amount equal to the amount of Development Security required to be posted by Seller under this PPA as of the termination date, less any Delay Damages already paid to Buyer by Seller, which amount, in addition to Buyer’s right to terminate this PPA, shall be Buyer’s sole and exclusive remedy, and Seller’s sole liability, for Seller’s failure to achieve Commercial Operation. Notwithstanding the foregoing, if an Event of Default of Seller occurs under Section 12.1(A)(8) Buyer’s right to terminate this PPA for failure to achieve Commercial Operation shall expire and terminate upon achieving Commercial Operation.

(A) In the event that Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A) and deliver written notice to Seller of such calculated amount. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) In the event that Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall calculate the Seller Termination Payment in a commercially reasonable manner as of the Early Termination Date and deliver written notice to Buyer of such calculated amount. The notice shall include a written statement explaining in

reasonable detail the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

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

12.6 Remedies Cumulative. Subject to Section 12.4 and Section 12.7 each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

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

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

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

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

12.11 No Duplication of Recovery. The Parties agree and acknowledge that this PPA and the Energy Storage Agreement are separate agreements and that an Event of Default under one agreement shall not by itself be interpreted as an Event of Default under the other agreement. The Parties further agree and acknowledge that the rights, obligations and remedies of the Parties under this PPA and the Energy Storage Agreement for a default or an Event of Default are separate and independently enforceable. However, to the extent that a common set of facts, conditions or events constitute a simultaneous default or Event of Default under this PPA and the Energy Storage Agreement, the Non-Defaulting Party shall be entitled to all available remedies under each agreement except that there shall be no double-recovery under each of this PPA and the Energy Storage Agreement by the Non-Defaulting Party for any monetary damages incurred by the Non-Defaulting Party.

ARTICLE 13
Contract Administration and Notices

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

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

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

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this PPA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this PPA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh generated, Seller's operating procedures, the Project equipment manuals and Operating Records) to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this PPA or to confirm compliance hereunder or directly in connection with the performance by such Party of its obligations hereunder; provided if any such examination reveals any inaccuracy in any invoice, the necessary adjustments shall be made in accordance with Section 9.6. All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this PPA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

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

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

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

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

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

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

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

(5) The receipt of the above schedules, data, certificates and reports by Buyer shall not be construed as an endorsement by Buyer of the design of the Project, does not constitute a warranty by Buyer as to the safety, durability

or reliability of the Project, otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts or, except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real time (or near real-time if real-time access is unavailable) to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 (Reserved)

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

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

ARTICLE 14 Force Majeure

14.1 Definition.

(A) Neither Party will be considered to be in default in respect to any obligation

hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A “**Force Majeure Event**” shall mean an event or circumstance that arises, after the, Execution Date, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this PPA. Such events or circumstances may include, but are not limited to: actions or inactions of civil, tribal, or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics or pandemics, explosions, serial product defects not generally known in the solar generation industry, and fires not caused by a failure to operate the Project in accordance with Prudent Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement).

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

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment from a supplier or vendor unless such inability itself is excused by reason of a Force Majeure Event, as the definition is applied to the supplier or vendor and such event constitutes a Force Majeure Event, as the definition is applied to Seller, for the Project or any component parts therefor; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Solar Energy Output of the Project caused by or arising from the acts or omissions of such third parties, unless such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay in the Interconnection Date not caused by Seller; (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 (other than serial product defects not generally known in the solar generation industry), or other mishaps, events or conditions, in each case attributable to normal wear and tear; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions, actions of Governmental Authorities or other events or circumstances that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller’s or Buyer’s products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against Seller or Seller’s contractors or subcontractors; (viii) any full or partial curtailment in the ability to deliver Product from the Project that is caused by Seller’s Shared Facilities or the terms of the Shared Facilities Agreement, or performance thereunder, unless such failures are themselves excused by reason of a Force Majeure Event, as the definition is applied to Seller; or (ix) 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 intense lightning strikes exceeding the design capabilities of the installed lightning protection system (such system designed in accordance with NFPA 780 and UL 96 and being UL Master Label certified),

tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this PPA beyond its stated Term. Notwithstanding any other provision in this PPA to the contrary, in the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller continues for an uninterrupted period of three hundred sixty-five (365) Days from its inception, either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this PPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. However, the Parties may agree to defer termination due to a Force Majeure Event upon mutually agreeable terms in writing.

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

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

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

14.4 Delay Caused by Force Majeure Event. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of either Buyer or the Transmission Provider to accept Solar Energy Output from the Project or to deliver Solar Energy Output from the Project, such amount of Solar Energy Output not accepted due to the Force Majeure Event shall be excluded from the calculation of the Monthly Solar Output Payment as set forth in Section 8.1.

ARTICLE 15

Representations, Warranties and Covenants

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

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

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

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

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

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

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

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

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

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

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

(G) Seller shall disclose to Buyer the extent of, and within five (5) Days after it is known to Seller, any violation of any Applicable Laws arising out of the construction of the Project, Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

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

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

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

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

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

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

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

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

(P) Seller is in compliance with Presidential Executive Order 13920, "Securing the United States Bulk-Power System" issued on May 1, 2020.

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

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

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

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

(2) violate any Applicable Law, or violate any provision in any

corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this PPA;

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

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

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

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

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

ARTICLE 16 Insurance

16.1 Evidence of Insurance. Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on or before June 1 of each Commercial Operation Year, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G and this Article 16 along with endorsements required below in Section 16.3. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this PPA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this PPA shall cover occurrences during the Term of this PPA. In the event that any insurance as required herein is commercially

available only on a “claims-made” basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, 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 the self-insured program’s net worth or means that renders the program insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this PPA, to request Seller to modify or replenish 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. Seller shall provide endorsements evidencing the following required insurance provisions:

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

(B) The insurance required under this PPA is primary and non-contributory with respect to other insurance carried by Buyer.

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

ARTICLE 17

Legal and Regulatory Compliance and Governmental Approval

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

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

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Solar Energy Output at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law in connection with the execution and performance of this PPA and a final order or other regulatory determination from the NMPRC that Buyer may procure renewable energy and associated RECs pursuant to this PPA and may recover the cost of such procurement (collectively, "**Requested Actions**"). In particular, but without limitation:

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

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is not contested or is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then this PPA shall automatically terminate ten (10) Days after the date of such action by the NMPRC and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person. For clarity, Buyer has no obligation to seek an appeal to the NMPRC decision.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer or Seller will elect to amend this PPA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this PPA, including a potential extension to the Expected Commercial Operation Date. If the Parties are unable to mutually agree on any amendments to this PPA to address such NMPRC Approval order, then this PPA shall automatically terminate twenty-five (25) Days after the date of the NMPRC Approval order and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval of all Requested Actions by January 5, 2021 (“**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, or a potential extension to the Expected Commercial Operation Date, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

(4) Upon any termination of this PPA pursuant to this Section 17.3, Buyer shall promptly and no later than fifteen (15) Business Days following the date of such termination notice return the Development Security held by Buyer to Seller, if any.

17.4 Compliance with Reliability Standards. To the extent that new standards applicable to the Seller as a Generator Operator, as defined by NERC, or other reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, NMPRC, Transmission Provider via the Interconnection Agreement, or any successor agencies the Seller shall comply with such standards and any and all costs incurred as a result of actions required for compliance with such new reliability standards shall be borne by Seller. To the extent that a violation of such reliability standard results in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, Seller shall reimburse Buyer for its share of such 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 (excluding between Seller and Buyer) 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 or Section 22.16, neither Party shall sell, transfer, or assign this PPA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18 or Section 22.16.

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

(B) Seller's consent shall not be required for any assignment of this PPA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, *provided* that such assignee is a load serving entity and such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this PPA as and if required by NMPRC regulations.

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

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

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

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

18.6 Assignment to Lenders.

(A) Cooperation. In connection with any assignment of this PPA by Seller to its Lenders, as soon as reasonably practicable after reasonable request from Seller or any Lender, Buyer will cooperate reasonably with Seller and Lender to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, provisions containing at least the following: (i) an option, but not an obligation, for the Lenders to cure any monetary Event of Default of Seller within thirty (30) Days of the expiration of the cure period provided therefor in Section 12.1, and cure any non-monetary Event of Default of Seller within sixty (60) Days of the expiration of the cure period provided therefor in Section 12.1, prior to Buyer terminating this PPA; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this PPA if Lenders need to foreclose on the Project prior to curing any Event of Default of Seller giving rise to such termination, but only to the extent that the period required for such foreclosure and cure does not exceed one hundred eighty (180) Days from receipt by Lenders of written notice of such Event of Default of Seller; provided that, in all cases, (a) Buyer will have no obligation to alter or modify

the terms of this PPA or provide any consent or enter into any agreement that has a material adverse effect on Buyer, and (b) Seller will be responsible for Buyer's reasonable out-of-pocket costs (including, but not limited to, attorneys' fees) associated with Buyer's review, negotiation, execution and delivery of any documents in connection with such assignment. Nothing in this Section 18.6 shall impair Buyer's right to receive all of the damages arising out of or relating to Seller's default, including damages accruing prior to termination as set forth in Section 12.3 of this PPA.

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber, convey in trust or assign this PPA or the revenues or proceeds therefrom as collateral security in connection with any financing, including under deeds of trust, mortgages, indentures or security agreements, provided that such a collateral assignment or conveyance by a Party does not place any limitation on the other Party's rights or expand the other Party's liability, risks or obligations under this PPA; and further provided that such Party shall not be relieved of any of its obligations or liability under this PPA and that the Lender, if the assigning Party is Seller, 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, such Party shall notify the other Party in writing of the name, address, and telephone and facsimile numbers of each Lender, collateral agent or trustee, as applicable, to which such Party's interest under this PPA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial notice, such Party shall promptly give the other Party 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.

(A) Seller shall post and maintain, at its sole cost and expense, Security equal to Sixty Thousand Dollars (\$60,000) per MW multiplied by the Guaranteed Solar Capacity ("**Development Security**") within the earlier of (i) thirty (30) Days after the final non-appealable NMPRC Approval has been obtained and (ii) the commencement of construction of the Project. Not later than the Commercial Operation Date, Seller shall post and maintain, at its sole cost and expense, security equal to Seventy-Five Thousand Dollars (\$75,000) per MW multiplied by the Guaranteed Solar Capacity ("**Delivery Term Security**"). Seller shall replenish Delivery Term Security, as applicable, to such required amount within fifteen (15) Days after any draw by Buyer. Seller shall have no obligation to replenish the Development Security. Buyer will return the Development Security to Seller in full if Commercial Operation occurs on or before the Guaranteed Start Date, provided Seller has paid in full any Delay Damages or Capacity Shortfall Damages. In the event that no amounts are due and owing by Seller to Buyer under this PPA and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the earlier of (i) termination of this PPA in accordance with its terms; and (ii) on the fifteenth (15th) Business Day after the expiration of the Term.

(B) If Buyer is not a Creditworthy Entity or otherwise suffers a Downgrade

Event, Buyer shall within ten (10) Business Days of such occurrence or event, post Security in an amount equal to six (6) months of projected revenues of Seller under this PPA. However, in no event shall Buyer be required to post or maintain Security if it is or becomes a Creditworthy Entity. To the extent that any Buyer Security is held by Seller, Seller shall promptly and in no event later than fifteen (15) Business Days, return the Security to Buyer following Buyer becoming a Creditworthy Entity.

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 the Posting Party : (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Beneficiary Party 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 Guaranty from a Guarantor, or (d) other security as may be reasonably acceptable to the Beneficiary Party. If at any time there shall be a Downgrade Event with respect to a Party's Guarantor, then the Beneficiary Party may require the Posting Party to post a Letter of Credit in an amount equal to the then-applicable amount of any outstanding Guaranty comprising the Security. Upon receipt of the Letter of Credit, the Guaranty shall be returned promptly to the Posting Party. Notwithstanding the foregoing, the Posting Party's obligation to provide a Letter of Credit in lieu of a Guaranty under this Section 19.2 shall be suspended during any period that (x) such Party's Guarantor is a Creditworthy Entity or such Party provides a replacement Guaranty from a Creditworthy Entity, and (y) such Guaranty is reinstated by such 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 the Beneficiary Party receives written notice from the issuing bank at least thirty (30) 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 the Beneficiary Party receives notice from the issuing bank that the Letter of Credit will not be extended, the Posting Party 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 Beneficiary Party at least thirty (30) Days before the expiration date of the original Letter of Credit. If the Posting Party fails to supply a substitute Letter of Credit or other acceptable Security as required, then the Beneficiary Party will have the right to draw on the total amount of the expiring Letter of Credit and such amount shall be held as cash Security hereunder. 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 bank of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit, then the Posting Party shall have fifteen (15) Days (or such longer period as Beneficiary Party in its sole discretion may permit in writing) following written notice from Beneficiary Party to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. A Posting Party may replace any Security provided hereunder with an alternative form of Security that complies with the requirements of this Section 19.2 provided there is no lapse in the Posting Party's provision of the required Security. The Beneficiary Party shall return to the Posting Party any existing Security posted by the Posting Party within ten (10) Business Days of any replacement thereof.

19.3 Grant of Security Interest. To the extent that a Posting Party posts cash to secure its obligations under this PPA, such Posting Party hereby grants to the Beneficiary Party a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by the Posting Party to the Beneficiary Party 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 the Beneficiary Party. The Posting Party agrees to take such action as reasonably required to perfect in favor of the Beneficiary Party 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, a Beneficiary Party in its sole discretion may draw from, offset against or make demand under such Security to recover any amounts owing to it arising out of this PPA, including any damages due to such Beneficiary Party and any amount for which such Beneficiary Party is entitled to indemnification under this PPA. A Beneficiary Party 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 such Beneficiary Party and from all such forms, in any sequence and at any time before or after termination of this PPA, as such Beneficiary Party may select until such time as the Security is exhausted.

ARTICLE 20

Indemnity; Insurance Proceeds

20.1 Indemnification.

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

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable from and against all Losses (as defined in Section 20.1(A)) to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of

them or anyone for whose acts any one of them may be liable, except to the extent that such Losses are caused by the gross negligence or willful misconduct of 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; *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 such settlement does not impact or contains a full release of and places no liability on the indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

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

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

ARTICLE 21 Governmental Charges

21.1 Allocation of Governmental Charges. Other than as provided in Section 9.7(A), Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer of Solar Energy Output that are imposed on the making available of Solar Energy Output arising prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of Solar Energy Output that are imposed at and from the taking of Solar Energy Output by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this PPA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Solar Energy Output hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

ARTICLE 22 Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.7, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect. Any waiver of the terms herein must be in writing to be enforceable.

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

22.3 Standard of Review. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the “public interest” standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

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

22.5 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Other than as provided in Section 9.7(A), Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons to perform services in connection with the Project, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers’ compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee.

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

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

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

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

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

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

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

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

22.14 Confidentiality.

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

(B) Other than in connection with this PPA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, potential lenders or investors, legal counsel and accountants (collectively, “**Receiving Party’s Representatives**”), but only if such Receiving Party’s Representatives need to know the Confidential Information in connection with this PPA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Subject to Section 22.14(E), to the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority, or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts means to ensure that such Confidential Information is not made public.

(C) As used in this Section 22.14, “**Confidential Information**” means all information that is furnished in connection with this PPA to the Receiving Party or its Receiving Party’s Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party’s Representatives have access by virtue of this PPA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by PNM or on PNM’s behalf)), or which concerns this PPA, the Disclosing Party or the Disclosing Party’s stockholders, members, affiliates or subsidiaries, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party’s Representatives by a director, officer, employee, Affiliate, stockholder, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this PPA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this PPA:

- (1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Receiving Party’s Representatives;
- (2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before

being furnished to the Receiving Party by the Disclosing Party; and

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

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

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

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

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

sufficient advance written notice, Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials. Notwithstanding the foregoing, either Party shall be permitted to disclose the following terms with respect to this PPA:

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

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

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this PPA, under deeds of trust, mortgages, indentures or security agreements, as collateral security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this PPA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions. Promptly after making any such encumbrance or collateral assignment, Buyer shall notify Seller in writing of the name, address, and telephone and facsimile numbers of each secured party, collateral agent or trustee, as applicable, to which Buyer's interest under this PPA has been encumbered. Such notice shall include the names of the account managers or other representatives of the secured party, collateral agent or trustee to whom all written and telephonic communications may be addressed. After giving the Seller such initial notice, Buyer shall promptly give Seller notice of any change in the information provided in the initial notice or any revised notice.

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

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

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller Guarantor, or if Seller has not provided a Guaranty to

satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer's external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within forty-five (45) Days of each calendar year end thereafter. If required, Seller's audited financial statement shall be prepared in accordance with GAAP, and any audits shall be conducted in accordance with Generally Accepted Auditing Standards (GAAS).

(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 a 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 a Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

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

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

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section in confidence in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the

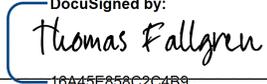
Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information, based on the advice of its counsel that it is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section; provided Buyer shall first provide notice to Seller of such anticipated disclosure, if practicable, to permit Seller to seek protection of any proprietary or confidential information.

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

[Signature page(s) follow]

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

PUBLIC SERVICE COMPANY OF NEW MEXICO

By 
16A45E858C2C4B9...

Name Thomas Fallgren

Title Vice President, PNM Generation

SAN JUAN SOLAR 1, LLC

By 
117773C6AAC642C...

Name: Josh Case

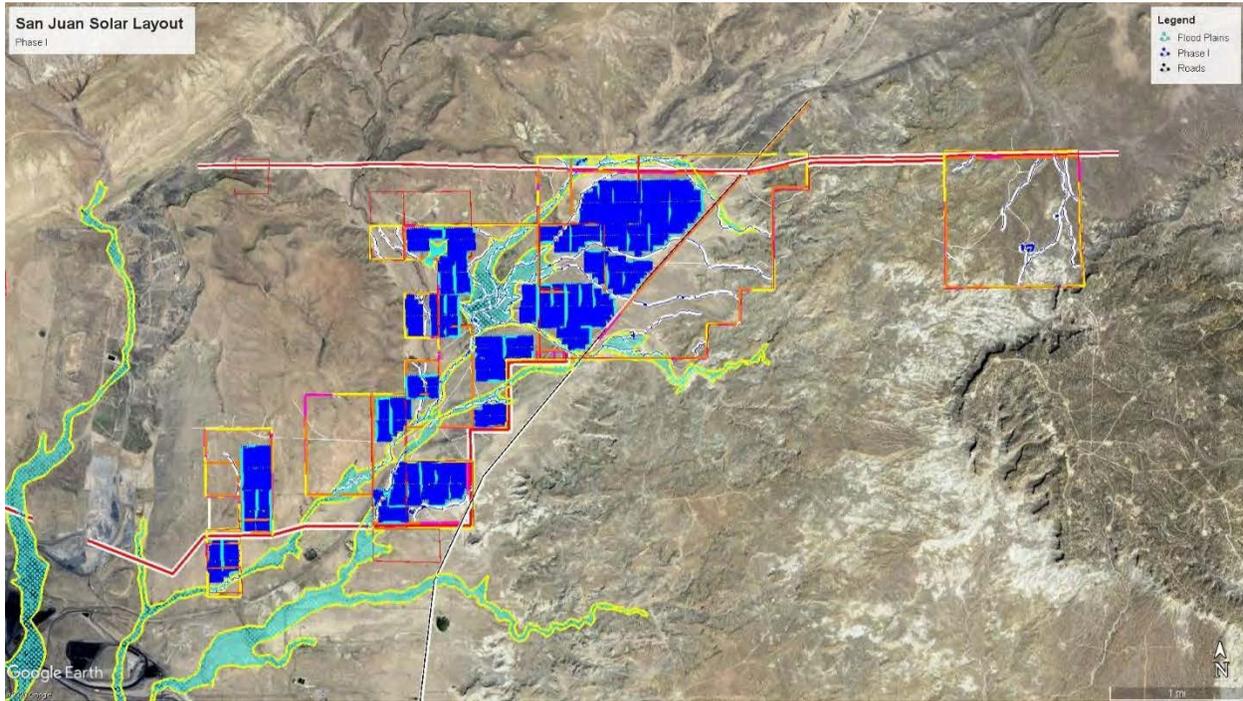
Title: Authorized Person

EXHIBIT A
(to Power Purchase Agreement)

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

1. Name of Seller's Project: San Juan Solar 1
2. Location: 36°49'48.73"N,108°21'7.27"W
3. Owner (if different from Seller): N/A
4. Operator: Seller or Affiliate thereof
5. Equipment/Fuel:
 - a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): Solar PV
 - b. Total number of units at the Project: 62
 - c. Total nameplate capacity (MWp): 240 MWdc
 - d. Total capacity at point of delivery: 200 MWac
 - e. Additional technology-specific information: Bifacial Panels on Single Axis Trackers

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



- Project Schedule:

Milestone Items	Dates
LGIA Executed	October 2020
Start of Construction/EPC Notice to Proceed	March 2021
Permitting Complete	July 2021
Major Equipment Supply Agreements Executed	September 2021
Start of Major Equipment Deliveries	September 2021
Start of Equipment Commissioning	September 2021
Interconnection In-Service Date (ISD)	Feb 2022
Financing Closed	February 2022
Interconnection - Sync Date	March 2022
	March 2022
Expected COD	June 10, 2022
Guaranteed COD	Expected COD + 180 Days

EXHIBIT B
(to Power Purchase Agreement)

ONE-LINE DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES

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

EXHIBIT C
(to Power Purchase Agreement)

DESCRIPTION OF SITE

SURVEYOR'S DESCRIPTION of: SAN JUAN SOLAR 1 PROJECT, State of New Mexico, and being more particularly described as follows:

All or a portion of the following San Juan County Tax Assessor's tax parcels numbers. The Project Site is located on approximately +/- 3933 acres of land commonly described as San Juan County Tax Assessor's tax parcel numbers 2087176198462, 2087177198005, 2087177066033, 2087177066132, 2087177066212, 2084179396132, 2087177066363, 2087177198330, 2086178264066, 2085179396198, 2085177396264, 2085178462066, 2085178462462, 2084179462396, 2084179198396, 2086179066198, 2085179132132, , and 2081179264264 are described as follows:

APN: 2087176198462

County: San Juan County, New Mexico

Legal: NW/NE Less the North 8 Acres in Sec. 22 T30N R15W NMPM

APN: 2087177198005

County: San Juan County, New Mexico

Legal: South 24 Acres SW/SE Sec 15, T30N R15W NMPM

North 8 Acres NW/NE Sec 22, T30N R15W NMPM

APN: 2087177066033

County: San Juan County, New Mexico

Legal: South 32 AC OF SE/SE OF SEC 15, T30N R15W NMPM

APN: 2087177066132

County: San Juan County, New Mexico

Legal: South 8 ACRES OF NE/SE OF SEC 15, T30N R15W NMPM

North 8 ACRES OF SE/SE OF SEC 15, T30N R15W NMPM

North 16 ACRES OF SW/SE OF SEC 15, T30N R15W NMPM

APN: 2087177066212

County: San Juan County, New Mexico

Legal: North 32 Acres NE/SE Sec. 15, T30N R15W NMPM

APN: 2084179396132

County: San Juan County, New Mexico

Legal: SW/4 Sec. 6, T30N R15W NMPM
N2/NE, S/2 SE/NE Sec. 15, T30N R15W NMPM

APN: 2087177066363
County: San Juan County, New Mexico
Legal: N2 SE/NE Sec. 15, T30N R15W NMPM

APN: 2087177198330
County: San Juan County, New Mexico
Legal: SW/NE Sec. 15, T30N R15W NMPM

APN: 2086178264066
County: San Juan County, New Mexico
Legal: SE/SW & SW/SE OF Sec. 11, T30N R15W NMPM
E/2 NW & W/2 NE OF Sec. 14, T30N R15W NMPM

APN: 2085179396198
County: San Juan County, New Mexico
Legal: N/2 SW, SE/4, SESW Sec. 1, T30N R15W NMPM
SE/SE Sec 11, T30N R15W NMPM
E2/NE/4, NE/SE Sec 14, T30N R15W NMPM
NW/SW, E/2SE, NE Sec. 12, T30N R15W NMPM

APN: 2085177396264
County: San Juan County, New Mexico
Legal: S2/NW, N2/SW Sec. 13, T30N R15W NMPM

APN: 2085178462066
County: San Juan County, New Mexico
Legal: SW/SW, SE/NW, E/2SW Sec. 12, T30N R15W NMPM

APN: 2085178462462
County: San Juan County, New Mexico
Legal: NW/NW & North 440 FT OF SW/NW Sec. 12, T30N R15W NMPM

APN: 2084179462396
County: San Juan County, New Mexico
Legal: W/2NW Sec. 6, T30N R15W NMPM

APN: 2084179198396
County: San Juan County, New Mexico
Legal: E2/NW, W/2NE Sec. 6, T30N R15W NMPM

APN: 2086179066198
County: San Juan County, New Mexico
Legal: NE/SE Sec. 2, T30N R15W NMPM

APN: 2085179132132

County: San Juan County, New Mexico

*Legal: SE/4, SE/SW Sec. 1 T30N R15W NMPM
NE/NW, W2/SE, NE/4 Sec. 12, T30N R15W NMPM*

APN: 2081179264264

County: San Juan County, New Mexico

*Legal: ALL Sec. 3, T30N R14W NMPM
W/2, W/2E/2, NE/NE Sec. 5, T30N R14W NMPM
E/2NE, SE/4 Sec. 6, T30N R14W NMPM
N1/2 Sec. 7, T30N R14W NMPM
W1/2NW, NE/NW Sec. 8, T30N R14W NMPM*

The fenced area of the above described Tract of Land contains approximately 1500 acres more or less in area.

EXHIBIT D
(to Power Purchase Agreement)
NOTICE ADDRESSES

**PUBLIC SERVICE COMPANY OF
NEW MEXICO**

SAN JUAN SOLAR 1, LLC

Notices:

All Notices/Invoices:

Delivery Address:

Delivery Address:

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

San Juan Solar 1, LLC
2279 N University Pkwy #4881
Provo, Ut 84604
Attn: Josh Case
Phone: 801.318.0510
josh.case@photosol-us.com

Invoices:

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

With copy to:
Holland & Hart
555 17th St #3200
Denver, Co 80202
Attn: Rochelle Rabeler
Phone: 303.295.8355
RNRabeler@hollandhart.com

Scheduling:

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

Mailing Address (if different from above):
N/A

Wire Transfer: As specified on invoices

Payments:

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

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

San Juan Solar 1, LLC
2279 N University Pkwy #4881
Provo, Ut 84604
Attn: Josh Case
Phone: 801.318.0510
josh.case@photosol-us.com

Wire Transfer:

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

With copy to:
Holland & Hart
555 17th St #3200
Denver, Co 80202
Attn: Rochelle Rabeler

Project Manager:

Public Service Company of New Mexico
Attention: Casey Kalberg
P.O. Box 227
Waterflow, NM 87421
Telephone: (505) 598-7613

Phone: 303.295.8355
RNRabeler@hollandhart.com

Project Manager:

SAN JUAN SOLAR 1
Attn: Josh Case
2279 N University Pkwy #4881
Provo, Ut 84604
Phone: 801.318.0510
josh.case@photosol-us.com

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

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

With a copy to:

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

EXHIBIT E
(to Power Purchase Agreement)

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

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
<i>Clean Water Act (CWA) Section 402, National Pollution Discharge Elimination System (NPDES). Construction Stormwater General Permit NMR1000000</i>	<i>U.S. Environmental Protection Agency (EPA)</i>
<i>CWA Sec 401 Water Quality Certification</i>	<i>New Mexico Environment Department (NMED) Surface Water Quality Bureau</i>
<i>CWA Sec 404, Nationwide Permit (NWP) #12 (utility lines;), NWP #14 (access roads), NWP #51 (renewal energy facilities) (if required)</i>	<i>U.S. Army Corps of Engineers</i>
<i>National Environmental Policy Act, Finding of No Significant Impact for an Environmental Assessment</i>	<i>U.S. Bureau of Land Management, Farmington Field Office</i>
<i>State of New Mexico Business Site Lease (ROW Grant)**</i>	<i>State of New Mexico – State Lands Office</i>
<i>San Juan County New Commercial/Addition Structures Permit</i>	<i>San Juan County, Building Division</i>
<i>Right of Way Grant and Notice to Proceed</i>	<i>U.S. Bureau of Land Management, Farmington Field Office</i>
<i>National Historic Preservation Act Section 106 Finding of Eligibility, Consultation, and Approval</i>	<i>New Mexico State Historic Preservation Office</i>
<i>Ground Disturbance Permit</i>	<i>New Mexico State Lands Office – Commercial Resources Division</i>
<i>San Juan County Floodplain Permit (if required)</i>	<i>San Juan County</i>

*Note – All project area washes are ephemeral and no longer considered jurisdictional by the US Army Corps of Engineers (refer to the recently enacted Navigable Waters Rule). Should the Navigable Waters Rule be reversed, or a stay issued from legal challenge, potential impacts to project area ephemeral washes would be authorized under the NWPs listed above.

**Note – All required biological and cultural resource surveys and reporting have been completed in accordance with NM SLO requirements.

EXHIBIT F
(to Power Purchase Agreement)

COMMISSIONING TESTS

- String Insulation Resistance and Continuity Tests
- String V_{oc} measurements
- String Current Checks
- DC Feeder Insulation Resistance and Continuity Tests
- Inverter OEM Commissioning Procedures
- MW Control Tuning/Testing
- V/MVAR/pf Control Tuning/Testing
- Automatic Generation Control (AGC) Functionality Test
- Pi Historian Data Feed Functionality Test
- Weather Station Data Feed Functionality Test
- Owner Control and Data Link Functionality Tests
- Curtailment Control (If applicable)
- Commissioning Performance Test (See Section 10.8)

EXHIBIT G
(to Power Purchase Agreement)

INSURANCE COVERAGES

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

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

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

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

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

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

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

EXHIBIT H
(to Power Purchase Agreement)

AVAILABILITY GUARANTEE

Section 1. Definitions.

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

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

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

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

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

“**Annual Report**” has the meaning set forth in Section 2(5) of this Exhibit.

“**Daylight Interval**” means each hour where plane of array irradiance conditions are 50 W/m² or greater. Data will be collected as hourly averages for all installed plane of array sensors at the Site.

“**Guaranteed Solar Availability Percentage**” has the meaning set forth in Section 2(1) of this Exhibit.

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

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

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

Commercial Operation Year.

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

“**Solar Unavailable Hours**” means those hours an inverter incorporated into a Solar Unit is not available during Daylight Intervals to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition, in which case the hours when an Emergency Condition occurs shall be deemed a Transmission Provider Curtailment and included in Seller Excused Hours); (b) in “run” status and faulted; (c) included in Scheduled Maintenance Outages in excess of fifty (50) hours in aggregate for the Project in any Commercial Operation Year; (d) incapable of being remotely controlled via its AGC system; or (e) otherwise not operational or capable of delivering Energy to the Point of Delivery.

Section 2. Solar Availability Guarantee.

1. Solar Availability Guarantee. Seller guarantees that the Project shall achieve an Actual Availability Percentage equal to or greater than ninety percent (90%) in each Commercial Operation Year after the Commercial Operation Date (“**Guaranteed Availability Percentage**”).

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

3. Damages Cap, Termination and Cure Rights. The total Solar Availability Damages payable by Seller for failure to meet the Guaranteed Solar Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to Twenty-Six Thousand Dollars (\$26,000) per MW of Guaranteed Solar Capacity (“**Period Availability Damages Cap**”) and in the aggregate at a value equivalent to Seventy-Eight Thousand Dollars (\$78,000) per MW of Guaranteed Solar Capacity (“**Aggregate Solar Availability Damages Cap**”) over the Term of the PPA.

4. Sole Remedy. The Parties agree that Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for any deficiency in the performance of the Project (including any failure to meet the Guaranteed Solar Availability Percentage) shall be the payment of damages up to the Annual Solar Availability Damages Cap and Aggregate Solar Availability Damages Cap, and the right to declare an Event of Default pursuant to Section 12.1(B)(7) of the PPA, if and to the extent applicable, and shall not be subject to the collection of any other

damages or any other remedies, including specific performance, and shall not be an Event of Default giving rise to a termination payment obligation except pursuant to Section 12.1(B)(7) of the PPA, as and to the extent applicable. Notwithstanding the foregoing, the limitations set forth herein shall not (i) be applicable to any indemnification claims pursuant to Article 20 of the PPA, or (ii) affect Buyer's rights to claim an Event of Default of Seller and pursue remedies under Section 12.4 of the PPA if Seller fails to pay Solar Availability Damages when due if not timely cured pursuant to the provisions of Article 12 of the PPA.

5. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of the Actual Solar Availability Percentage for the previous Commercial Operation Year and the Solar Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of Solar Availability Damages paid to Buyer under the PPA and shall provide notice that the Aggregate Solar Availability Damages Cap has been reached, if applicable. If Solar Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

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

ATTACHMENT 1 TO EXHIBIT H**EXAMPLE CALCULATION OF SOLAR AVAILABILITY DAMAGES****I. Example of Actual Solar Availability Percentage Calculation**

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

During the Commercial Operation Year in question, 62 Solar Units were part of the Project.

The inverters incorporated into the Solar Units had the following operating characteristics:

	Hours	Solar Units Affected	Solar Unit Hours
Solar Period Hours (“PH”)	4,000	62	248,000
Solar Unavailable Hours (“UH”)			10,000
Solar Excused Hours (“EH”)			1,000

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

$$\text{Sum of Available Hours} = \text{PH} - \text{UH} + \text{EH}: 239,000 = 248,000 - 10,000 + 1,000$$

Actual Solar Energy Availability Percentage

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

- (a) Sum of Solar Available Hours: 239,000 hours
- (b) Sum of Solar Period Hours: 248,000 hours
- (c) Actual Solar Availability Percentage: $(\text{Sum of Solar Available Hours} / \text{Sum of Solar Period Hours}) \times 100 = (239,000 / 248,000) \times 100 = 96.4\%$

II. Example of Availability Damages

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

- (a) Seller’s Guaranteed Solar Availability in Commercial Operation Year 4 = 90%.
- (b) Seller’s Actual Solar Availability in Commercial Operation Year 4 = 85%.
- (c) Solar Energy Output Payment Rate = \$26.31
- (d) Actual Solar Energy Output = 483,000 MWh

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

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

$$\$26.31 \times (.90 - .85) \times (483,000 \div .85 * .90) = \$672,762.18$$

EXHIBIT I
(to Power Purchase Agreement)

FORM OF GUARANTY

GUARANTY

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

RECITALS:

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

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

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are 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 that may be recovered hereunder exceed [_____].

- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.
- (b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay the Overdue Obligation 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 any calendar day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday where banks in Albuquerque, New Mexico, are permitted or authorized to close.

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 corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance by Guarantor of this Guaranty; and
- (c) the execution, delivery and performance of this Guaranty has been duly and validly authorized by all _____ proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by

the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. **RESERVATION OF CERTAIN DEFENSES.** 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 are available to the Obligor with respect to the 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 its defenses (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 the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

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

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

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

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

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

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

<i>courier deliveries]</i>	<i>-- for use in connection with courier deliveries]</i>
----------------------------	--

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

10. MISCELLANEOUS.

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New Mexico, without regard to principles of conflicts of laws thereunder.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably:
 - (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and
 - (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any

claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

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

* * *

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

[●]
By: _____
Name: _____
Title: _____

EXHIBIT J
(to Power Purchase Agreement)

**COMMERCIAL OPERATION
FORM OF CERTIFICATION**

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

Seller hereby certifies and represents to Buyer the following:

- (1) Solar Units with an aggregate capacity of at least [●] MW have been constructed, commissioned and tested and are capable of delivering Energy on a sustained basis (in accordance with the Solar Unit manufacturer’s requirements and the Commissioning Tests);
- (2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and
- (3) the Project has been completed in all material respects.

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

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

SAN JUAN SOLAR 1, LLC
 Signature: _____
 Name: _____
 Title: _____

[Licensed Professional Engineer]
 Signature: _____
 Name: _____
 Title: _____
 Date: _____
 License Number and LPE Stamp: _____

EXHIBIT K
(to Power Purchase Agreement)

ANNUAL DEGRADATION GUARANTEES

Test at Beginning of Commercial Operation Year	Degradation-Adjusted Annual Guaranteed Solar Capacity (% of Guaranteed Solar Capacity)	Maximum % Degradation from Prior Year Actual Degradation
1 - Commissioning Test	100.00%	0.00%
2	99.5%	0.50%
3	99.0%	0.50%
4	98.5%	0.50%
5	98.0%	0.50%
6	97.5%	0.50%
7	97.0%	0.50%
8	96.5%	0.50%
9	96.0%	0.50%
10	95.5%	0.50%
11	95.0%	0.50%
12	94.5%	0.50%
13	94.0%	0.50%
14	93.5%	0.50%
15	93.0%	0.50%
16	92.5%	0.50%
17	92.0%	0.50%
18	91.5%	0.50%
19	91.0%	0.50%
20	90.5%	0.50%

EXHIBIT L
(to Power Purchase Agreement)

FIRST YEAR GENERATION FORECAST

The following represents the first year forecast of net, AC generation delivered to the Point of Delivery.

On-Peak Hours are considered to be hour ending 0700 through and including 2200 Pacific prevailing time which is 16 hours, Monday through Saturday excluding any NERC holidays which are the major holidays. All other hours and all day Sundays are off-peak.

Month	On-Peak Energy Delivered (MWh)	Off-Peak Energy Delivered (MWh)
January	23,721	5,484
February	27,901	4,994
March	43,530	5,838
April	47,156	8,254
May	49,260	14,391
June	54,695	11,874
July	47,089	14,752
August	48,712	8,655
September	42,808	7,789
October	36,155	7,020
November	26,462	4,976
December	23,130	3,598
Total Annual	470,618	97,626
Total Combined Annual	568,244	
 Annual Capacity Factor	 32.4%	

ESA for 100 MW Battery Storage Project with SJS 1 Storage, LLC

PNM Exhibit TGF-5

Is contained in the following 113 pages.

Energy Storage Agreement - SJS 1 Storage 1064368

ENERGY STORAGE AGREEMENT—SJS 1 STORAGE FACILITY

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

SJS 1 STORAGE, LLC

Dated as of September 24, 2020

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION.....	1
1.1 Definitions.....	1
1.2 Rules of Construction.	17
1.3 Interpretation with Interconnection Agreement.....	18
1.4 Interpretation of Arrangements for Electric Supply to the Project.....	19
ARTICLE 2 TERM AND TERMINATION	19
2.1 Execution Date and Term.	19
ARTICLE 3 PROJECT DESCRIPTION.....	20
3.1 Commercial Terms.....	20
3.2 Project.	20
3.3 Location.	20
3.4 General Design of the Project.....	21
3.5 Expected Commercial Operation Date.	22
3.6 Extensions.....	22
3.7 Delay Damages; Guaranteed Start Date.	22
3.8 ESS Capacity Shortfall.	23
3.9 Test Period.	23
3.10 Notice of Commercial Operation.....	23
3.11 Grid Charging.	24
3.12 ESS Unit Capabilities.	24
3.13 ESS Non-Performance Liquidated Damages.....	24
3.14 Availability Guarantee.	25
3.15 Guaranteed ESS Roundtrip Efficiency Payment.	25
ARTICLE 4 AGC; SELLER CURTAILMENT	25
4.1 AGC.....	25
ARTICLE 5 DELIVERY AND METERING	26
5.1 Delivery Arrangements.....	26
5.2 Availability Reporting.	27
5.3 Electric Metering Devices.....	27
5.4 Adjustment for Inaccurate Meters.	28

ARTICLE 6 CONDITIONS PRECEDENT	29
6.1 Conditions Precedent.	29
6.2 Notice.	29
ARTICLE 7 SALE AND PURCHASE OF PRODUCT	29
7.1 Sale and Purchase of Product.....	29
7.2 Title and Risk of Loss.	29
7.3 Regulatory Attributes and Changes in Law.	30
7.4 Scheduling.....	30
7.5 Forced Outages.	31
ARTICLE 8 PAYMENT CALCULATIONS.....	31
8.1 Billing Components.	31
8.2 Payment Support Requirement.	32
8.3 Survival on Termination.	32
ARTICLE 9 BILLING AND PAYMENT PROCEDURES.....	32
9.1 Statements and Payment of Electricity Payments.....	32
9.2 Miscellaneous Payments.	33
9.3 Currency and Method of Payment.	33
9.4 Default Interest.....	33
9.5 Disputed Items.	33
9.6 Statement Errors.....	34
9.7 Taxes.....	34
9.8 Setoff and Payment Adjustments.....	35
9.9 Netting.....	35
9.10 Survival on Termination.	35
ARTICLE 10 OPERATIONS AND MAINTENANCE.....	35
10.1 Construction of the Project.	35
10.2 Commissioning Tests.....	36
10.3 Access to and Inspection of the Project.	37
10.4 Operating Parameters.....	37
10.5 Operating Procedures.....	38
10.6 Project Maintenance.....	39
10.7 Sales to Third Parties.	39

ARTICLE 11 REGULATORY ATTRIBUTES.....	39
11.1 Sale of Regulatory Attributes.....	39
ARTICLE 12 DEFAULT AND REMEDIES	40
12.1 Events of Default of Seller.....	40
12.2 Events of Default of Buyer.	42
12.3 Damages Prior to Termination.....	43
12.4 Termination.....	44
12.5 Specific Performance.	45
12.6 Remedies Cumulative.	45
12.7 Waiver and Exclusion of Other Damages.....	46
12.8 Payment of Amounts Due to Buyer.....	46
12.9 Duty to Mitigate.....	46
12.10 Security Rights.....	47
12.11 No Duplication of Recovery.	47
12.12 Cross Termination.....	47
ARTICLE 13 CONTRACT ADMINISTRATION AND NOTICES	47
13.1 Notices in Writing.....	47
13.2 Representative for Notices.....	48
13.3 Authority of Representatives.	48
13.4 Records.	48
13.5 Provision of Real-Time Data.	49
13.6 Reserved.....	49
13.1 Exhibits.	50
13.1 Resolution of Issues.	50
ARTICLE 14 FORCE MAJEURE.....	50
14.1 Definition.	50
14.2 Notification Obligations.....	52
14.3 Duty to Mitigate.....	52
14.4 Delay Caused by Force Majeure Event.	52
ARTICLE 15 REPRESENTATIONS, WARRANTIES AND COVENANTS.....	53
15.1 Seller’s Representations, Warranties and Covenants.....	53
15.2 Buyer’s Representations, Warranties and Covenants.	55

ARTICLE 16 INSURANCE.....	56
16.1 Evidence of Insurance.....	56
16.2 Term and Modification of Insurance.	56
16.3 Endorsements and Other Requirements.....	56
ARTICLE 17 LEGAL AND REGULATORY COMPLIANCE AND GOVERNMENTAL APPROVAL	57
17.1 Applicable Laws.	57
17.2 Governmental Approvals.....	57
17.3 NMPRC Approval.	57
17.4 Compliance with Reliability Standards.	58
17.5 Compliance Information.....	58
ARTICLE 18 ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS	59
18.1 No Assignment Without Consent.	59
18.2 Conditions on Transfers.....	59
18.3 Change of Control.....	60
18.4 Transfer Without Consent Is Null and Void.....	60
18.5 Subcontracting.....	60
18.6 Assignment to Lenders.....	60
ARTICLE 19 CREDIT AND SECURITY REQUIREMENTS	61
19.1 Security.....	61
19.2 Form of Security.....	61
19.3 Grant of Security Interest.....	62
19.4 Use of Security.....	63
ARTICLE 20 INDEMNITY; INSURANCE PROCEEDS.....	63
20.1 Indemnification.....	63
20.2 Notice of Claims; Procedure.....	63
20.3 Survival of Obligations.....	64
20.4 Insurance Proceeds.....	64
ARTICLE 21 GOVERNMENTAL CHARGES	65
21.1 Allocation of Governmental Charges.....	65
ARTICLE 22 MISCELLANEOUS	65
22.1 Waiver.....	65

22.2 Fines and Penalties..... 65

22.3 Standard of Review..... 66

22.4 Disclaimer of Certain Third Party Beneficiary Rights. 66

22.5 Relationship of the Parties. 66

22.6 Equal Employment Opportunity Compliance Certification. 66

22.7 Survival of Obligations..... 66

22.8 Severability. 66

22.9 Complete Agreement; Amendments..... 67

22.10 Binding Effect..... 67

22.11 Headings. 67

22.12 Counterparts..... 67

22.13 Governing Law and Choice of Forum. 67

22.14 Confidentiality. 67

22.15 Marketing Rights; Press Releases and Media Contact; Access..... 69

22.16 Right to Mortgage..... 70

22.17 Forward Contract and Master Netting Agreement..... 70

22.18 Accounting Matters..... 70

22.19 Telephone Recording..... 72

EXHIBITS

- Exhibit A Description of Seller's Energy Storage System, Site Map and Project Schedule
- Exhibit B One-Line Diagrams of Project and Interconnection Facilities
- Exhibit C Description of Site
- Exhibit D Notice Addresses
- Exhibit E Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
- Exhibit F Commissioning and Annual Tests
- Exhibit G Insurance Coverages
- Exhibit H Not Used
- Exhibit I Availability Guarantees
- Exhibit J Form of Seller Guaranty
- Exhibit K Commercial Operation Form of Certification
- Exhibit L Roundtrip Efficiency Guarantee
- Exhibit M ESS Operating Restrictions

ENERGY STORAGE AGREEMENT

This Energy Storage Agreement, as may be amended from time to time, is entered into this 24th Day of September, 2020 (“**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 SJS 1 STORAGE, LLC, a Delaware limited liability company (“**Seller**”), whose principal place of business is 1633 W. Innovation Way, 5th Floor, Lehi, UT 84043. Buyer and Seller may be referred to in this Energy Storage Agreement individually as a “**Party**” and collectively as the “**Parties**.”

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

WHEREAS, Seller desires to develop, design, construct, own and operate an energy storage facility, as further defined herein and in Exhibit A, which will be integrated with the San Juan Solar 1 facility; and

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

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

ARTICLE 1

Definitions and Rules of Interpretation

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

“**Abandonment**” means (a) a cessation of work and operations in connection with the Project for more than ninety (90) Days by Seller or Seller’s contractors without Seller’s initiation of or development and submittal to Buyer of a reasonable project impact mitigation or remediation plan but only if such cessation is not caused by a Force Majeure, or not in accordance with Seller’s Project Schedule as may be updated from time to time (b) the relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this ESA.

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

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

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

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

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

“**AGC**” stands for “Automatic Generation Control” and means energy management system equipment that automatically adjusts the quantity of Charging Energy and Discharging 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 those services as provided by this Project that are necessary to support the transmission or balancing of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider’s or Balancing Area Authority’s system. Ancillary Services may include operating reserves, regulation, black-start capability, reactive supply, voltage control, frequency response, contingency reserves, and other Ancillary Service products, each to the extent that the Project is capable of providing such services.

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

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

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

“**Beneficiary Party**” means a Party that is entitled to require the procurement, posting, or payment of Security from another Party pursuant to Article 19.

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

“**Black Start Capability**” means that the ESS inverters shall be provided with the ability to form an islanded grid inside the Project while disconnected from the Point of Delivery if Buyer instructs Seller to reserve stored energy for this function. For the avoidance of doubt, the ESS will not have additional installed energy capacity to provide black start after a one hundred twenty (120) MWh discharge event, for example after completing an ESS Capacity Test, until the ESS has been charged again. Buyer may enhance the Black Start Capability after the Effective Date if (a) Buyer provides specifications for an enhanced Black Start Capability, (b) the specifications are within the capabilities of Seller’s ESS integrated equipment and controls system supplier, and (c) Buyer pays all costs associated with upgrading the ESS to the enhanced Black Start Capability specifications as verified by an independent engineer. Upon the satisfaction of all of (a), (b) and (c) in the preceding sentence, Seller shall upgrade the ESS to the enhanced Black Start Capability specifications within eighteen (18) months.

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

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

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

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

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

“**Charging Energy**” means the amount of Energy supplied by Buyer at Buyer’s cost and in accordance with Prudent Utility Practices, and delivered to Seller at the Point of Delivery to be

stored at the Project for the purpose of charging the ESS and discharge at a later time, as measured by the Electric Metering Devices, net of any estimated AC losses (based on methodology agreed to by the Parties) between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

“Commercial Operation” means that (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (b) Seller has completed three (3) successful start-ups of the ESS without experiencing any abnormal operating conditions and has been available to dispatch continuously for a period of twenty-four (24) hours with controls in auto and synchronized to the Buyer’s system; (c) all Seller required permits, required consents, and Governmental Approvals are in full force and effect; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable, mutually agreed test protocols and procedures set forth in Exhibit F or by another method acceptable to Buyer; (e) Seller has obtained all necessary rights under a separate Shared Facilities Agreement, which shall include necessary rights pursuant to the Interconnection Agreement, for interconnection and delivery of Discharge Energy to the Point of Delivery and interconnection and, if applicable, delivery of Charging Energy from the Point of Delivery and is not in breach of its Shared Facilities Agreement (and San Juan Solar Project, LLC is not in breach under the Interconnection Agreement); (f) Seller has satisfactorily completed other testing in accordance with the Shared Facilities Agreement and the Interconnection Agreement requirements; (g) Seller has obtained required insurance coverage in compliance with Section 16.1 and with Exhibit G; (h) Buyer has received an officer’s certificate from Seller that the Project has been completed in all material respects; (i) Seller has delivered to Buyer the Delivery Term Security; and (j) Seller has provided 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 being borne by Seller.

“Commercial Operation Date” means the date on which all of the conditions set forth in the definition of “Commercial Operation” have been satisfied, as such date is further determined in accordance with Section 3.10.

“Commercial Operation Year” means a period of twelve (12) consecutive Months with the first Commercial Operation Year commencing on the Commercial Operation Date and ending on the last Day of the Month that is twelve (12) full Months after the Commercial Operation Date, and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

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

“Contract Value” means the present values of the ESS Capacity Payments for each Commercial Operation Year (or portion thereof) in the then-remaining term (determined without reference to the early termination) of (a) the quantity of ESS Capacity expected to be made available during such Commercial Operation Year (or portion thereof) times (b) the ESS Capacity Payment Rate. 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.

"Credit Rating" means for any Person, the respective ratings then assigned to such Person's unsecured, senior long-term debt (not supported by third party credit enhancement) by S&P or Moody's.

"Creditworthy Entity" means a Person that has a Credit Rating of at least BBB- by S&P and Baa3 by Moody's.

"Day" means a calendar day and includes Saturdays, Sundays and holidays.

"DC" means direct current.

"Debt" means solely with respect to Seller after the Commercial Operation Date, without duplication, (a) all obligations of Seller for borrowed money, (b) all obligations of Seller evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of Seller to pay the deferred purchase price of property or services, except trade accounts payable and other accrued expenses arising in the ordinary course of business, (d) all deferred obligations of Seller to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit, line of credit or other instrument, and (e) obligations of Seller in respect of interest rate swap agreements, caps, collars, or other interest rate hedging mechanisms.

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

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

"Delay Damages" means the applicable amount set forth in the following table:

Days after the Expected Commercial Operation Date	Applicable Delay Damages Amount (\$/Day per MW of Delayed Capacity)
1-45	\$75.00
46-90	\$125.00
91-180	\$200.00

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

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

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

“Development Security” has the meaning set forth in Section 19.1.

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

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

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

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

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

“Downgrade Event” shall mean that the applicable Person is no longer a Creditworthy Entity.

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

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

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

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

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, delivered to or received from the Project , in each case at a nominal voltage at the Point of Delivery, as measured by Electric Metering Devices, net of auxiliary loads, station electrical uses and appropriate line losses.

“Energy Storage Services” means the acceptance of Charging Energy at the Project, the storing of Energy in the Project, and the delivery of Discharge Energy from the Project at the Point of Delivery, all in accordance with Buyer’s dispatch instructions and subject to the terms and conditions of this ESA.

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

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

“ESA” means this Energy Storage Agreement between Seller and Buyer, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

“ESS Capacity” means the power (expressed in MW as measured at the Point of Delivery) that can be discharged from the ESS for four (4) consecutive hours when starting from the Maximum State of Charge, as determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

“ESS Capacity Payment” has the meaning set forth in Section 8.1(A).

“ESS Capacity Payment Rate” means the price to be paid by Buyer to Seller for Product made available from the Energy Storage System, as set forth in this ESA.

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

“ESS Operating Restrictions” means the ESS operational restrictions as identified in Exhibit M.

“ESS Roundtrip Efficiency” means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the BESS meter 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 an Event of Default of Seller as set forth in Section 12.1 or an Event of Default of Buyer as set forth in Section 12.2.

“Execution Date” has the meaning set forth in the Preamble.

“Expected Commercial Operation Date” has the meaning set forth in Section 3.1.

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

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

“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 and September 2018 NERC Reliability Guideline for BPS-Connected Inverter-Based Resource Performance at the Point of Delivery as may be amended or updated.

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

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

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

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

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

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

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

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

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

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

“Guaranteed System Latency” means the guaranteed time measured between when the control signal is received on the Project site at the point of interface with the system operator and the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint, as specified in Section 3.12.

"Guarantor" means a Creditworthy Entity that is an Affiliate of the Posting Party that has delivered a Guaranty to the Beneficiary Party for the benefit of the Posting Party under Article 19.

"Guaranty" means a guaranty in substantially the form attached as Exhibit I or other form reasonably acceptable to the beneficiary Party.

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

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

"Interconnection Agreement" means the separate agreement between San Juan Solar Project, LLC and the Transmission Provider for interconnection of the Project to the Transmission Provider's Transmission System, as such agreement may be amended from time to time.

"Interconnection Facilities" means the Transmission Provider's Interconnection Facilities, Seller's Interconnection Facilities, and that portion of the Seller's Shared Facilities pertaining to the Interconnection Agreement.

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

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

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

"kWh" means kilowatt hour AC.

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

Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and the related rights from Seller; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

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

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

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

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

“Market Event” has the meaning set forth in Section 7.4(B).

“Maximum State of Charge” means the relative SOC above which the battery manufacturer recommends that the BESS 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 BESS system not be drawn, expressed in percent of Nameplate Energy Capacity.

“Month” means a calendar month.

“Monthly Billing Period” means the period during any particular Month in which Product has been made available at the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

“Monthly Electricity Cost” means, for a month, the sum of (i) (a) the quantity of Charging Energy during such month times (b) the Solar Energy Output Payment Rate (as such term is defined in the PPA).

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

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

“MW” means megawatt or one thousand (1,000) kW AC.

“MWh” means megawatt hours AC.

“Nameplate Energy Capacity” is the maximum amount of energy in MWh, less auxiliary loads, that the BESS can store at 100% state of charge.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Point of Delivery**” means , unless otherwise modified in accordance with Section 3.11, the electric system point at which (a) Buyer delivers Charging Energy to Seller, (b) Seller delivers Discharge Energy to Buyer, and (c) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this ESA.

“Posting Party” means a Party who is obligated to procure, post, or pay Security for a Beneficiary Party pursuant to Article 19.

“PPA” or **“Power Purchase Agreement”** means the Power Purchase Agreement dated as of September 24, 2020 between San Juan Solar 1, LLC and Buyer relating to the Solar Facility, including the Exhibits and Schedules attached thereto, as the same may be amended from time to time in accordance with the provisions thereof.

“Product” means all Energy Storage Services, Regulatory Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, and other products, all as made available by the Project, all of which shall be delivered for Buyer’s exclusive use pursuant to the terms of this ESA.

“Project” means Seller’s energy storage facility, located in San Juan County, New Mexico with a designed maximum power discharge capability of 100 MW for four (4) hours (400 MWh), as identified and described in Article 3 and Exhibit A to this ESA, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Buyer at the Point of Delivery: Seller’s equipment, buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, Seller’s Interconnection Facilities and Seller’s Shared Facilities necessary to connect the ESS to the Electric Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this ESA.

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

“Project Schedule” has the meaning set forth in Section 3.2 and Exhibit A.

“Promotional Materials” has the meaning set forth in Section 22.15(A).

“Prudent Utility Practice(s)” means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the 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 at all times and are adequately experienced, trained and licensed as necessary to operate the Project properly, efficiently, and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency Conditions whether caused by events on or off the Site;

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

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

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating voltage, current, volt-ampere reactive (“VAR”) loading, frequency, rotational speed, polarity, synchronization, the ESS Operating Restrictions, and reasonable manufacturer operating restrictions as approved by Buyer which approval to not be unreasonably withheld, and/or control system limits;

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

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

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

“**Rating Agency**” shall mean S&P or Moody’s.

“**Recapture Period**” means the first five (5) years and three (3) months following the later of the Commercial Operation Date, or the date that the Project is placed in service as defined by the Internal Revenue Service, within which the ESS must be charged exclusively from Energy generated by the Solar Facility.

“**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).

“**Regulatory Attributes**” means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of a regulatory nature that are created or otherwise arise from the Project’s storage or delivery of electricity from energy storage resources. Regulatory Attributes include those currently existing or arising during the Term under local, state, regional,

federal, or international legislation or regulation relevant to the use of ESS under any governmental, regulatory or voluntary program, including laws or regulations. Regulatory 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. Regulatory 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.

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

“Replacement ESS Costs” means the actual costs incurred by Buyer following an Event of Default by Seller that are reasonable and necessary to replace the Product which Seller, in accordance with this ESA, would have made available to Buyer but failed to so provide pursuant to this ESA. Buyer shall not have to enter into a replacement contract to establish the Replacement ESS Costs. If Buyer does not enter into a replacement contract, then the Replacement ESS Costs will be based on the market price for comparable ESS Unit Capabilities, Regulatory Attributes and any Ancillary Services (if any and only to the extent previously provided by the Project hereunder) delivered to Buyer’s system, as reasonably determined by a third party reasonably acceptable to both Parties. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs for an Event of Default also include (i) the reasonable amounts paid or incurred by Buyer for transmission and distribution of replacement Discharge Energy to the Point of Delivery and any associated transmission or distribution costs, and (ii) Buyer’s expenses, including reasonable attorneys’ fees, incurred as a result of Seller’s failure to perform under this ESA.

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

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

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

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

“Security” means Development Security, Delivery Term Security or security required to be posted by Buyer in accordance with Section 19.1(B), as applicable.

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

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

“Seller Excused Hours” means those hours during which Seller is unable to schedule or receive Charging Energy, or deliver Discharge Energy as a result of: (a) a Scheduled Maintenance Outage, (b) a Force Majeure Event, or (c) a Seller Curtailment.

“Seller Forced Outage” means an unplanned reduction, interruption or suspension of all or a portion of Charging Energy receipts or Discharge Energy deliveries from the Project, in each case at the Point of Delivery and not associated with Seller Excused Hours.

“Seller Guarantor” means a Creditworthy Entity that is an Affiliate of Seller that has made a Guaranty for the benefit of Buyer under Article 19.

“Seller Permitted Transfer” means any of the following: (a) a Change of Control of Seller’s Ultimate Parent; (b) a Change of Control of Seller where Seller’s Ultimate Parent continues to control Seller after such Change of Control or any transaction exclusively among Affiliates of Seller; or (c) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor or in connection with a Tax Equity Financing; *provided* that in the case of (b), following such transfer (A) the entity that operates the Project is (or contracts with) a Qualified Operator, and (B) that such transfer does not have a material adverse effect on the Seller’s credit characteristics, and Seller maintains the applicable Seller Security requirements.

“Seller Termination Payment” means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Product) 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, plus (c) if the ESA is terminated by Seller under Article 12 during the first six (6) years after the Commercial Operation Date, the actual lost value of any previously realized Tax Benefits not recoverable under a replacement contract, including those subject to recapture. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential incidental, punitive, exemplary, indirect or business interruption damages which for the avoidance of doubt do not include the actual lost value of previously realized Tax Benefits specified in subpart (c) which Tax Benefits the Parties agree shall be deemed direct, actual damages for purposes hereunder. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

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

“Seller’s Financial Statements” has the meaning set forth in Section 22.18(B).

“Seller’s Interconnection Facilities” includes Seller’s metering, relays, and load control equipment on the low side of the step-up transformer, as provided for in the Interconnection

Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this ESA.

“Seller’s Shared 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. This equipment is located as conceptually depicted in Exhibit B to this ESA.

“Shared Facilities Agreement” means an agreement by and between Seller, San Juan Solar Project, LLC, and other Affiliates of Seller that are parties thereto in the future, governing the interconnection of the Project pursuant to the terms of the Interconnection Agreement, the use of Seller’s Shared Facilities, the right to occupy or use shared real property, and the ownership or governance of the rights associated with the foregoing between the parties thereto.

“Site” means a portion of the Solar Facility site, including the parcel or parcels of real property on which the Solar Facility and the Project will be constructed and located, including any shared 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 Solar Facility is more specifically described in Section 3.3 and Exhibit C to this ESA. For the avoidance of doubt, this ESA is Site specific.

“Solar Facility” means the co-located 200 MW_{AC} San Juan Solar 1 solar generating plant consisting of photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary to collect sunlight and convert it into electricity which, among other things, will be used to charge the ESS per Buyer’s dispatch elections.

“Supplemental State Tax Incentives” means any state or local production tax credit or investment tax credit placed into effect after the Execution Date and determined by reference to energy storage technologies in effect in the State of New Mexico.

“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 (including ITCs but excluding Supplemental State Tax Incentives), and any other tax credits which are or will be generated by the Project; and (b) any cash payments or outright grants of money relating 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 construction of the Project by monetizing the Tax credits, depreciation and other Tax Benefits associated with the Project.

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

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

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

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

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

“Transmission Provider” means the Person, designated agent, or third party acting in its capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable. For purposes of this ESA, no party to the Shared Facilities Agreement nor the owner of the Seller’s Shared Facilities shall be considered or deemed to be a Transmission Provider.

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

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

“Ultimate Parent” means Four Corners Solar Center, LLC.

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

1.2 Rules of Construction.

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

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

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

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

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

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

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

(H) The word “or” is not exclusive.

(I) 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.

1.3 Interpretation with Interconnection Agreement. Buyer 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. If and to the extent Seller becomes subject to the FERC Standards of Conduct for Transmission Providers, Seller shall conduct its operations in a manner intended to comply with the FERC Standards of Conduct for Transmission Providers.

(A) The Parties acknowledge and agree that the Interconnection Agreement and the Shared Facilities Agreement shall be separate and free-standing contracts and that the terms of this ESA are not binding upon the Transmission Provider or Seller’s Affiliates under the Shared Facilities Agreement. The Shared Facilities Agreement shall be maintained for the Term of this ESA and will not restrict or limit Buyer’s ability to dispatch the Project or otherwise have an adverse impact on Seller’s performance of its obligations under this ESA or the PPA.

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

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

1.4 Interpretation of Arrangements for Electric Supply to the Project. This ESA does not provide for the supply of retail electric power or natural gas to the Project, for any purpose (“**House Energy**”). 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.

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

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

(C) Separate from energy provided to the battery, Seller shall have the right to consume energy concurrently generated by the Solar Facility for House Energy and to co-locate additional facilities designed to supply House Energy; provided, however, that excess energy produced from such additional facilities shall not be delivered by Seller to Buyer under this ESA. House Energy shall be real time measured by a dedicated Electric Metering Device and shall not be delivered by Seller to Buyer under this ESA.

ARTICLE 2

Term and Termination

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

ARTICLE 3
Project Description

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

COMMERCIAL TERMS

Buyer: Public Service Company of New Mexico	Seller: SJS 1 Storage, LLC
Project: SJS 1 Storage	
Point of Delivery: The point where Seller makes available to Buyer Product being provided under this ESA, as further specified in the definition of “Point of Delivery.”	
Contract Term: Twenty (20) years following the Commercial Operation Date	Product Type: Bundled Discharge Energy, Regulatory Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, and Energy Storage Services
ESS Capacity Payment Rate: \$7.70 per kW per month	
Day(s) of week: Monday through Sunday, including NERC holidays	Hours: Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Prevailing Time (“MPT”)
Guaranteed Start Date: One hundred and eighty (180) Days after the Expected Commercial Operation Date	
Expected Commercial Operation Date: June 10, 2022 as may be adjusted pursuant to Section 3.6	

3.2 Project. Exhibit A provides a detailed description and implementation schedule (“**Project Schedule**”) of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed material changes in the Project or the 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, the material Electric Metering Devices, and the location of the Interconnection Facilities is included in Exhibit A to this ESA. Seller will provide notice to Buyer of the final proposed location of the ESS at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller’s contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Shared Facilities Agreement and in compliance with the Interconnection Agreement. Seller shall maintain the Project according to Prudent Utility Practices, the Shared Facilities Agreement and in compliance with the Interconnection Agreement, and the terms of this ESA. The Project shall at all times:

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

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

(C) use communication circuits from the Project to Buyer's System Control Center for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for AGC by Buyer;

(D) supply Discharge Energy in compliance with the requirements of the Shared Facilities Agreement and in compliance with the Interconnection Agreement and Prudent Utility Practices;

(E) be capable of receiving Charging Energy from Buyer and delivering Discharge Energy to Buyer, each at the frequency specified by Buyer;

(F) be capable of immediate disconnection remotely upon receipt of the control signal from the Buyer's System Control Center;

(G) meet voltage and reactive/active power control performance for a Category B system as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Point of Delivery;

(H) meet the normal and abnormal performance category as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Point of Delivery, which shall be Category II minimum;

(I) 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 at the Point of Delivery; and

(J) to the extent applicable, comply with Presidential Executive Order 13920, "Securing the United States Bulk-Power System" issued on May 1, 2020. Within sixty (60) Days of the Execution Date, Seller shall provide to Buyer a notification defining Seller's approach to complying with the Executive Order. Seller shall provide the final equipment suppliers and places of origin for all bulk-power system electric equipment (as defined in the Executive Order) procured for the Project and shall address the methodology for evaluating the full supply chain for components of such equipment and devices.

Within one-hundred eighty (180) Days following the Execution Date, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's Supervisory Control and Data Acquisition ("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 control of the ESS. These controls shall include the following MESA-ESS modes or equivalent: (i) Active Power Smoothing, (ii) Automatic Generation Control, and (iii) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE-1547.1: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with PNM's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with PNM's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements, (iii) production change management, and (iv) CIP governance requirements.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth in this ESA, Seller shall cause the Commercial Operation Date to occur no later than the Expected Commercial Operation Date as defined in Section 3.1.

3.6 Extensions. The Expected Commercial Operation Date shall be extended by a number of Days, up to (a) a maximum of one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to the duration in Days of any Force Majeure Event that delays construction or commencement of operation of the Project, or (b) a maximum of one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to the duration in Days of any delay in the occurrence of the in-service date of the Transmission Provider's Interconnection Facilities after February 10, 2022 ("**Interconnection Date**") not resulting from a default of Seller under the Shared Facilities Agreement or the Interconnection Agreement or any act or omission of Seller. Seller shall give written notice to Buyer describing any such Force Majeure or interconnection delay within five (5) Business Days after determining the occurrence of such an event. The number of Days of such extension shall be calculated from the date on which the Force Majeure Event or interconnection delay, as applicable, begins. If a Force Majeure Event or interconnection delay will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then unless the Parties have agreed to extend such period, Buyer will have the right to terminate this ESA without liability of either Party other than obligations already incurred upon notice to Seller delivered prior to the earlier of the Commercial Operation Date or sixty (60) Days following the end of such one hundred eighty (180) Day period.

3.7 Delay Damages; Guaranteed Start Date. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller will use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages to Buyer in an amount equal to the Delay Damages per Day per each MW of Delayed ESS Capacity for each Day after the Expected Commercial Operation Date until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date; provided Seller's aggregate liability for Delay Damages shall not exceed an amount equal to the Development Security. "**Delayed ESS Capacity**" means the Guaranteed ESS Capacity minus the ESS Capacity as of the determination date.

3.8 ESS Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve Commercial Operation. If Seller has not caused all Delayed ESS Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Five Hundred Thousand Dollars (\$500,000) per MW of Delayed ESS Capacity (as of the Guaranteed Start Date) (“**ESS Capacity Shortfall Damages**”). Upon payment by Seller of the ESS Capacity Shortfall Damages, the Guaranteed PMAX will be reduced to the amount of ESS Capacity that has achieved Commercial Operation.

3.9 Test Period. Seller shall give written notice to Buyer of its intent to start testing the Energy Storage System not less than thirty (30) Days prior to the date upon which Seller expects to begin testing the Energy Storage System. During the Test Period, Seller shall have the right to deliver Energy generated by the Solar Facility, such Energy purchased by the Buyer pursuant to the terms of the PPA, to the Delivery Point as Charging Energy as reasonably required for purposes of testing and commissioning the Project. Seller shall subsequently redeliver such Charging Energy to Buyer at the Point of Delivery as Discharge Energy. In accordance with Section 7.2, Buyer shall retain title of such Charging Energy and Discharging Energy. Seller shall notify Buyer seven (7) Days prior to the initiation of the delivery of Discharge Energy during the Test Period, subject to Buyer approval. 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. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date. Seller shall deliver to Buyer a notice of Commercial Operation no later than three (3) Business Days after all of the conditions in the definition of “Commercial Operation” have been satisfied or waived by the Parties, together with reasonable supporting evidence of the satisfaction of such conditions. Buyer shall diligently review such notice and shall use good faith efforts to review and accept or reject in writing such notice within ten (10) Days following Buyer’s receipt of such notice. If Buyer rejects Seller’s notice of Commercial Operation, then Seller shall either dispute Buyer’s rejection or take such steps as are necessary to correct the deficiencies identified in Buyer’s rejection notice following which the Parties will repeat the process set forth in this Section 3.10 until Buyer has accepted Seller’s notice of Commercial Operation, and the Commercial Operation Date shall be the date specified in the accepted notice or such date as otherwise agreed by the Parties.

3.11 Grid Charging. During the Recapture Period, the ESS shall be configured to charge exclusively using Energy produced by the Solar Facility. Seller shall, in cooperation with the Solar Facility owner, make any required modifications to the ESS to accept Charging Energy from both the electrical grid and Solar Facility and make commercially reasonable efforts to obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from both the electrical grid and Solar Facility within six (6) months following expiration of the Recapture Period.

Notwithstanding the foregoing, in the event of a termination of the PPA resulting in the inability of the Solar Facility to provide Charging Energy to the ESS during the Recapture Period, the conditions defined in Section 12.12 shall apply.

3.12 ESS Unit Capabilities. “ESS Unit Capabilities” means all of the following for the ESS:

(A) Guaranteed PMAX of 100 MW of charging and discharging capability as measured at the Point of Delivery, and as may be adjusted pursuant to Section 3.8;

(B) Guaranteed ESS Capacity: discharge ESS at Guaranteed PMAX for four (4) consecutive hours; starting at the Maximum State of Charge

(C) Guaranteed ESS Roundtrip Efficiency of 86% at the Commercial Operation Date with an annual degradation of -0.3% per Commercial Operation Year. RTE is calculated as the ratio of discharging energy to charging energy, all measured at the BESS Meter;

(D) Guaranteed Discharge Ramp Rate of 50 MW per second measured between 85% state of charge and 15% state of charge representing the maximum rate that the ESS can change its output power;

(E) Guaranteed Charge Ramp Rate of 50 MW per second measured between 15% state of charge to 85% state of charge representing the maximum rate that the ESS can change its input power;

(F) Guaranteed System Latency: two (2) second;

(G) Guaranteed Frequency Response Capability of 30 MW/0.1Hz with battery responses in accordance with Section 3.12 (A) through (F); and

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

3.13 ESS Non-Performance Liquidated Damages. Seller will pay Buyer the following liquidated damages as the sole and exclusive remedy for ESS unit non-performance, including any failure to meet the ESS Unit Capabilities (in each case other than as excused due to (a) a Force Majeure Event, (b) a Seller Curtailment, or (c) failure of Buyer to deliver Charging Energy) or to comply with the requirements of Section 7.4(a):

(A) If Seller is unable to achieve the Guaranteed ESS Capacity (as may be adjusted pursuant to Section 3.8), Seller shall pay Buyer One Hundred Twenty Thousand Dollars (\$120,000) for each MW (prorated for any portion thereof) of ESS Capacity shortfall annually (prorated for any portion of a year) until such deficiency is cured; and

(B) Ten Thousand Dollars (\$10,000) per event (each event shall last no longer than three (3) Days) for inability to comply with the Guaranteed Charge Ramp Rate, Guaranteed Discharge Ramp Rate, Guaranteed System Latency or the Guaranteed Frequency Response Capability; provided, however, under no circumstances will ESS Non-Performance Liquidated Damages exceed Five Hundred Thousand Dollars (\$500,000) in any Commercial Operation Year and an aggregate of One and One-Half Million Dollars (\$1.5 million) over the Term of this ESA. As used in this Section 3.13(A), "event" means an occurrence causing a failure to comply by Seller lasting no more than seventy-two (72) hours; each exceedance of the seventy-two (72) hour cap by the same occurrence will be deemed a separate event. If multiple failures occur during the same 72-hour period, they will be treated as a single event if arising out of a common root cause.

3.14 Availability Guarantee. Seller guarantees that the Project shall be available to deliver Discharge Energy, store Energy or accept Charging Energy and shall pay Availability Damages, if any, in accordance with Seller's obligations under the provisions of Exhibit I.

3.15 Guaranteed ESS Roundtrip Efficiency Payment.

If the ESS Roundtrip Efficiency is below the Guaranteed ESS Roundtrip Efficiency, Seller will pay to Buyer an amount equal to the Monthly Electricity Cost multiplied by (Guaranteed ESS Roundtrip Efficiency – ESS Roundtrip Efficiency).

ARTICLE 4
AGC; Seller Curtailment

4.1 AGC.

(A) Prior to the Commercial Operation Date or, if applicable, prior to the Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall maintain such AGC throughout the Delivery Term. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations.

(B) Buyer shall not request or remotely instruct operation of the Project in violation of Prudent Utility Practices, the Operating Parameters, the Operating Procedures to be mutually developed as defined in this ESA, the ESS Operating Restrictions, or the Interconnection Agreement.

(C) Beginning on the Commercial Operation Date, PNM shall have the right to control the ESS, via AGC control, to its fullest capability provided that, notwithstanding any

provision in this ESA other than the Operating Parameters to the contrary, during the Recapture Period, the ESS shall be charged exclusively from the Solar Facility. Total cycles shall not exceed 365 Equivalent Full Cycles in any calendar year.

(D) Buyer shall reduce power dispatch to and from the Project, as applicable, during and to the extent of any Seller Curtailment.

4.2 Seller Curtailment. A Seller Curtailment occurs any time the Project is unable to receive otherwise available Charging Energy and 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 its scheduling practices, or indirectly, by the Transmission Provider pursuant to the OATT or transmission service arrangements (“**Seller Curtailment**”). A Seller Curtailment does not include any inability to receive otherwise available Charging Energy and deliver otherwise available Discharge Energy to Buyer as a result of the terms of or performance under the Shared Facilities Agreement.

ARTICLE 5 Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this ESA to accept the Charging Energy at and from the Point of Delivery as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy to the Energy Storage System. Seller shall only use the Charging Energy for Buyer’s benefit in accordance with the terms and conditions of this ESA. Seller shall construct or secure use of facilities necessary (i) to deliver the Discharge Energy to the Point of Delivery, (ii) receive Charging Energy from the Solar Facility at the Point of Delivery to the ESS, and (iii) after the Recapture Period, in the event Buyer elects to charge from the grid, receive Charging Energy from the grid at the Point of Delivery to the ESS, including diligently negotiating and executing a Shared Facilities Agreement that fully complies with the requirements of the Transmission Provider’s Interconnection Agreement. Buyer acknowledges and agrees that the Shared Facilities and Interconnection Agreements establish a maximum capacity amount and that such capacity shall be a limit on, and jointly used by, the Project and the Solar Facility, provided that delivery of Energy from the Solar Facility to the Transmission Provider’s Transmission System shall take priority over Discharge Energy; provided, however, when Buyer dispatches the ESS for the provision of Ancillary Services in response to an Emergency Condition, Discharge Energy shall take priority over delivery of Energy from the Solar Facility.

(B) Seller shall be responsible for the costs required to receive and deliver Energy at the Point of Delivery for the Project.

(C) Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses, imbalances, and any other transfer-related charges required to deliver Discharge Energy from and beyond the Point of Delivery. After the Recapture Period, in the event Buyer elects to charge from the grid pursuant to Section 3.11, Buyer shall be responsible for all

transmission charges, ancillary service charges, electrical losses, scheduling, imbalance energy and any other transfer-related charges for delivery of Charging Energy to the Point of Delivery.

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to (i) take Discharge Energy at the Point of Delivery and deliver it to points beyond, and (ii) after the Recapture Period, in the event Buyer elects to charge from the grid pursuant to Section 3.11, deliver Charging Energy to the Point of Delivery.

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

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Charging Energy and Discharge Energy delivered pursuant to this ESA shall be metered and accounted for separately from any electric generation facility, including the Solar Facility, that utilizes the same Electric Interconnection Point. Seller shall install Electric Metering Devices and Back-Up Metering, each in an arrangement consistent with the configuration depicted in Exhibit B, or as otherwise agreed between the Parties.

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

(C) All Electric Metering Devices used to measure the Charging Energy and Discharge Energy and to monitor and coordinate operation of the Project shall be owned, installed, and maintained in accordance with the Shared Facilities and the Interconnection Agreement, as applicable, at no cost to Buyer under this ESA. Calibration records shall be maintained by Seller for a period not less than two (2) years and shall be provided to Buyer promptly within forty five (45) Days following their availability. The design of the Electric Metering Device system shall be subject to Buyer approval prior to commencement of construction of the Project. The Seller 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 Buyer upon completion of the testing. Electric Metering Devices shall be bi-directional and shall be capable of measuring and reading instantaneous and hourly real and reactive Energy and capacity, if supplied by either the grid, solar generation system or ESS system. Electric Metering Devices shall be installed at the Point of Delivery. Subject to Section 10.3(A), Seller shall provide or arrange with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices for all purposes necessary to perform under this ESA and shall provide Buyer the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted. Buyer shall also have the right to conduct its own tests of the Electric Metering Devices in Buyer's reasonable discretion upon prior written notice to Seller. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including obtaining any consent or other agreement from the Transmission Provider necessary to allow Buyer such access. Energy shall be

metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Buyer.

(D) Seller shall install and maintain, at its own expense, backup metering devices (“**Back-Up Metering**”), in addition to the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Buyer. Seller, at its own expense, shall inspect and test Back-Up Metering upon installation and at least annually thereafter and provide all test results to Buyer upon completion of the testing. Subject to Section 10.3(A), Seller shall provide Buyer with reasonable advance notice of, and permit Buyer to witness and verify, such inspections and tests, *provided, however*, that Buyer shall not unreasonably interfere with or disrupt the activities of the Seller and shall comply with all applicable safety and security standards. Upon written request from Buyer, the Seller shall perform additional inspections or tests of Back-Up Metering and shall permit a qualified representative of the Buyer to inspect or witness the testing of Back-Up Metering, *provided, however*, that the Buyer shall not unreasonably interfere with or disrupt the activities of the Seller and shall comply with all applicable safety and security standards. The actual expense of any such requested additional inspection or testing shall be borne by the Buyer, unless, upon such inspection or testing, Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the Seller. If requested in writing, the Seller shall provide copies of any inspection or testing reports to the Buyer.

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

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

(A) In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. If Back-Up Metering is installed on the low side of Seller’s step-up transformer, the Back-Up Metering data shall be adjusted for losses in the same manner as for the Electric Metering Devices. In the event that Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of 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 Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

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

ARTICLE 6 Conditions Precedent

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

(A) Subject to Section 17.3, Buyer has received NMPRC Approval; and

(B) Buyer has received approval of the Boards of Directors of Buyer and its parent company, as required, which approval has been received.

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

ARTICLE 7 Sale and Purchase of Product

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

7.2 Title and Risk of Loss. 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 such Charging Energy from and after such delivery until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy at the Point of Delivery, and Buyer shall be deemed to be in control of such Discharge Energy from

and after delivery and receipt at the Point of Delivery. Title and risk of loss related to any Regulatory Attributes shall transfer from Seller to Buyer at the Point of Delivery or as otherwise specified in the applicable regulation.

7.3 Regulatory Attributes and Changes in Law. The Parties acknowledge and agree that (a) Regulatory Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this ESA all right and title to such additional Regulatory Attributes is included in the ESS Capacity Payment Rate; and (c) such additional Regulatory Attributes shall pass to Buyer in accordance with Section 7.2 of this ESA. If, in order for Buyer to receive the benefit of any additional Regulatory Attributes, Seller must incur any third-party costs or costs associated with modifying the Facility or the operation thereof not otherwise provided for in this ESA, or if any change in law or regulation relating to such future Regulatory Attributes occurs after the Execution Date that causes Seller to incur any third-party costs not otherwise provided for in this ESA in order to deliver the additional Regulatory Attributes, then such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly upon occurrence of such costs to Seller by Buyer. Seller shall use commercially reasonable efforts to deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; *provided that*, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such additional Regulatory Attributes. For the avoidance of doubt, Buyer shall remain liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice. The Parties agree to negotiate in good faith any further agreements and documentation necessary to effectuate the transfer of such additional Regulatory Attributes. Notwithstanding the foregoing, the Parties must reach mutual agreement prior to incurring any additional costs or proceeding with modifications of the ESS or the operation thereof to provide any additional Regulatory Attributes.

7.4 Scheduling.

(A) Buyer shall 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 on a Day-ahead basis, in accordance with WECC protocols, operating policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines, except that Buyer shall not schedule any Discharge Energy, Charging Energy or Ancillary Services during Seller Forced Outages, Scheduled Maintenance Outages, Force Majeure Events, and Seller Curtailments.

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

consistent with this ESA to the extent possible; provided any amendment hereto will require each Party's written consent.

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

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and SCC as applicable, Seller shall, by 6:00 a.m. MPT on each Day, submit a good faith estimate of the hourly availability of Product for the next six (6) Days.

(E) If, at any time following submission of a good faith estimate as described in Sections 5.2 and 7.4(C) above, Seller becomes aware of any change that alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Forced Outages.

(A) Buyer and Seller shall promptly advise one another of events that may form the basis for a declaration of the existence or termination of Seller Excused Hours or a Seller Forced Outage. Buyer or Seller (as appropriate) shall at the earliest practicable date provide the other Party written notice ("**Outage Notice**") of the declaration of the existence of Seller Excused Hours or a Seller Forced Outage not available to Buyer through the SCADA system. Seller shall provide such notice, if applicable, to Buyer's System Control Center. An Outage Notice provided by either Party shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Product, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Buyer or Seller (as appropriate) shall keep the other Party informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

(B) Within five (5) Business Days after the end of the Month, Seller shall prepare, maintain and deliver to Buyer a schedule that identifies all Scheduled Maintenance Outages, deratings and Seller Forced Outages that occurred during the Month. The data reported must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

ARTICLE 8 Payment Calculations

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

(A) **Monthly ESS Capacity Payment.** Subject to Section 14.4, Buyer shall pay Seller an amount equal to the ESS Capacity not to exceed Guaranteed ESS Capacity multiplied by the ESS Capacity Payment Rate (the “**ESS Capacity Payment**”).

(B) If Supplemental State Tax Incentives become available in connection with the Product, Seller shall use commercially reasonable efforts to become eligible for and to obtain any such incentives.

(C) In the event that Seller or an Affiliate of Seller or a Tax Equity Investor, if any, becomes eligible actually receives, by means of lower tax rates, tax credits or otherwise, any Supplemental State Tax Incentives with respect to the Project, the actual monetary value of such Supplemental State Tax Incentives received by Seller or its Affiliates will be shared between the Parties; provided that any gross receipts abatement up to 50% in connection with the Project shall not be construed as a Supplemental State Tax Incentive. No later than thirty (30) Days after receipt or utilization of any such actual monetary value of Supplemental State Tax Incentives by Seller or an 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 ESA consistent with Applicable Law.

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

ARTICLE 9 Billing and Payment Procedures

9.1 **Statements and Payment of Electricity Payments.**

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

(B) Payments due shall be determined and adjusted in accordance with Article 8 and Section 3.15. From and after the Commercial Operation Date, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the fifteenth (15th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this ESA (in Dollars) payable to Seller for the preceding Month. Each such invoice shall show the ESS Capacity Payment, information and calculations, in reasonable detail.

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

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

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

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

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

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

9.5 Disputed Items.

(A) Either Party ("**Disputing Party**") may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall promptly (and no later than sixty (60) Days after the delivery of the invoice or statement by the other Party, give written notice to the other Party together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with

Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

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

9.6 Statement Errors. In the event that either Party becomes aware of any error in any statement, including following an audit or review of records in accordance with Section 13.4, such Party shall, promptly 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, with interest at the Default Rate; provided no adjustment shall be made hereunder if an error is not addressed within three hundred and sixty-five (365) Days of such error.

9.7 Taxes.

(A) On all invoices, Seller shall separately show all New Mexico gross receipts, compensating, sales, and other similar taxes charged to Buyer provided that in no event will interest or penalties on such taxes be reimbursable by Buyer. If the sale of Product takes place on tribal land, Seller will comply with applicable state and tribal laws governing the reporting and payment of gross receipts taxes on those transactions.

(B) Other than as provided in Section 9.7(A), Seller shall be responsible and shall pay when due all income, gross receipts, compensating, use, valued added, excise, transfer, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. If Buyer is assessed any Taxes or associated fees as a result of the improvement of 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 and does remit payment of such Taxes on behalf of the other Party, such Party for which Taxes were paid on its behalf shall promptly reimburse the other Party for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this ESA and implement the provisions in this ESA in a manner that will minimize Taxes due and payable by all Parties.

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

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

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

9.9 Netting.

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

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

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

ARTICLE 10 Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Shared Facilities Agreement and the Interconnection Agreement, this ESA, Applicable Law and other applicable requirements and standards. Seller will be solely responsible for, and the ESS Capacity Payment Rate will not be adjusted to accommodate, increased costs or any failure to obtain any Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates. During the construction phase of the Project, if Seller employs apprentices in accordance with the New Mexico Public Utility Act, Seller shall reasonably report on such employed apprentices to

Buyer. Nothing in this ESA shall be construed as imposing additional requirements requiring Seller to employ such apprentices.

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15th of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include any expected change in the Project Schedule and list of known or reasonably expected cost or schedule risks. If Seller becomes aware of any critical milestone that will not be achieved by the required date, Seller must provide Buyer written notice and a recovery plan to minimize any delay in the construction schedule. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Subject to Section 10.3(A), Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer, except as required by Prudent Utility Practices or Applicable Law; or (ii) for modifications, alterations, expansions or other changes that would not materially alter the Guaranteed ESS Capacity, ESS Unit Capabilities, or availability of the Project or to materially and adversely impact the capabilities of the Project.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date), a Project Manager who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer. Seller's Project Manager shall be deemed to have authority to act on behalf of Seller with respect to day-to-day operations matters with respect to the Project (provided such Project Manager shall not have any authority to execute or approve any amendment of this ESA), and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller.

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

10.2 Commissioning Tests.

(A) Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and of the proposed tests scheduled relating to the commissioning of the Project ("**Commissioning Tests**") as described in Exhibit F. Subject to Section 10.3, Representatives of Buyer shall have the right to be present at all such testing. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities and Seller's Shared Facilities, for the purposes set forth herein; provided that, in connection with any access to the Project pursuant to this Section 10.3 or as otherwise permitted in this ESA, Buyer shall (i) not unreasonably interfere with or disrupt the activities of Seller or other parties to the Shared Facilities Agreement, (ii) comply with all applicable safety and security standards and requirements of Seller, and (iii) indemnify the Seller, and its related persons specified in and pursuant to Section 20.1(B), for Losses (as defined in Section 20.1(A)) arising in connection with Buyer's or Buyer's representatives' or agents' exercise or use of the access rights granted hereunder. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with all of Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

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

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices, the Operating Procedures, the ESS Operating Restrictions, and the Interconnection Agreement ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this ESA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this ESA; and (ii) comply with reasonable requirements of Buyer regarding day-to-day or hour-by-hour communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Discharge Energy delivered by Seller will meet all requirements of the Transmission Provider and this ESA and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this ESA. Seller shall provide Buyer with all real time measurement parameters of the Project including individual inverter data available to Buyer via a PI historian interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized

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

10.5 Operating Procedures.

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

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

(C) Seller will perform, at Seller's expense, an annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F and promptly provide the results to Buyer. Seller shall make commercially reasonable efforts to cure any deficiencies in the test within sixty (60) Days from the test date.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this ESA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, no later than September 1 of each Commercial Operation Year, Seller shall provide Buyer with a non-binding notice of the annual Scheduled Maintenance Outages for the following Commercial Operation Year and a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's capacity, including the duration of such event. Each annual Scheduled Maintenance Outage for the Commercial Operation Year will be subject to approval by Buyer. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule and Seller will use commercially reasonable efforts to make such modifications. 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 and Seller shall use commercially reasonable efforts to accommodate such requests. Seller may not make any changes to any annual maintenance schedule without Buyer's prior written approval. 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. Notwithstanding the foregoing, Seller may, in its reasonable discretion, shut down or interrupt the Project in order to perform emergency maintenance or address an Emergency Condition.

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

10.7 Sales to Third Parties. As of the start of the Test Period, Seller shall not sell or divert Product to any Person other than Buyer.

ARTICLE 11 Regulatory Attributes

11.1 Sale of Regulatory Attributes. If future Regulatory Attributes become available, this Article 11 shall apply.

(A) Other than as specified in Sections 11.1(D), effective from the date on which the Project first makes Product available to Buyer at the Point of Delivery, Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature

and description (other than those granted by or through Buyer), all right, title and interest in and to Regulatory Attributes associated with the Project. The value of the Regulatory Attributes transferred under this ESA shall be included in the ESS Capacity Payment Rate.

(B) Seller and Buyer shall execute all documents and instruments necessary to ensure that the Regulatory Attributes are available to Buyer or its respective designee(s).

(C) To the extent applicable, Ownership by Buyer of Regulatory Attributes shall include any Regulatory Attributes that are reserved or “banked” throughout the Term of this ESA, but not used, sold, assigned or otherwise utilized during the Term of this ESA. Buyer may, to the extent permitted by Applicable Law and this ESA, assign its rights, title and interest in and to any Regulatory 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(B), Tax Benefits in effect on the Execution Date of this ESA or any successor or other provision providing for a federal, state and/or local tax credit determined by reference to energy storage systems shall be owned by Seller.

ARTICLE 12 Default and Remedies

12.1 Events of Default of Seller.

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

- (1) Seller’s dissolution or liquidation;
- (2) Seller’s assignment of this ESA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 or in any consent to collateral assignment with any Lender;
- (3) Seller’s filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller’s voluntarily taking advantage of any such law by answer or other affirmative action;
- (4) The sale by Seller to a third party, or diversion by Seller for any use, of Product committed to Buyer by Seller except in compliance with Section 12.9;
- (5) The failure of any Guarantor delivering a Guaranty to secure Seller’s obligations hereunder to (i) make, when due, any payment required under such Guaranty, or (ii) meet the criteria as set forth in the definition of Guarantor, in each case if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt of notice of such failure

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

(7) Seller's assignment of this ESA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18, unless remedied within ten (10) Days of receipt of notice of such failure;

(8) Seller's failure to make any payment due to Buyer under or in connection with this ESA unless remedied within twenty (20) Days of receipt by Seller of written notice of such failure from Buyer (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this ESA); or

(9) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date or other date mutually agreed to by the Parties.

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

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

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

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

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

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

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

(7) Seller's failure to maintain in effect any agreements required to deliver Product to the Point of Delivery;

(8) The Project fails, after the Commercial Operation Date, to achieve Guaranteed ESS Unit Capabilities referenced in Section 3.12.

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

(1) Any representation or warranty made by Seller in this ESA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such breach or 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 other than as set forth below:

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

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

(3) Buyer's assignment of this ESA, except as permitted in accordance with Article 18, unless Buyer remedies such Event of Default within ten (10) Days of receipt notice thereof;

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

(5) The failure of any Guarantor delivering a Guaranty to secure Buyer's obligations hereunder to (i) make, when due, any payment required under such Guaranty, or (ii) meet the criteria as set forth in the definition of Guarantor, in each case if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt of notice of such failure; or

(6) 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 other affirmative action.

(B) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this ESA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer.

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

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

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

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

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

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

12.3 Damages Prior to Termination.

(A) Upon and following the occurrence of an Event of Default that has not been subsequently cured by the defaulting Party under this ESA, and subject in each case to the limitation on damages set forth in Section 12.7, and the duty to mitigate damages set forth in Section 12.9, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this ESA from the Defaulting Party as set forth in Section 12.3(B); (ii) exercise its rights pursuant to Section 12.5; (iii) suspend performance; (iv) with respect to an Event of Default of Seller, exercise its rights pursuant to Section 12.10 with respect to any Security; and (v) exercise its rights to terminate this ESA pursuant to Section 12.4.

(B) For all Events of Default, subject to Section 12.9, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-

Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, that if an Event of Default has occurred and has continued uncured for a period of one hundred eighty (180) Days, the Non-Defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this ESA as provided for in Section 12.4. If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include an amount of cover damages equal to Replacement ESS Costs minus the product of (x) the quantity of Product so replaced, and (y) the ESS Capacity Payment Rate. Further, Seller acknowledges and agrees that in addition to the foregoing, Seller shall be obligated to pay Buyer any such damages associated with replacement of Product notwithstanding the availability or prices of electric energy and capacity from other fuel sources, such as natural gas. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any Regulatory Attributes that may become available pursuant to this ESA, provided that Buyer has used commercially reasonable efforts to avoid, minimize or mitigate the same. Seller acknowledges that Buyer entered into this ESA for the procurement of Product, which includes 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 or in Seller's compliance with Section 12.9, 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 Capacity Payment Rate; provided that the foregoing amount shall be reduced by an amount equal to (A) the amount of any revenues that Seller, using commercially reasonable efforts, is able to obtain by selling Product to a third party or into the market, less (B) Seller's costs and expenses incurred to effectuate any such sales.

12.4 Termination. Upon and following the occurrence of an Event of Default that has not been subsequently cured by the Defaulting Party under this ESA, the Non-Defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and sixty (60) Days after the notice thereof, upon which this ESA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this ESA, except that Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this ESA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this ESA. Upon the termination of this ESA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment; and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination

Payment plus any amounts due from Buyer (net of any amounts due from Seller). If Buyer elects to terminate this ESA for an Event of Default under Section 12.1(A)(8), the Buyer Termination Payment shall be capped at an amount equal to the amount of Development Security required to be posted by Seller under this ESA as of the termination date, less any Delay Damages already paid to Buyer by Seller, which amount, in addition to Buyer's right to terminate this ESA, shall be Buyer's sole and exclusive remedy, and Seller's sole liability, for Seller's failure to achieve Commercial Operation. Notwithstanding the foregoing, if an Event of Default of Seller occurs under Section 12.1(A)(8) Buyer's right to terminate this ESA for failure to achieve Commercial Operation shall expire and terminate upon achieving Commercial Operation.

(A) In the event that Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A) and deliver written notice to Seller of such calculated amount. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) In the event that Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall calculate the Seller Termination Payment in a commercially reasonable manner as of the Early Termination Date and deliver written notice to Buyer of such calculated amount. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

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

12.6 Remedies Cumulative. Subject to Section 12.4 and Section 12.7 each right or remedy of the Parties provided for in this ESA shall be cumulative of and shall be in addition to every other right or remedy provided for in this ESA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

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

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

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

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default enumerated in Section 12.1 or an Early Termination Date affecting a Party, the Non-Defaulting Party 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. The Non-Defaulting Party shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce the Defaulting Party's obligations under this ESA, subject to the obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

12.11 No Duplication of Recovery. The Parties agree and acknowledge that this ESA and the PPA are separate agreements and that an Event of Default under one agreement shall not by itself be interpreted as an Event of Default under the other agreement. The Parties further agree and acknowledge that the rights, obligations and remedies of the Parties under this ESA and the PPA for a default or an Event of Default are separate and independently enforceable. However, to the extent that a common set of facts, conditions or events constitute a simultaneous default or Event of Default under this ESA and the PPA, the Non-Defaulting Party shall be entitled to all available remedies under each agreement except that there shall be no double-recovery under each of this ESA and the PPA by the Non-Defaulting Party for any monetary damages incurred by the Non-Defaulting Party.

12.12 Cross Termination. In the event of a termination of the PPA during the Recapture Period, this ESA shall automatically terminate, unless the Parties mutually agree to waive termination and maintain the ESA in effect. In the event the termination of the PPA during the Recapture Period is caused by a default or Event of Default of the Seller under the PPA, Buyer shall be entitled to receive the Buyer Termination Payment under this ESA. In the event the termination of the PPA during the Recapture Period is caused by a default or Event of Default of the Buyer under the PPA, Seller shall be entitled to receive the Seller Termination Payment under this ESA.

ARTICLE 13 Contract Administration and Notices

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

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

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

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this ESA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this ESA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this ESA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records) to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this ESA or to confirm compliance hereunder or directly in connection with the performance by such Party of its obligations hereunder; provided if any such examination reveals any inaccuracy in any invoice, the necessary adjustments shall be made in accordance with Section 9.6. All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this ESA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

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

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

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

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

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

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

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

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

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time (or near real-time if real-time access is unavailable) to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Reserved.

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

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

ARTICLE 14 Force Majeure

14.1 Definition.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" shall mean an event or circumstance that arises, after the Execution Date, is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this ESA. Such events or circumstances may include, but are not limited to: actions or inactions of civil, tribal, or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics, pandemics, explosions serial product defects not generally known in the battery energy storage industry, and fires not caused by a failure to operate the Project in accordance with Prudent

Utility Practices, hurricanes, floods, unusually severe weather events not excluded in subpart (C)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement).

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

(C) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment from a supplier or vendor unless such inability itself is excused by reason of a Force Majeure Event, as the definition is applied to the supplier or vendor and such event constitutes a Force Majeure Event, as the definition is applied to Seller, for the Project or any component parts therefor; (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, unless such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay in the Interconnection Date not caused by Seller; (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 other than serial product defects not generally known in the battery energy storage industry, or other mishaps, events or conditions, in each case attributable to normal wear and tear; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions, actions of Governmental Authorities or other events or circumstances that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; (viii) any full or partial curtailment in the ability to deliver Product from the Project that is caused by Seller's Shared Facilities or the Shared Facilities Agreement unless such failures are themselves excused by reason of a Force Majeure Event, as the definition is applied to Seller; or (ix) 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 intense lightning strikes exceeding the design capabilities of the installed lightning protection system (such system designed in accordance with NFPA 780 and UL 96 and being UL Master Label certified), tornadoes and floods.

(D) In no event will any delay or failure of performance caused by a Force Majeure Event extend this ESA beyond its stated Term. Notwithstanding any other provision in this ESA to the contrary, in the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller continues for an uninterrupted period of three hundred sixty-five (365) Days from its inception, either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this ESA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination. However, the Parties may agree to defer termination due to a Force Majeure Event upon mutually agreeable terms in writing.

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

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

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

14.4 Delay Caused by Force Majeure Event. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of (a) Seller to make available Discharge Energy from the Project at the Point of Delivery, (b) Seller to receive Charging Energy from the Point of Delivery to the Project, or (c) the Solar Facility to deliver Energy to the Point of Delivery during the Recapture Period, such amount of ESS Capacity not available to Buyer due to the Force Majeure Event shall be proportionately excluded from the Monthly ESS Capacity Payment calculations as set forth in Section 8.1.

ARTICLE 15
Representations, Warranties and Covenants

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

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

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

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

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

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

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

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

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

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will be

obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

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

(G) Seller shall disclose to Buyer the extent of, and within five (5) Days after it is known to Seller, any violation of any Applicable Laws arising out of the construction of the Project, Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

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

(I) Seller has and/or will have good and marketable title to the Regulatory Attributes.

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

(K) To the extent applicable, all right, title and interest in and to the Regulatory Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

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

(M) After the Commercial Operation Date, Seller will not directly incur, assume or carry any Debt in connection with the Project. Any project debt will be carried by an upstream affiliate of Seller.

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

(O) Seller is in compliance with Presidential Executive Order 13920, "Securing the United States Bulk-Power System" issued on May 1, 2020.

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

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

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

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

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

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

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

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

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

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

ARTICLE 16 Insurance

16.1 Evidence of Insurance.

(A) Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on or before June 1 of each Commercial Operation Year, provide Buyer with two (2) copies of insurance certificates evidencing the insurance coverages required to be maintained by Seller in accordance with Exhibit G and this Article 16 along with endorsements required below in Section 16.3. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this ESA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this ESA shall cover occurrences during the Term of this ESA. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, 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 the self-insured program's net worth or means that renders the program insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

(C) Buyer shall have the right, at times deemed appropriate to Buyer during the Term of this ESA, to request Seller to modify or replenish 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. Seller shall provide endorsements evidencing the following required insurance provisions:

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

(B) The insurance required under this ESA is primary and non-contributory with respect to other insurance carried by Buyer.

(C) Seller's liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G shall name Buyer and its Affiliates, officers, directors, and employees as additional

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

ARTICLE 17

Legal and Regulatory Compliance and Governmental Approval

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

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

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Product at the rates specified in Article 8, shall be conditioned upon the receipt of any Governmental Approvals required by Applicable Law in connection with the execution and performance of this ESA and a final order or other regulatory determination from the NMPRC that Buyer may procure renewable energy and associated renewable energy certificates pursuant to the PPA and may recover the cost of such procurement under the PPA; (collectively, "**Requested Actions**"). In particular, but without limitation:

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

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is not contested or is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then this ESA shall automatically terminate ten (10) Days after the date of such action by the NMPRC and shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person. For clarity, Buyer has no obligation to seek an appeal to the NMPRC decision.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer or Seller will elect to amend this ESA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this ESA, including a potential extension to the Expected Commercial Operation Date. If the Parties are unable to mutually agree on any amendments to this ESA to address such NMPRC Approval order, then this ESA shall automatically terminate twenty-five (25) Days after the date of the NMPRC Approval order and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

(3) If the NMPRC, has not, for any reason, entered an order upon the request for approval of all Requested Actions by January 5, 2021 (“**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, or a potential extension to the Expected Commercial Operation Date, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

(4) Upon any termination of this ESA pursuant to this Section 17.3, Buyer shall promptly and no later than fifteen (15) Business Days following the date of such termination notice return the Development Security held by Buyer to Seller, if any.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to Seller as a Generator Operator as defined by NERC, or other reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, NMPRC, Transmission Provider via the Interconnection Agreement, or any successor agencies, Seller shall comply with such standards and any and all costs incurred as a result of actions required for compliance with such new reliability standards shall be borne by Seller. To the extent that a violation of such reliability standard results in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, Seller shall reimburse Buyer for its share of such 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

(excluding between Seller and Buyer) 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 or Section 22.16, neither Party shall sell, transfer, or assign this ESA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18 or Section 22.16.

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

(B) Seller's consent shall not be required for any assignment of this ESA by Buyer to any Affiliate or in connection with certain corporate events involving Buyer or its parent corporation, including, but not limited to, mergers, reorganizations, consolidations, and asset and/or stock sales, provided that such assignee is a load serving entity and such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and further provided that any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this ESA as and if required by NMPRC regulations.

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

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

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

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

18.6 Assignment to Lenders.

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

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber, convey in trust or assign this ESA or the revenues or proceeds therefrom as collateral security in connection with any financing, including under deeds of trust, mortgages, indentures or security agreements, *provided* that such a collateral assignment or conveyance by a Party does not place any limitation on the other Party's rights or expand the other

Party's liability, risks or obligations under this ESA; and *further provided* that such Party shall not be relieved of any of its obligations or liability under this ESA and that the Lender, if the assigning Party is Seller, 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, such Party shall notify the other Party in writing of the name, address, and telephone and facsimile numbers of each Lender, collateral agent or trustee, as applicable, to which such Party's interest under this ESA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial notice, such Party shall promptly give the other Party 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.

(A) Seller shall post and maintain, at its sole cost and expense, Security equal to Sixty Thousand Dollars (\$60,000) per MW multiplied by the Guaranteed Capacity ("**Development Security**") within the earlier of (i) thirty (30) Days after final non-appealable NMPRC Approval has been obtained and (ii) the commencement of construction of the Project. Not later than the Commercial Operation Date, Seller shall post and maintain, at its sole cost and expense, Security equal to Seventy-Five Thousand Dollars (\$75,000) per MW multiplied by the Guaranteed Capacity (the "**Delivery Term Security**"). Seller shall replenish the Delivery Term Security, as applicable, to such required amount within fifteen (15) Days after any draw by Buyer. Seller shall have no obligation to replenish the Development Security. Buyer will return the Development Security to Seller in full if Commercial Operation occurs on or before the Guaranteed Start Date, provided Seller has paid in full any Delay Damages or Capacity Shortfall Damages. In the event that no amounts are due and owing by Seller to Buyer under this ESA and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the earlier of (i) termination of this ESA in accordance with its terms; and (ii) on the fifteenth (15th) Business Day after the expiration of the Term.

(B) If Buyer is not a Creditworthy Entity or otherwise suffers a Downgrade Event, Buyer shall within ten (10) Business Days of such occurrence or event, post Security in an amount equal to six (6) months of projected revenues of Seller under this ESA. However, in no event shall Buyer be required to post or maintain Security if it is or becomes a Creditworthy Entity. To the extent that any Buyer Security is held by Seller, Seller shall promptly and in no event later than fifteen (15) Business Days, return the Security to Buyer following Buyer becoming a Creditworthy Entity.

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 the Posting Party: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Beneficiary Party 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 Guaranty from a Guarantor, or (d) other security as may be reasonably acceptable to the Beneficiary Party. If at any time there shall be a Downgrade Event with respect to a Party’s Guarantor, then the Beneficiary Party may require the Posting Party to post a Letter of Credit in an amount equal to the then-applicable amount of any outstanding Guaranty comprising the Security. Upon receipt of the Letter of Credit, the Guaranty shall be returned promptly to the Posting Party. Notwithstanding the foregoing, the Posting Party’s obligation to provide a Letter of Credit in lieu of a Guaranty under this Section 19.2 shall be suspended during any period that (x) such Party’s Guarantor is a Creditworthy Entity or such Party provides a replacement Guaranty from a Creditworthy Entity, and (y) such Guaranty is reinstated by such 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 the Beneficiary Party receives written notice from the issuing bank at least thirty (30) 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 the Beneficiary Party receives notice from the issuing bank that the Letter of Credit will not be extended, the Posting Party 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 Beneficiary Party at least thirty (30) Days before the expiration date of the original Letter of Credit. If the Posting Party fails to supply a substitute Letter of Credit or other acceptable Security as required, then the Beneficiary Party will have the right to draw on the total amount of the expiring Letter of Credit and such amount shall be held as cash Security hereunder. 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 bank of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit, then the Posting Party shall have fifteen (15) Days (or such longer period as the Beneficiary Party in its sole discretion may permit in writing) following written notice from the Beneficiary Party to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. A Posting Party may replace any Security provided hereunder with an alternative form of Security that complies with the requirements of this Section 19.2 provided there is no lapse in the Posting Party’s provision of the required Security. The Beneficiary Party shall return to the Posting Party any existing Security posted by the Posting Party within ten (10) Business Days of any replacement thereof

19.3 Grant of Security Interest. To the extent that the Posting Party posts cash to secure its obligations under this ESA, such Posting Party hereby grants to the Beneficiary Party a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by the Posting Party to the Beneficiary Party 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 the Beneficiary Party. The Posting Party agrees to take such actions as reasonably required to perfect in favor of the Beneficiary Party 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, the Beneficiary Party in its sole discretion may draw from, offset against or make demand under such Security to recover any amounts owing to it arising out of this ESA, including any damages due to the Beneficiary Party and any amount for which such Beneficiary Party is entitled to indemnification under this ESA. A Beneficiary Party 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 the Beneficiary Party and from all such forms, in any sequence and at any time before or after termination of the ESA, as such Beneficiary Party may select until such time as the Security is exhausted.

ARTICLE 20 Indemnity; Insurance Proceeds

20.1 Indemnification.

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

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, except to the extent that such Losses are caused by the gross negligence or willful misconduct of 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; *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 such settlement does not impact or contains a full release of and places no liability on the indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

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

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

ARTICLE 21 Governmental Charges

21.1 Allocation of Governmental Charges. Other than as provided in Section 9.7(A), Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer the Product that are imposed prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of the Product that are imposed at and from the taking of the Product by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this ESA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Product hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

ARTICLE 22 Miscellaneous

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

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

22.3 Standard of Review. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this ESA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the “public interest” standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

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

22.5 Relationship of the Parties.

(A) This ESA shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Other than as provided in Section 9.7(A), Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons to perform services in connection with the Project, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers’ compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee.

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

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

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

unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

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

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

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

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

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

22.14 Confidentiality.

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

(B) Other than in connection with this ESA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, potential lenders or investors, legal counsel and accountants (collectively, “**Receiving Party’s Representatives**”), but only if such Receiving Party’s Representatives need to know the Confidential Information in connection with this ESA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Subject to Section 22.14(E),

to the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts to ensure that such Confidential Information is not made public.

(C) As used in this Section 22.14, “**Confidential Information**” means all information that is furnished in connection with this ESA to the Receiving Party or its Receiving Party’s Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party’s Representatives have access by virtue of this ESA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by PNM or on PNM’s behalf)), or which concerns this ESA, the Disclosing Party or the Disclosing Party’s stockholders, members, affiliates or subsidiaries, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party’s Representatives by a director, officer, employee, Affiliate, stockholder, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this ESA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this ESA:

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

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

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

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

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure in the proceeding shall use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information to make such disclosure of Confidential Information subject to a protective order or other similar procedure; provided, however, Seller acknowledges and agrees that Buyer may disclose this ESA and related documents, without seeking a protective order or similar process, in any proceeding before the NMPRC or pursuant to any other regulatory process under NMPRC jurisdiction.

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

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

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

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

seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within twenty (20) Business Days.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this ESA, under deeds of trust, mortgages, indentures or security agreements, as collateral security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this ESA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions. Promptly after making any such encumbrance or collateral assignment, Buyer shall notify Seller in writing of the name, address, and telephone and facsimile numbers of each secured party, collateral agent or trustee, as applicable, to which Buyer's interest under this ESA has been encumbered. Such notice shall include the names of the account managers or other representatives of the secured party, collateral agent or trustee to whom all written and telephonic communications may be addressed. After giving the Seller such initial notice, Buyer shall promptly give Seller notice of any change in the information provided in the initial notice or any revised notice.

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

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

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

(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 a 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 a Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

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

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

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section in confidence in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those

Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its counsel, that it is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section; provided Buyer shall first provide notice to Seller of such anticipated disclosure, if practicable, to permit Seller to seek protection of any proprietary or confidential information.

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

[Signature page(s) follow]

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

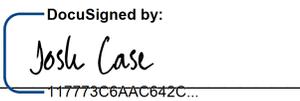
PUBLIC SERVICE COMPANY OF NEW MEXICO

By 
16A45E858C2C4B9...

Name Thomas Fallgren

Title Vice President, PNM Generation

SJS 1 STORAGE, LLC

By 
117773C6AAC642C...

Name Joshua Case

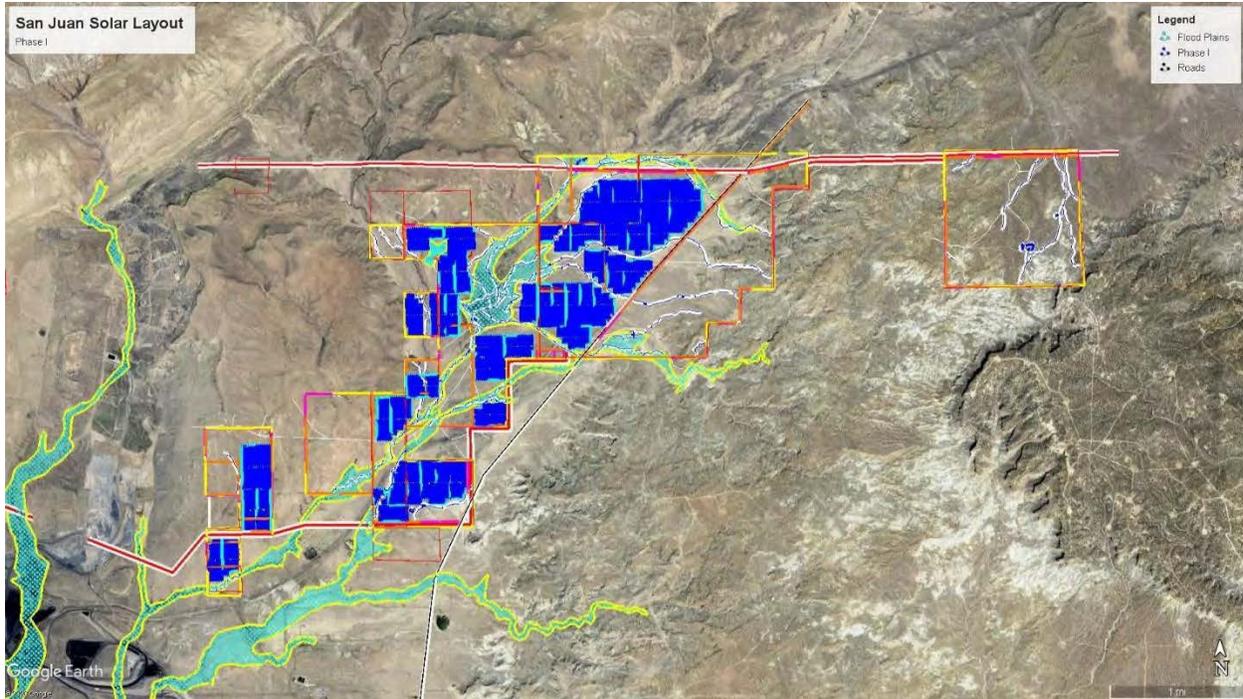
Title Authorized Person

EXHIBIT A
(to Energy Storage Agreement)

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

1. Name of Seller's Project: SJS 1 Storage

Location: San Juan County, New Mexico at 36°49'48.73"N,108°21'7.27"W
2. Owner (if different from Seller): N/A
3. Operator: Seller or an Affiliate thereof
4. Equipment/Fuel:
 - a. Type of facility and conversion equipment: Battery Energy Storage
 - b. Total number of units at the Project: 41
 - c. Total nameplate capacity (AC): 104 MW
 - d. Total capacity at point of delivery: 100 MWac / 400 MWh
 - e. Additional technology-specific information: Lithium Ion
5. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the Energy Storage Agreement.

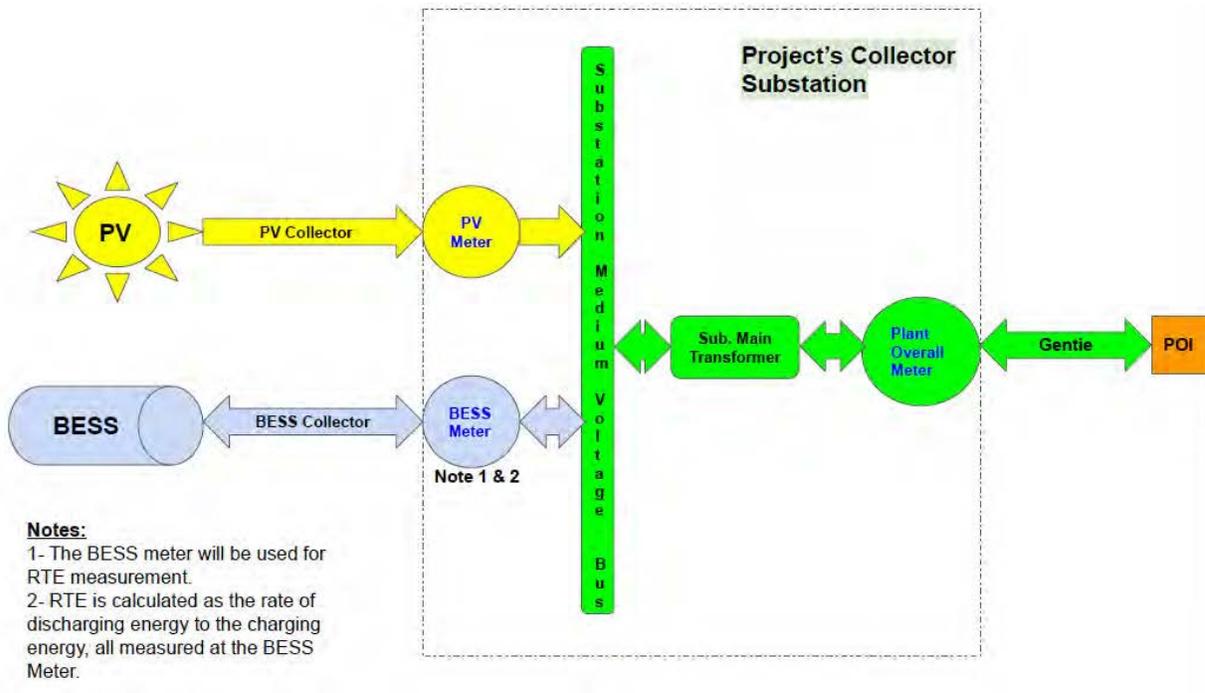


6. Project Milestone Schedule

Milestone Items	Dates
LGIA Executed	October 2020
Start of Construction/EPC Notice to Proceed	March 2021
Permitting Complete	July 2021
Major Equipment Supply Agreements Executed	September 2021
Start of Major Equipment Deliveries	September 2021
Start of Equipment Commissioning	September 2021
Interconnection In-Service Date (ISD)	Feb 2022
Financing Closed	February 2022
Interconnection - Sync Date	March 2022
Expected COD	June 10, 2022
Guaranteed COD	Expected COD + 180 Days

EXHIBIT B
(to Energy Storage Agreement)

ONE-LINE DIAGRAM OF PROJECT AND INTERCONNECTION FACILITIES



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

EXHIBIT C
(to Energy Storage Agreement)

DESCRIPTION OF SITE
PARCEL SURVEY FOR
SJS 1 STORAGE PROJECT

NOTE: The SJS 1 Storage Project will be located within the boundaries of the San Juan Solar 1 Project in the State of New Mexico, and being more particularly described as follows:

All or a portion of the following San Juan County Tax Assessor's tax parcels numbers. The Project Site is located on approximately +/- 3933 acres of land commonly described as San Juan County Tax Assessor's tax parcel numbers 2087176198462, 2087177198005, 2087177066033, 2087177066132, 2087177066212, 2084179396132, 2087177066363, 2087177198330, 2086178264066, 2085179396198, 2085177396264, 2085178462066, 2085178462462, 2084179462396, 2084179198396, 2086179066198, 2085179132132, , and 2081179264264 are described as follows:

APN: 2087176198462

County: San Juan County, New Mexico

Legal: NW/NE Less the North 8 Acres in Sec. 22 T30N R15W NMPM

APN: 2087177198005

County: San Juan County, New Mexico

*Legal: South 24 Acres SW/SE Sec 15, T30N R15W NMPM
North 8 Acres NW/NE Sec 22, T30N R15W NMPM*

APN: 2087177066033

County: San Juan County, New Mexico

Legal: South 32 AC OF SE/SE OF SEC 15, T30N R15W NMPM

APN: 2087177066132

County: San Juan County, New Mexico

*Legal: South 8 ACRES OF NE/SE OF SEC 15, T30N R15W NMPM
North 8 ACRES OF SE/SE OF SEC 15, T30N R15W NMPM
North 16 ACRES OF SW/SE OF SEC 15, T30N R15W NMPM*

APN: 2087177066212

County: San Juan County, New Mexico

Legal: North 32 Acres NE/SE Sec. 15, T30N R15W NMPM

APN: 2084179396132

County: San Juan County, New Mexico

Legal: SW/4 Sec. 6, T30N R15W NMPM

N2/NE, S/2 SE/NE Sec. 15, T30N R15W NMPM

APN: 2087177066363
County: San Juan County, New Mexico
Legal: N2 SE/NE Sec. 15, T30N R15W NMPM

APN: 2087177198330
County: San Juan County, New Mexico
Legal: SW/NE Sec. 15, T30N R15W NMPM

APN: 2086178264066
County: San Juan County, New Mexico
Legal: SE/SW & SW/SE OF Sec. 11, T30N R15W NMPM
E/2 NW & W/2 NE OF Sec. 14, T30N R15W NMPM

APN: 2085179396198
County: San Juan County, New Mexico
Legal: N/2 SW, SE/4, SESW Sec. 1, T30N R15W NMPM
SE/SE Sec 11, T30N R15W NMPM
E2/NE/4, NE/SE Sec 14, T30N R15W NMPM
NW/SW, E/2SE, NE Sec. 12, T30N R15W NMPM

APN: 2085177396264
County: San Juan County, New Mexico
Legal: S2/NW, N2/SW Sec. 13, T30N R15W NMPM

APN: 2085178462066
County: San Juan County, New Mexico
Legal: SW/SW, SE/NW, E/2SW Sec. 12, T30N R15W NMPM

APN: 2085178462462
County: San Juan County, New Mexico
Legal: NW/NW & North 440 FT OF SW/NW Sec. 12, T30N R15W NMPM

APN: 2084179462396
County: San Juan County, New Mexico
Legal: W/2NW Sec. 6, T30N R15W NMPM

APN: 2084179198396
County: San Juan County, New Mexico
Legal: E2/NW, W/2NE Sec. 6, T30N R15W NMPM

APN: 2086179066198
County: San Juan County, New Mexico
Legal: NE/SE Sec. 2, T30N R15W NMPM

APN: 2085179132132

County: San Juan County, New Mexico

Legal: SE/4, SE/SW Sec. 1 T30N R15W NMPM

NE/NW, W2/SE, NE/4 Sec. 12, T30N R15W NMPM

APN: 2081179264264

County: San Juan County, New Mexico

Legal: ALL Sec. 3, T30N R14W NMPM

W/2, W/2E/2, NE/NE Sec. 5, T30N R14W NMPM

E/2NE, SE/4 Sec. 6, T30N R14W NMPM

N1/2 Sec. 7, T30N R14W NMPM

W1/2NW, NE/NW Sec. 8, T30N R14W NMPM

The fenced area of the above described Tract of Land contains approximately 1500 acres more or less in area.

EXHIBIT D
(to Energy Storage Agreement)
NOTICE ADDRESSES

**PUBLIC SERVICE COMPANY OF
NEW MEXICO**

SJS 1 STORAGE, LLC

Notices:

All Notices/Invoices:

Delivery Address:

Delivery Address:

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

SJS 1 Solar, LLC
1633 W. Innovation Way, 5th Floor
Lehi, UT 84043
Attn: Josh Case
Phone: 801.318.0510
Josh.case@photosol-us.com

Invoices:

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

With copy to:
Holland & Hart
555 17th St #3200
Denver, CO 80202
Attn: Rochelle Rabeler
Phone: 303.295.8355
RNRabeler@hollandhart.com

Scheduling:

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

Mailing Address (if different from above):
N/A

Wire Transfer: As specified on invoices

Payments:

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

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

SJS 1 Solar, LLC
1633 W. Innovation Way, 5th Floor
Lehi, UT 84043
Attn: Josh Case
Phone: 801.318.0510
Josh.case@photosol-us.com
With copy to:
Holland & Hart
555 17th St #3200

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: Casey Kalberg
P.O. Box 227
Waterflow, NM 87421
Telephone: (505) 598-7613

Denver, Co 80202
Attn: Rochelle Rabeler
Phone: 303.295.8355
RNRabeler@hollandhart.com

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

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

Project Manager:

SJS 1 STORAGE, LLC
Attn: Josh Case
Address: 2279 N University Pkwy #4881
Provo, Ut 84604
Phone: 801.318.0510
josh.case@photosol-us.com

With a copy to:

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

EXHIBIT E
(to Energy Storage Agreement)

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

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
<i>Clean Water Act (CWA) Section 402, National Pollution Discharge Elimination System (NPDES). Construction Stormwater General Permit NMR1000000</i>	<i>U.S. Environmental Protection Agency (EPA)</i>
<i>CWA Sec 401 Water Quality Certification</i>	<i>New Mexico Environment Department (NMED) Surface Water Quality Bureau</i>
<i>CWA Sec 404, Nationwide Permit (NWP) #12 (utility lines;), NWP #14 (access roads), NWP #51 (renewal energy facilities) (if required)</i>	<i>U.S. Army Corps of Engineers</i>
<i>National Environmental Policy Act, Finding of No Significant Impact for an Environmental Assessment</i>	<i>U.S. Bureau of Land Management, Farmington Field Office</i>
<i>State of New Mexico Business Site Lease (ROW Grant)**</i>	<i>State of New Mexico – State Lands Office</i>
<i>San Juan County New Commercial/Addition Structures Permit</i>	<i>San Juan County, Building Division</i>
<i>Right of Way Grant and Notice to Proceed</i>	<i>U.S. Bureau of Land Management, Farmington Field Office</i>
<i>National Historic Preservation Act Section 106 Finding of Eligibility, Consultation, and Approval</i>	<i>New Mexico State Historic Preservation Office</i>
<i>Ground Disturbance Permit</i>	<i>New Mexico State Lands Office – Commercial Resources Division</i>
<i>San Juan County Floodplain Permit (if required)</i>	<i>San Juan County</i>

*Note – All project area washes are ephemeral and no longer considered jurisdictional by the US Army Corps of Engineers (refer to the recently enacted Navigable Waters Rule). Should the Navigable Waters Rule be reversed, or a stay issued from legal challenge, potential impacts to project area ephemeral washes would be authorized under the NWP's listed above.

**Note – All required biological and cultural resource surveys and reporting have been completed in accordance with NM SLO requirements.

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

EXHIBIT F
(to Energy Storage Agreement)

COMMISSIONING AND ANNUAL TESTS

Commissioning Tests

- A. Automatic Generation Control (AGC) Functionality Test
- B. SCADA Functionality Test
- C. Owner Control and Data Link Functionality Tests (See Section 3.4)
- D. ESS Solar Capacity Firming Test
- E. ESS Unit Capabilities Tests

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

A. Automatic Generation Control (AGC) Functionality Test

Purpose:

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

System starting state:

The ESS will be in the on-line state at between 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. This profile shall not cause the ESS to charge from the grid.

Procedure:

1. Record the ESS active power level at the ESS Electric Metering Device.
2. Command the ESS to follow a simulated AGC discharging signal every four (4) seconds for ten (10) minutes.
3. Upon confirmation of the availability of sufficient Solar Energy Output, command the ESS to follow a simulated AGC charging signal every four (4) seconds for ten (10) minutes.
4. Record and store the ESS active power response (in seconds).

System end state:

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

B. SCADA Functionality Test

Seller shall prepare and submit to Buyer a SCADA Functionality Test procedure no later than 120 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such SCADA Functionality Test procedure and Seller shall perform and successfully demonstrate the SCADA functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

C. Owner Control and Data Link Functionality Test

Seller shall prepare and submit to Buyer an Owner Control and Data Link Functionality Test procedure no later than 120 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Owner Control and Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Owner Control and Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

D. ESS Solar Capacity Firming Test

Seller shall perform a test of the ESS control system to validate its capability to maintain a constant energy delivery from the combined PPA and ESA to the Point of Delivery (“POD”). The test shall be performed over a three (3) hour test period given a fixed MW setpoint at the Point of Delivery from the integrated Solar Facility and ESS. The test shall validate the ability of the ESS control system to autonomously charge solar generation or discharge to maintain a constant POD output within two (2) percent of the output setpoint and within the limits of the ESS Unit Capabilities and ESS Operating Restrictions. The constant POD setpoint shall be between the ESS PMAX and the POD rating minus PMAX or reasonably adjusted according to the solar generation forecast on the day of the test. The test shall be deemed successful if the ESS is able to regulate the POD to the output setpoint, within two (2) percent, at all times during the three (3) hour test when the charging or discharging of the ESS to maintain the output setpoint would not violate the ESS Unit Capabilities or ESS Operating Restrictions.

Commissioning and Annual Tests

The following tests shall be conducted as a requirement to achieve the Commercial Operation Date and will be repeated annually (or more frequently as allowed under the ESA) throughout the term of the ESA.

E. ESS Unit Capabilities Testing

E.1 ESS CAPACITY TEST

E.1.1 General

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

E.1.2 Requirements Applicable to all ESS Capacity Tests

A. Purpose of Test. Each ECT shall:

- (1) verify compliance with the Guaranteed ESS Capacity or otherwise determine any lower ESS Capacity for the purposes of this ESA;
 - (2) determine the Roundtrip Efficiency (RTE) of the ESS;
- B. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:
- (1) discharge time (minutes);
 - (2) ESS Charging Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh (“ESS Meter Energy In”);
 - (3) ESS Discharge Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh (“ESS Meter Energy Out”);
 - (4) ESS Discharge Energy measured at the ESS Electric Meter Device including the accounting of losses from the ESS Electric Meter Device to the Point of Delivery, in MWh (“Point of Delivery Energy Out”);
 - (5) ESS Charging Energy measured at the ESS Electric Meter Device accounting for losses from the Point of Delivery to the ESS Electric Meter Device, in MWh (“Point of Delivery Energy In”);
- C. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.
- D. Test Elements and Sequence. Each ECT shall include the following test elements:
- (1) the discharging of the ESS from a 100% State of Charge at a power discharge setpoint rate equal to the Guaranteed ESS Capacity (MW);
 - (2) the determination of Point of Delivery Energy Out, as measured by the ESS Electric Meter Device, that is discharged from the ESS to the Point of Delivery until either a 0% State of Charge is achieved or four (4) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by four (4) hours shall determine the ESS Capacity. The ESS Electric Metering Device shall be programmed to correct for losses between the ESS Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;
 - (3) the discharging of the ESS until the first of the following two events take place: (i) Minimum State of Charge is reached or (ii) the ESS has achieved four (4) hours of discharging the Guaranteed ESS Capacity;
 - (4) starting at the Minimum State of Charge, the charging of the ESS at a

constant power charge rate equal to the lesser of the Guaranteed ESS Capacity and the generating capacity (in MW) of the Solar Facility, subject to Section E.1.2.E(2) below;

- (5) the determination of Point of Delivery Energy In, as measured by the ESS Electric Metering Device, that is required to charge the ESS until a 100% State of Charge is achieved as of the commencement of the ESS Capacity Test.

E. Test Conditions.

- (1) General. At all times during an ECT, the ESS shall be operated in compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. The ESS shall have charged and discharged at least 80% of one (1) Equivalent Full Cycle in the twenty-four (24)-hour period prior to the ECT, charged to a 100% State of Charge using Charging Energy on the day of the ECT and maintained at a 100% State of Charge for at least two (2) hours prior to commencement of the ECT. The ECT shall commence within one (1) hour after sunset or other such time as mutually agreed by the Parties, and the Solar Facility shall be disconnected prior to commencement of such ECT. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the ESS shall otherwise be at unity (1.00) power factor.
- (2) Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT (including a level of irradiance that does not permit the Solar Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such ECT in accordance with Section E.1.2.F of these ESS Capacity Test Procedures. The ECT will not be postponed or rescheduled for insufficient irradiance if the Solar Facility produces sufficient power to demonstrate charging at the ESS Guaranteed Capacity for at least 80% of the charging period during the ECT and sufficient energy is available for the ESS to reach a 100% State of Charge at least one hour prior to sunset.
- (3) Weather Conditions. Ambient outside dry bulb air temperature of 25°C. Seasonal weather patterns may prevent the occurrence of an ECT. In such circumstances, Seller shall supply adjusted performance metrics for the ESS at a range of ambient conditions for Buyer's review and approval (such approval not to be unreasonably conditioned, delayed or withheld) ninety (90) Business Days prior to the scheduled ECT to determine whether the scheduled ECT is feasible.
- (4) Instrumentation and Metering. Seller shall provide all instrumentation,

metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Section 5 of the ESA.

- F. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section E.1.2.E(2) of this ESS Capacity Test Procedure), Seller may, in its sole discretion: (i) accept the results up to the time the ECT was suspended; provided, however, that to the extent Buyer reasonably objects to such results, Buyer may require that the ECT be repeated or that the portion thereof that was not completed, be completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Seller is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.
- G. Final Report. Within ten (10) Business Days after the completion of any ECT, Seller shall prepare and submit to Buyer a written report of the results of the ECT, which report shall include:
- (1) A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;
 - (2) the measured data for the ESS Electric Meter Device readings as well as each parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT and plant log sheets verifying the operating conditions and output of the ESS;
 - (3) The ESS Capacity as determined by the ECT, including supporting calculations; and
 - (4) Seller's statement of either Seller's acceptance of the ECT or Seller's rejection of the ECT results and reason(s) therefor.

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

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section E.1.2.F of this ESS Capacity Test Procedure.

- H. Supplementary ESS Capacity Test Protocol. No later than one hundred twenty (120) days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit F with additional and

supplementary details, procedures and requirements applicable to ESS Capacity Tests based on the then-current design of the Facility (collectively, the “Supplementary ESS Capacity Test Protocol”). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit F. Future modifications to the Supplementary ESS Capacity Test Protocol, as mutually agreed, shall be documented and maintained by the Parties.

- I. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first four (4) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this ESA, multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the day following the completion of the ESS Capacity Test for all purposes under this ESA.
- J. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh-AC) and the ESS Meter Energy In (MWh-AC) as below:

$$\text{Roundtrip Efficiency (\%)} = \frac{[\text{ESS Meter Energy-Out (MWh-AC)}]}{[\text{ESS Meter Energy-In (MWh-AC)}]} \times 100$$

E.2 ESS RESPONSE DELAY TEST

Purpose of Test:

1. Determine the Charge Ramp Rate of the ESS
2. Determine the Discharge Ramp Rate of the ESS

Test Conditions:

The ESS Facility will be in the on-line state at between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. This test shall not cause the ESS to charge from the grid.

Test procedure:

Measured Charge Ramp Rate:

1. Send an active power charge command of PMAX to charge the batteries
2. The time measured from when the ESS receives the PMAX charge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of charge PMAX shall be the Charge Ramp Latency
3. Record the time measured to ramp from 1% to PMAX
4. Divide the change in ESS system output (achieved power (in MW) less the 1% power (in MW)) by the time required to reach the achieved power to determine the Measured Charge Ramp Rate

Measured Discharge Ramp Rate:

1. Send an active power discharge command of PMAX to discharge the batteries
2. The time measured from when the ESS receives the PMAX discharge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of discharge PMAX shall be the Discharge Ramp Latency
3. Record the time measured to ramp from 1% to PMAX
4. Divide the change in ESS system output (achieved power (in MW) less the 1% power (in MW)) by the time required to reach the achieved power to determine the Measured Discharge Ramp Rate

Determination of Liquidated Damages for Guaranteed Charge Ramp Rate, Guaranteed Discharge Ramp Rate, or Guaranteed System Latency:

To the extent that the Charge Rate Latency or Discharge Rate Latency, as measured during an ESS Unit Capabilities Test or during operation of the Project, is longer than the Guaranteed System Latency identified in Section 3.12, ESS Non-Performance Liquidated Damages as outlined in Section 3.13 of the ESA shall apply.

To the extent that the Measured Charge Ramp Rate or Measured Discharge Ramp Rate, as measured during an ESS Unit Capabilities Test or during operation of the Project, is lower than the Guaranteed Charge Ramp Rate or Guaranteed Discharge Ramp Rate identified in Section 3.12, respectively, ESS Non-Performance Liquidated Damages as outlined in Section 3.13 of the ESA shall apply.

EXHIBIT G
(to Energy Storage Agreement)

INSURANCE COVERAGES

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

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

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

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

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

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

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

EXHIBIT H – RESERVED
(to Energy Storage Agreement)

EXHIBIT I
(to Energy Storage Agreement)

AVAILABILITY GUARANTEES

Section 1. Definitions.

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

“Actual ESS Availability Percentage” means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all ESS Available Hours divided by (ii) the sum of all ESS Period Hours in the relevant Commercial Operation Year.

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

“Annual ESS Availability Damages Cap” has the meaning set forth in Section 2.1(C).

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

“ESS Availability Damages” has the meaning set forth in Section 2.1(B) of this Exhibit.

“ESS Available Hours” means for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of ESS Period Hours in such Commercial Operation Year, minus (b) the aggregate ESS Unavailable Hours in such Commercial Operation Year. The ESS Available Hours shall be prorated for partial availability (e.g., 100 MW available for 1 hour = 1 hour of availability. 50 MW available for 30 minutes + 100 MW available for 30 minutes = (50 MW x 30 minutes) + (100 MW x 30 minutes) / 60 minutes = .75 hour of availability).

“ESS Excused Hours” means, in any Commercial Operation Year, (a) the aggregate Seller Excused Hours for such Commercial Operation Year to the extent that the ESS is affected during such hours; provided that, for purposes of the Guaranteed ESS Availability Percentage, only the first fifty (50) hours of Scheduled Maintenance Outages in the aggregate for any portion of the Project per Commercial Operation Year shall be treated as ESS Excused Hours, (b) all hours during which a Seller Curtailment occurs in such Commercial Operation Year and (c) all hours during any outage which is the result of attempted delivery of Charging Energy by Buyer at the Point of Delivery that does not meet the requirements of the Interconnection Agreement or this ESA.

“ESS Period Hours” means eight thousand seven hundred sixty (8,760) hours for any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year.

“ESS Unavailable Hours” means those hours, other than ESS Excused Hours, that the ESS is not available to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition); (b) in “run” status and faulted; (c) included in Scheduled Maintenance Outages in excess of fifty (50) hours in aggregate for the Project in any Commercial Operation

Year; (d) incapable of being remotely controlled via its AGC system; or (e) otherwise not operational or capable of delivering Discharge Energy at or accepting Charging Energy to the Point of Delivery,

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

Section 2. Availability Guarantees.

1. ESS Availability Guarantee.

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

(B) ESS Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed ESS Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to One Thousand Five Hundred Dollars (\$1,500) per MW of Guaranteed ESS Capacity per one percent (1%) shortfall in the Guaranteed ESS Availability Percentage, calculated annually and prorated for any portion of a Commercial Operation Year (“**ESS Availability Damages**”), but in no event in excess of the Annual ESS Availability Damages Cap and the Aggregate ESS Availability Damages Cap. A sample calculation of the ESS Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 2 to this Exhibit I.

(C) ESS Availability Damages Cap, Termination and Cure Rights. The total ESS Availability Damages payable by Seller for failure to meet the Guaranteed ESS Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to Fifteen Thousand Dollars (\$15,000) per MW of Guaranteed ESS Capacity (“**Annual ESS Availability Damages Cap**”) and in the aggregate at a value equivalent to Forty-Five Thousand (\$45,000) per MW of Guaranteed ESS Capacity (“**Aggregate ESS Availability Damages Cap**”) over the Term of the ESA.

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

provisions of Article 12 of the ESA are an Event of Default of Seller for which Buyer may terminate the ESA and seek damages in accordance with Section 12.4 of the ESA.

3. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of Actual ESS Availability Percentage for the previous Commercial Operation Year and the ESS Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of ESS Availability Damages paid to Buyer under the ESA and shall provide notice that the Aggregate ESS Availability Damages Cap has been reached, if applicable. If ESS Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

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

ATTACHMENT 1 TO EXHIBIT I
EXAMPLE CALCULATION OF ESS AVAILABILITY DAMAGES

I. Example of Actual ESS Availability Percentage Calculation

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

The ESS had the following operating characteristics:

	Hours
ESS Period Hours (“EPH”)	8,760
ESS Unavailable Hours (“EUH”)	700

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

Sum of ESS Available Hours = EPH – EUH: $8,060 = 8,760 - 700$

Actual ESS Availability Percentage

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

- (a) Sum of ESS Available Hours: 8,060 hours
- (b) Sum of ESS Period Hours: 8,760 hours
- (c) Actual ESS Availability Percentage: $(\text{Sum of ESS Available Hours} / \text{Sum of ESS Period Hours}) \times 100 = (8,060 / 8,760) \times 100 = 92.0\%$

II. Example of ESS Availability Damages

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

- (a) Seller’s Guaranteed ESS Availability Percentage in Commercial Operation Year 4 = 95%.
- (b) Seller’s Actual ESS Availability Percentage in Commercial Operation Year 4 = 92%.
- (c) Seller’s Guaranteed ESS Capacity = 100 MW.

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

(Seller's Guaranteed ESS Availability Percentage in Commercial Operation Year 4 – Seller's Actual ESS Availability Percentage in Commercial Operation Year 4) (the latter two expressed as a decimal) x (100) x Liquidated Damage Value x Seller's Guaranteed ESS Capacity = ESS Availability Damage

$$(0.95 - 0.92) \times 100 \times \$1,500 \times 100 = \$450,000$$

As specified in the definition of "ESS Unavailable Hours," all ESS Excused Hours are excluded from the calculation of ESS Unavailable Hours. Thus, in the example above, the 700 hours of ESS Unavailable Hours does not include any hours that are ESS Excused Hours.

EXHIBIT J
(to Energy Storage Agreement)

FORM OF SELLER GUARANTY

GUARANTY

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

RECITALS:

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

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

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

* * *

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

- (a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. \$ _____) (the “**Maximum Recovery Amount**”), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys’ fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs that may be recovered hereunder exceed [_____].
- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are

deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.
- (b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay the Overdue Obligation 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 any calendar day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday where banks in Albuquerque, New Mexico are permitted or authorized to close..

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 corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance by Guarantor of this Guaranty; and
- (c) the execution, delivery and performance of this Guaranty has been duly and validly authorized by all _____ proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by

the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. **RESERVATION OF CERTAIN DEFENSES.** 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 are available to Obligor with respect to the 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 its defenses (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 the limitations imposed by the Maximum Recovery Amount as specified in *Section 1(a)* above) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

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

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

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

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

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

<i>TO GUARANTOR:</i> *	<i>TO COUNTERPARTY:</i>
[●] <i>Attn:</i> Treasurer	[●] <i>Attn:</i>

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

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

10. MISCELLANEOUS.

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New Mexico, without regard to principles of conflicts of laws thereunder.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably:
 - (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and
 - (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any

claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

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

* * *

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

[•]

By: _____

Name: _____

Title: _____

EXHIBIT K
(to Energy Storage Agreement)

**COMMERCIAL OPERATION
FORM OF CERTIFICATION**

This certification (“Certification”) of Commercial Operation is delivered by SJS 1 Storage, LLC (“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 100 MW for four (4) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharge Energy on a sustained basis (in accordance with the ESS manufacturer’s requirements and the Commissioning Tests);
- (2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and
- (3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

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

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

SJS 1 STORAGE, LLC

[Licensed Professional Engineer]

Signature: _____
Name: _____
Title: _____

Signature: _____
Name: _____
Title: _____
Date: _____

License Number and LPE Stamp: _____

EXHIBIT L
(to Energy Storage Agreement)

ROUNDTRIP EFFICIENCY DEGRADATION GUARANTEE

Year	Annual R/T Eff Degradation
1	0.3%
2	0.3%
3	0.3%
4	0.3%
5	0.3%
6	0.3%
7	0.3%
8	0.3%
9	0.3%
10	0.3%
11	0.3%
12	0.3%
13	0.3%
14	0.3%
15	0.3%
16	0.3%
17	0.3%
18	0.3%
19	0.3%
20	0.3%

EXHIBIT M
(to Energy Storage Agreement)

ESS Operating Restrictions

Subject to the terms of this ESA, the ESS shall be operated in accordance with the following operating restrictions. Seller is authorized to utilize the BESS control system to enforce these Operating Restrictions:

1. Except as otherwise allowed in Section 12.12, during the Recapture Period, the ESS shall exclusively be charged using Energy produced by the Solar Facility.
2. Except as allowed in Section 5.1(A), the amount of Discharge Energy at any point in time shall be limited to the interconnection limit minus the contemporaneous Energy production by the Solar Facility.
3. The number of ESS Equivalent Full Cycles in any Commercial Operation Year shall be limited according to Section 4.1(C).
4. The annual average state of charge percentage shall be maintained below fifty percent (50%) during any Commercial Operation Year.
5. The ESS will be dispatched in order to maintain a state of charge between zero (0) MWh and four hundred (400) MWh, inclusive.
6. Any delivery of Charging Energy from the grid will be in compliance with the terms of the Interconnection Agreement.
7. The ESS will be operated in accordance with Prudent Utility Practice.

In the event that Buyer's actions violate the above ESS Operating Restrictions, Buyer shall compensate Seller for actual additional maintenance requirements or remedy for any warranty claims directly related to such violation. If the Parties are unable to resolve any dispute concerning a claimed violation of the ESS Operating Restrictions, they shall proceed in accordance with Section 13.8 of the ESA.

PPA for 100 MW Solar Project with 201LC 8me LLC

PNM Exhibit TGF-6

Is contained in the following 107 pages.

Solar PPA Agreement 1064334

POWER PURCHASE AGREEMENT

ROCKMONT SOLAR

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

201LC 8ME LLC

Dated as of September 23, 2020

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION.....	1
1.1 Definitions.....	1
1.2 Rules of Construction.	18
1.3 Interpretation with Interconnection Agreement.	18
1.4 Interpretation of Arrangements for Electric Supply to the Project.	19
ARTICLE 2 TERM AND TERMINATION	19
2.1 Execution Date and Term.	19
ARTICLE 3 PROJECT DESCRIPTION.....	20
3.1 Commercial Terms.....	20
3.2 Project.	20
3.3 Location.	20
3.4 General Design of the Project.	21
3.5 Expected Commercial Operation Date.	22
3.6 Extension.....	22
3.7 Delay Damages.	22
3.8 Capacity Shortfall.	22
3.9 Test Energy.	23
3.10 Notice of Commercial Operation.....	23
ARTICLE 4 AGC; BUYER CURTAILMENT; SELLER CURTAILMENT	23
4.1 AGC; Buyer Curtailment.	24
4.2 Seller Curtailment.	24
ARTICLE 5 DELIVERY AND METERING	25
5.1 Delivery Arrangements.....	25
5.2 Availability Reporting.	25
5.3 Electric Metering Devices.....	25
5.4 Adjustment for Inaccurate Meters.	27
ARTICLE 6 CONDITIONS PRECEDENT.....	27
6.1 Conditions Precedent.	27
6.2 Notice.	28
ARTICLE 7 SALE AND PURCHASE OF SOLAR ENERGY OUTPUT	28
7.1 Sale and Purchase of Solar Energy Output.....	28
7.2 Title and Risk of Loss.....	28

7.3	Future Environmental Attributes and Changes in Law.....	28
7.4	Scheduling.....	29
7.5	Forced Outages.	30
7.6	Availability Guarantee.	30
ARTICLE 8 PAYMENT CALCULATIONS.....		30
8.1	Billing Components.	30
8.2	Payment Support Requirement.	31
8.3	Survival on Termination.	31
ARTICLE 9 BILLING AND PAYMENT PROCEDURES.....		31
9.1	Statements and Payment of Electricity Payments.....	31
9.2	Miscellaneous Payments.....	32
9.3	Currency and Method of Payment.	32
9.4	Default Interest.....	32
9.5	Disputed Items.	32
9.6	Statement Errors.....	33
9.7	Taxes.....	33
9.8	Setoff and Payment Adjustments.....	34
9.9	Netting.....	34
9.10	Survival on Termination.	34
ARTICLE 10 OPERATIONS AND MAINTENANCE.....		34
10.1	Construction of the Project.	34
10.2	Commissioning Tests.....	35
10.3	Access to and Inspection of the Project.	36
10.4	Operating Parameters.....	36
10.5	Operating Procedures.....	37
10.6	Project Maintenance.....	37
10.7	Sales to Third Parties.	38
10.8	Performance Tests.....	38
10.9	Annual Performance Test Guarantee Damages.	40
10.10	Buyer-Requested Performance Tests.....	42
10.11	Weather Stations.....	42
ARTICLE 11 RECS AND ENVIRONMENTAL ATTRIBUTES.....		43
11.1	Sale of RECs and Environmental Attributes.	43
ARTICLE 12 DEFAULT AND REMEDIES		44

12.1	Events of Default of Seller.....	44
12.2	Events of Default of Buyer.	46
12.3	Damages Prior to Termination.....	47
12.4	Termination.....	48
12.5	Specific Performance.	49
12.6	Remedies Cumulative.	49
12.7	Waiver and Exclusion of Other Damages.....	50
12.8	Payment of Amounts Due to Buyer.	50
12.9	Duty to Mitigate.	50
12.10	Security Rights.	50
ARTICLE 13 CONTRACT ADMINISTRATION AND NOTICES		50
13.1	Notices in Writing.....	50
13.2	Representative for Notices.....	51
13.3	Authority of Representatives.	51
13.4	Records.	51
13.5	Provision of Real-Time Data.	52
13.6	Examination of Records.....	52
13.7	Exhibits.	53
13.8	Resolution of Issues.	53
ARTICLE 14 FORCE MAJEURE.....		53
14.1	Definition.	53
14.2	Notification Obligations.....	55
14.3	Duty to Mitigate.....	55
14.4	Force Majeure Event.....	55
ARTICLE 15 REPRESENTATIONS, WARRANTIES AND COVENANTS.....		55
15.1	Seller’s Representations, Warranties and Covenants.....	55
15.2	Buyer’s Representations, Warranties and Covenants.	57
ARTICLE 16 INSURANCE.....		58
16.1	Evidence of Insurance.....	58
16.2	Term and Modification of Insurance.	58
16.3	Endorsements and Other Requirements.....	59
ARTICLE 17 LEGAL AND REGULATORY COMPLIANCE AND GOVERNMENTAL APPROVAL		59
17.1	Applicable Laws.	59

17.2	Governmental Approvals.....	59
17.3	NMPRC Approval.....	60
17.4	Compliance with Reliability Standards.....	61
17.5	Compliance Information.....	61
ARTICLE 18 ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS		61
18.1	No Assignment Without Consent.....	61
18.2	Conditions on Transfers.....	62
18.3	Change of Control.....	62
18.4	Transfer Without Consent Is Null and Void.....	62
18.5	Subcontracting.....	62
18.6	Assignment to Lenders.....	62
ARTICLE 19 CREDIT AND SECURITY REQUIREMENTS		63
19.1	Security.....	63
19.2	Form of Security.....	64
19.3	Grant of Security Interest.....	64
19.4	Use of Security.....	65
ARTICLE 20 INDEMNITY; INSURANCE PROCEEDS.....		65
20.1	Indemnification.....	65
20.2	Notice of Claims; Procedure.....	65
20.3	Survival of Obligations.....	66
20.4	Insurance Proceeds.....	66
ARTICLE 21 GOVERNMENTAL CHARGES		67
21.1	Allocation of Governmental Charges.....	67
ARTICLE 22 MISCELLANEOUS		67
22.1	Waiver.....	67
22.2	Fines and Penalties.....	67
22.3	Standard of Review.....	67
22.4	Disclaimer of Certain Third Party Beneficiary Rights.....	67
22.5	Relationship of the Parties.....	68
22.6	Equal Employment Opportunity Compliance Certification.....	68
22.7	Survival of Obligations.....	68
22.8	Severability.....	68
22.9	Complete Agreement; Amendments.....	68
22.10	Binding Effect.....	69

22.11	Headings.	69
22.12	Counterparts.	69
22.13	Governing Law and Choice of Forum.	69
22.14	Confidentiality.	69
22.15	Marketing Rights; Press Releases and Media Contact; Access.	71
22.16	Right to Mortgage.	71
22.17	Forward Contract and Master Netting Agreement.	72
22.18	Accounting Matters.	72
22.19	Telephone Recording.	73

EXHIBITS

- Exhibit A Description of Seller's Generation Facilities, Site Map and Project Schedule
- Exhibit B One-Line Diagrams of Project and Interconnection Facilities
- Exhibit C Description of Site
- Exhibit D Notice Addresses
- Exhibit E Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
- Exhibit F Commissioning Tests
- Exhibit G Insurance Coverages
- Exhibit H Availability Guarantee
- Exhibit I Form of Seller Guaranty
- Exhibit J Commercial Operation Form of Certification
- Exhibit K Annual Degradation Guarantees
- Exhibit L Annual Generation Forecast
- Exhibit M Development and Construction Standards Organizations

POWER PURCHASE AGREEMENT—ROCKMONT SOLAR

This Power Purchase Agreement—Rockmont Solar, as may be amended from time to time, is entered into this 23rd Day of September, 2020 (“**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 201LC 8me LLC (“**Seller**”), whose principal place of business is 4370 Town Center Blvd., Suite 110; El Dorado Hills, CA 95762. Buyer and Seller may be referred to in this PPA individually as a “**Party**” and collectively as the “**Parties**.”

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

WHEREAS, Seller desires to develop, design, construct, own and operate a solar energy electric generating facility with an expected total maximum power output of approximately one-hundred (100) MW (“**Project**”), as further defined herein and in Exhibit A; and

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

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

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

ARTICLE 1

Definitions and Rules of Interpretation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Buyer Economic Curtailment**” means (a) any curtailment with the intended purpose of achieving economic savings by not purchasing energy available from the Project, or (b) any curtailment resulting from Buyer’s economic bidding into a regional market. For avoidance of doubt, PNM is not required to provide this Project as a participating resource in a regional market.

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

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

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

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

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

“Commercial Operation” means that (a) Solar Units with an aggregate capacity of at least ninety percent (90%) of the Guaranteed Solar Capacity have been constructed, commissioned, tested and proven capable of delivering Energy on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system, (b) Seller has obtained all required consents and Governmental Approvals, (c) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement, (d) Seller has satisfactorily completed the Commissioning Tests identified in Exhibit F in accordance with mutually agreed test procedures and other testing in accordance with Interconnection Agreement requirements, (e) Seller has obtained required insurance coverage, and (f) Buyer has received an officer’s certificate from Seller 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) Seller provides a written notification to Buyer that the Commercial Operation has commenced, and Buyer validates that all requirements for Commercial Operation have been satisfied in accordance with Section 3.10, (b) Seller provides to Buyer a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit J, with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

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

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

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

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

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

“**DC**” means direct current.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Energy Storage Agreement” means that certain Energy Storage Agreement between 309SJ 8me LLC and Buyer dated as of **September 23, 2020**.

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

“Energy Storage System” or **“ESS”** has the meaning ascribed to it in the Energy Storage Agreement. For the avoidance of doubt, the Energy Storage System is being developed concurrently and jointly with the Project and may share certain equipment, buildings, and facilities, including transformers, Interconnection Facilities, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate, with the Project.

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

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

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

“Event of Default” means an Event of Default of Seller as set forth in Section 12.1 or an Event of Default of Buyer as set forth in Section 12.2.

“Execution Date” has the meaning set forth in the Preamble.

“Executive Order” has the meaning set forth in Section 3.4(H).

“Expected Commercial Operation Date” has the meaning set forth in Section 3.1.

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

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

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

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

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

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

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

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

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

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

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

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

“**Interconnection Date**” has the meaning set forth in Section 3.6.

“**Interconnection Agreement**” means the separate agreement between Seller, 309SJ 8me LLC, and/or an Affiliate of Seller, and the Transmission Provider for interconnection of the Project to the Transmission Provider’s Transmission System, as such agreement may be amended from time to time.

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

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

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

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

“**kWh**” means kilowatt hour AC.

“**Lender(s)**” means any and all Persons: (a) lending money or extending credit (including

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

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

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

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

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

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

“**Model Rated Power**” has the meaning set forth in Section 10.8(D)(6).

“**Month**” means a calendar month.

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

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

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

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

“**MWh**” means megawatt hours AC.

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Performance Test Ratio**” has the meaning set forth in Section 10.8(D)(4).

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

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

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

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

“**Point of Delivery**” means the electric system point at which Seller makes available to Buyer and delivers to Buyer the Solar Energy Output being provided by Seller to Buyer under

this PPA. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this PPA. For the avoidance of doubt, Energy delivered directly to the Energy Storage System shall be deemed to have been delivered at the Point of Delivery.

“**Portfolio**” means electrical energy generating and storage assets and related assets and entities, comprising seven hundred fifty (750) MW or more of electrical energy generating and storage capacity, including the Project (or the interests of Seller or the interests of its direct or indirect parent companies), that are owned or leased by Seller or Affiliates of Seller.

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

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

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

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

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

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

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

(A) equipment, materials, resources, and supplies, including spare parts inventories, are

available to meet the Project's needs;

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

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

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

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system, or contrary to good utility practice, environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating requirements of the Interconnection Agreement, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for solar power generation operations serving public utilities in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Sites and under both normal and reasonably foreseeable Emergency Conditions; and

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

“Qualified Operator” is (a) a Person that has at least three (3) years' experience with operating at least one hundred (100) MW of solar generation, or (b) any other Person reasonably acceptable to Buyer.

“RC” has the meaning set forth in Section 10.8(D)(1).

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

“Receiving Party's Representatives” has the meaning set forth in Section 22.14(B).

“Recording” has the meaning set forth in Section 22.19.

“Regulatory End Date” has the meaning set forth in Section 17.3(B)(3).

“Reliability Curtailment” means any curtailment of the Project by the BAA or Transmission Provider due to any of the following reasons: (a) the Transmission Provider and/or BAA directs a general curtailment, reduction or redispatch of generation in the area for any reason other than any economic purpose or to accomplish least cost dispatch; (b) the BAA curtails or

otherwise reduces the Metered Output in order to meet NERC/WECC standards criteria in regard to compliance obligations to the PNM Balancing Area and/or Transmission Provider's Transmission System to operate within system limitations or other operating areas as directed by the Peak Reliability Organization; or (c) for safety or equipment failure situations. For the avoidance of doubt, a Reliability Curtailment includes curtailments associated with an oversupply of generation on Buyer's or the Transmission Provider's Transmission System during a period of time when generating facilities connected to the Transmission Provider's Transmission System are interrupted or reduced in an equitable and non-discriminatory manner, but shall not include any curtailment for any economic purpose or to accomplish least cost dispatch, which curtailment shall be deemed a Buyer Economic Curtailment. If any of the conditions set forth in this definition subparts (a) through (c) are applicable, Buyer shall be rebuttably presumed not to be curtailing for economic reasons. Buyer, upon reasonable notice, will provide reasonable documentation relating to any Reliability Curtailments to confirm compliance with this definition.

“Renewable Energy Certificate” or “REC” means a document evidencing that the amount of renewable energy shown on the document has been generated from the Project and certified as such by WREGIS. For purposes of this PPA and registration with WREGIS, RECs are accumulated on a MWh basis with one (1) REC for each MWh of renewable energy generated. RECs include all Environmental Attributes associated with the generated energy. “RECs” excludes (i) any local, state or federal investment tax credit, production tax credit, depreciation deductions or other tax benefit to Seller based on ownership of, or Energy production from, any portion of the Project, including the Tax Benefits, (ii) depreciation and other tax benefits arising from ownership or operation of the Project unrelated to its status as a generator of renewable or environmentally clean energy, and (iii) any Energy, reliability or other power attributes from the Project.

“Replacement Energy Costs” means the actual costs incurred by Buyer following an Event of Default by Seller that are reasonable and necessary to replace Solar Energy Output (which includes RECs, Environmental Attributes and Ancillary Services as defined herein) which Seller, in accordance with this PPA, would have generated at the Project and delivered to Buyer, but failed to so provide pursuant to this PPA. Buyer shall not have to enter into a replacement contract to establish the Replacement Energy Costs. If Buyer does not enter into a replacement contract, then the Replacement Energy Costs will be based on the market price for Energy, Environmental Attributes (including RECs) and Ancillary Services delivered to Buyer's system, as reasonably determined by Buyer. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement Energy Costs for an Event of Default also include (i) the reasonable amounts paid or incurred by Buyer for transmission or distribution of replacement Solar Energy Output and any associated transmission or distribution costs, (ii) the reasonable amounts paid or incurred by Buyer for the purchase of RECs associated with the replacement Solar Energy Output, and (iii) Buyer's reasonable expenses, including reasonable outside attorneys' fees, suffered as a result of Seller's failure to perform under this PPA.

“Requested Actions” has the meaning set forth in Section 17.3.

“Sales Taxes” means any New Mexico state and local sales taxes, use taxes, gross receipts taxes, compensating taxes, and similar taxes and charges.

“**S&P**” means Standard & Poor’s Corporation and any successor thereto.

“**Scheduled Maintenance Outage**” means a time during which a Solar Unit is shut down or its output reduced to undergo scheduled maintenance in accordance with this PPA, or as otherwise agreed by Seller and Buyer.

“**SEC**” or United States Securities and Exchange Commission has the meaning set forth in Section 22.18.

“**Security**” means Development Security or Delivery Term Security, as applicable.

“**Seller**” has the meaning set forth in the Preamble.

“**Seller Curtailment**” has the meaning set forth in Section 4.2.

“**Seller Excused Hours**” means those hours during which Seller is unable to schedule or deliver Energy to Buyer as a result of: (a) a Scheduled Maintenance Outage, (b) a Transmission Provider Curtailment, (c) a Reliability Curtailment, (d) a Buyer Curtailment, (e) a Force Majeure Event, or (f) any breach or failure by Buyer to perform any of its obligations under this PPA (other than due to a breach by Seller of its obligations under this PPA).

“**Seller Forced Outage**” means an unplanned reduction, interruption or suspension not associated with Seller Excused Hours of all or a portion of Energy deliveries from the Project to the Electric Interconnection Point.

“**Seller Guarantor**” means an entity with a long-term senior unsecured debt credit rating of “Baa3” or higher by Moody’s and “BBB-” or higher by S&P that has made a Seller Guaranty for the benefit of Buyer.

“**Seller Guaranty**” means a guaranty in substantially the form attached as Exhibit I.

“**Seller Permitted Transfer**” means any of the following: (a) a sale of a Portfolio; (b) a Change of Control of Seller’s Ultimate Parent; (c) a Change of Control of Seller where Seller’s Ultimate Parent is the same entity and continues to control Seller after such Change of Control; (d) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor; or (e) a transfer of all or substantially all of the assets of Seller’s Ultimate Parent in a single transaction; *provided*, that in the case of each, following such transfer the assignee (A) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (B) delivers evidence reasonably satisfactory to Buyer that such assignee’s creditworthiness is equal to or better than that of Seller; and (C) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this PPA (or otherwise agrees to maintain the existing Development Security or Delivery Term Security, as applicable, for the Project).

“**Seller Termination Payment**” means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Solar

Energy Output) calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, plus (b) Seller's Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this PPA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment does not include consequential incidental, punitive, exemplary or indirect or business interruption damages. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

"Seller's Costs" means brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this PPA or in entering into new arrangements which replace this PPA; and all reasonable attorneys' fees and expenses incurred by Seller in connection with the termination of this PPA.

"Seller's Financial Statements" has the meaning set forth in Section 22.18(B).

"Seller's Interconnection Facilities" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this PPA.

"Shortfall Factor" has the meaning set forth in Section 10.9(B).

"Site" means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this PPA. For the avoidance of doubt, this PPA is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld.

"Solar Energy Output" means Metered Output, Environmental Attributes (including RECs) and Ancillary Services generated by the Project.

"Solar Energy Output Payment Rate" means the price to be paid by Buyer to Seller for the Energy Output, as set forth in this PPA.

"Solar Unit(s)" means the photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary for the Project to collect sunlight at the Site and convert it into electricity. One Solar Unit includes all equipment associated with a single inverter.

"Supplemental State Tax Incentives" means any state or local production tax credit or

investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date and determined by reference to renewable electric energy produced from renewable energy resources in effect in the state of New Mexico, net of associated expenses, taxes, and lost Tax Benefits, if any.

“**Tax Benefits**” means (a) federal and state investment and/or production tax credits (including ITCs but excluding Supplemental State Tax Incentives), and any other tax credits which are or will be generated by the Project and (b) any cash payments or outright grants of money made by a Governmental Authority relating in any way to such tax credits or the Project.

“**Tax Equity Financing**” means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a “**Tax Equity Investor**”) in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the Tax credits, depreciation and other Tax Benefits associated with the Project.

“**Tax Equity Investor**” has the meaning set forth in the definition of Tax Equity Financing.

“**Taxes**” means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

“**Term**” means the period during which this PPA shall remain in full force and effect, and which is further defined in Article 2.

“**Termination Payment**” means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

“**Test Energy**” means any and all Solar Energy Output generated by the Project and delivered to Buyer during the Test Period.

“**Test Period**” means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider’s Transmission System and delivers metered Energy to the Point of Delivery and ending on the Commercial Operation Date.

“**Test Rated Power**” has the meaning set forth in Section 10.8(D)(5).

“**TP Forced Outage**” means an unplanned component failure or other condition that requires all or a portion of the Transmission Provider’s Interconnection Facilities or Transmission Provider’s Transmission System to be removed from service immediately that impacts Seller’s operation of the Project.

“**TP Maintenance Outage**” means the removal of all or a substantial portion of the

Transmission Provider's Interconnection Facilities or Transmission Provider's Transmission System from service to perform work on specific components that can be deferred, but that nevertheless requires all or a substantial portion of the Transmission Provider's Interconnection Facilities or Transmission Provider's Transmission System to be removed from service before the next TP Planned Outage. TP Maintenance Outages may occur anytime during the Commercial Operation Year, have flexible start dates, and may or may not have predetermined durations.

"TP Planned Outage" means the removal of the Transmission Provider's Interconnection Facilities or Transmission Provider's Transmission System from service to perform repairs that are scheduled in advance and have a predetermined duration.

"TP Reliability Curtailment" means any curtailment by the Transmission Provider in accordance with WECC operating policies and criteria and the OATT of Solar Energy Output deliveries for reliability reasons but does not include any Buyer Curtailment.

"Transmission Provider" means the entity, designated agent, or third party acting in its capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

"Transmission Provider Curtailment" means curtailments of Energy from the Project directed by the Transmission Provider resulting from (a) a TP Forced Outage that is not the result of a Force Majeure Event, (b) a TP Maintenance Outage, (c) a TP Planned Outage, (d) a TP Reliability Curtailment, or (e) an Emergency Condition.

"Transmission Provider's Interconnection Facilities" means the facilities necessary to connect the Transmission Provider's Transmission System to the Electric Interconnection Point, including breakers, bus work, bus relays, and associated equipment installed by the Transmission Provider for the direct purpose of physically and electrically interconnecting the Project, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. Arrangements for the installation and operation of the Transmission Provider's Interconnection Facilities shall be governed by the Interconnection Agreement.

"Transmission Provider's Transmission System" means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

"Ultimate Parent" means 8minutenergy US Solar, LLC, a Delaware limited liability company.

"Weather Stations" has the meaning set forth in Section 10.11(A).

"WECC" means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

"WREGIS" means the Western Renewable Energy Generation Information System or

any successor system.

“**WREGIS Certificates**” has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules.

“**WREGIS Operating Rules**” means the rules that describe the operations of WREGIS, as may be amended, which are currently available at www.wregis.org.

“**WREGIS Qualified Reporting Entity**” as defined by WREGIS Operating Rules means an individual or organization providing renewable generation data to create WREGIS certificates that has met the established WREGIS guidelines provided in WREGIS Operating Rules.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to “Articles,” “Sections,” “Exhibits” or “Schedules” shall be to articles, sections, exhibits, or schedules of this PPA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this PPA; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this PPA, the terms of this PPA shall take precedence.

(D) This PPA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this PPA and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this PPA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (i) where the PPA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, acceptance, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the PPA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words “include” or “including” or similar words shall be interpreted as “including but not limited to” or “including, without limitation.”

(G) Use of the words “tax” or “taxes” shall be interpreted to include taxes, fees, surcharges, and the like.

1.3 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, as applicable, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this PPA are not binding upon

the Transmission Provider.

(B) Notwithstanding any other provision in this PPA, nothing in the Interconnection Agreement shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this PPA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third party entity.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This PPA does not provide for the supply of retail electric power or natural gas to the Project, for any purpose ("**House Energy**"). Seller shall contract with the local utility in whose retail service territory the Project is located ("**Local Provider**") for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement.

(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 its proposed Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Calendar Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller's Interconnection Facilities. The terms of this PPA are not binding upon the Local Provider. For purposes of this PPA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this PPA, nothing in Seller's arrangements for the supply of House Energy to the Project shall alter or modify Seller's or Buyer's rights, duties and obligations under this PPA. This PPA shall not be construed to create any rights between Seller and Buyer in Buyer's capacity as the Local Provider.

(C) Seller shall have the right to consume energy concurrently generated by the Project for House Energy and to co-locate additional facilities designed to supply House Energy; provided, however, that excess energy produced from such facility shall not be delivered by Seller to Buyer under this PPA. House Energy shall be real time measured by either (i) separate Electric Metering Devices for Metered Output and House Energy or (ii) a single Electric Metering Device that separately measures Metered Output and House Energy. Each meter will have bi-directional kWh pulse accumulators and will be recorded separately for delivered and received power.

ARTICLE 2 Term and Termination

2.1 Execution Date and Term. This PPA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time on the date that is the last Day of the twentieth (20th) Commercial Operation Year, subject to the early termination provisions set forth herein. Applicable provisions of this PPA shall

continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

ARTICLE 3 Project Description

3.1 Commercial Terms. The following commercial terms apply to the transaction contemplated by this PPA, each term as more fully set forth in this PPA:

COMMERCIAL TERMS

Buyer: Public Service Company of New Mexico	Seller: 201LC 8me LLC
Project: Rockmont Solar	
Point of Delivery: The point of interconnection with PNM's Transmission system at which point Seller makes available to Buyer and delivers to Buyer the Solar Energy Output being provided under this PPA, as specified in <u>Exhibit B</u> .	
Contract Term: 20 Commercial Operation Years	Guaranteed Solar Capacity (MW_{AC}): 100 MW _{AC}
Product Type: Bundled Energy, Ancillary Services and RECs	Solar Energy Output Payment Rate: \$27.35/MWh
Day(s) of week: Monday through Sunday, including NERC holidays	Hours: Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Prevailing Time (“MPT”)
Guaranteed Start Date: One hundred eighty (180) Days after the Expected Commercial Operation Date	
Expected Commercial Operation Date: June 20, 2022, subject to Section 3.6.	

3.2 Project. Exhibit A provides a detailed description and implementation schedule (“**Project Schedule**”) of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed material changes in the Project or the 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 PPA. Exhibit A also contains a preliminary indication of the location of the Solar Units at the Site. Seller will provide notice to Buyer of the final proposed location of the Solar Units at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller's contractors

at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project according to Prudent Utility Practice(s), the PPA and the Interconnection Agreement. The Project shall at all times:

- (A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, generator telemetering equipment and communications equipment;
- (B) be equipped for and capable of AGC by Buyer;
- (C) use communication circuits from the Project to Buyer's System Control Center for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for AGC by Buyer;
- (D) supply Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;
- (E) deliver Energy to Buyer, at the frequency specified by Buyer;
- (F) be capable of being remotely started and stopped by Buyer's System Control Center;
- (G) be capable of immediate disconnection remotely by the Buyer's System Control Center; and
- (H) to the extent applicable, comply with Presidential Executive Order 13920, "Securing the United States Bulk-Power System" issued on May 1, 2020 ("**Executive Order**"). Within one hundred eighty (180) Days of the Execution Date, Seller shall provide to Buyer a notification defining Seller's approach to complying with the Executive Order. Seller shall provide the expected equipment suppliers and places of origin for all bulk-power system electric equipment as defined in the Executive Order and shall address the methodology for evaluating the full supply chain for components of such equipment and devices.

Within one-hundred eighty (180) Days following the Execution Date, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the ESS. These controls shall include the following MESA-ESS modes or equivalent: (i) Active Power Smoothing, (ii) Automatic Generation Control, and (iii) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE-1547.1: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with PNM's network, systems, or assets including a detailed explanation of its

methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with PNM's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to web servers, (iii) production change management, and (iv) CIP governance requirements.

3.5 Expected Commercial Operation Date. Subject to the extensions as specifically set forth herein, the Commercial Operation Date shall occur no later than the Expected Commercial Operation Date

3.6 Extension. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended by a number of Days, on a day-for-day basis up to a maximum of (a) one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event, (b) one hundred eighty (180) Days, in the event of delay of the in-service date of the Transmission Provider's Interconnection Facilities and Network Upgrades after March 1, 2022 ("**Interconnection Date**") that delays commencement of operation of the Project, or (c) one hundred eighty (180) Days, in the event that the Transmission Provider fails to identify the location of Seller's interconnection point by January 30, 2021, until such point is identified by the Transmission Provider. Seller will give written notice to Buyer describing any such Force Majeure Event or interconnection delay within five (5) Business Days after the occurrence of the Force Majeure Event or interconnection delay. The number of Days of such extension is calculated from the date on which the Force Majeure Event or interconnection delay begins. If a Force Majeure Event will delay the Commercial Operation Date for more than one hundred eighty (180) Days, or if an interconnection delay will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this PPA without liability of either Party, and Buyer shall return the Development Security less any amounts due from Seller to Buyer.

3.7 Delay Damages. If the Commercial Operation Date has not occurred by the Expected Commercial Operation Date as such date may be extended pursuant to Section 3.6, Seller will use commercially reasonable efforts to continue construction of the Project and shall pay liquidated damages ("**Delay Damages**") to Buyer for each Day after the Expected Commercial Operation Date until the earlier of (i) the Commercial Operation Date, and (ii) the Guaranteed Start Date, in an amount equal to One Hundred Fifty Dollars (\$150) per each MW of Delayed Capacity for the first forty-five (45) Days of Delay Damages, and an amount equal to Two Hundred Dollars (\$200) per Day per each MW of Delayed Capacity for the subsequent one hundred thirty five (135) Days of Delay Damages. "**Delayed Capacity**" is an amount equal to the difference between the Guaranteed Solar Capacity and the Installed Solar Capacity. In no event shall the aggregate Delay Damages paid pursuant to this Section 3.7 exceed Thirty-Three Thousand Seven Hundred Fifty Dollars (\$33,750) per MW of Delayed Capacity.

3.8 Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed Solar Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed Solar Capacity to achieve Commercial Operation. If Seller has not caused all Delayed Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the

amount of Six Hundred Thousand Dollars (\$600,000) per MW of Delayed Capacity (“**Capacity Shortfall Damages**”), in which case the Guaranteed Solar Capacity will be reduced in an amount equal to the Delayed Capacity for which Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

3.9 Test Energy. Not less than thirty (30) Days prior to the date upon which Seller expects to begin delivering Test Energy, Seller shall give written notice to Buyer of such expected deliveries. During the Test Period, Buyer agrees to accept and purchase all Test Energy generated at the Project and delivered by Seller to Buyer at the Point of Delivery at a rate equal to fifty percent (50%) of the Solar Energy Output Payment Rate; provided, that Buyer shall not be required to purchase Test Energy for a period that exceeds ninety (90) Days after initial delivery of Test Energy. Seller shall notify Buyer seven (7) Days prior to the initial delivery of Test Energy to Buyer subject to PNM approval not to be unreasonably withheld. The Parties agree to cooperate and make reasonable efforts to coordinate the scheduling and delivery of Test Energy. To the extent caused by PNM withholding its approval of Seller’s notice to deliver Test Energy, or as a result of the Parties’ coordination of the scheduling and delivery of the Test Energy, Seller’s delivery of Test Energy is delayed for one or more days relative to Seller’s initial notice, and to the extent that Seller is able to demonstrate that there was a resulting delay in achieving the Expected Commercial Operation Date, the Expected Commercial Operation Date and Guaranteed Start Date shall be extended on a day-for-day basis commensurate with the delay. Scheduling for subsequent deliveries of Test Energy shall be as set forth in Section 5.1.

3.10 Notice of Commercial Operation. Not less than sixty (60) Days prior to the date upon which Seller expects to achieve the Commercial Operation Date, Seller shall give written notice to Buyer of such expected Commercial Operation Date; provided that such Commercial Operation Date shall not be more than ninety (90) Days prior to the Expected Commercial Operation Date. Seller shall provide Buyer notice in the form of Exhibit J when Seller believes that all requirements to Commercial Operation have been satisfied. Buyer shall, within ten (10) Days, in writing either accept or reject this notice in its reasonable discretion, and if Buyer rejects the notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer’s rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller’s most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

ARTICLE 4

AGC; Buyer Curtailment; Seller Curtailment

4.1 AGC; Buyer Curtailment.

(A) Prior to the Commercial Operation Date or, if applicable, prior to the Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall maintain such AGC throughout the Delivery Term capable of controlling each inverter.

(B) Beginning on the Commercial Operation Date, Buyer shall have the right to curtail the Project by use of the AGC system to effect its curtailment rights pursuant to this Section 4.1(B) (“**Buyer Curtailment**”). Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer’s energy set point margin of error. Seller shall ensure that the Project’s AGC Remote/Local status is in “Remote” set-point control during normal operations. Buyer Curtailment shall be allowed for a Buyer Economic Curtailment or any other curtailment as required for the protection of the Buyer’s systems that is effectuated in a non-discriminatory manner given the operational circumstances at the time. Such Buyer Curtailment rights do not provide the Buyer with any rights to direct the operation of the Project. For a Buyer Economic Curtailment only, Buyer shall: (i) pay Seller an amount equal to the sum of the Solar Energy Output Payment Rate multiplied by the Deemed Energy associated with the number of Buyer Economic Curtailment MWh. For purposes of this Section 4.1(B), “**Deemed Energy**” shall mean the amount of Energy that was not delivered to Buyer by Seller but would have been so delivered but for the Buyer Economic Curtailment as follows: Deemed Energy (MWh) shall be reasonably calculated by Seller taking into account weather and pyranometer data from the meteorological station(s), via a mutually agreed upon method, at the Site for all or a portion of the Solar Units taken out of service due to the Buyer Economic Curtailment but excluding any Solar Unit(s) taken out of service or operating at a reduced capacity for other reasons, and adjusted to account for electrical losses in delivering Energy to the Point of Delivery. Buyer shall have the right to review and approve Seller’s calculations of Deemed Energy.

(C) Seller shall reduce Solar Energy Output from the Project during and to the extent of any Reliability Curtailment, Transmission Provider Curtailment, Seller Curtailment or Buyer Curtailment. Buyer shall pay for Deemed Energy during a Buyer Economic Curtailment as specified above. With the exception of a Buyer Economic Curtailment, Buyer shall not be required to pay Seller for any curtailed Energy during any Reliability Curtailment, Buyer Curtailment, Seller Curtailment or Transmission Provider Curtailment.

4.2 Seller Curtailment. A Seller Curtailment occurs any time the Project is unable to deliver otherwise available Energy to the Point of Delivery as a result of transmission limitations prior to the Point of Delivery, including as a result of Seller’s scheduling practices, or indirectly, by the Transmission Provider pursuant to the OATT or transmission service arrangements (“**Seller Curtailment**”).

ARTICLE 5 Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall secure transmission necessary to deliver the Energy to the Point of Delivery, including diligently negotiating and executing an Interconnection Agreement with the

Transmission Provider, or, in the alternative, diligently negotiating and executing any such changes to an executed Interconnection Agreement as are necessary to accommodate the characteristics of the Project. As between Buyer and Seller under this PPA, Seller shall be responsible for the costs of interconnection and costs required to deliver the Solar Energy Output from the Project to Buyer at the Point of Delivery, including the costs of any associated network upgrades. As between Buyer and Seller under this PPA, Seller shall also be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges applicable to the Project's output up to the Point of Delivery. Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on, and jointly used by, the Project and the Energy Storage System, provided that delivery of Energy from the Project to the Transmission Provider's Transmission System shall take priority over Energy discharged from the Energy Storage System, and the Project may not be curtailed during a period in which the Energy Storage System is concurrently being discharged, except as required to maintain reliability by the Balancing Area Authority.

(B) Buyer shall be responsible for costs required to deliver the Solar Energy Output from and beyond the Point of Delivery. Except as provided in this Section 5.1 and Section 7.4, Seller shall not be responsible for costs and charges related to scheduling and imbalances.

(C) On a Day-ahead basis, and no later than 4:00 a.m. MPT, Seller, or Seller's agent, shall make available to Buyer a 24-hour forecast of the Metered Output to be delivered to Buyer. Each Friday, and no later than 12:00 noon MPT, Seller shall provide Buyer a weekly Project generation forecast for the following week based on equipment availability. In addition, Seller, or Seller's agent, shall establish and maintain (including any future technological improvements developed by Seller, or an agent of Seller) an interface with Buyer via a web-based file transfer protocol for the purpose of transferring to Buyer real-time forecasting data related to the Project (or any alternative transfer mechanism mutually agreed to by the Parties).

(D) Buyer shall be responsible for all necessary transmission service arrangements, including scheduling arrangements, if any, to take Metered Output at the Point of Delivery and deliver it to points beyond.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM MPT on the current availability of the Project to Buyer's SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Energy sold and delivered pursuant to this PPA shall be metered and accounted for separately from any electric generation facility that utilizes the same Electric Interconnection Point.

(B) The following provisions of this Section shall govern Electric Metering Devices except to the extent the Interconnection Agreement modifies or otherwise conflicts with these provisions, in which case, the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Energy made available to Buyer by Seller under this PPA and to monitor and coordinate operation of the Project shall be

owned, installed, and maintained in accordance with the Interconnection Agreement at no cost to Buyer under this PPA. Calibration records shall be maintained by Seller for a period not less than two (2) years and shall be provided to Buyer within forty-five (45) Days of their availability. Electric metering devices shall be installed at the Point of Delivery to the extent required under the Interconnection Agreement. If Electric Metering Devices are not installed at the Point of Delivery, meters or meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery. The design of the Electric Metering Device system shall be subject to Buyer approval prior to commencement of construction of the Project. The Seller 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 Buyer upon completion of the testing. Seller shall provide or arrange with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices for all purposes necessary to perform under this PPA and shall provide Buyer the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted. Buyer shall also have the right to conduct its own tests of the Electric Metering Devices in Buyer's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Seller; and Seller shall have the right to be present at Buyer's tests of the Electric Metering Devices. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including obtaining any consent or other agreement from the Transmission Provider necessary to allow Buyer such access. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Buyer.

(D) Seller shall install and maintain, at its own expense, backup metering devices (“**Back-Up Metering**”) in addition to the Electric Metering Devices, which installation and maintenance shall be performed in a manner acceptable to the Buyer. Seller, at its own expense, shall inspect and test Back-Up Metering upon installation and at least annually thereafter and provide all test results to Buyer upon completion of the testing. Seller shall provide Buyer with reasonable advance notice of, and permit Buyer to witness and verify, such inspections and tests, *provided, however*, that Buyer shall not unreasonably interfere with or disrupt the activities of Seller and shall comply with all applicable safety standards. Upon written request, the Seller shall perform additional inspections or tests of Back-Up Metering and shall permit a qualified representative of the Buyer to inspect or witness the testing of Back-Up Metering, *provided, however*, that the Buyer shall not unreasonably interfere with or disrupt the activities of the Seller and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Buyer, unless, upon such inspection or testing, Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which event the expense of the requested additional inspection or testing shall be borne by the Seller. If requested in writing, the Seller shall provide copies of any inspection or testing reports to the Buyer.

(E) If any Electric Metering Devices, or Back-Up Metering, are found to be defective or inaccurate outside the bounds of the selected device's manufacturer's performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by Seller, at Seller's expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device, or Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device, or Back-

Up Metering, is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) In the event that the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering to determine the amount of such inaccuracy, provided, however, that Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. If Back-Up Metering is installed on the low side of Seller's step-up transformer, the Back-Up Metering data shall be adjusted for losses in the same manner as for the Electric Metering Devices. In the event that Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of Metered Output from the Project to the Point of Delivery during periods of similar operating conditions when the Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) In the event that the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

(C) To the extent that the adjustment period covers a period of deliveries for which payment has already been made by Buyer, Buyer shall use the corrected measurements as determined in accordance with this Article to recompute the amount due for the period of the inaccuracy and shall subtract the previous payments by Buyer for this period from such re-computed amount. If the difference is a positive number, the difference shall be paid by Buyer to Seller; if the difference is a negative number, that difference shall be paid by Seller to Buyer, or at the discretion of Buyer, may take the form of an offset to payments due Seller by Buyer. Payment of such difference by the owing Party shall be made not later than thirty (30) Days after the owing Party receives notice of the amount due.

ARTICLE 6 Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this PPA are subject to satisfaction of the following conditions precedent:

- (A) Subject to Section 17.3, receipt of NMPRC Approval; and
- (B) Receipt of approval of the Boards of Directors of Buyer and its parent company as required, which approval has been received.

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable.

ARTICLE 7 Sale and Purchase of Solar Energy Output

7.1 Sale and Purchase of Solar Energy Output. In accordance with and subject to the terms and conditions of this PPA, commencing on the Commercial Operation Date and continuing through the end of the Term (“**Delivery Term**”), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Solar Energy Output made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that, subject to Section 8.1(A), Buyer shall not be required to receive and purchase Solar Energy Output when and to the extent that (a) a Party’s performance is excused by a Force Majeure Event, (b) a Transmission Provider Curtailment is continuing, (c) a Reliability Curtailment is continuing, (d) a Seller Forced Outage is continuing, (e) a Seller Curtailment is continuing, (f) a Buyer Curtailment is continuing, or (g) a Scheduled Maintenance Outage is continuing. Furthermore, Buyer shall not be required to receive or purchase Solar Energy Output that corresponds to instantaneous generation that exceeds the Guaranteed Solar Capacity as adjusted for losses to the Point of Delivery.

7.2 Title and Risk of Loss. As between Seller and Buyer, Seller shall be deemed to be in control of the Solar Energy Output from the Project up to delivery, but not including, receipt at the Point of Delivery and Buyer shall be deemed to be in control of such Solar Energy Output after Seller’s delivery and upon Buyer’s receipt at the Point of Delivery. Title and risk of loss related to the Solar Energy Output shall transfer from Seller to Buyer at the Point of Delivery.

7.3 Future Environmental Attributes and Changes in Law. The Parties acknowledge and agree that (a) additional Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this PPA all right and title to such additional Environmental Attributes is included in the Solar Energy Output Payment Rate as Solar Energy Output and (c) such additional Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this PPA. If in order for Buyer to receive the benefit of any additional Environmental Attributes Seller must incur any third-party costs not otherwise provided for in this PPA, or if any change in law or regulation relating to such future Environmental Attributes occurs after the Execution Date that causes Seller to incur any third-party costs not otherwise provided for in this PPA in order to deliver the additional Environmental Attributes, then such costs shall, if Seller incurs such costs at Buyer’s request, be reimbursed promptly to Seller by Buyer; provided, that Seller shall not be required to incur any costs for Buyer to receive the benefit of additional Environmental Attributes unless requested to do so by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; provided that, if the additional costs exceed Seller’s good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such additional Environmental Attributes. For the avoidance of doubt, Buyer shall remain liable to Seller for all costs incurred prior to Seller’s receipt of Buyer’s notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such additional Environmental Attributes.

7.4 Scheduling.

(A) Seller shall arrange all scheduling services necessary to ensure compliance with WECC operating policies and criteria, Transmission Provider OATT requirements, and any other applicable guidelines. Prior to the implementation and applicability to the Project of any energy market, to the extent scheduling is required now or in the future, Buyer shall schedule all Metered Output in accordance with WECC operating policies and criteria, Transmission Provider OATT requirements and any other applicable guidelines in a manner maximizing Metered Output from the Project based on the then-most-current forecast of energy provided by Seller, except for Transmission Provider Curtailments, Reliability Curtailments, Seller Forced Outages, Scheduled Maintenance Outages, Force Majeure Events, Buyer Curtailments, and Seller Curtailments. At least thirty (30) Days prior to the anticipated Commercial Operation Date, Seller shall provide Buyer with a good faith estimate of the quantity of Solar Energy Output it expects to generate for the remainder of that Commercial Operation Year. By July 1 of each succeeding Commercial Operation Year, Seller shall provide Buyer with a good faith estimate of the hourly quantities of Solar Energy Output that Seller expects to generate in the following Commercial Operation Year (“**Projected Schedule**”). Seller shall also provide estimates of the daily quantity of Energy to be delivered to Buyer. Seller shall configure the ramp rate for the Project such that it will not generate energy at a rate that increases greater than ten (10) MW per minute; provided if any Energy in excess of the ramp rate limit can be utilized to charge the Energy Storage System, Buyer shall receive and purchase such Energy at the Solar Energy Output Payment Rate. For the avoidance of doubt, Buyer shall not be obligated to maintain available capacity in the Energy Storage System to accept excess Energy that exceeds the ramp rate limit.

(B) If at any point during the Delivery Term, (i) an alternative market design is implemented in which the Project will or can participate in an energy market, or (ii) if either the Project, the Electric Interconnection Point or Buyer no longer reside in the same market (each of (i) and (ii) is a “**Market Event**”) and such Market Event materially changes the interconnection and delivery requirements in this PPA, the Parties shall cooperate in good faith to facilitate the delivery of Solar Energy Output from the Point of Delivery to Buyer, at the least possible cost to the Parties, consistent with this PPA to the extent possible.

(C) Seller shall provide, or cause its operation and maintenance contractor to provide, to Buyer its good faith, non-binding estimates of the daily quantity of Solar Energy Output to be delivered by Seller to the Point of Delivery for each week (Sunday through Saturday) by 4:00 p.m. MPT on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and Buyer’s SCC as applicable, Seller shall, by 6:00 a.m. MPT on each Day, submit a good faith estimate of the hourly quantities of Solar Energy Output to be delivered for Buyer at the Point of Delivery for the next six (6) subsequent Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) and (D) above, Seller becomes aware of any change that materially alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Forced Outages.

(A) Buyer and Seller shall promptly advise one another of events that may form the basis for a declaration of the existence or termination of Buyer Curtailment, Transmission Provider Curtailment, Reliability Curtailments, Seller Excused Hours or a Seller Forced Outage. Buyer or Seller (as appropriate) shall at the earliest practicable date provide the other Party written notice (“**Outage Notice**”) of the declaration of the existence of a Buyer Curtailment, Transmission Provider Curtailment, Reliability Curtailment, Seller Excused Hours or a Seller Forced Outage. Seller shall provide such notice to Buyer’s System Control Center. An Outage Notice provided by either Party shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Metered Output, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Buyer or Seller (as appropriate) shall keep the other Party informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

(B) Within five (5) business Days after the end of the Month, Seller shall prepare, maintain and deliver to Buyer a schedule that identifies all Scheduled Maintenance Outages, deratings and Seller Forced Outages that occurred during the Month. The data reported must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

7.6 Availability Guarantee. Seller guarantees that the Project shall be available to produce Solar Energy Output and shall pay Availability Damages, if any, in accordance with Seller’s obligations under the provisions of Exhibit H.

ARTICLE 8 Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and, other than charges for Test Energy, will begin on the Commercial Operation Date:

(A) Monthly Solar Energy Output Payment. Subject to the provisions of this PPA, Buyer shall accept and pay for Solar Energy Output generated at the Project and delivered by Seller to Buyer. Buyer shall pay Seller an amount equal to the product of (a) the aggregate amount of Solar Energy Output (MWh) delivered for Buyer to the Point of Delivery from the Project plus the Deemed Energy resulting from any Buyer Economic Curtailment multiplied by (b) the Solar Energy Output Payment Rate. As used herein, the “**Solar Energy Output Payment Rate**” is the rate of \$27.35 per MWh for the Solar Energy Output delivered for Buyer to the Point of Delivery from the Project. For the avoidance of doubt, the Solar Energy Output Payment Rate also compensates Seller for the associated Environmental Attributes, RECs and Ancillary Services, in any Monthly Billing Period. The Solar Energy Output Payment Rate includes all Taxes.

(B) If Supplemental State Tax Incentives become available in connection with the Solar Energy Output, Seller shall use commercially reasonable efforts to become eligible for and to obtain any such credits.

(C) In the event that Seller, Affiliate of Seller or Tax Equity Investor becomes eligible to receive any Supplemental State Tax Incentives with respect to the Project, the value of such Supplemental State Tax Incentives will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental State Tax Incentives by Seller, Affiliate of Seller, or Tax Equity Investor, Seller will remit to Buyer a payment equal to sixty percent (60%) of the value of such Supplemental State Tax Incentives.

8.2 Payment Support Requirement. Each Party shall use commercially reasonable efforts to defend, before any Governmental Authority, all terms and conditions of this PPA consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. 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 PPA.

ARTICLE 9 Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MPT on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8. From and after the start of the Test Period, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this PPA (in Dollars) payable to Seller for the preceding Month (and with respect to the first billing Month, any preceding Month including and following the Test Period). Each such invoice shall show information and calculations, in reasonable detail.

(D) Beginning with the first Month in the Test Period, until an invoice is required to be prepared pursuant to clause (C) above, Seller shall prepare an invoice showing the charges for Test Energy payable to Seller for the preceding Month.

(E) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the

applicable due date.

(F) If banks in the State of New Mexico are permitted to close on any date on which any payment by Buyer would otherwise have been due, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(G) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this PPA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. Notwithstanding anything contained in this PPA, all payments to be made by either Seller or Buyer under this PPA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this PPA or, if no account is specified, into the account designated by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this PPA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the 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. In the event that either Party becomes aware of any error in any

statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) All Energy delivered by Seller to Buyer hereunder shall be sales for resale, with Buyer reselling such Energy. Buyer shall obtain and provide Seller an appropriate New Mexico Nontaxable Transaction Certificate prior to the date any sales under this PPA occur. The Parties further acknowledge their understanding that, under Applicable Law, no Sales Tax is applicable to the sale or delivery of Solar Energy Output hereunder; however, in the event any such Tax is or becomes applicable, Buyer shall reimburse Seller for such Tax. During the Delivery Term, Seller and Buyer each covenant that it will take all actions required and refrain from taking any actions which are prohibited, which such action or inaction would cause the Energy delivered hereunder to Buyer to not qualify for a New Mexico Nontaxable Transaction Certificate. Notwithstanding the foregoing, Buyer shall reimburse Seller for any Sales Taxes, if any, imposed on Seller's sale of and Buyer's purchase of Solar Energy Output and on Buyer's payment and Seller's receipt of amounts due under this PPA provided, however, that in no event shall Buyer be liable for any Taxes other than Sales Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Solar Energy Output to Buyer pursuant to this PPA.

(B) Seller shall be responsible and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of a Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this PPA and implement the provisions in this PPA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, with copies of

any documentation respecting this PPA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this PPA, including Section 9.9 below, all payments between the Parties under this PPA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this PPA, including damages and other payments that are owed by a party to the other Party pursuant to this PPA. Undisputed and non-offset portions of amounts invoiced under this PPA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this PPA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment under this PPA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this PPA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

ARTICLE 10 Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement, the PPA, Applicable Law and the applicable standards of the organizations included in Exhibit M. Seller will be solely responsible for, and the Solar Energy Output Payment Rate will not be adjusted to accommodate, increased costs or any failure to obtain any Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, the New Mexico Public Utility Act.

(B) On and after the start of construction and through the Commercial Operation

Date, Seller will provide Buyer monthly construction updates no later than the 15th of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks. If Seller becomes aware of any critical milestone that will not be achieved by the required date, Seller must provide Buyer written notice and a recovery plan to minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to materially alter the Guaranteed Solar Capacity, annual performance, or availability of the Project or to materially and adversely impact the capabilities of the Project; or (iii) in connection with maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller. Buyer acknowledges that certain assets of Seller related to the Project, including certain equipment, buildings, and facilities, transformers, Interconnection Facilities, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate, may be shared with other electricity generation and/or storage projects; provided that Seller's sharing of such facilities shall not materially and adversely affect Seller's performance of its obligations hereunder.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date) a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller.

(E) Other than the rights and obligations of Buyer specified in this PPA and any documents ancillary hereto, neither this PPA nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning Tests. Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and of the proposed tests scheduled relating to the commissioning of the Project ("**Commissioning Tests**") as described in Exhibit F. Representatives of Buyer shall have the right to be present at all such testing. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer acknowledges that such access does not provide Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with all of Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this PPA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this PPA and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment nor as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this PPA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this PPA, and (ii) comply with reasonable requirements of Buyer regarding day-to-day or hour-by-hour communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Solar Energy Output delivered by Seller will meet all requirements for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this PPA. Seller shall provide Buyer with all real time measurement parameters of the Project including system availability data made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers and Prudent Utility Practices. Seller shall have qualified personnel test, calibrate and certify in writing the proper functioning of all protective equipment at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. PNM reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with a ten (10) Day

written notice of planned testing and/or calibration.

10.5 Operating Procedures. Not later than ninety (90) Days before the Commercial Operation Date Seller shall provide Buyer a draft of all Operating Procedures. Not later than thirty (30) days before the Commercial Operation Date, an operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable written Operating Procedures for integration of the Project into Buyer's system. Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity and Solar Energy Output reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, this PPA, Prudent Utility Practice, Applicable Laws and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel of Seller capable of starting, running, and stopping the Project must be continuously available, either at the Project or capable of being at the Project on ninety (90) minutes' notice, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per day, seven (7) days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project. Buyer will use commercially reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance with this PPA. At least sixty (60) days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, no later than September 1 of each Commercial Operation Year, Seller shall provide Buyer with a non-binding notice of the annual Scheduled Maintenance Outages for the following Commercial Operation Year and a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's generation, including the duration of such event. Each annual Scheduled Maintenance Outage for the Commercial Operation Year will be subject to approval by Buyer. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the Project's generation for any reason at any time during May 1st through September 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. Seller must give Buyer no less than ninety (90) days' advance notice of any proposed change in

the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(B) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Metered Output to the Point of Delivery. Seller shall also obtain and maintain an appropriate water supply for the Project during the Term to maintain reliability of the Project. Upon the reasonable, written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. As of the start of the Test Period, Seller shall not sell or divert Solar Energy Output to a third Person.

10.8 Performance Tests. “**Performance Tests**” means the Commissioning Performance Test, the Annual Performance Tests, and Buyer-Requested Performance Tests as described in this Section 10.8 and in Sections 10.9, and 10.10. Performance Tests shall be performed to verify compliance of the solar photovoltaic plant net AC capacity at the Point of Delivery with the Guaranteed Solar Capacity.

(A) Seller shall conduct a performance test prior to the Commercial Operation Date in accordance with applicable provisions of this Section 10.8 (the “**Commissioning Performance Test**”).

(B) Seller shall conduct a performance test in accordance with this Section 10.8 in each Commercial Operation Year after the Commercial Operation Date (each, an “**Annual Performance Test**”). Each Annual Performance Test shall be performed no earlier than nine (9) months and no later than fifteen (15) months from the completion of the previous Annual Performance Test or Commissioning Performance Test as mutually agreed by the Parties.

(C) Annual degradation rates included in Exhibit K will be used in the Annual Performance Test PVSYST Model for the purpose of Annual Performance Tests described in this Section 10.8. Annual degradation rates identified in Exhibit K shall be applied as incremental to the actual degradation experienced and measured through the prior Commercial Operation Year’s Performance Test.

(D) The Commissioning Performance Test, Annual Performance Tests, and Buyer-Requested Performance Tests shall be conducted in accordance with ASTM E2848-13, except where deviations are provided in this Section 10.8 (D).

(1) The reporting conditions (“**RC**”) will be developed in accordance with ASTM E2939-13 and will utilize site measured irradiance and ambient temperature data collected during the Performance Test. The same RC will be used for computing the Model Rated Power and Test Rated Power using their respective regression equations.

(2) The Performance Test period will include at least five (5) days of data and at least fifty (50) filtered data points.

(3) Model Rated Power and Test Rated Power shall account for losses to the Point of Delivery.

(4) The result from an Annual Performance Test or Buyer-Requested Performance Test is the ratio of Test Rated Power to Model Rated Power (the “**Performance Test Ratio**”).

(5) “**Test Rated Power**” shall be the value produced by the regression of filtered site measured power and site measured weather data evaluated at the RC, adjusted by Seller for any unavailable equipment during the Performance Test.

(6) “**Model Rated Power**” shall be the value produced by the regression of filtered Annual Performance Test PVSYST Model power and filtered model weather data evaluated at the RC, adjusted by Seller for any unavailable equipment during the Performance Test.

(7) The Model Rated Power will be calculated using the Annual Performance Test PVSYST Model. Site measured POA irradiance will be used as the irradiance input to the Annual Performance Test PVSYST Model.

(8) The PVSYST model utilized by Seller to predict the annual generation forecasts included in Exhibit L will be used as the PVSYST model for initial comparison to the actual site performance during the Commissioning Performance Test. Such PVSYST model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer at least two (2) months prior to initiation of the Commissioning Performance Test. Should any modifications to this PVSYST model be proposed by Seller after completion of the Commissioning Performance Test, Seller shall provide to Buyer the proposed modifications to the draft PVSYST model for review and approval. Any modifications to the PVSYST model mutually accepted by the Parties will be incorporated and the resulting modified PVSYST model together with a schedule of annual degradation will be the “**Annual Performance Test PVSYST Model**”.

(9) The Annual Performance Test PVSYST Model and a listing of model input assumptions shall be prepared by Seller and furnished to Buyer within one (1) month of the completion of the Commissioning Performance Test. The Annual Performance Test PVSYST Model will annually account for actual degradation through the prior Performance Test with incremental annual degradation added as previously agreed to by the Parties. This mutually accepted Annual Performance Test PVSYST Model will be utilized without modification, unless agreed to by both Parties, in all Annual Performance Tests and Buyer-Requested Performance Tests as well as determination of any Annual Performance Test Guarantee Damages as defined in Section 10.9.

(E) Within thirty (30) days of the completion of a Performance Test, Seller may elect to conduct a single re-test. Upon completion of the single re-test, Seller must choose for the

results of either test to be used as the Annual Performance Test.

(F) For all Performance Tests and re-tests, Seller shall notify Buyer at least ten (10) Days prior to the initiation of the Performance Test or re-test, and Buyer shall have the option to inspect the Project during such Performance Test or re-test.

(G) For all Performance Tests and re-tests, Seller shall provide a “**Performance Test Report**” that includes all performance data, model simulations, calculations, and test reports to the Buyer for analysis and review. Seller shall maintain records of performance testing for a minimum of five (5) years following the date the test was performed.

(H) Proposed terms associated with the guarantee, the required irradiance conditions, degradation allowances, modeling software inputs, and the methodology to be utilized for validation of the Guaranteed Solar Capacity shall be provided by the Seller and subject to mutual agreement of the Parties.

10.9 Annual Performance Test Guarantee Damages.

(A) Seller guarantees that Annual Performance Tests shall meet or exceed the Annual Performance Test Guarantee. The “**Annual Performance Test Guarantee**” is met when the average of the Performance Test Ratio for the Annual Performance Test and the Performance Test Ratio for the previous Annual Performance Test, or the Commissioning Performance Test (i.e. 1.000) as applicable, results in a value greater than or equal to 0.960 (the “**Annual Performance Test Guarantee Ratio**”) without the application of any commercial test tolerance or adjustment to the results for test measurement uncertainty. If an Annual Performance Test shows that the Annual Performance Guarantee was met, then Seller shall not owe Annual Performance Test Guarantee Damages.

(B) If any Annual Performance Test shows that the Annual Performance Guarantee was not met, then Seller shall owe Annual Performance Test Guarantee Damages calculated in accordance with this Section 10.9. The calculated Energy shortfall (the “**Energy Shortfall**”) shall be the total Energy delivered by Seller in the most recently completed Commercial Operation Year multiplied by the Shortfall Factor. The “**Shortfall Factor**” is one (1) minus the ratio of the average of the Performance Test Ratios of the most recently completed Commercial Operation Year and the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year and the Annual Performance Test Guarantee Ratio. These calculations shall be performed using the following formulas:

$$ES = E_n \times SF$$

$$SF = 1 - \frac{\frac{1}{2}(PTR_n + PTR_{n-1})}{APTGR}$$

Where,

ES = Energy Shortfall

E_n = Energy delivered by Seller in the most recently completed Commercial

Operation Year

SF = Shortfall Factor

PTR_n = Performance Test Ratio for the most recently completed Commercial Operation Year

PTR_{n-1} = Performance Test Ratio for the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year

APTGR = Annual Performance Test Guarantee Ratio

(C) Seller shall pay Annual Performance Test Guarantee Damages in accordance with this Section 10.9. Liquidated damages associated with failure to meet the Annual Performance Test Guarantee shall be paid in the amount equal to (x) the Solar Energy Output Payment Rate multiplied by (y) the Energy Shortfall as determined using the above calculation (the resulting amount is the “**Annual Performance Test Guarantee Damages**”), but in no event in excess of the Annual Solar Capacity Guarantee Damages Cap and the Aggregate Solar Capacity Guarantee Damages Cap.

(D) The following is an example (for illustrative purposes only) of the Energy Shortfall calculation: A Performance Test is conducted and results in an average Performance Test Ratio of 0.930 (the average of the Performance Test Ratios of the most recently completed Commercial Operation Year and the Commercial Operation Year immediately preceding the most recently completed Commercial Operation Year). The Solar Energy Output Payment Rate is \$27.35/MWh and the total annual Energy delivered by the Project in the most recently completed Commercial Operation Year is 130,000 MWh. Annual Performance Test Guarantee Damages shall be paid as a result of the Performance Test Ratio being less than the Annual Performance Test Guarantee Ratio of 0.960. The amount of Annual Performance Test Guarantee Damages is calculated to be $[\$27.35/\text{MWh}] \times [130,000 \times (1 - 0.930 / 0.960)] = \$111,109.38$.

(E) The total Annual Performance Test Guarantee Damages payable by Seller for failure to meet the Annual Performance Test Guarantee in any Commercial Operation Year shall be capped annually at a value equivalent to Twenty Thousand Dollars (\$20,000) per MW of Guaranteed Solar Capacity (“**Annual Solar Capacity Guarantee Damages Cap**”). The total Annual Performance Test Guarantee Damages payable by Seller shall be capped in the aggregate at a value equal to Sixty Thousand Dollars (\$60,000) per MW of Guaranteed Solar Capacity (“**Aggregate Annual Solar Capacity Guarantee Damages Cap**”) over the Term of the PPA.

(F) Notwithstanding anything to the contrary in this PPA, the Parties agree that Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for any failure of Seller to meet the Annual Performance Test Guarantee or the Annual Performance Test Guarantee Ratio (including in the event of any Buyer-Requested Performance Tests), shall be the payment of Annual Performance Test Guarantee Damages as and when required in this Section 10.9, up to the Annual Solar Capacity Guarantee Damages Cap and the Aggregate Annual Solar Capacity Guarantee Damages Cap. Any such failures shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default under this PPA.

10.10 Buyer-Requested Performance Tests. In the event of a material adverse change in expected Solar Energy Output based on monthly billing, Seller shall perform additional tests as requested by Buyer (“Buyer-Requested Performance Tests”), limited to the conditions described in this Section 10.10. Buyer-Requested Performance Tests will be conducted as described in Section 10.8, for Buyer-Requested Performance Tests performed within the second and subsequent Commercial Operation Years.

(A) If the results of a Buyer-Requested Performance Test fail to meet the Annual Performance Test Guarantee Ratio, Annual Performance Test Guarantee Damages would apply for the time period following the Buyer-Requested Performance Test until such time as a subsequent retest confirms that corrective actions have resolved deficiencies.

(B) Only one (1) Buyer-Requested Performance Test may be requested per Commercial Operation Year.

(C) Buyer-Requested Performance Test may not be requested within three months of a previous Performance Test.

(D) Buyer-Requested Performance Test will be performed at a time mutually agreeable to both Parties.

10.11 Weather Stations.

(A) Seller shall, at Seller’s cost and no later than thirty (30) days prior to the estimated Commercial Operation Date, provide, install, own, operate and maintain a minimum of four (4) stand-alone meteorological stations (“**Weather Stations**”) at the Project Site to monitor and report weather data. The Weather Stations shall be appropriately spaced on the Site as determined by Seller’s engineer and agreed to by Buyer in order to provide representative conditions for the Project and to provide real time information on changing weather conditions. The Weather Stations shall include the capability for measuring, indicating, and recording ambient temperature, barometric pressure, solar radiation, and relative humidity. Seller shall submit to PNM for review and approval, Seller’s technical specifications for the Weather Stations along with a site plan showing the location of the station(s) (GPS coordinates), the location of all solar generating units, photovoltaic modules, current inverters, and other prominent features, as applicable. The system shall be interconnected via a web-based file transfer protocol, or other mutually-agreed protocol, to provide indication of all measured parameters to PNM and the data shall be available to PNM via a PI historian interface. Seller shall provide to Buyer, and shall maintain during the Term, a data link or unrestricted real time access into the weather forecast modeling.

(B) Seller shall not select the type of Weather Station without the prior written consent of PNM, which shall not be unreasonably withheld. No later than three (3) months prior to the estimated Commercial Operation Date, the Parties shall agree on the locations of the Weather Stations and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Stations.

(C) Data collected from the Weather Stations shall be utilized for determination of the Solar Performance Ratio, minimum solar irradiance for determination of system availability,

and lost output due to curtailment or outages.

ARTICLE 11
RECs and Environmental Attributes

11.1 Sale of RECs and Environmental Attributes.

(A) Other than as specified in Section 11.1(D) below, and considering the prior actions that must be completed as specified in Section 11.1(E) below, effective from the date on which the Project first delivers Energy for sale to Buyer at the Point of Delivery, Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to RECs and Environmental Attributes associated with the generation of Energy. Seller shall make the RECs available to Buyer within ten (10) Days of the RECs being created in WREGIS. Seller shall be liable for Buyer's costs to replace the RECs if Seller fails to deliver RECs within ten (10) Days after written notice from Buyer of such failure, and such failure is due to Seller's fault or negligence. The RECs and Environmental Attributes transferred under this PPA shall be bundled with the associated Energy, and Buyer shall pay Seller for the bundled RECs and Environmental Attributes and Energy as set forth in this PPA.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the RECs and Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Environmental Attributes and RECs shall include any Environmental Attributes and RECs that are reserved or "banked" throughout the Term of this PPA, but not used, sold, assigned or otherwise transferred during the Term of this PPA. Buyer may, to the extent permitted by Applicable Law and this PPA, assign its rights, title and interest in and to any RECs and Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this PPA or any successor or other provision providing for a federal, state and/or local tax credit determined by reference to renewable electric energy produced from renewable energy resources shall be owned by Seller.

(E) Seller shall, at its sole expense and before commencement of the Test Period, take all actions and execute all documents or instruments necessary to ensure that the Project is registered as a generating unit in WREGIS for the purpose of tracking all Renewable Energy Certificates corresponding to all Metered Output, and that all associated WREGIS Certificates are issued and tracked and transferred in a timely manner to Buyer. Seller shall comply with all Applicable Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be responsible for all expenses associated with registering the Project with WREGIS, establishing and maintaining Seller's WREGIS account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS account to Buyer's WREGIS account.

(F) Seller shall register the Project, as necessary, so that the Project is compliant

with reporting requirements related to RECs and Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law. Notwithstanding the foregoing, Seller shall not be required to expend more than Five Thousand Dollars (\$5,000) per MW annually and Ten Thousand Dollars (\$10,000) per MW in the aggregate to maintain compliance due to regulatory changes relating to RECs.

(G) Prior to commencement of the Test Period, Seller shall provide written documentation to Buyer evidencing that the RECs generated by the Project will be reported to WREGIS using a WREGIS Qualified Reporting Entity, as that term is defined by WREGIS.

(H) Neither Seller nor Buyer will have any liability to the other for any act, omission, misrepresentation, or breach (other than an act or omission due to the failure to pay fees, charges or expenses by the responsible Party), by an entity that certifies the characteristics or delivery of a REC, or the qualification of the Project as a renewable energy facility, under Applicable Law. The certifying entity may include a Governmental Authority, WREGIS or other generation information system, an independent auditor or other third party.

ARTICLE 12 Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable other than as set forth below:

- (1) Seller's dissolution or liquidation;
- (2) Seller's assignment of this PPA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 and in any consent to collateral assignment with any Lender;
- (3) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller voluntarily taking advantage of any such law by answer or otherwise;
- (4) The intentional sale by Seller to a third party, or diversion by Seller for any use, of Energy, RECs or Ancillary Services committed to Buyer by Seller;
- (5) Seller's actual fraud or other material misrepresentation or willful misconduct in connection with this PPA or the operation of the Project;
- (6) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer or the entity providing such Security;
- (7) The failure of Seller Guarantor or Seller to make, when due,

any payment required, or the failure of any Seller Guarantor to meet the criteria as set forth in the definition of Seller Guarantor if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Business Days of receipt of notice of such failure;

(8) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, as may be extended subject to Section 3.6, or other date mutually agreed to by the Parties;

(9) Seller's failure to make any payment due to Buyer under or in connection with this PPA (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this PPA) shall constitute an Event of Default upon the failure of Seller to cure within twenty (20) Days of written notice from Buyer to Seller; or

(10) Seller's failure to deliver RECs in accordance with the terms of this PPA, unless remedied within ten (10) Business Days of receipt of notice of such failure.

(B) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer, Seller is not able to deliver Energy to the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements required to deliver Energy to the Point of Delivery;

(3) Seller's failure to register the Project or ensure registration of the RECs in accordance with the terms of this PPA;

(4) Seller's failure to maintain in effect any agreements required to deliver Solar Energy Output to the Point of Delivery;

(5) Seller's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Buyer; or

(6) The Project fails to maintain an Actual Solar Availability Percentage of at least eighty percent (80%) over any two (2) consecutive Commercial Operation Years; provided, however, the Parties agree that there is not an Event of Default under this Section 12.1(B)(6) if Seller (i) demonstrates to

Buyer's reasonable satisfaction that the Project was maintained and operated consistent with Prudent Utility Practices, including in connection with the supply of available spare parts and equipment, (ii) within ten (10) Business Days after the end of such second consecutive Commercial Operation Year, provides Buyer a remediation plan to return to compliance with the Solar Availability Percentage requirements, and (iii) remediates the cause of the shortfall of the Solar Availability Percentage requirements as soon as reasonably practicable, however, in no event later than ninety (90) Days after falling below the eighty percent (80%) value.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's assignment of this PPA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18;

(2) Any representation or warranty made by Seller in this PPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(3) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor; *provided, however,* that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment of this PPA (or any of its rights hereunder) for the benefit of creditors; or

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise.

(B) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this PPA) shall constitute an Event of Default

upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer.

(C) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within thirty (30) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Buyer's actual fraud or other material misrepresentation or willful misconduct in connection with this PPA or the operation of the Project.

(2) Buyer's failure to comply with any other material obligation under this PPA, which would result in a material adverse impact on Seller.

(D) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

(2) Buyer's assignment of this PPA, except as permitted in accordance with Article 18; or

(3) Any representation or warranty made by Buyer in this PPA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, and the duty to mitigate damages set forth in Section 12.9, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this PPA from the Defaulting Party as set forth in Section 12.3(B), (ii) exercise its rights pursuant to Section 12.5, (iii) suspend performance, (iv) with respect to an Event of Default of Seller, exercise its rights pursuant to Section 12.10 with respect to any Security, and (v) exercise its rights to terminate this PPA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, that if an Event of Default has occurred and has continued uncured for a period of one hundred eighty (180) Days, the Non-Defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this PPA as provided for in Section 12.4. If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include, to the extent applicable, an amount of

cover damages equal to Replacement Energy Costs minus the product of (x) the quantity of Solar Energy Output so replaced and (y) the Solar Energy Output Payment Rate. Further, Seller acknowledges and agrees that in addition to the foregoing, Seller shall be obligated to pay Buyer any such damages associated with replacement of Solar Energy Output notwithstanding the availability or prices of electric energy from other fuel sources, such as natural gas. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any RECs and any Environmental Attributes pursuant to this PPA, provided that Buyer has used commercially reasonable efforts to avoid, minimize or mitigate the same. Seller acknowledges that Buyer entered into this PPA for the procurement of Solar Energy Output, which includes RECs and Environmental Attributes. If Buyer is the Defaulting Party, the Parties agree that damages recoverable by Seller hereunder on account of an Event of Default of Buyer shall include costs and losses incurred by Seller due to such Event of Default, including, to the extent applicable, an amount of cover damages equal to the quantity of Solar Energy Output produced by Seller following such Event of Default, plus, to the extent that Seller is unable to produce Solar Energy Output due to the Event of Default of Buyer, an additional quantity equal to the amount of Solar Energy Output that would have been produced by Seller absent such Event of Default of Buyer, each multiplied by the Solar Energy Output Payment Rate; provided that the foregoing amount shall be reduced by an amount equal to (A) the amount of any revenues that Seller, using commercially reasonable efforts, is able to obtain by selling Solar Energy Output to a third party or into the market, less (B) Seller's costs and expenses incurred to effectuate any such sales.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and sixty (60) Days after the notice thereof, upon which this PPA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this PPA, except that Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this PPA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this PPA. Upon the termination of this PPA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment, and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller). Notwithstanding the foregoing, if the Commercial Operation Date has not occurred by the Guaranteed Start Date, as may be extended subject to Section 3.6, Buyer may terminate this PPA in accordance with this Section 12.4, and the maximum Buyer Termination Payment, and Seller's maximum liability hereunder, will be an amount equal to the Development Security less any Delay Damages already paid to Buyer.

(A) In the event that Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) In the event that Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material performance obligation of the other Party under this PPA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm

or loss.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this PPA, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this PPA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this PPA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default enumerated in Section 12.1 or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this PPA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE 13

Contract Administration and Notices

13.1 Notices in Writing. Notices required by this PPA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this PPA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt, to the representative of said other Party. If delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this PPA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this PPA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this PPA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of

this PPA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this PPA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such other Party relating to this PPA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh generated, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this PPA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) **Operating and Maintenance Records.** Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Project that will include, without limitation, power production records for each hour; dispatch and scheduled Energy production; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practice or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) **Billing and Payment Records.** To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(C) **Project Development Records and Data Submissions.** Seller shall submit or cause to be submitted to Buyer the following documents on or before the dates specified below:

(1) No later than thirty (30) Days after the Execution Date and ending on the Commercial Operation Date, (i) monthly construction progress reports in such form as may be agreed to by Buyer in accordance with Section 10.1(A) and 10.1(B), and (ii) reports, when and as Seller becomes aware, of any new condition or event that may have a material adverse effect on the timely completion of the Project.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Solar Energy Output from, the Project in accordance with this PPA, and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this PPA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Solar Energy Output from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which

such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals from any Governmental Authority which address environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the Solar Units.

(4) Upon request by Buyer, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer shall not be construed as an endorsement by Buyer of the design of the Project, does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project, otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts or, except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this PPA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless Seller has defaulted under this PPA, in which case Seller will bear the reasonably incurred expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this PPA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this PPA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, Exhibit C, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this PPA in a quick and inexpensive manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this PPA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the

dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days written notice, declare the mediation process unsuccessful and initiate legal and equitable remedies.

ARTICLE 14 Force Majeure

14.1 Definition.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A "**Force Majeure Event**" shall mean an event or circumstance that arises, after the Execution Date that is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this PPA. Such events or circumstances may include, but are not limited to: actions or inactions of civil, tribal, or military authority (including courts and governmental or administrative agencies), acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics (including circumstances related to COVID-19 that occur after the Execution Date), 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 (D)(viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement).

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance shall not be considered a Force Majeure Event, unless Seller can demonstrate that such equipment was of a quality consistent with Prudent Utility Practice, operated within its useful life, installed and maintained properly, and not subject to known systemic quality problems.

(C) 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.

(D) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, for any reason (the risk of which is assumed by Seller); (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Solar Energy Output of the Project caused by or arising from the acts or omissions of such third parties, unless such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Seller; (iii) any delay in the Interconnection Date caused by Seller; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against Seller or Seller's contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(E) In no event will any delay or failure of performance caused by a Force Majeure Event extend this PPA beyond its stated Term. Notwithstanding any other provision in this PPA to the contrary, in the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller continues for an uninterrupted period of one hundred eighty (180) Days from its inception, either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this PPA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(F) Except as otherwise provided in this PPA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this PPA (including payment obligations) to the extent that such performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided that failure to provide notice within ten (10) Business Days only waives the Force Majeure Event as to periods prior to when the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance

shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this PPA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event. Upon the occurrence and during the continuance of a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event affects the ability of either Buyer or the Transmission Provider to accept Solar Energy Output from the Project or to deliver Solar Energy Output from the Project, then any lost production (MWh) during the Force Majeure Event shall be excluded from the determination of the Monthly Solar Output Payment as set forth in Section 8.1.

ARTICLE 15

Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents and warrants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the

management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this PPA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this PPA.

(C) The obligations of Seller under this PPA are valid and binding obligations of Seller.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will either not be needed or be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term, with which the failure to comply shall have a material adverse effect on the Parties.

(G) Seller shall disclose to Buyer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the construction of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) Seller has or shall obtain sufficient water necessary for operation of the Project in accordance with Prudent Utility Practices.

(J) Seller has and/or will have upon the generation of Solar Energy Output good and marketable title to the RECs and Environmental Attributes.

(K) Seller has not sold, delivered or transferred the RECs or Environmental

Attributes to any other Person, in whole or in part.

(L) All right, title and interest in and to the RECs and Environmental Attributes are free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(M) Subject to 11.1(F), each REC and Environmental Attribute complies with the requirements set forth in the New Mexico Renewable Energy Act, NMSA 1978, § 62-16-1 *et seq.*, and Title 17.9.572 NMAC.

(N) As soon as practical but in no event longer than fifteen (15) days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(O) Except as expressly set forth in this PPA, Seller disclaims any warranty, express or implied, including but not limited to any warranty of merchantability or fitness for a particular purpose, or warranty arising from any course of dealing, performance, or usage of trade. Buyer expressly waives any warranty not expressly included in this PPA.

(P) To the extent applicable, Seller is in compliance with the Executive Order.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The execution, delivery, and performance of its obligations under this PPA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, members, managers and/or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this PPA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this PPA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this PPA.

(C) This PPA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1, and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

ARTICLE 16 Insurance

16.1 Evidence of Insurance. Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on each policy anniversary, provide Buyer 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 provided by the ISO form or an equivalent with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A-VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this PPA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this PPA shall cover occurrences during the Term of this PPA on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer and its Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this PPA is primary and non-contributory with respect to other insurance carried by Buyer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G includes Buyer and its Affiliates, officers, directors, and employees as additional insureds for ongoing operations but only to the extent Buyer (or other additional insured) is vicariously liable for the negligence, acts or omissions of Seller. The liability insurance required pursuant to paragraphs (B) and (D) of Exhibit G shall include a standard ISO or an equivalent separation of insureds clause and will not include a cross-suit exclusion applicable to claims brought by or against an additional insured.

ARTICLE 17

Legal and Regulatory Compliance and Governmental Approval

17.1 Applicable Laws. Each Party shall at all times comply with all Applicable Laws. Each Party shall promptly notify the other Party of any material investigations, notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the PPA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this PPA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 in confidence in accordance with Section 22.14, unless such information is public information.

17.2 Governmental Approvals. Each Party shall timely and lawfully procure and maintain in good standing, at its own cost and expense, all Governmental Approvals and Additional Consents and shall timely and properly pay its respective charges and fees in connection therewith.

17.3 NMPRC Approval. The obligations of the Parties hereunder, including Buyer's obligation to purchase Solar Energy Output at the rates specified in Article 8, shall be conditioned upon the receipt of NMPRC Approval in connection with the execution and performance of this PPA and a final order or other regulatory determination from the NMPRC that Buyer may procure renewable energy and associated RECs pursuant to this PPA and may recover the cost of such procurement (collectively, "**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain

NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, “**NMPRC Approval**”).

(1) If the NMPRC disapproves any of the Requested Actions, then this PPA shall automatically terminate ten (10) Days after the date of such action by the NMPRC and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer or Seller will elect to amend this PPA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this PPA, including a potential extension to the Expected Commercial Operation Date and the Guaranteed Start Date. If the Parties are unable to mutually agree on any amendments to this PPA to address such NMPRC Approval order, then this PPA shall automatically terminate ten (10) Days after the date on which the parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

(3) If the NMPRC has not, for any reason, entered an order upon the request for approval of all Requested Actions by January 5, 2021 (“**Regulatory End Date**”), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, including a potential extension to the Expected Commercial Operation Date and the Guaranteed Start Date, then this PPA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this PPA remain in effect.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that (i) a negligent or wrongful action or inaction or (ii) a violation of such reliability standard by Seller results in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any

successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties.

17.5 Compliance Information. Each Party acting reasonably shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants, engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

ARTICLE 18

Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this PPA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) any assignment or transfer of this PPA by Seller to an Affiliate of Seller; or (ii) any assignment or transfer of this PPA by Seller in connection with a Seller Permitted Transfer, *provided* that in the case of any assignment or transfer pursuant to clauses (i) or (ii) above that are not Changes of Control of Seller, such assignee 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; and, *provided further*, that in the case of any assignment or transfer pursuant to clause (i) above, such assignee (a) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (b) delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (c) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this PPA (or otherwise agrees to maintain the existing Development Security or Delivery Term Security, as applicable, for the Project).

(B) Seller's consent shall not be required for any assignment of this PPA by Buyer to any Affiliate or in connection with the acquisition, merger, reorganization, consolidation or the sale of all or substantially all assets and/or stocks of Buyer or its parent corporation, *provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee's creditworthiness is equal to or better than that of Buyer; and *further provided* that such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this PPA as and if required by NMPRC regulations and will resell the Energy purchased hereunder.

18.2 Conditions on Transfers. If the rights and interests of a Party in this PPA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms

and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this PPA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this PPA with the Affiliate as if such Person had been named under this PPA; *provided, however*, that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this PPA made without fulfilling the requirements of this PPA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this PPA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders.

(A) Cooperation. In connection with any assignment of this PPA by Seller to its Lenders, as soon as reasonably practicable after reasonable request from Seller or any Lender, Buyer will cooperate reasonably with Seller and Lender to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, provisions containing at least the following: (i) an option, but not an obligation, for the Lenders to cure any monetary Event of Default of Seller within thirty (30) Days of the expiration of the cure period provided therefor in Section 12.1, and cure any non-monetary Event of Default of Seller within sixty (60) Days of the expiration of the cure period provided therefor in Section 12.1, prior to Buyer terminating this PPA; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this PPA if Lenders need to foreclose on the Project prior to curing any Event of Default of Seller giving rise to such termination, but only to the extent that the period required for such foreclosure and cure does not exceed one hundred eighty (180) Days from receipt by Lenders of written notice of such Event of Default of Seller. Buyer's consent shall not be required in connection with a Lender's exercise of remedies under its financing agreements for the Project, provided however, that in any case where a Lender's remedy involves the direct or indirect transfer of shares of, or equity interests in, Seller (including a Change of Control of Seller), or assignment of this PPA or any of Seller's rights or

obligations hereunder, in either case, then any such transfer or assignment shall only be to a Person who (1) is or retains a Qualified Operator, (2) either has (x) a long-term senior unsecured debt credit rating of “Baa3” or higher by Moody’s and “BBB-” or higher by S&P, or (y) a tangible net worth of no less than one hundred million dollars (\$100,000,000) and (3) except in the event of a Change of Control of Seller, agrees in writing to be bound by the terms of this PPA; provided that, in all cases, (a) Buyer will have no obligation to alter or modify the terms of this PPA or provide any consent or enter into any agreement that has a material adverse effect on Buyer, and (b) Seller will be responsible for Buyer’s reasonable costs (including, but not limited to, attorneys’ fees) associated with Buyer’s review, negotiation, execution and delivery of any documents in connection with such assignment. Nothing in this Section 18.6 shall impair Buyer’s right to receive all of the damages arising out of or relating to Seller’s default, including damages accruing prior to termination as set forth in Section 12.3 of this PPA.

(B) Financing Liens. Either Party may, without the other Party’s consent, transfer, sell, pledge, encumber or assign this PPA or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller does not place any limitation on Buyer’s rights or materially expand Buyer’s liability, risks or obligations under this PPA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this PPA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Lender, collateral agent or trustee, as applicable, to which Seller’s interest under this PPA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

ARTICLE 19

Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to Sixty Thousand Dollars (\$60,000) per MW multiplied by the Guaranteed Solar Capacity within the earlier of (i) thirty (30) Days after the receipt of NMPRC Approval and (ii) the commencement of construction of the Project (“**Development Security**”). 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 Seventy-Five Thousand Dollars (\$75,000) per MW multiplied by the Guaranteed Solar Capacity (the “**Delivery Term Security**”). Seller shall replenish the Delivery Term Security to such required amount within fifteen (15) Days after any draw by Buyer. Upon achievement of the Commercial Operation Date or promptly after Buyer terminates this PPA as a result of Seller’s failure to achieve Commercial Operation on or before the Guaranteed Start Date, Buyer shall return the Development Security to Seller, less any amounts drawn against the Development Security pursuant to Section 12.10. In the event that no amounts are due and owing by Seller to Buyer under this PPA and provided no claims are then outstanding, Seller’s Delivery Term Security shall be released to Seller upon the earlier of (i) termination of this PPA in accordance with its terms; and (ii) on the fifteenth (15th) Business Day after the expiration of the Term.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Buyer: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars (\$10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor, or (d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall be renewed by Seller for successive one-year or shorter periods. Seller shall notify Buyer not less than thirty (30) Days prior to the termination of any Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit, then Seller shall have fifteen (15) Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements. Buyer shall not be required to post security.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this PPA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such action as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security. In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this PPA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this PPA. Buyer may draw from, offset

against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of this PPA, as Buyer may select until such time as the Security is exhausted.

ARTICLE 20
Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them, or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "Losses") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses (as defined in Section 20.1(A)) to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses, and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as

indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim, suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

20.4 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

ARTICLE 21 Governmental Charges

21.1 Allocation of Governmental Charges. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer of Solar Energy Output that are imposed on the making available of Solar Energy Output arising prior to the Point of Delivery or prior to the transfer of the Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of Solar Energy Output that are imposed at and from the taking of Solar Energy Output by Buyer at the Point of Delivery or at and after the transfer of the Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall

promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this PPA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Solar Energy Output hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

ARTICLE 22 Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this PPA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this PPA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination.

22.3 Standard of Review. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this PPA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the “public interest” standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

22.4 Disclaimer of Certain Third Party Beneficiary Rights. In executing this PPA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this PPA.

22.5 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons to perform such services, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers’ compensation coverage. None of the Persons employed by Seller shall be considered

employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this PPA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this PPA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the PPA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this PPA with a view toward effecting the purposes of this PPA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Buyer and Seller with respect to the Project and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect to the sale of Solar Energy Output from the Project. Subject to approval by any Governmental Authority with jurisdiction over this PPA, this PPA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect. This PPA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this PPA are for ease of reference only and do not constitute a part of this PPA.

22.12 Counterparts. This PPA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the

signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law and Choice of Forum. The interpretation and performance of this PPA and each of its provisions shall be governed and construed in accordance with the laws of the State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this PPA shall be brought in the United States District Court for the District of New Mexico.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, “**Disclosing Party**” refers to the Party disclosing information to the other Party, and the term “**Receiving Party**” refers to the Party receiving information from the other Party.

(B) Other than in connection with this PPA, the Receiving Party will not use the Confidential Information (as defined in clause (C) below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, legal counsel and accountants (collectively, “**Receiving Party’s Representatives**”), but only if such Receiving Party’s Representatives need to know the Confidential Information in connection with this PPA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Subject to Section 22.14(E), to the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority, or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts means to ensure that such Confidential Information is not made public.

(C) As used in this Section 22.14, “**Confidential Information**” means all information that is furnished in connection with this PPA to the Receiving Party or its Receiving Party’s Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party’s Representatives have access by virtue of this PPA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by PNM or on PNM’s behalf)), or which concerns this PPA, the Disclosing Party or the Disclosing Party’s stockholders, members, affiliates or subsidiaries, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party’s Representatives by a director, officer, employee, Affiliate, stockholder, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this PPA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this PPA:

- (1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or

its Receiving Party's Representatives;

(2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party;

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party; and

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this PPA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this PPA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this PPA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this PPA that relates solely to this PPA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this PPA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure in the proceeding shall use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information to make such disclosure of Confidential Information subject to a protective order or other similar procedure; *provided, however*, Seller acknowledges and agrees that Buyer may disclose this PPA and related documents, without seeking a protective order or similar process, in any proceeding before the NMPRC or pursuant to any other regulatory process under NMPRC jurisdiction. In the event that Buyer intends to disclose additional requested or supporting documents that include any of Seller's Confidential Information in any proceeding before the NMPRC or pursuant to any other regulatory process under NMPRC jurisdiction, Buyer shall provide notice to Seller of such intended disclosure and, if Seller responds within two (2) Business Days (or other shorter response time as may be required or directed by the NMPRC) of receiving Buyer's notice and requests that Buyer seek a protective order or similar procedure, Buyer shall seek a protective order or similar procedure to limit the disclosure. Seller shall reasonably cooperate with Buyer in seeking protection from the disclosure of Seller's Confidential Information.

22.15 Marketing Rights; Press Releases and Media Contact; Access. Seller hereby grants to Buyer the right to advertise, market, and promote to the general public the benefits of this PPA and the RECs that are generated under this PPA and delivered to Buyer during the Term, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this PPA and the creation, sale or retirement of such RECs (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the “**Promotional Materials**”). Seller shall obtain and grant to Buyer an irrevocable, royalty free, worldwide license to use and distribute its Promotional Materials, including using the name, description and images of the Project. Seller will make available to Buyer a basic description of the Project, and any press releases or statements that Seller produces regarding the Project. Upon sufficient advance written notice, Seller will grant to Buyer or its designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials. Notwithstanding the foregoing, either Party shall be permitted to disclose the following terms with respect to this PPA:

- (1) Party names;
- (2) Renewable resource type;
- (3) Term;
- (4) Project location;
- (5) Guaranteed Solar Capacity;
- (6) Commercial Operation Date; and
- (7) Point of Delivery.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this PPA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this PPA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions, and Buyer shall be responsible for Seller’s reasonable costs associated with assisting Buyer in such transactions.

22.17 Forward Contract and Master Netting Agreement. Notwithstanding any other provision of this PPA, the Parties acknowledge that this PPA is a forward contract and master netting agreement within the meaning of the safe harbor provisions of the Bankruptcy Code. Accordingly, the Parties agree, notwithstanding any other provision in this PPA, that this PPA may be terminated and remedies exercised hereunder by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination or to the exercise

of the remedies set forth herein.

22.18 Accounting Matters The Parties agree that Generally Accepted Accounting Principles in the United States of America (“GAAP”) and the rules of the United States Securities and Exchange Commission (“SEC”) require Buyer to evaluate if Buyer must consolidate Seller’s financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this PPA (i) will be considered a lease under Accounting Standards Codification 842 - Leases, or (ii) require consolidation of Seller’s financial information with Buyer’s financial statements pursuant to Accounting Standards Codification 810 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer’s accounting treatment for the PPA, jointly the “Accounting Standards”). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties’ review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the Parties agree to the following provisions for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller’s Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller’s parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial statements are deemed necessary by Buyer’s external auditors to complete an audit of Buyer’s consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) (“**Seller’s Financial Statements**”) shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller’s records and personnel, so that Buyer and Buyer’s independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). All reasonable expenses for the foregoing that are incremental to Seller’s normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

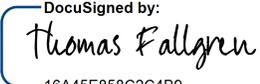
(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section in confidence in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information, based on the advice of its counsel that it is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

22.19 Telephone Recording. Each Party to this PPA acknowledges and agrees to the taping or electronic recording (“**Recording**”) of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this PPA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

[Signature page(s) follow]

IN WITNESS WHEREOF, the Parties have caused this PPA to be duly executed as of the date first above written. This PPA shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By 
16A45E858G2C4B9...

Name Thomas Fallgren

Title Vice President, PNM Generation

201LC 8ME LLC

By: 
111E22F12E0449A...

Name: Thomas Buttgenbach

Title: President

EXHIBIT A
(to Power Purchase Agreement)

**DESCRIPTION OF SELLER'S GENERATION FACILITIES, SITE MAP AND
PROJECT SCHEDULE**

1. Name of Seller's Project: Rockmont Solar Project
2. Location: San Juan County, New Mexico
3. Owner (if different from Seller): 201LC 8me LLC
4. Operator: Seller or Affiliate thereof
5. Equipment/Fuel:
 - a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): Solar PV
 - b. Total number of units at the Project: 27 (subject to change in final design)
 - c. Total capacity (MWp): 136 MWdc (subject to change in final design)
 - d. Total nameplate capacity at point of delivery: 100 MWac (net of all transformation and transmission losses)
 - e. Additional technology-specific information: Single-Axis Tracking PV
6. Project Schedule:

Key Milestone	Date
PNM Confirmation of San Juan Satellite Station Location	January 30, 2021
LGIA Execution	March 31, 2021
Major Equipment Supply Agreements Executed	June 30, 2021
Discretionary Permits	October 31, 2021
Close Financing	November 24, 2021
Start of Project Construction	December 1, 2021
First Major Equipment Delivered to Site	January 30, 2022
Interconnection In-Service Date	March 1, 2022
Commissioning Start Date	March 15, 2022
Expected Commercial Operation	June 20, 2022

- 7. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the PPA.

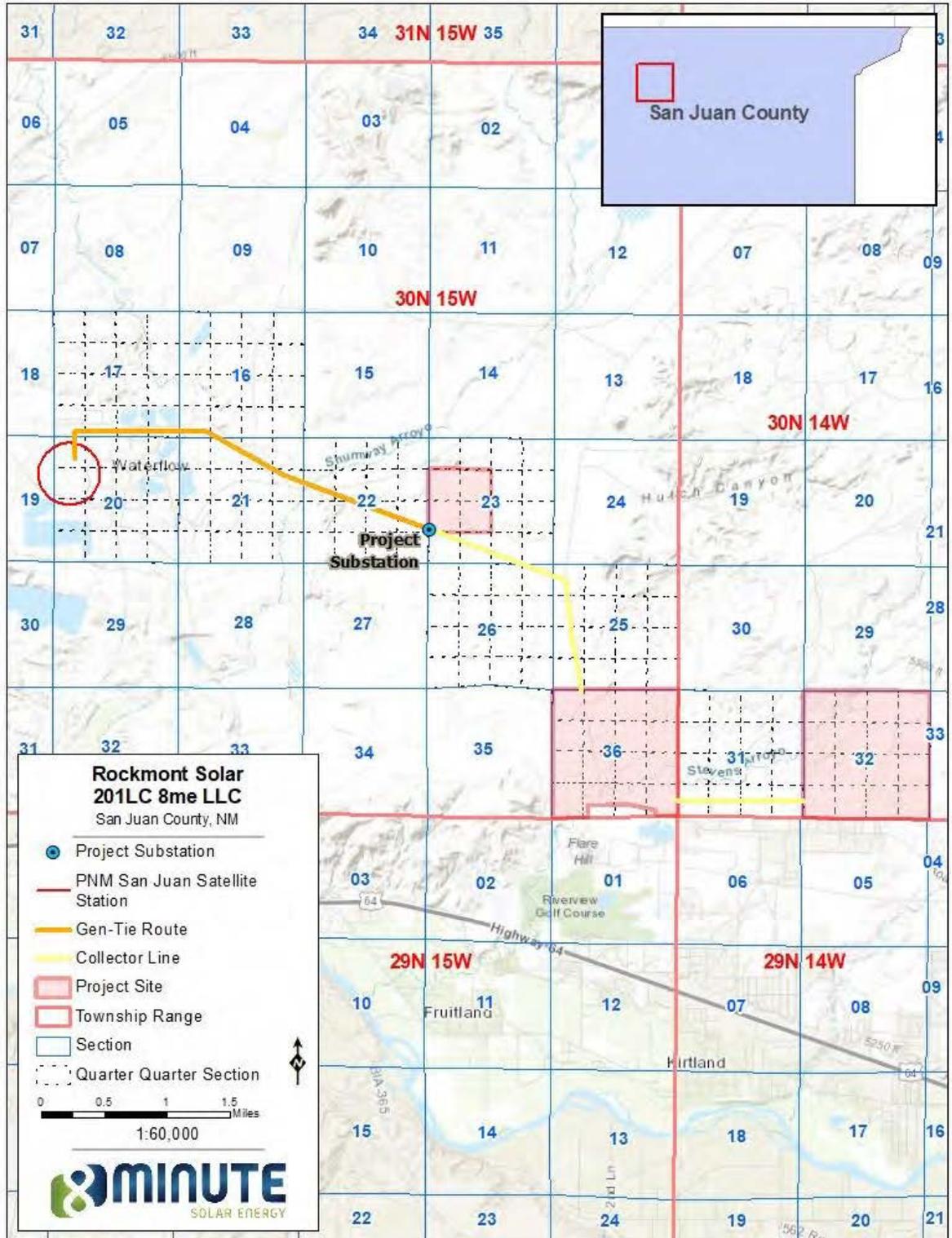


EXHIBIT B (to Power Purchase Agreement)

ONE-LINE DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES

See attached one-line diagram of the Project, which indicates the Interconnection Facilities, the network upgrades, the Electric Interconnection Point, the Point of Delivery (if different than the Electric Interconnection Point) and ownership and location of meters. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.

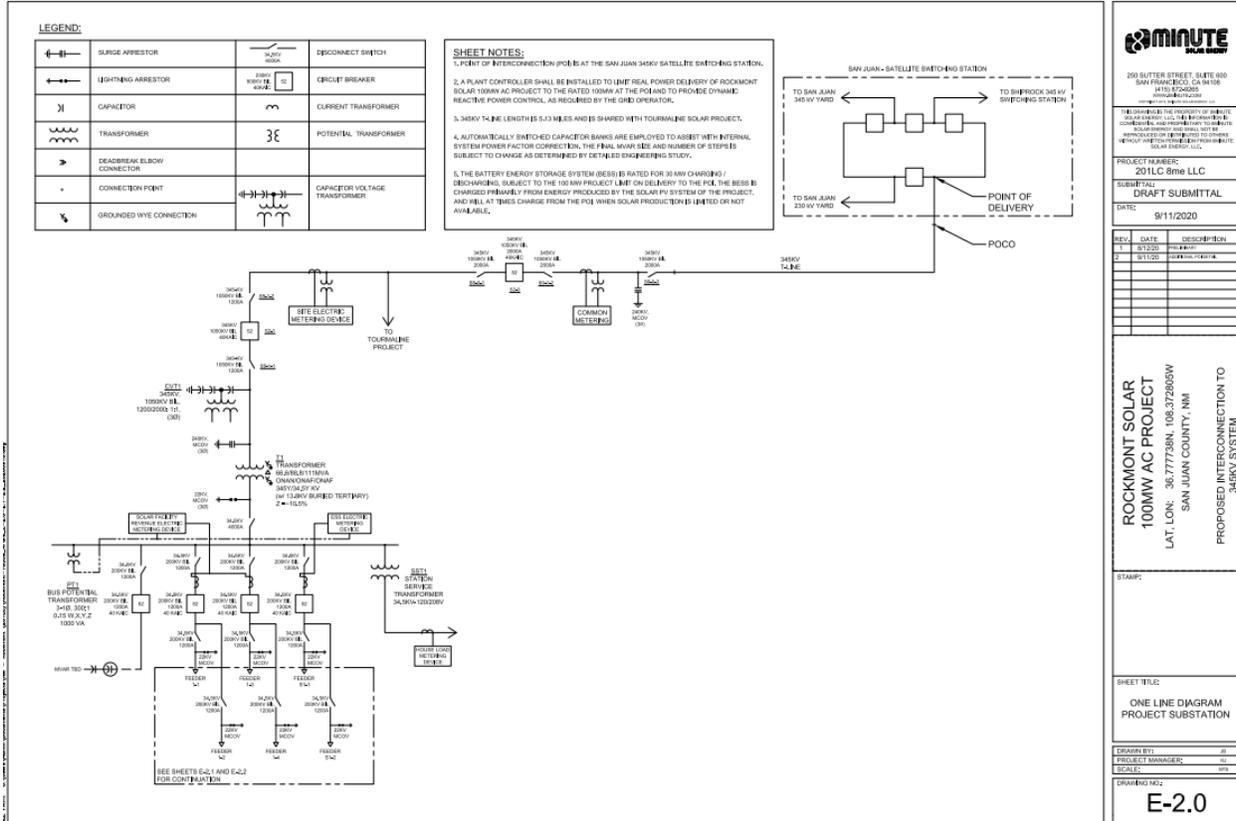


EXHIBIT C
(to Power Purchase Agreement)

DESCRIPTION OF SITE

SURVEYOR'S DESCRIPTION of: San Juan County, State of New Mexico, and being more particularly described as follows:

Section 32 contained in Township 30 North Range 14 West

Section 36 contained in Township 30 North Range 15 West

South $\frac{1}{2}$ Northwest $\frac{1}{4}$ and North $\frac{1}{2}$ Southwest $\frac{1}{4}$ of Section 23, Township 30 North, Range 15 West

The above described Tract of Land contains 1,421 acres more or less in area.

EXHIBIT D
(to Power Purchase Agreement)
NOTICE ADDRESSES

**PUBLIC SERVICE COMPANY OF
NEW MEXICO**

201LC 8ME LLC

Notices:

All Notices/Invoices:

Delivery Address:

Delivery Address:

Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

201LC 8me LLC
c/o 8minute Solar Energy LLC
4370 Town Center Blvd., Suite 110
El Dorado Hills, CA 95762

Invoices:

Attn: Transactions

Attn: Energy Analysis

Phone: (916) 608-9060

Phone: (505)541-2585

Fax: (916) 608-98691

Fax: (505) 241-2434

Email: transactions@8minute.com

Email:

PNMEAM@pnmresources.com

Invoices: invoice@8minute.com

Scheduling:

Mailing Address (if different from above):

Attn: Traders

Phone: (505) 855-6226 day-ahead
(505)855-6216 real time

Fax: (505) 241-4188

Email: zz-WPMTraders@pnm.com

Wire Transfer:

Wells Fargo Bank
ABA: 121000248
ACCT: 4066482027

Payments:

**With additional Notice of an Event of
Default, termination and other legal notices
to:**

Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107

Attn: Albuquerque Division Cash

201LC 8me LLC

Attn: Transactions

C/o 8minute Solar Energy LLC
5455 Wilshire Blvd., Suite 2010
Los Angeles, CA 90036

Phone: (323) 525-0900

Fax: (310) 424-7112

Wire Transfer:

Wells Fargo Bank

ABA# [121000248]

Albuquerque, New Mexico

ME Whsle Pwr Depository: 651-537-7916

Attn: EA-Wholesale Power Marketing

Project Manager:

Public Service Company of New Mexico
Attn.: Casey Kalberg
PO Box 227
Waterflow, N.M 87421
Telephone: (505) 598-7613

Project Manager:

201LC 8me LLC
C/o 8minute Solar Energy LLC
Attn: Ben New
Email: bnew@8minute.com
Phone: (415) 271-1234

With additional Notice of an Event of Default, termination and other legal notices to:

Public Service Company of New Mexico
Attention: Tom Fallgren
2401 Aztec Rd. NE
Albuquerque, NM 87107
Telephone: (505) 241-4148
Fax: (505) 241-2375

With a copy to:

Public Service Company of New Mexico
Attention: Madonna N. Bixby, Senior
Corporate Counsel
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-4929
Fax: (505) 241-4318

EXHIBIT E
(to Power Purchase Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS,
APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED**

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
<i>Clean Water Act (CWA) Section 402, National Pollution Discharge Elimination System (NPDES). Construction Stormwater General Permit NMR1000000</i>	<i>US Environmental Protection Agency (EPA)</i>
<i>CWA Sec 401 Water Quality Certification</i>	<i>New Mexico Environment Department (NMED) Surface Water Quality Bureau</i>
<i>CWA Sec 404, Nationwide Permit (NWP) #12 (utility lines), NWP #14 (access roads), NWP #51 (renewal energy facilities) (if required)</i>	<i>U.S. Army Corps of Engineers</i>
<i>National Environmental Policy Act, Finding of No Significant Impact for an Environmental Assessment</i>	<i>U.S. Bureau of Land Management, Farmington Field Office</i>
<i>Right of Way Grant and Notice to Proceed</i>	<i>U.S. Bureau of Land Management, Farmington Field Office</i>
<i>National Historic Preservation Act Section 106 Finding of Eligibility, Consultation, and Approval</i>	<i>New Mexico State Historic Preservation Office</i>
<i>State of New Mexico Business Site Lease (ROW Grant)</i>	<i>State of New Mexico – State Lands Office</i>
<i>Ground Disturbance Permit</i>	<i>New Mexico State Lands Office – Commercial Resources Division</i>
<i>San Juan County New Commercial/Addition Structures Permit</i>	<i>San Juan County, Building Division</i>
<i>San Juan County Floodplain Permit</i>	<i>San Juan County</i>
<i>Transmission Line Location and Right-of-Way Permit</i>	<i>New Mexico Public Regulatory Commission</i>
<i>No Hazard Determination</i>	<i>Federal Aviation Administration</i>

EXHIBIT F
(to Power Purchase Agreement)

COMMISSIONING TESTS

- String Insulation Resistance and Continuity Tests
- String V_{oc} measurements
- String Current Checks
- DC Feeder Insulation Resistance and Continuity Tests
- Inverter OEM Commissioning Procedures
- MW Control Tuning/Testing
- V/MVAR/pf Control Tuning/Testing (or equivalent)
- Automatic Generation Control (AGC) Functionality Test (or equivalent)
- SCADA Functionality Test (or equivalent)
- Weather Station Data Feed Functionality Test (as part of SCADA testing)
- Owner Control and Data Link Functionality Tests (See Section 3.4)
- Curtailment Control (or equivalent, if applicable)
- Commissioning Performance Test (See Section 10.8)

EXHIBIT G
(to Power Purchase Agreement)

INSURANCE COVERAGES

Seller shall obtain and maintain the following insurance coverages, at a minimum:

A. Workers' Compensation Insurance, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars (\$1,000,000) per accident, One Million (\$1,000,000) for disease, and One Million (\$1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

B. Commercial General Liability Insurance, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.

C. Business Automobile Liability Insurance, or the equivalent, with a limit of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

D. Excess or Umbrella Liability. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Ten Million dollars (\$10,000,000) written on a per occurrence basis

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

E. Property Insurance. During construction and operation, Seller shall provide or arrange for the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. For the avoidance of doubt, builders' risk insurance shall qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to industry standard limits acceptable to Seller's financing parties, 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, including boilers and engines, in an amount equal to their probable maximum loss.

EXHIBIT H
(to Power Purchase Agreement)

AVAILABILITY GUARANTEE

Section 1. Definitions.

Capitalized terms used in this Exhibit H and not defined herein shall have the meaning assigned in Article 1 of the PPA.

“Actual Solar Availability Percentage” means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Solar Available Hours for all Solar Units that were part of the Project at the beginning of the relevant Commercial Operation Year for all Daylight Intervals, divided by (ii) the sum of all Solar Period Hours in the relevant Commercial Operation Year for all Solar Units that were part of the Project on the Commercial Operation Date.

“Actual Solar Energy Output” means the Energy (in MWh) generated by the Project and delivered to the Point of Delivery.

“Aggregate Solar Availability Damages Cap” has the meaning set forth in Section 2(3) of this Exhibit.

“Annual Solar Availability Damages Cap” has the meaning set forth in Section 2(3) of this Exhibit.

“Annual Report” has the meaning set forth in Section 2(5) of this Exhibit.

“Daylight Interval” means each hour where plane of array irradiance conditions are 50 W/m² or greater. Data will be collected as hourly averages for all installed plane of array sensors at the Site.

“Guaranteed Solar Availability Percentage” has the meaning set forth in Section 2(1) of this Exhibit.

“Solar Availability Damages” has the meaning set forth in Section 2(2) of this Exhibit.

“Solar Available Hours” means for each Solar Unit, for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of Solar Period Hours in such Commercial Operation Year, minus (b) the aggregate Solar Unavailable Hours for such Solar Unit in such Commercial Operation Year, plus (c) the aggregate Solar Excused Hours for such Solar Unit in such Commercial Operation Year.

“Solar Excused Hours” means, in any Commercial Operation Year, (a) the aggregate Seller Excused Hours during Daylight Intervals for such Commercial Operation Year; provided that for purposes of the Availability Guaranty only the first fifty (50) hours of Scheduled Maintenance Outages in the aggregate for the Project per Commercial Operation Year shall be treated as Excused Hours, and (b) all hours during which a Seller Curtailment occurs in such

Commercial Operation Year.

“**Solar Period Hours**” means the number of Daylight Intervals within any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year.

“**Solar Unavailable Hours**” means those hours a Solar Unit is not available during Daylight Intervals to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition, in which case the hours when an Emergency Condition occurs shall be deemed a Transmission Provider Curtailment and included in Seller Excused Hours); (b) in “run” status and faulted; (c) included in Scheduled Maintenance Outages in excess of fifty (50) hours in aggregate for the Project in any Commercial Operation Year; (d) incapable of being remotely controlled via its AGC system; or (e) otherwise not operational or capable of delivering Energy to the Point of Delivery.

Section 2. Solar Availability Guarantee.

1. Solar Availability Guarantee. Seller guarantees that the Project shall achieve an Actual Availability Percentage equal to or greater than ninety percent (90%) in each Commercial Operation Year after the Commercial Operation Date (“**Guaranteed Availability Percentage**”).

2. Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed Solar Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to (x) the Solar Energy Output Payment Rate, multiplied by (y) the Guaranteed Solar Availability Percentage minus the Actual Solar Availability Percentage for such Commercial Operation Year (both expressed as a decimal), multiplied by (z) the Actual Solar Energy Output for such Commercial Operation Year divided by the Actual Solar Availability Percentage (expressed as a decimal), multiplied by the Guaranteed Solar Availability Percentage (expressed as a decimal) (the “**Solar Availability Damages**”), but in no event in excess of the Annual Solar Availability Damages Cap and the Aggregate Solar Availability Damages Cap. A sample calculation of the Solar Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit H.

3. Damages Cap, Termination and Cure Rights. The total Solar Availability Damages payable by Seller for failure to meet the Guaranteed Solar Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to Twenty-Six Thousand Dollars (\$26,000) per MW of Guaranteed Solar Capacity (“**Annual Solar Availability Damages Cap**”) and in the aggregate at a value equivalent to Seventy-Eight Thousand Dollars (\$78,000) per MW of Guaranteed Solar Capacity (“**Aggregate Solar Availability Damages Cap**”) over the Term of the PPA.

4. Sole Remedy. The Parties agree that Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for any deficiency in the performance of the Project (including any failure to meet the Guaranteed Solar Availability Percentage) shall be the payment of damages up to the Annual Solar Availability Damages Cap and Aggregate Solar Availability Damages Cap, and the right to declare an Event of Default pursuant to Section 12.1(B)(6) and (7) of the PPA, if and to the extent applicable, and shall not be subject to the collection of any

other damages or any other remedies, including specific performance, and shall not be an Event of Default giving rise to a termination payment obligation except pursuant to Section 12.1(B)(6) and (7) of the PPA, as and to the extent applicable. Notwithstanding the foregoing, the limitations set forth herein shall not be applicable to any indemnification claims pursuant to Article 20 of the PPA and Seller's material breach of its obligation to operate and maintain the Project in accordance with Prudent Utility Practice or Seller's failure to pay Solar Availability Damages when due if not timely cured pursuant to the provisions of Article 12 of the PPA are an Event of Default of Seller for which Buyer may terminate the PPA and seek damages in accordance with Section 12.4 of the PPA.

5. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller's computation of the Actual Solar Availability Percentage for the previous Commercial Operation Year and the Solar Availability Damages, if any, due to Buyer (the "**Annual Report**"). Such Annual Report shall include the total amount of Solar Availability Damages paid to Buyer under the PPA and shall provide notice that the Aggregate Solar Availability Damages Cap has been reached, if applicable. If Solar Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

6. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the PPA.

ATTACHMENT 1 TO EXHIBIT H
EXAMPLE CALCULATION OF SOLAR AVAILABILITY DAMAGES

I. Example of Actual Solar Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

During the Commercial Operation Year in question, 50 Solar Units were part of the Project.

The Solar Units had the following operating characteristics:

	Hours	Solar Units Affected	Solar Unit Hours
Solar Period Hours (“PH”)	4,000	50	200,000
Solar Unavailable Hours (“UH”)			5,000
Solar Excused Hours (“EH”)			1,000

Given these assumed facts, the Available Hours for the Solar Units during the Commercial Operation Year would be calculated as follows:

$$\text{Sum of Available Hours} = \text{PH} - \text{UH} + \text{EH}: 196,000 = 200,000 - 5,000 + 1,000$$

Actual Solar Energy Availability Percentage

Given these assumed facts, the Actual Solar Availability Percentage for the Project during the Commercial Operation Year in question would be calculated as follows:

- (a) Sum of Solar Available Hours: 196,000 hours
- (b) Sum of Solar Period Hours: 200,000 hours
- (c) Actual Solar Availability Percentage: $(\text{Sum of Solar Available Hours} / \text{Sum of Solar Period Hours}) \times 100 = (196,000 / 200,000) \times 100 = 98.0\%$

II. Example of Availability Damages

Example of Solar Availability Damages based on the following assumed facts:

- (a) Seller’s Guaranteed Solar Availability in Commercial Operation Year 4 = 90%.
- (b) Seller’s Actual Solar Availability in Commercial Operation Year 4 = 85%.
- (c) Solar Energy Output Payment Rate = \$27.35
- (d) Actual Solar Energy Output = 250,000 MWh

Given these assumed facts, Seller calculates the Availability Damages due to Buyer as follows:

Solar Energy Output Payment Rate x (Guaranteed Solar Availability Percentage in Commercial Operation Year 4 — Actual Solar Availability Percentage for Commercial Operation Year 4 (each expressed as a decimal)) x (Actual Solar Energy Output for Commercial Operation Year 4 ÷ Actual Solar Availability Percentage for Commercial Operation Year 4 x Guaranteed Solar Availability Percentage for Commercial Operation Year 4 (the latter two expressed as a decimal)) = Solar Availability Damage:

$$\$27.35 \times (.90 - .85) \times (250,000 \div .85 * .90) = \$361,985.29$$

EXHIBIT I
(to Power Purchase Agreement)

FORM OF SELLER GUARANTY

GUARANTY

THIS GUARANTY (this “**Guaranty**”), dated as of _____, _____ (the “**Effective Date**”), is made by [●]. (“**Guarantor**”), in favor of [INSERT COUNTERPARTY’S NAME IN ALL CAPS] (“**Counterparty**”).

RECITALS:

A. WHEREAS, Counterparty and Guarantor’s indirect, wholly-owned subsidiary [INSERT OBLIGOR’S NAME IN ALL CAPS] (“**Obligor**”) have entered into, or concurrently herewith are entering into, that certain _____ Agreement dated/made/entered into/effective as of _____, 20__ (the “**Agreement**”); and

B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. GUARANTY. Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

- (a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ [spell out the dollar amount] U.S. Dollars (U.S. \$ _____) (the “**Maximum Recovery Amount**”), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys’ fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [_____].
- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are

deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.
- (b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New Mexico.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

- (a) it is a corporation duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and
- (c) the execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. RESERVATION OF CERTAIN DEFENSES. Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

5. AMENDMENT OF GUARANTY. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. WAIVERS AND CONSENTS. Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

- (a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.
- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a

release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor’s obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

8. **TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor’s obligations hereunder will terminate automatically and immediately upon the earlier of (i) the termination or expiration of the Agreement, and (ii) 11:59:59 Eastern Prevailing Time of [insert date] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called “**Notice**”) by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

<u>TO GUARANTOR:</u> *	<u>TO COUNTERPARTY:</u>
[●] <i>Attn:</i> Treasurer	<i>Attn:</i> [●]
<i>[Tel: [●] -- for use in connection with courier deliveries]</i>	<i>[Tel: [●] -- for use in connection with courier</i>

	<i>deliveries]</i>
--	--------------------

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New Mexico, without regard to principles of conflicts of laws thereunder.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably:
 - (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and
 - (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any claim that it is not personally subject to the jurisdiction of the above-named courts, that the

suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

[•]
By: _____
Name: _____
Title: _____

EXHIBIT J
(to Power Purchase Agreement)

**COMMERCIAL OPERATION
FORM OF CERTIFICATION**

This certification (“Certification”) of Commercial Operation is delivered by _____ (“Seller”) to Public Service Company of New Mexico (“Buyer”) in accordance with the terms of that certain Power Purchase Agreement dated _____ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Solar Units with an aggregate capacity of at least [●] MW have been constructed, commissioned and tested and are capable of delivering Energy on a sustained basis (in accordance with the Solar Unit manufacturer’s requirements and the Commissioning Tests);
- (2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and
- (3) the Project has been completed in all material respects (except for punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Solar Energy Output and meet, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this _____ day of _____, 20__.

[●]
Signature: _____
Name: _____
Title: _____

[Licensed Professional Engineer]
Signature: _____
Name: _____
Title: _____
Date: _____

License Number and LPE Stamp: _____

EXHIBIT K
(to Power Purchase Agreement)

ANNUAL DEGRADATION GUARANTEES

Annual degradation allowances for the determination of compliance with the Annual Performance Test Guarantee Ratio for the Project shall be as allowed in the following table. In addition, an allocation of one-half percent (0.5%) degradation over any running five (5) year period is available to Seller to be used on an annual basis in the case that any actual annual degradation exceeds the allowance identified in the table. Notwithstanding the foregoing, degradation in any five (5) year continuous period shall not exceed two and one-half percent (2.5%) or Annual Performance Test Guarantee Damages shall apply as established in Section 10.9. Furthermore, in the case that the results of an Annual Performance Test suggest a year-over-year improvement in performance (i.e. negative degradation), the applicable actual additional degradation for that year shall be deemed to be zero percent (0.0%) and the value for the “Degradation-Adjusted Annual Guaranteed Solar Capacity” in the below table will be the same as the prior year based on the testing from the prior year. For clarity, the one-half percent (0.5%) degradation allocation shall not be used as a test tolerance or margin to offset factors other than degradation.

Test at Beginning of Commercial Operation Year	Degradation-Adjusted Annual Guaranteed Solar Capacity (% of Guaranteed Solar Capacity)	Maximum % Degradation from Prior Year Actual Degradation
1 - Commissioning Test	100.00%	0.00%
2	99.5%	0.50%
3	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 0.50%) and 0.50% or (ii) 99.0%	0.50%
4	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 1.0%) and 0.50% or (ii) 98.5%	0.50%
5	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 1.5%) and 0.50% or (ii) 98.0%	0.50%
6	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 2.0%) and 0.50% or (ii) 97.5%	0.50%
7	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 2.5%) and 0.50% or (ii) 97.0%	0.50%
8	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 3.0%) and 0.50% or (ii) 96.5%	0.50%

Test at Beginning of Commercial Operation Year	Degradation-Adjusted Annual Guaranteed Solar Capacity (% of Guaranteed Solar Capacity)	Maximum % Degradation from Prior Year Actual Degradation
9	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 3.5%) and 0.50% or (ii) 96.0%	0.50%
10	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 4.0%) and 0.50% or (ii) 95.5%	0.50%
11	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 4.5%) and 0.50% or (ii) 95.0%	0.50%
12	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 5.0%) and 0.50% or (ii) 94.5%	0.50%
13	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 5.5%) and 0.50% or (ii) 94.0%	0.50%
14	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 6.0%) and 0.50% or (ii) 93.5%	0.50%
15	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 6.5%) and 0.50% or (ii) 93.0%	0.50%
16	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 7.0%) and 0.50% or (ii) 92.5%	0.50%
17	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 7.5%) and 0.50% or (ii) 92.0%	0.50%
18	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 8.0%) and 0.50% or (ii) 91.5%	0.50%
19	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 8.5%) and 0.50% or (ii) 91.0%	0.50%
20	The greater of (i) 100% less the sum of the prior year's measured cumulative degradation (not to exceed 9.0%) and 0.50% or (ii) 90.5%	0.50%

EXHIBIT L
(to Power Purchase Agreement)

ANNUAL GENERATION FORECAST

The following represents the annual forecast of net, AC generation delivered to the Point of Delivery.

On-Peak Hours are considered to be hour ending 0700 through and including 2200 Pacific prevailing time which is 16 hours, Monday through Saturday excluding any NERC holidays which are the major holidays. All other hours and all day Sundays are off-peak.

Month	On-Peak Energy Delivered (MWh)	Off-Peak Energy Delivered (MWh)
January	13032	2506
February	15193	2532
March	21892	3243
April	23915	3679
May	26609	5117
June	28503	4385
July	25481	4900
August	25445	3770
September	22845	3515
October	18766	3609
November	14381	2212
December	11918	1766
Total Annual	247980	41234
Total Combined Annual	289214	
Annual Capacity Factor	33%	

EXHIBIT M
(to Power Purchase Agreement)

DEVELOPMENT AND CONSTRUCTION STANDARDS ORGANIZATIONS

The following provides a listing of standards organizations that may apply to the construction of the Project. Notwithstanding this list, Seller retains all responsibility to comply with appropriate standards and Applicable Law.

The latest issue of the codes, standards, and publications of the following organizations in effect at the Execution Date of the PPA shall be used in the design and construction of the Project to the extent applicable.

ACI	American Concrete Institute
AI	Asphalt Institute
AISC	American Institute for Steel Construction
AISI	American Iron and Steel Institute
ANSI	American National Standards Institute
ASCE	American Society of Civil Engineers
ASHRAE	American Society of Heating, Refrigeration and Air Conditioning Engineers
ASME	American Society of Mechanical Engineers
ASNT	American Society of Nondestructive Testing
ASTM	ASTM International
AWS	American Welding Society
CFR	U.S. Code of Federal Regulations
CRSI	Concrete Reinforcing Steel Institute
IBC	International Building Code
ICEA	Insulated Cable Engineers Association
IEC	International Electrotechnical Commission
IFC	International Fire Code
IEEE	Institute of Electrical and Electronics Engineers
IES	Illuminating Engineers Society
ISA	International Society of Automation
ISO	International Standards Organization
MBMA	Metal Building Manufacturer's Association
NACE	National Association of Corrosion Engineers
NEC	National Electric Code
NERC	North American Electric Reliability Corporation
NEMA	National Electrical Manufacturer's Association
NESC	National Electric Safety Code

NFPA	National Fire Protection Association
NIOSH	National Institute of Occupational Safety and Health
NIST	National Institute of Standards and Technology
NMCBC	New Mexico Commercial Building Code
NMDOT	New Mexico Department of Transportation
NMRLD	New Mexico Construction Industries Division Contactor Licensing Regulation
NMED	New Mexico Environment Department
NMOSHA	New Mexico Occupational Health and Safety Bureau
SSPC	Society of Protective Coatings
UL	Underwriters Laboratories

ESA for 30 MW Battery Storage Project with 309SJ 8me LLC

PNM Exhibit TGF-7

Is contained in the following 111 pages.

ENERGY STORAGE AGREEMENT

ROCKMONT STORAGE

by and between

PUBLIC SERVICE COMPANY OF NEW MEXICO

and

309SJ 8ME LLC

Dated as of September 23, 2020

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS AND RULES OF INTERPRETATION.....	1
1.1 Definitions.....	1
1.2 Rules of Construction.	18
1.3 Interpretation with Interconnection Agreement.....	18
1.4 Interpretation of Arrangements for Electric Supply to the Project.....	19
ARTICLE 2 TERM AND TERMINATION	20
2.1 Execution Date and Term.	20
ARTICLE 3 PROJECT DESCRIPTION.....	20
3.1 Commercial Terms.....	20
3.2 Project.	20
3.3 Location.	20
3.4 General Design of the Project.....	21
3.5 Expected Commercial Operation Date.	22
3.6 Extension Due to Force Majeure.	22
3.7 Delay Damages.	22
3.8 ESS Capacity Shortfall.	23
3.9 Test Period.	23
3.10 Notice of Commercial Operation.....	23
3.11 Grid Charging and Recapture Period Termination.....	24
3.12 ESS Unit Capabilities.	24
3.13 ESS Non-Performance Liquidated Damages.....	25
3.14 Availability Guarantee.	26
3.15 Guaranteed ESS Roundtrip Efficiency Payment.	26
3.16 Federal Tax Treatment.....	26
ARTICLE 4 AGC; SELLER CURTAILMENT	26
4.1 AGC; Seller Curtailment.....	26
ARTICLE 5 DELIVERY AND METERING	27
5.1 Delivery Arrangements.....	27
5.2 Availability Reporting.	28
5.3 Electric Metering Devices.....	28

5.4	Adjustment for Inaccurate Meters.	29
ARTICLE 6 CONDITIONS PRECEDENT		30
6.1	Conditions Precedent.	30
6.2	Notice.	30
ARTICLE 7 SALE AND PURCHASE OF PRODUCT		30
7.1	Sale and Purchase of Product.	30
7.2	Title and Risk of Loss.	30
7.3	Future Environmental Attributes and Changes in Law.	31
7.4	Scheduling.	31
7.5	Forced Outages.	32
ARTICLE 8 PAYMENT CALCULATIONS		32
8.1	Billing Components.	32
8.2	Payment Support Requirement.	33
8.3	Survival on Termination.	33
ARTICLE 9 BILLING AND PAYMENT PROCEDURES		33
9.1	Statements and Payment of Electricity Payments.	33
9.2	Miscellaneous Payments.	34
9.3	Currency and Method of Payment.	34
9.4	Default Interest.	34
9.5	Disputed Items.	34
9.6	Statement Errors.	35
9.7	Taxes.	35
9.8	Setoff and Payment Adjustments.	36
9.9	Netting.	36
9.10	Survival on Termination.	36
ARTICLE 10 OPERATIONS AND MAINTENANCE		36
10.1	Construction of the Project.	36
10.2	Commissioning Tests.	37
10.3	Access to and Inspection of the Project.	38
10.4	Operating Parameters.	38
10.5	Operating Procedures.	39
10.6	Project Maintenance.	40

10.7	Sales to Third Parties	40
ARTICLE 11 FUTURE ENVIRONMENTAL ATTRIBUTES.....		40
11.1	Sale of Future Environmental Attributes	40
ARTICLE 12 DEFAULT AND REMEDIES		41
12.1	Events of Default of Seller.....	41
12.2	Events of Default of Buyer.	43
12.3	Damages Prior to Termination.....	44
12.4	Termination.....	45
12.5	Specific Performance.	46
12.6	Remedies Cumulative.	46
12.7	Waiver and Exclusion of Other Damages.....	46
12.8	Payment of Amounts Due to Buyer.....	46
12.9	Duty to Mitigate.....	47
12.10	Security Rights.....	47
ARTICLE 13 CONTRACT ADMINISTRATION AND NOTICES		47
13.1	Notices in Writing.....	47
13.2	Representative for Notices	47
13.3	Authority of Representatives.	47
13.4	Records.	47
13.5	Provision of Real-Time Data.	49
13.6	Examination of Records.....	49
13.7	Exhibits.	49
ARTICLE 14 FORCE MAJEURE.....		50
14.1	Definition.	50
14.2	Notification Obligations.....	51
14.3	Duty to Mitigate.....	52
14.4	Force Majeure Event Occurring After Commercial Operation.	52
ARTICLE 15 REPRESENTATIONS, WARRANTIES AND COVENANTS.....		52
15.1	Seller’s Representations, Warranties and Covenants.....	52
15.2	Buyer’s Representations, Warranties and Covenants.....	54
ARTICLE 16 INSURANCE.....		55
16.1	Evidence of Insurance.....	55

16.2	Term and Modification of Insurance.	55
16.3	Endorsements and Other Requirements.	55
ARTICLE 17 LEGAL AND REGULATORY COMPLIANCE AND GOVERNMENTAL APPROVAL		56
17.1	Applicable Laws.	56
17.2	Governmental Approvals.	56
17.3	NMPRC Approval.	56
17.4	Compliance with Reliability Standards.	57
17.5	Compliance Information.	57
ARTICLE 18 ASSIGNMENT AND OTHER TRANSFER RESTRICTIONS		58
18.1	No Assignment Without Consent.	58
18.2	Conditions on Transfers.	58
18.3	Change of Control.	59
18.4	Transfer Without Consent Is Null and Void.	59
18.5	Subcontracting.	59
18.6	Assignment to Lenders.	59
ARTICLE 19 CREDIT AND SECURITY REQUIREMENTS		60
19.1	Security.	60
19.2	Form of Security.	60
19.3	Grant of Security Interest.	61
19.4	Use of Security.	61
ARTICLE 20 INDEMNITY; INSURANCE PROCEEDS.....		62
20.1	Indemnification.	62
20.2	Notice of Claims; Procedure.	62
20.3	Insurance Proceeds.	63
ARTICLE 21 GOVERNMENTAL CHARGES		63
21.1	Allocation of Governmental Charges.	63
ARTICLE 22 MISCELLANEOUS		64
22.1	Waiver.	64
22.2	Fines and Penalties.	64
22.3	Rate Changes.	64
22.4	Disclaimer of Certain Third Party Beneficiary Rights.	64

22.5	Relationship of the Parties.	64
22.6	Equal Employment Opportunity Compliance Certification.	64
22.7	Survival of Obligations.	65
22.8	Severability.	65
22.9	Complete Agreement; Amendments.	65
22.10	Binding Effect.	65
22.11	Headings.	65
22.12	Counterparts.	65
22.13	Governing Law and Choice of Forum.	65
22.14	Confidentiality.	66
22.15	Marketing Rights; Press Releases and Media Contact; Access.	67
22.16	Right to Mortgage.	68
22.17	Forward Contract and Master Netting Agreement.	68
22.18	Accounting Matters.	68
22.19	Telephone Recording.	70

EXHIBITS

- Exhibit A Description of Seller's Energy Storage System, Site Map and Project Schedule
- Exhibit B One-Line Diagrams of Project and Interconnection Facilities
- Exhibit C Description of Site
- Exhibit D Notice Addresses
- Exhibit E Seller's Required Governmental Authority Permits, Consents, Approvals, Licenses and Authorizations to Be Obtained
- Exhibit F Commissioning and Annual Tests
- Exhibit G Insurance Coverages
- Exhibit H Not Used
- Exhibit I Availability Guarantees
- Exhibit J Form of Seller Guaranty
- Exhibit K Commercial Operation Form of Certification
- Exhibit L Roundtrip Efficiency Guarantee
- Exhibit M Optional Pricing Structure - > 365 Annual Equivalent Full Cycles
- Exhibit N ESS Operating Restrictions

ENERGY STORAGE AGREEMENT

This Energy Storage Agreement, as may be amended from time to time, is entered into this 23rd Day of September, 2020 (“**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 309SJ 8me LLC, a Delaware limited liability company (“**Seller**”), whose principal place of business is 4370 Town Center Blvd., Suite 110; El Dorado Hills, CA 95762. Buyer and Seller may be referred to in this Energy Storage Agreement individually as a “**Party**” and collectively as the “**Parties**.”

WHEREAS, Buyer is a public utility that owns and operates electric generation, transmission, and distribution facilities and is subject to the laws of the State of New Mexico and the rules and regulations of the New Mexico Public Regulation Commission; and

WHEREAS, Seller desires to develop, design, construct, own and operate an energy storage facility, as further defined herein and in Exhibit A;

WHEREAS, Seller desires to sell and deliver to Buyer the Product generated by the Project, and Buyer agrees to buy the same from Seller, in accordance with the terms and conditions set forth in this ESA; and

WHEREAS, Buyer and Seller intend to enter into a certain Power Purchase Agreement, pursuant to which some of the energy generated by the Solar Facility will be used exclusively in Seller’s ESS,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1

Definitions and Rules of Interpretation

1.1 Definitions. The following terms shall have the meanings set forth herein.

“**Abandonment**” means (a) a cessation of work and operations at or in respect of the Project for more than ninety (90) Days by Seller or Seller’s contractors but only if such cessation is not caused by a Force Majeure Event or not in accordance with Seller’s Project Schedule, or (b) the relinquishment of possession and control of the Project (or any material portion thereof) by Seller, other than a transfer permitted under this ESA.

“**AC**” means alternating electric current.

“**Accounting Standards**” has the meaning set forth in Section 22.18.

“**Actual Charge Ramp Rate Delay**” has the meaning set forth in Exhibit F.

“**Actual Discharge Ramp Rate Delay**” has the meaning set forth in Exhibit F.

“**Actual System Latency Delay**” has the meaning set forth in Exhibit F.

“**Additional Consents**” means the approvals, consents, authorizations or other requirements not listed in the definition of Governmental Approvals in this ESA that are required from any Governmental Authority with respect to the Project.

“**Affiliate**” of any named Person or entity means any other person or entity that controls, is under the control of, or is under common control with, the named entity. For purposes of this definition, the term “control” (including the terms “controls,” “under the control of” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person or entity, whether through ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests of any class of voting securities, by contract, or otherwise.

“**After Tax Basis**” means, with respect to any payment received or deemed to have been received by a Party, the amount of such payment (“**Base Payment**”) supplemented by a further payment (“**Additional Payment**”) to such Party so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all Taxes (including any federal, state or local income taxes) required to be paid by such Party in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to the Base Payment and the Additional Payment), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to federal income taxation at the highest statutory rate applicable to corporations for the relevant period or periods, and state and local taxes at the highest rates applicable to corporations with respect to such Base Payment and Additional Payment, and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes.

“**AGC**” stands for “Automatic Generation Control” and means energy management system equipment that automatically adjusts the quantity of Charging Energy and Discharge Energy of the Project, including communication circuits to communicate Project operating information to Buyer’s representatives on a real-time basis for the purpose of telemetering, supervisory control/data acquisition and voice communications.

“**Ancillary Services**” means operating reserves, frequency regulation, 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 in its then-current configuration.

“**Applicable Law**” means all applicable laws, statutes, treaties, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Authority, now in effect or hereafter enacted, amendments to any of the foregoing, interpretations of any of the foregoing by a Governmental Authority having jurisdiction over this ESA and matters related thereto, the Parties or the Project, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards or like actions (including those relating to human health, safety, the natural environment or otherwise).

“**Back-Up Metering**” has the meaning set forth in Section 5.3(D).

“**Balancing Area Authority**” has the meaning given by NERC in its Glossary of Terms Used in NERC Reliability Standards, as may be amended from time to time.

“**Bankruptcy Code**” means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as amended from time to time.

“**Black Start Capability**” means that the ESS inverters shall be provided with the ability to form an islanded grid inside the Project while disconnected from the Point of Delivery if Buyer instructs Seller to reserve stored energy for this function. For the avoidance of doubt, the ESS will not have additional installed energy capacity to provide black start after a one hundred twenty (120) MWh discharge event, for example after completing an ESS Capacity Test, until the ESS has been charged again. Buyer may enhance the Black Start Capability after the Effective Date if (a) Buyer provides specifications for an enhanced Black Start Capability, (b) the specifications are within the capabilities of Seller’s ESS integrated equipment and controls system supplier, and (c) Buyer pays all costs associated with upgrading the ESS to the enhanced Black Start Capability specifications as verified by an independent engineer. Upon the satisfaction of all of (a), (b) and (c) in the preceding sentence, Seller shall upgrade the ESS to the enhanced Black Start Capability specifications within eighteen (18) months.

“**Business Day**” means any calendar Day that is not a Saturday, a Sunday, or a state and/or federal recognized holiday where banks in Albuquerque, New Mexico, are permitted or authorized to close.

“**Buyer**” has the meaning set forth in the Preamble.

“**Buyer Costs**” means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Buyer either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or entering into new arrangements which replace this ESA; and (b) all reasonable attorneys’ fees and expenses reasonably incurred by Buyer in connection with the termination of this ESA, to the extent such costs are not already accounted for under Replacement ESS Costs.

“**Buyer Termination Payment**” means the sum of (a) the difference between (i) the net present value of the Replacement Energy Costs, calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, and (ii) the Contract Value, plus (b) Buyer Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. To the extent the total value of the calculation in subpart (a) above is negative, the value used in such subpart (a) will be zero. The Buyer Termination Payment shall not include consequential incidental, punitive, exemplary, indirect or business interruption damages.

“**Change of Control**” means any circumstance in which the current owner ceases to own, directly or indirectly through one or more intermediate entities, at least fifty percent (50%) of the outstanding equity or voting interests in an entity.

“**Charging Energy**” means the amount of Energy supplied by Buyer at Buyer’s cost and in accordance with Prudent Utility Practices, and delivered to Seller at the Point of Delivery to be stored at the Project for the purpose of charging the ESS and discharge at a later time, as measured by the Electric Metering Devices, accounting for estimated AC losses (based on methodology agreed to by the Parties) between the Electric Metering Devices and the Point of Delivery that are not already reflected in the metered data.

“**Commercial Operation**” means that (a) the ESS has been constructed, commissioned, tested, and proven capable of delivering a minimum of ninety-five percent (95%) of the Guaranteed ESS Capacity on a sustained basis without experiencing any abnormal or unsafe operating conditions on any interconnected system; (b) Seller has completed three (3) successful start-ups of the ESS without experiencing any abnormal operating conditions and has been available to dispatch continuously for a period of twenty-four (24) hours with controls in auto and synchronized to the Buyer’s system; (c) all Seller required permits, required consents, and Governmental Approvals are in full force and effect; (d) the ESS Unit Capabilities have been demonstrated through testing in accordance with applicable test protocols and procedures set forth in Exhibit F or by another method acceptable to Buyer; (e) Seller has obtained all necessary rights under an Interconnection Agreement between Seller and the Transmission Provider for interconnection and delivery of Discharge Energy to the Point of Delivery and interconnection and delivery of Charging Energy from the Point of Delivery and is not in breach of its Interconnection Agreement; (f) Seller has satisfactorily completed the Pre-Commercial Operation Date Testing and Modifications requirements set forth in the Interconnection Agreement; (g) Seller has obtained required insurance coverage as set forth in this ESA; and (h) Seller has provided to Buyer an officer’s certificate that the Project has been completed in all material respects.

“**Commercial Operation Date**” means the date on which all of the following have occurred (a) Seller provides a written notification to Buyer that the Commercial Operation has commenced, and Buyer validates that all requirements for Commercial Operation have been satisfied in accordance with Section 3.10; (b) Seller provides to Buyer a certification from a Licensed Professional Engineer, substantially in the form attached hereto as Exhibit K, with all fees and costs associated with the Licensed Professional Engineer having been borne by Seller, and (c) Seller shall have delivered the Delivery Term Security to Buyer in accordance with the relevant provisions of Article 19.

“**Commercial Operation Year**” means a period of twelve (12) consecutive Months. The first Commercial Operation Year shall commence on the Commercial Operation Date and end on the last Day of the Month that is twelve (12) full Months after the Commercial Operation Date, and each subsequent Commercial Operation Year shall be each twelve (12) Month period thereafter.

“**Confidential Information**” has the meaning set forth in Section 22.14(C).

“**Contract Value**” means the sum of the present values of the ESS Capacity Payments for each Commercial Operation Year (or portion thereof) in the then-remaining term (determined without reference to the early termination) of the quantity of ESS Capacity expected to be made available during such Commercial Operation Year (or portion thereof) times the ESS Capacity Payment Rate for such Commercial Operation Year. All elements of the foregoing calculations shall be determined in a commercially reasonable manner. The present values of the monthly

payments from their payment dates in the foregoing calculations shall be determined using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing.

“**Day**” means a calendar day and includes Saturdays, Sundays and holidays; if a payment falls due on a Day that is not a Business Day, the payment will be due on the next Business Day thereafter.

“**DC**” means direct current.

“**Debt**” means solely with respect to Seller after the Commercial Operation Date, without duplication, (a) all obligations of Seller for borrowed money, (b) all obligations of Seller evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of Seller to pay the deferred purchase price of property or services, except trade accounts payable and other accrued expenses arising in the ordinary course of business, (d) all deferred obligations of Seller to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit, line of credit or other instrument, and (e) obligations of Seller in respect of interest rate swap agreements, caps, collars, or other interest rate hedging mechanisms.

“**Default Rate**” has the meaning set forth in Section 9.4.

“**Defaulting Party**” means the Party with respect to which an Event of Default under Article 12 has occurred.

“**Delay Damages**” has the meaning set forth in Section 3.7.

“**Delayed ESS Capacity**” has the meaning set forth in Section 3.7.

“**Delivery Term**” has the meaning set forth in Section 7.1.

“**Delivery Term Security**” has the meaning set forth in Section 19.1.

“**Development Security**” has the meaning set forth in Section 19.1.

“**Discharge Energy**” means Energy discharged from the ESS and delivered to Buyer at the Point of Delivery, as measured by the Electric Metering Devices, corrected for any estimated electrical losses to the Point of Delivery and excluding losses attributable to any other facility sharing the same Point of Delivery, based on methodology agreed to by the Parties.

“**Disclosing Party**” has the meaning set forth in Section 22.14(A).

“**Dispute Notice**” has the meaning set forth in Section 13.8.

“**Disputing Party**” has the meaning set forth in Section 9.5(A).

“**Dollars**” means the lawful currency of the United States of America.

“**Downgrade Event**” shall mean that the long-term credit rating of a Person’s long-term senior unsecured debt is not “Baa3” or higher by Moody’s or “BBB-” or higher by S&P.

“Early Termination Date” has the meaning set forth in Section 12.4.

“Electric Interconnection Point” means the physical point at which electrical interconnection is made between the Project and the Transmission Provider’s Transmission System.

“Electric Metering Device(s)” means all metering and data processing equipment used to measure, record, or transmit data relating to Charging Energy and Discharge Energy. Electric Metering Devices include the metering current transformers and the metering voltage transformers.

“Emergency Condition” means (a) a condition or situation that presents an imminent physical threat of danger to life, health or property, and/or could reasonably be expected in the opinion of the Transmission Provider to cause a significant disruption to the Transmission Provider’s Transmission System or otherwise be required in accordance with the requirements of the Peak Reliability Organization and/or NERC/WECC, or (b) any system condition not consistent with Prudent Utility Practices; provided that an Emergency Condition shall not include any emergency caused by Seller’s breach of its Interconnection Agreement with the Transmission Provider.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in units of kWh or MWh, delivered to or received from the Project.

“Energy Storage Services” means the acceptance of Charging Energy at the Project, the storing of Energy in the Project, and the delivery of Discharge Energy from the Project at the Point of Delivery, all in accordance with Buyer’s dispatch instructions, in compliance with the ESS Unit Capabilities and ESS Operating Restrictions, and subject to the terms and conditions of this ESA.

“Energy Storage System” or **“ESS”** means the energy storage equipment, storage system controller, inverters, transformers, thermal management system, and other equipment necessary to charge, store, and subsequently deliver electricity from the Project to the Point of Delivery.

“Environmental Attributes” means all attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances of an environmental nature that are created or otherwise arise from the Project’s delivery of electricity from renewable energy resources in contrast with the generation of electricity using nuclear or fossil fuels or other traditional resources. Forms of such attributes include any and all environmental air quality credits, green credits, including carbon credits, emissions reduction credits, certificates, tags, offsets, allowances, or similar products or rights, howsoever entitled, (a) resulting from the avoidance of the emission of any gas, chemical, or other substance, including mercury, nitrogen oxide, sulfur dioxide, carbon dioxide, carbon monoxide, particulate matter or similar pollutants or contaminants of air, water or soil, gas, chemical, or other substance, and (b) attributable to the generation, purchase, sale or use of Energy. Environmental Attributes include those currently existing or arising during the Term under local, state, regional, federal, or international legislation or regulation relevant to the avoidance of any emission described above under any governmental, regulatory or voluntary program, including the United Nations Framework Convention on Climate Change and related Kyoto Protocol or other programs, laws or regulations. Environmental Attributes include the reporting rights related to any such attributes, aspects, characteristics, claims, credits, benefits, reductions, offsets or allowances,

including the right of a Person to report the ownership thereof in compliance with federal or state law, if applicable, or otherwise to a federal or state agency or any other Person. Environmental Attributes specifically exclude (x) Tax Benefits, (y) depreciation deductions and depreciation benefits, and other tax benefits arising from ownership or operation of the Project; and (z) any Energy, reliability or other power attributes from the Project.

“Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, as to constitute a violation of federal, state or local laws or regulations, and present a material risk under federal, state or local laws and regulations that the Site will not be available or usable, whether in whole or in part, for the purposes contemplated by this ESA.

“Equivalent Full Cycle” means the equivalent of a full ESS charge/discharge cycle with the associated delivery of Discharge Energy (in MWh) equivalent to the Guaranteed ESS Capacity over a four (4) hour duration. An Equivalent Full Cycle occurs when the total ESS Discharge Energy (in MWh) over a period of time, regardless of the depth of battery discharge or quantity of partial charges/discharges, divided by the product of the Guaranteed ESS Capacity times four (4) hours (in MWh) equals one (1).

“ESA” means this Energy Storage Agreement between Seller and Buyer, including the Exhibits and Schedules attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

“ESS Capacity” means the power (expressed in MW as measured at the Point of Delivery) that can be discharged from the ESS for at least four (4) consecutive hours, as determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

“ESS Capacity Payment” has the meaning set forth in Section 8.1(A).

“ESS Capacity Payment Rate” means the price to be paid by Buyer to Seller as set forth in this ESA.

“ESS Capacity Shortfall Damages” has the meaning set forth in Section 3.8.

“ESS Capacity Test” has the meaning set forth in Exhibit F.

“ESS Operating Restrictions” means the operating restrictions of the ESS set forth in Exhibit N.

“ESS Response Delay” has the meaning set forth in Exhibit F.

“ESS Response Delay Damages” has the meaning set forth in Section 3.13(B).

“ESS Roundtrip Efficiency” means the ratio of the delivered Discharge Energy to the delivered Charging Energy, in each case as measured at the ESS Electric Metering Device without adjustment to the Point of Delivery and determined periodically in accordance with applicable test protocols and procedures set forth in Exhibit F.

“ESS Unit Capabilities” has the meaning set forth in Section 3.12.

“Event of Default” means a Seller Event of Default as set forth in Section 12.1 or a Buyer Event of Default as set forth in Section 12.2.

“Execution Date” has the meaning set forth in the Preamble.

“Executive Order” has the meaning set forth in Section 3.4(J)

“Expected Commercial Operation Date” has the meaning set forth in Section 3.1.

“FERC” means the Federal Energy Regulatory Commission or any successor agency.

“Force Majeure Event” has the meaning set forth in Section 14.1.

“Frequency Response Capability” means the ability of the ESS to react to frequency within predefined bounds as specified in Section 3.12(G), measured in MW per 0.1 Hz, by charging or discharging to counter frequency deviations and supporting frequency as required by NERC Reliability Standard BAL-003-1 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 the laws, policies or programs of a Governmental Authority that take effect after the Execution Date. Future Environmental Attributes are further described in Section 7.3 and Article 11 herein.

“GAAP” has the meaning set forth in Section 22.18.

“Governmental Approval” means any authorization, consent, permission, approval (including an NMPRC Approval), license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation by any Governmental Authority relating to the construction, development, ownership, occupation, startup, testing, operation or maintenance of the Project or to the execution, delivery or performance of this ESA or the procurement pursuant to this ESA of renewable energy and Renewable Energy Certificates and shall also mean, where and as applicable and the context so dictates, any and all authorization, consent, permission, approval, license, ruling, permit, exemption, variance, order, judgment, instruction, condition, direction, directive, decree, declaration of or regulation with regard to any Non-Governmental Compliance Obligations.

“Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority or duly appointed Person exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal.

“Governmental Charges” means any Taxes, charges or costs that are assessed or levied by any Governmental Authority, including local, state or federal regulatory or taxing authorities that would affect the sale and purchase of the Product, either directly or indirectly.

“Guaranteed Charge Ramp Rate” has the meaning set forth in Section 3.12.

“Guaranteed Discharge Ramp Rate” has the meaning set forth in Section 3.12.

“Guaranteed ESS Capacity” has the meaning set forth in Section 3.12 and shall be valid for the full duration of the ESA with no allowance for degradation.

“Guaranteed ESS Roundtrip Efficiency” has the meaning set forth in Section 3.12.

“Guaranteed PMAX” has the meaning set forth in Section 3.12.

“Guaranteed Start Date” has the meaning set forth in Section 3.1.

“Guaranteed System Latency” means the guaranteed time measured between when the control signal is received and the ESS responds to the signal by changing the discharge or charge power value by more than 1% of the control setpoint, as specified in Section 3.12.

“Hazardous Materials” means any substance, material, gas, or particulate matter that is regulated by any local Governmental Authority, any applicable state, or the United States of America as an environmental pollutant or dangerous to public health, public welfare, or the natural environment including, without limitation, protection of non-human forms of life, land, water, groundwater, and air, including but not limited to any material or substance that is (a) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (b) petroleum, including any fraction, derivative or additive; (c) asbestos; (d) polychlorinated biphenyls; (e) radioactive material; (f) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (g) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (h) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*; (i) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; or (j) defined as a “pesticide” under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*

“House Energy” has the meaning set forth in Section 1.4.

“Idle Losses” means energy storage system uses that are integral to the operation of the ESS, including transformers, inverters, storage thermal regulation, and energy management system.

“Interconnection Agreement” means the separate agreement between Seller, 201LC 8me LLC, and/or an Affiliate of Seller, and the Transmission Provider for interconnection of the Project to the Transmission Provider’s Transmission System, as such agreement may be amended from time to time.

“Interconnection Date” has the meaning set forth in Section 3.6.

“Interconnection Facilities” means the Transmission Provider’s Interconnection Facilities and Seller’s Interconnection Facilities.

“Issuer Minimum Requirements” has the meaning set forth in Section 19.2.

“ITC(s)” means the investment tax credits established pursuant to Section 48 of the Internal Revenue Code, as such law may be amended or superseded.

“kW” means one or more kilowatts AC of electricity, as the context requires.

“kWh” means kilowatt hour AC.

“Lender(s)” means any and all Persons (a) lending money or extending credit (including any financing lease, monetization of tax benefits, back-leverage or paygo financing, Tax Equity Financing or credit derivative arrangement) to Seller: (i) for the development, construction, interim or permanent financing or refinancing of the Project; (ii) for working capital or other ordinary business requirements of the Project (including the maintenance, repair, replacement or improvement of the Project); (iii) for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Project; (iv) for any capital improvement or replacement related to the Project; or (v) for the purchase of the Project and the related rights from Seller; (b) participating as a Tax Equity Investor in the Project; or (c) acting as any lessor under a lease finance arrangement relating to the Project.

“Letter of Credit” means an irrevocable, unconditional, transferable standby letter of credit for the benefit of the receiving Party that is issued by an entity meeting the Issuer Minimum Requirements and otherwise satisfies the requirements set forth in Section 19.2.

“Licensed Professional Engineer” means an independent, professional engineer reasonably acceptable to Buyer, licensed in the State of New Mexico and otherwise qualified to perform the work and provide the certifications required hereunder.

“Local Provider” has the meaning set forth in Section 1.4.

“Losses” has the meaning set forth in Section 20.1(A).

“Month” means a calendar month.

“Monthly Billing Period” means the period during any particular Month in which Product has been made available at the Point of Delivery for sale to Buyer, whether or not occurring prior to or subsequent to the Commercial Operation Date.

“Monthly Electricity Cost” means, for a month, the sum of (i) (a) the quantity of Charging Energy during such month times (b) the Solar Energy Output Payment Rate (as such term is defined in the PPA).

“Moody’s” means Moody’s Investor Services, Inc. and any successor thereto.

“Mountain Prevailing Time” or **“MPT”** means the time in effect in the Mountain Time Zone of the United States of America, whether Mountain Standard Time or Mountain Daylight Saving Time.

“MW” means megawatt or one thousand (1,000) kW AC.

“MWh” means megawatt hours AC.

“NERC” means the North American Electric Reliability Corporation or any successor organization.

“NMPRC” means the New Mexico Public Regulation Commission or any successor agency.

“NMPRC Approval” has the meaning set forth in Section 17.3(B).

“Non-Defaulting Party” means the Party other than the Defaulting Party with respect to an Event of Default that has occurred under Article 12.

“Non-Governmental Compliance Obligations” means all necessary filings, applications, accreditations, registrations and/or other requirements including deposits, fees, accounts, and/or other obligations with WREGIS, NERC, WECC, and all other applicable agencies, self-regulatory organizations and industry committees to which the Party is required to have membership and/or submit to jurisdiction in the performance of this ESA.

“O&M Records” has the meaning set forth in Section 13.4(A).

“OATT” means Open Access Transmission Tariff.

“Operating Parameters” has the meaning set forth in Section 10.4(A).

“Operating Procedures” means those procedures developed pursuant to Section 10.5.

“Operating Records” means the final version of all operating logs, blueprints for construction, operating manuals, all warranties on equipment, and other documents related to the manufacture and installation of the ESS and generator step-up transformer, material engineering drawings, and environmental permits, plans, and studies, whether in printed or electronic format, that Seller uses or maintains for the operation of the Project.

“Outage Notice” has the meaning set forth in Section 7.5(A).

“Party” or **“Parties”** has the meaning set forth in the Preamble and includes any permitted assignee of a Party.

“Peak Reliability Organization” means the entity that fulfills the duties of the Reliability Coordinator, as defined by NERC, and as delegated by WECC, for its Reliability Coordinator Area in the Western Interconnection.

“**Person**” means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental Authority.

“**PNM**” has the meaning set forth in the Preamble.

“**Point of Delivery**” means , unless otherwise modified in accordance with Section 3.11, the electric system point at which (a) Buyer delivers Charging Energy to Seller, (b) Seller delivers Discharge Energy to Buyer, and (c) Seller makes the Ancillary Services available to Buyer. The Point of Delivery shall be specified in Section 3.1 and Exhibit B to this ESA.

“**Portfolio**” means electrical energy generating and storage assets and related assets and entities, comprising seven hundred fifty (750) MW or more of electrical energy generating and storage capacity, including the Project (or the interests of Seller or the interests of its direct or indirect parent companies), that are owned or leased by Seller or Affiliates of Seller.

“**PPA**” means the Power Purchase Agreement dated as of September 23, 2020 between 201LC 8me LLC and Buyer relating to the Solar Facility, including the Exhibits and Schedules attached thereto, as the same may be amended from time to time in accordance with the provisions thereof.

“**Product**” means all Energy Storage Services, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, all as made available by the Project, all of which shall be delivered for Buyer’s exclusive use pursuant to the terms of this ESA.

“**Project**” means Seller’s energy storage facility, located in San Juan County, with a designed maximum power discharge capability of 30 MW for four (4) hours (120 MWh), as identified and described in Article 3 and Exhibit A to this ESA, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Buyer at the Point of Delivery: Seller’s equipment, buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, Seller’s Interconnection Facilities necessary to connect the ESS to the Electric Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this ESA.

“**Project Manager**” has the meaning set forth in Section 10.1(D).

“**Project Schedule**” has the meaning set forth in Section 3.2.

“**Promotional Materials**” has the meaning set forth in Section 22.15.

“**Prudent Utility Practice(s)**” means the practices, methods, and acts (including the practices, methods, and acts engaged in or approved by a significant portion of the battery energy storage industry serving public utilities, WECC and/or NERC) for similar facilities that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to

accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, reliability, safety, environmental protection, economy, and expedition. Prudent Utility Practice(s) are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances. Subject to the foregoing, with respect to the Project, Prudent Utility Practice(s) includes taking reasonable steps to ensure that:

(A) equipment, materials, resources, and supplies, including spare parts inventories, are available to meet the Project's needs;

(B) sufficient operating personnel are available at all times and are adequately experienced, trained and licensed as necessary to operate the Project properly, efficiently, and in coordination with Buyer and are capable of responding to reasonably foreseeable Emergency Conditions whether caused by events on or off the Site;

(C) preventive, routine, and non-routine maintenance and repairs are performed on a basis that ensures reliable, long-term and safe operation, and are performed by knowledgeable, trained, and experienced personnel utilizing proper equipment and tools;

(D) appropriate monitoring and testing are performed to ensure equipment is functioning as designed;

(E) equipment is not operated in a reckless manner, or in a manner unsafe to workers, the general public, or the interconnected system or contrary to good utility practice environmental laws, permits or regulations or without regard to defined limitations, such as flood conditions, safety inspection requirements, operating requirements of the Interconnection Agreement, frequency, rotational speed, polarity, synchronization, and/or control system limits;

(F) equipment and components meet or exceed the standard of durability that is generally used for battery energy storage systems of the technology provided in the region and will function properly over the full range of ambient temperature and weather conditions reasonably expected to occur at the Site and under both normal and reasonably foreseeable Emergency Conditions; and

(G) equipment, components, and processes are appropriately permitted with any local, state, or federal Governmental Authority and are operated and maintained in accordance with applicable permit and regulatory requirements.

“Qualified Operator” is (a) a Person that has at least three (3) years' experience with operating energy storage systems to the extent reasonably available in the market and that is trained on the functionality and operation of the ESS technology, or (b) any other Person reasonably acceptable to Buyer.

“Rating Agency” shall mean S&P or Moody's.

“Recapture Period” means the first five (5) years following the Commercial Operation Date within which the ESS must be charged exclusively from Energy generated by the Solar Facility.

“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).

“Renewable Energy Certificates” or **“RECs”** means a Certificate, as that term is defined by WREGIS Operating Rules. For purposes of this ESA and registration with WREGIS, RECs are accumulated on a kilowatt-hour basis until a MWh has been accumulated with one (1) REC for each MWh of renewable energy generated. RECs include all Environmental Attributes associated with the generated energy as provided in the WREGIS Operating Rules. RECs exclude (a) any local, state or federal investment tax credit, production tax credit, depreciation deductions or other tax benefit to Seller based on ownership of, or Energy production from any portion of, the Project, including the Tax Benefits, and (b) depreciation and other tax benefits arising from ownership or operation of the Project unrelated to its status as a generator of renewable or environmentally clean energy.

“Replacement ESS Costs” means the actual costs incurred by Buyer following an Event of Default that are reasonable and necessary to replace the Product which Seller, in accordance with this ESA, would have made available to Buyer but failed to so provide pursuant to this ESA. Buyer shall not have to enter into a replacement contract to establish the Replacement ESS Costs. If Buyer does not enter into a replacement contract, then the Replacement ESS Costs will be based on the market price for comparable ESS Unit Capabilities, Future Environmental Attributes and Ancillary Services delivered to Buyer’s system, as reasonably determined by a third party reasonably acceptable to both Parties. In calculating such amounts, Buyer will comply with the requirements set forth in Section 12.4(A) in establishing the market price. Replacement ESS Costs for an Event of Default also include (a) the reasonable amounts paid or incurred by Buyer for transmission of replacement Discharge Energy to the Point of Delivery and any associated transmission or distribution costs, and (b) Buyer’s reasonable expenses, including reasonable outside attorneys’ fees, incurred as a result of Seller’s failure to perform under this ESA.

“Requested Actions” has the meaning set forth in Section 17.3.

“Sales Taxes” means any New Mexico state and local sales taxes, use taxes, gross receipts taxes, compensating taxes, and similar taxes and charges.

“S&P” means Standard & Poor’s Corporation and any successor thereto.

“Scheduled Maintenance Outage” means a time during which the ESS is shut down or its output reduced to undergo scheduled maintenance in accordance with this ESA, or as otherwise agreed by Seller and Buyer.

“SEC” has the meaning set forth in Section 22.18.

“Security” means Development Security or Delivery Term Security, as applicable.

“**Seller**” has the meaning set forth in the Preamble.

“**Seller Curtailment**” has the meaning set forth in Section 4.2.

“**Seller Excused Hours**” means those hours during which Seller is unable to make available Product as a result of: (a) a Scheduled Maintenance Outage, (b) a Force Majeure Event, (c) a Seller Curtailment, or (d) any failure by Buyer to perform a material obligation under this ESA (other than due to a breach by Seller of its obligations under this ESA).

“**Seller Forced Outage**” means an unplanned reduction, interruption or suspension of all or a portion of Charging Energy receipts or Discharge Energy deliveries from the Project, in each case at the Point of Delivery and not associated with Seller Excused Hours.

“**Seller Guarantor**” means an entity with a long-term senior unsecured debt credit rating of “Baa3” or higher by Moody’s and “BBB-” or higher by S&P that has made a Seller Guaranty for the benefit of Buyer.

“**Seller Guaranty**” means a guaranty in substantially the form attached as Exhibit J.

“**Seller Permitted Transfer**” means any of the following: (a) a sale of a Portfolio; (b) a Change of Control of Seller’s Ultimate Parent; (c) a Change of Control of Seller where Seller’s Ultimate Parent is the same entity and continues to control Seller after such Change of Control; (d) the direct or indirect transfer of shares of, or equity interests in, Seller to a Tax Equity Investor; or (e) a transfer of all or substantially all of the assets of Seller’s Ultimate Parent in a single transaction; *provided* that in the case of each, following such transfer the assignee (A) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (B) delivers evidence reasonably satisfactory to Buyer that such assignee’s creditworthiness is equal to or better than that of Seller; and (C) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA (or otherwise agrees to maintain the existing Development Security or Delivery Term Security, as applicable, for the Project).

“**Seller Termination Payment**” means the sum of (a) the difference between (i) the Contract Value and (ii) the net present value of the payments that can reasonably be expected to be applicable in the market under a replacement contract covering the same products (i.e., Product) calculated using a discount factor equal to the latest weighted average cost of capital as reported in the then-most recent NMPRC Rule 510 Annual Reporting filing, plus (b) Seller’s Costs. Any such calculations will be based on reasonable assumptions as to future Project operations, differences between a replacement contract and this ESA, and similar considerations. Seller shall not have to enter into a replacement contract to establish the foregoing calculations. The Seller Termination Payment shall not include consequential incidental, punitive, exemplary, indirect or business interruption damages. To the extent the total value of the calculation in subpart (a) above is negative, the resulting value to be used in subpart (a) will be zero.

“**Seller’s Costs**” means (a) brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred and documented by Seller either in terminating any arrangement pursuant to which it has hedged its obligations under this ESA or in entering into

new arrangements which replace this ESA; and (b) all reasonable attorneys' fees and expenses reasonably incurred by Seller in connection with the termination of this ESA.

"Seller's Financial Statements" has the meaning set forth in Section 22.18(B).

"Seller's Interconnection Facilities" means the equipment between the high side disconnect of the step-up transformer and the Electric Interconnection Point, including all related relaying protection and physical structures as well as all transmission facilities required to access the Transmission Provider's Transmission System at the Electric Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. On the low side of the step-up transformer, "Seller's Interconnection Facilities" includes Seller's metering, relays, and load control equipment as provided for in the Interconnection Agreement. This equipment is located within the Project and is conceptually depicted in Exhibit B to this ESA.

"Site" means the parcel or parcels of real property on which the Project will be constructed and located, including any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of the Project. The Site for the Project is more specifically described in Section 3.3 and Exhibit C to this ESA. For the avoidance of doubt, this ESA is Site specific and any relocation or expansion of the physical location of the proposed Site (other than in connection with Seller's Interconnection Facilities) will require prior Buyer approval, not to be unreasonably withheld.

"Solar Facility" means the co-located one-hundred (100) MW_{AC} solar generating plant consisting of photovoltaic arrays, tracking devices, inverters, transformers, and other equipment necessary to collect sunlight and convert it into electricity which, among other things, will be used to charge the ESS per Buyer's dispatch elections. For the avoidance of doubt, the Solar Facility is being developed concurrently and jointly with the Project and may share certain equipment, buildings, and facilities, including transformers, Interconnection Facilities, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate, with the Project.

"Supplemental State Tax Incentive" means any state or local production tax credit or investment tax credit to the extent enacted and placed into effect under Applicable Law after the Execution Date and determined by reference to renewable electric energy produced from renewable energy resources or by reference to energy storage technologies in effect in the State of New Mexico, net of associated expenses, taxes, and lost Tax Benefits, if any.

"System Control Center" or **"SCC"** means Buyer's representative(s) responsible for dispatch of the ESS.

"Tax Benefits" means (a) federal and state investment and/or production tax credits (including ITCs but excluding Supplemental State Tax Incentives), and any other tax credits that are or will be generated by the Project; and (b) any cash payments or outright grants of money made by a Governmental Authority relating directly to such tax credits.

"Tax Equity Financing" means, with respect to Seller or an upstream equity owner of Seller, any transaction or series of transactions (including, without limitation, any transaction of

the type described in this definition that utilizes a lease or inverted lease structure) resulting in a portion of the membership interests in Seller or an upstream equity owner, as applicable, being issued or otherwise provided to another Person (a “**Tax Equity Investor**”) in exchange for capital contributions to Seller or such upstream equity owner, as applicable, or the Project being sold to and leased by Seller from a Tax Equity Investor, in either case for the purpose of raising a portion of the funds needed to finance the Project by monetizing the tax credits, depreciation and other Tax Benefits associated with the Project.

“**Tax Equity Investor**” has the meaning set forth in the definition of Tax Equity Financing.

“**Taxes**” means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, other than taxes, levies, licenses or charges based upon net income or net worth as set forth in more detail in Section 9.7.

“**Term**” means the period during which this ESA shall remain in full force and effect, and which is further defined in Article 2.

“**Termination Payment**” means the Buyer Termination Payment or the Seller Termination Payment, as applicable.

“**Test Period**” means the period commencing on the day the Project is energized, operates in parallel with the Transmission Provider’s Transmission System and is available to receive Charging Energy from and deliver Discharge Energy to the Point of Delivery, and ending on the Commercial Operation Date.

“**Transmission Provider**” means the entity, designated agent, or third party acting in its capacity owning, controlling, or operating facilities used for the transmission of electric energy in interstate commerce and providing transmission service under the OATT and any successor entity, if applicable.

“**Transmission Provider’s Interconnection Facilities**” means the facilities necessary to connect the Transmission Provider’s Transmission System to the Electric Interconnection Point, including breakers, bus work, bus relays, and associated equipment installed by the Transmission Provider for the direct purpose of physically and electrically interconnecting the Project, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities. Arrangements for the installation and operation of the Transmission Provider’s Interconnection Facilities shall be governed by the Interconnection Agreement.

“**Transmission Provider’s Transmission System**” means the contiguously interconnected electric transmission and sub-transmission facilities over which the Transmission Provider has rights (by ownership or contract) to provide bulk transmission of capacity and energy from the Electric Interconnection Point.

“**Ultimate Parent**” means 8minutenergy US Solar, LLC, a Delaware limited liability company.

“WECC” means the Western Electricity Coordinating Council, a NERC regional electric reliability council, or any successor organization.

“WREGIS” means the Western Renewable Energy Generation Information System or any successor system.

1.2 Rules of Construction.

(A) The masculine shall include the feminine and neuter.

(B) References to “Articles,” “Sections,” “Exhibits” or “Schedules” shall be to articles, sections, exhibits, or schedules of this ESA unless otherwise stated.

(C) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this ESA; *provided*, that in the event of a conflict between the terms of any Exhibit or Schedule and the terms of this ESA, the terms of this ESA shall take precedence.

(D) This ESA was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this ESA, and none of the provisions hereof shall be construed against one Party on the grounds that such Party is the author of this ESA or any part hereof.

(E) The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this ESA. Unless expressly provided otherwise in this ESA, (i) where the ESA requires the consent, approval, acceptance, agreement or similar action by a Party, such consent, approval, agreement or similar action shall not be unreasonably withheld, conditioned or delayed, and (ii) wherever the ESA gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be reasonable.

(F) Use of the words “include” or “including” or similar words shall be interpreted as “including but not limited to” or “including, without limitation.”

(G) Use of the words “tax” or “taxes” shall be interpreted to include taxes, fees, surcharges, and the like.

1.3 Interpretation with Interconnection Agreement. Each Party shall conduct its operations in a manner intended to comply with FERC Standards of Conduct for Transmission Providers, as applicable, requiring the separation of its transmission and merchant functions.

(A) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this ESA are not binding upon the Transmission Provider.

(B) Notwithstanding any other provision in this ESA, nothing in the Interconnection Agreement shall alter or modify Seller’s or Buyer’s rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and the Transmission Provider.

(C) Seller expressly recognizes that, for purposes of this ESA, the Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Buyer, an Affiliate of Buyer, or a third-party entity.

1.4 Interpretation of Arrangements for Electric Supply to the Project. This ESA does not provide for the supply of retail electric power or natural gas to the Project, for any purpose (“**House Energy**”). Seller shall contract with the local utility in whose retail service territory the Project is located (“**Local Provider**”) for the supply of House Energy or any necessary backfeed power and station service power consistent with requirements of the Interconnection Agreement.

(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 its proposed Project from the Local Provider, including any required line extension to facilitate such service. Such contract shall be executed by both the Seller and Local Provider and provided to Transmission Provider at least ninety (90) Calendar Days prior to the earlier of the Commercial Operation Date and the in-service date of Seller’s Interconnection Facilities. The terms of this ESA are not binding upon the Local Provider. For purposes of this ESA, the Local Provider shall be deemed to be a separate entity and separate contracting party, whether or not the Local Provider is Buyer or an Affiliate of Buyer.

(B) Notwithstanding any other provision in this ESA, nothing in Seller’s arrangements for the supply of House Energy to the Project shall alter or modify Seller’s or Buyer’s rights, duties and obligations under this ESA. This ESA shall not be construed to create any rights between Seller and Buyer in Buyer’s capacity as the Local Provider.

(C) Separate from energy provided to the battery, Seller shall have the right to consume energy concurrently generated by the Solar Facility for House Energy and to co-locate additional facilities designed to supply House Energy; provided, however, that excess energy produced from such additional facility shall not be delivered by Seller to Buyer under this ESA. House Energy shall be real time measured by a dedicated Electric Metering Device and shall not be delivered by Seller to Buyer under this ESA.

ARTICLE 2

Term and Termination

2.1 Execution Date and Term. This ESA shall become effective on the Execution Date, subject to conditions precedent set forth herein, and shall end at 11:59 p.m. Mountain Prevailing Time on the date that is the last Day of the twentieth (20th) Commercial Operation Year, subject to the early termination provisions set forth herein. Applicable provisions of this ESA shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination.

ARTICLE 3
Project Description

3.1 Commercial Terms. The following commercial terms, and as more fully set forth in this ESA, apply to the transaction contemplated by this ESA:

COMMERCIAL TERMS

Buyer: Public Service Company of New Mexico	Seller: 309SJ 8me LLC
Project: Rockmont Storage	
Point of Delivery: The point where Seller makes available to Buyer Product being provided under this ESA, as further specified in the definition of “Point of Delivery” and represented in <u>Exhibit B</u> .	
Contract Term: 20 Commercial Operation Years	Product Type: Bundled Discharge Energy, Future Environmental Attributes, Ancillary Services, ESS Capacity and other ESS Unit Capabilities, and Energy Storage Services
ESS Capacity Payment Rate: \$7.99 per kW per month	
Day(s) of week: Monday through Sunday, including NERC holidays	Hours: Hour Ending 0100 – Hour Ending 2400, Monday through Sunday Mountain Prevailing Time (“MPT”)
Guaranteed Start Date: One hundred eighty (180) Days after the Expected Commercial Operation Date	
Expected Commercial Operation Date: June 20, 2022, subject to Section 3.6.	

3.2 Project. Exhibit A provides a detailed description and implementation schedule (“**Project Schedule**”) of the Project, including identification of the major equipment and components that will make up the Project as well as key project construction and permitting milestones. Seller shall provide advance written notice to Buyer at the earliest practicable time of any proposed changes in the Project or Project Schedule.

3.3 Location. A scaled map that identifies the Site, the location of the Electric Interconnection Point and the location of the Interconnection Facilities is included in Exhibit A to this ESA. Exhibit A also contains a preliminary indication of the location of the ESS at the Site. Seller will provide notice to Buyer of the final proposed location of the ESS at the Site no later than thirty (30) Days prior to the initial Site construction mobilization and commencement of civil infrastructure work by Seller’s contractors at the Site. Seller shall provide advance written notice to Buyer at the earliest practicable time of any other proposed location changes.

3.4 General Design of the Project. Seller shall construct the Project in accordance with Prudent Utility Practices and in accordance with the terms and conditions of the Interconnection Agreement. Seller shall maintain the Project according to Prudent Utility Practices, the Interconnection Agreement, and the terms of this ESA. The Project shall at all times:

(A) have the required panel space and 125V DC battery-supplied voltage to accommodate metering, system telemetering equipment and communications equipment;

(B) be equipped for and capable of AGC by Buyer;

(C) use communication circuits from the Project to Buyer's System Control Center for the purpose of telemetering, supervisory control/data acquisition, and voice and other communications as required for AGC by Buyer;

(D) supply Discharge Energy with minimal harmonic distortion in compliance with the requirements of the Interconnection Agreement and Prudent Utility Practices;

(E) be capable of receiving Charging Energy from Buyer and delivering Discharge Energy to Buyer, each at the frequency specified by Buyer;

(F) be capable of immediate disconnection remotely by the Buyer's System Control Center;

(G) meet voltage and reactive/active power control performance for a Category B system as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Point of Delivery;

(H) meet the normal and abnormal performance category as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) at the Point of Delivery, which shall be Category II minimum;

(I) 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 at the Point of Delivery; and

(J) to the extent applicable, comply with Presidential Executive Order 13920, "Securing the United States Bulk-Power System" issued on May 1, 2020 ("**Executive Order**"). Within one hundred eighty (180) Days of the Execution Date, Seller shall provide to Buyer a notification defining Seller's approach to complying with the Executive Order. Seller shall provide the expected equipment suppliers and places of origin for all bulk-power system electric equipment as defined in the Executive Order and shall address the methodology for evaluating the full supply chain for components of such equipment and devices.

Within one-hundred eighty (180) Days following the Execution Date, the Parties shall develop and mutually agree to system security and compatibility protocols to ensure the compatibility of Seller's SCADA or equivalent systems with Buyer's system. The Seller's SCADA shall be a standards-based control protocol (such as, but not limited to MESA-ESS using DNP3 or IEC-61850) for Buyer-directed dispatch of the ESS. These controls shall include the following MESA-ESS modes or

equivalent: (i) Charge-Discharge (real power dispatch), (ii) Coordinated Charge-Discharge (state of charge management), (iii) Active Power Smoothing, (iv) Automatic Generation Control, and (v) the following Emergency and Reactive Power modes as modified to comply with the NERC Inverter Based Resource Guideline 2018-09 and IEEE-1547.1: (a) Voltage Ride-Through, (b) Frequency Ride-Through, (c) Frequency-Watt, (d) Dynamic Reactive Current, (e) Fixed Power Factor, and (f) Volt-VAR Control. Furthermore, Seller shall adhere to and provide evidence of adherence to the NIST Cybersecurity Framework (CSF) and NERC CIP requirements when interacting with PNM's network, systems, or assets including a detailed explanation of its methods to achieve the control objective of each CSF requirement. Seller shall also submit to inspection for NERC CIP-013 requirements. All technologies interfacing directly with PNM's network, systems, or assets shall adhere to (i) business-to-business (B2B) VPN standards, (ii) multi-factor authentication (MFA) requirements for human logins to web servers, (iii) production change management, and (iv) CIP governance requirements.

3.5 Expected Commercial Operation Date. Subject to the extensions as set forth in this ESA, the Commercial Operation Date shall occur no later than the Expected Commercial Operation Date.

3.6 Extension Due to Force Majeure. The Expected Commercial Operation Date and related damages provisions under Section 3.7 shall be extended by a number of Days, on a day-for-day basis up to a maximum of (a) one hundred eighty (180) Days, or longer period agreed to by the Parties, equal to the duration of any Force Majeure Event, or (b) one hundred eighty (180) Days, in the event of delay of the in-service date of the Transmission Provider's Interconnection Facilities after March 1, 2022 ("**Interconnection Date**") that delays commencement of operation of the Project or (c) one hundred eighty (180) Days, in the event that the Transmission Provider fails to identify the location of Seller's interconnection point by January 30, 2021, until such point is identified by the Transmission Provider. Seller shall give written notice to Buyer describing any such Force Majeure Event or interconnection delay within five (5) Business Days after the occurrence of the Force Majeure Event or interconnection delay. The number of Days of such extension shall be calculated from the date on which the Force Majeure Event or interconnection delay begins. If a Force Majeure Event will delay the Commercial Operation Date for more than one hundred eighty (180) Days, or if an interconnection delay will delay the Commercial Operation Date for more than one hundred eighty (180) Days, then Buyer will have the right to terminate this ESA without liability of either Party other than obligations already incurred, and Buyer shall return the Development Security less any amounts due from Seller to Buyer.

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 until the earlier of (a) the Commercial Operation Date, and (b) the Guaranteed Start Date, in an amount equal to One Hundred Fifty Dollars (\$150) per each MW of Delayed Capacity for the first forty-five (45) Days of Delay Damages, and an amount equal to Two Hundred Dollars (\$200) per Day per each MW of Delayed Capacity for the subsequent one hundred thirty five (135) Days of Delay Damages. "**Delayed ESS Capacity**" means the Guaranteed ESS Capacity minus the ESS Capacity as of the determination date. In no event shall the aggregate Delay Damages

exceed Thirty-Three Thousand Seven Hundred Fifty Dollars (\$33,750) per MW of Delayed ESS Capacity.

3.8 ESS Capacity Shortfall. If the Commercial Operation Date is declared before the full Guaranteed ESS Capacity of the Project has been constructed, commissioned and tested, Seller shall use commercially reasonable efforts to cause the remaining portion of the Guaranteed ESS Capacity to achieve Commercial Operation. If Seller has not caused all Delayed ESS Capacity to achieve Commercial Operation on or before the Guaranteed Start Date, then no later than twenty (20) Days after the Guaranteed Start Date, Seller shall pay to Buyer liquidated damages in the amount of Six Hundred Thousand Dollars (\$600,000) per MW of Delayed ESS Capacity (as of the Guaranteed Start Date) ("**ESS Capacity Shortfall Damages**"), in which case the Guaranteed PMA and Guaranteed ESS Capacity will be reduced by the amount equal to the Delayed ESS Capacity for which ESS Capacity Shortfall Damages were timely paid pursuant to this Section 3.8.

3.9 Test Period. Seller shall give written notice to Buyer of its intent to start testing the Energy Storage System not less than thirty (30) Days prior to the date upon which Seller expects to begin testing the Energy Storage System. During the Test Period, Seller shall have the right to deliver Energy generated by the Solar Facility, such Energy purchased by the Buyer pursuant to the terms of the PPA, to the Point of Delivery as Charging Energy as reasonably required for purposes of testing and commissioning the Project. Seller shall subsequently redeliver such Charging Energy to Buyer at the Point of Delivery as Discharge Energy. In accordance with Section 7.2, Buyer shall retain title of such Charging Energy and Discharge Energy. Seller shall notify Buyer seven (7) Days prior to the initiation of the delivery of Discharge Energy during the Test Period, subject to Buyer approval not to be unreasonably withheld. The Parties agree to cooperate and make reasonable efforts to coordinate the scheduling and delivery of Discharge Energy during the Test Period. To the extent caused by PNM withholding its approval of Seller's notice to schedule and deliver Discharge Energy during the Test Period, or as a result of the Parties' coordination of the scheduling and delivery of Discharge Energy during the Test Period, Seller's delivery of Discharge Energy during the Test Period is delayed for one or more days relative to Seller's initial notice, and to the extent that Seller is able to demonstrate that there was a resulting delay in achieving the Expected Commercial Operation Date, the Expected Commercial Operation Date and Guaranteed Start Date shall be extended on a day-for-day basis commensurate with the delay. 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. Buyer shall, within ten (10) Days, in writing either accept or reject this notice in its reasonable discretion, and if Buyer rejects the notice, Seller shall promptly correct any defects or deficiencies and shall either resubmit the notice, or initiate dispute resolution in accordance with Section 13.8 in response to Buyer's rejection. If Buyer accepts that Seller has fulfilled the requirements of Commercial Operation, the Commercial Operation Date shall occur as of the date upon which Seller's most recent notice of Commercial Operation is submitted to Buyer. If Buyer rejects the notice and Seller initiates dispute resolution, the Commercial Operation Date shall be the date it is determined to have occurred

pursuant to such dispute resolution process, if so determined. In the event that Seller should determine that the Expected Commercial Operation Date for the Project is not feasible or is impossible to achieve, Seller shall promptly notify Buyer and shall advise Buyer of the new proposed Commercial Operation Date; provided, however, such new Commercial Operation Date shall not be later than the Guaranteed Start Date.

3.11 Grid Charging and Recapture Period Termination. During the Recapture Period, the ESS shall be configured to charge exclusively using Energy produced by the Solar Facility. Seller shall, in cooperation with the Solar Facility owner, make any required modifications to the ESS to accept Charging Energy from both the electrical grid and Solar Facility and make commercially reasonable efforts to obtain authorization from the Transmission Provider to allow the ESS to accept Charging Energy from both the electrical grid and Solar Facility within six (6) months following expiration of the Recapture Period.

Notwithstanding the foregoing, in the event of a termination of the PPA resulting in the inability of the Solar Facility to provide Charging Energy to the ESS during the Recapture Period, Seller shall have the option to allow Buyer to deliver Charging Energy to the ESS from the electrical grid or to terminate this ESA. If the termination of the PPA resulted from an Event of Default (as defined in the PPA) of Seller under the PPA and Seller elects to terminate this ESA, it shall be considered an Event of Default by Seller under this ESA and Buyer shall be entitled to pursue its remedies under this ESA. If the termination of the PPA is for an Event of Default of Buyer or for an extended Force Majeure Event (all as defined in the PPA) and Seller elects to terminate this ESA, such termination of this ESA shall not be considered an Event of Default of Seller hereunder. If the termination of the PPA resulted from an Event of Default (as defined in the PPA) of Buyer under the PPA and Seller elects to terminate this ESA, it shall be considered an Event of Default by Buyer under this ESA and Seller shall be entitled to pursue its remedies under this ESA.

3.12 ESS Unit Capabilities. “ESS Unit Capabilities” means all of the following for the ESS:

(A) Guaranteed P_{MAX} of 30 MW of charging and discharging capability as measured at the Point of Delivery, and as may be adjusted pursuant to Section 3.8;

(B) Guaranteed ESS Capacity: discharge ESS at Guaranteed P_{MAX} for four (4) consecutive hours, and as may be adjusted pursuant to Section 3.8;

(C) Guaranteed ESS Roundtrip Efficiency as shown in Exhibit L; Seller shall provide any applicable degradation forecasts applicable to this guarantee;

(D) Guaranteed Discharge Ramp Rate of two (2) seconds to ramp to the commanded discharging power (up to P_{MAX} and at a rate of up to 15 MW/s), in each case with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power and as measured when state of charge is between fifteen percent (15%) state of charge and eighty-five percent (85%) state of charge representing the maximum ramp rate that the ESS can change its output power;

(E) Guaranteed Charge Ramp Rate of two (2) seconds to ramp to the commanded charging power (up to P_{MAX} and at a rate of up to 15 MW/s) in each case with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power and as measured when state

of charge is between fifteen percent (15%) state of charge and eighty-five percent (85%) state of charge representing the maximum ramp rate that the ESS can change its input power;

(F) Guaranteed System Latency: one (1) second;

(G) Guaranteed Frequency Response Capability of 25 MW/0.1Hz, within the times guaranteed in Sections 3.12(D), (E) and (F);

(H) Capability to support Ancillary Services in accordance with the system design and ESS Operating Restrictions, or as otherwise agreed by the Parties in writing; and

3.13 ESS Non-Performance Liquidated Damages. Beginning one (1) year after the Commercial Operation Date, ESS Unit Capabilities shall be tested annually as provided in Section 10.5(C) and calculated as described in Exhibit F. Seller will pay Buyer the following liquidated damages as the sole and exclusive remedy for ESS unit non-performance, including any failure to meet the ESS Unit Capabilities (in each case other than as excused due to (a) a Force Majeure Event, (b) a Seller Curtailment, (c) failure of Buyer to deliver Charging Energy, or (d) to the extent that violation of the ESS Operating Restrictions resulted in such failure) or to comply with the requirements of Section 7.4(a).

(A) Beginning one (1) year after the Commercial Operation Date, if Seller is unable to achieve the Guaranteed ESS Capacity (as may be adjusted pursuant to Section 3.8), Seller shall pay Buyer One Hundred Thousand Dollars (\$100,000) for each MW (prorated for any portion thereof) of ESS Capacity shortfall annually (prorated for any portion of a year) until such deficiency is cured.

(B) Upon failure of Seller to satisfy the Guaranteed Discharge Ramp Rate, Guaranteed Charge Ramp Rate, or Guaranteed System Latency during Project operation or ESS Unit Capabilities Testing, Seller shall pay to Buyer “**ESS Response Delay Damages**” equal to five thousand dollars (\$5,000) per second of ESS Response Delay as determined in accordance with Exhibit F, up to a maximum of ten thousand dollars (\$10,000) per event. In the event that the ESS Response Delay is a positive value and Seller pays the ESS Response Delay Damages due, Seller shall be allowed a thirty (30) day cure period and the opportunity to re-test to demonstrate that the ESS Response Delay is cured. Seller shall not be liable for additional damages under Section 3.13(C) for the same event or during such thirty (30) day cure period. If the system has not otherwise been tested and shown to meet the ESS Unit Capabilities by the expiration of the cure period, then additional ESS Response Delay Damages shall be assessed, and another cure period shall begin. This procedure shall repeat until Seller performs a successful test and proves that the ESS Unit Capabilities are satisfied. For the avoidance of doubt, ESS Response Delay Damages shall not be refundable upon cure of the ESS Response Delay. A test method and calculation for the ESS Response Delay is described in Exhibit F herein.

(C) In the event that the ESS fails to meet the Guaranteed Frequency Response Capability, Seller shall pay to Buyer an amount equal to two thousand dollars (\$2,000) per MW of response, up to ten thousand dollars (\$10,000) per event of failure. Seller shall be allowed a thirty (30) day cure period after the aforementioned failure to demonstrate compliance with the Guaranteed

Frequency Response Capability. Seller shall not be liable for additional damages under Section 3.13(B) for the same event or during such thirty (30) day cure period. If the system fails to meet such standards after the cure period then additional liquidated damages shall be assessed, and another cure period shall begin. This procedure shall repeat until Seller performs a successful test and proves that the Guaranteed Frequency Response Capability is satisfied. For the avoidance of doubt, liquidated damages paid for Guaranteed Frequency Response Capability shall not be refundable upon cure of the failure.

3.14 Availability Guarantee. Seller guarantees that the Project shall be available to deliver Discharge Energy, store Energy or accept Charging Energy and shall pay Availability Damages, if any, in accordance with Seller's obligations under the provisions of Exhibit I.

3.15 Guaranteed ESS Roundtrip Efficiency Payment.

If the ESS Roundtrip Efficiency is below the Guaranteed ESS Roundtrip Efficiency, Seller will pay to Buyer an amount equal to the Monthly Electricity Cost multiplied by (Guaranteed ESS Roundtrip Efficiency – ESS Roundtrip Efficiency).

3.16 Federal Tax Treatment. Buyer and Seller agree that the Project is intended to qualify as "solar energy property" and qualify for federal Tax credits under Section 48 of the Internal Revenue Code. Accordingly, the Parties agree that this ESA is intended to be considered integrated with the PPA for federal income tax purposes, and that the Project is an integral part of the Solar Facility, and energy from the Solar Facility will be used to charge the ESS during the Recapture Period. For these reasons, the Parties shall limit grid charging as set forth in Section 3.11. Except as required under Applicable Law, no Party shall take any position inconsistent with this Section 3.16 without the express written consent of the other Party.

ARTICLE 4
AGC; Seller Curtailment

4.1 AGC; Seller Curtailment.

(A) Prior to the Commercial Operation Date or, if applicable, prior to the Test Period, Seller, at its sole cost and expense, shall install AGC at the Project and shall maintain such AGC throughout the Delivery Term. Seller shall ensure that, throughout the Delivery Term, the SCADA signal is capable of functioning within the margin of error specified in the control system manufacturer's energy set point margin of error. Seller shall ensure that the Project's AGC Remote/Local status is in "Remote" set-point control during normal operations.

(B) Beginning on the Commercial Operation Date, PNM shall have the right to direct the dispatch of the ESS, via AGC control, to its fullest capability provided that, notwithstanding any provision in this ESA to the contrary, during the Recapture Period, the ESS shall be charged exclusively from the Solar Facility. Total cycles shall not exceed 365 Equivalent Full Cycles in any Commercial Operation Year; provided, however, Buyer shall have the option to exceed 365 Equivalent Full Cycles in a Commercial Operation Year and to reimburse Seller for such additional cycles in accordance with the payment structure identified in Exhibit M, as long as the

number of Equivalent Full Cycles in any one (1) Commercial Operation Year does not exceed three hundred eighty (380).

(C) Buyer shall reduce power dispatch to and from the Project, as applicable, during and to the extent of any Seller Curtailment.

4.2 Seller Curtailment. A Seller 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 its scheduling practices, or indirectly, by the Transmission Provider pursuant to the OATT or transmission service arrangements (“**Seller Curtailment**”).

ARTICLE 5 Delivery and Metering

5.1 Delivery Arrangements.

(A) Seller shall take all actions required in accordance with the terms and conditions of this ESA to accept the Charging Energy at and from the Point of Delivery as part of providing the Energy Storage Services, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy to the Energy Storage System. Seller shall use and only use the Charging Energy for Buyer’s benefit or for Idle Losses in accordance with the terms and conditions of this ESA. Seller shall (i) secure transmission necessary to deliver the Discharge Energy to the Point of Delivery, (ii) receive Charging Energy from the Solar Facility at the Point of Delivery to the ESS, and (iii) after the Recapture Period, Seller shall seek to amend the Interconnection Agreement, as necessary, or otherwise obtain authorization from the Transmission Provider, to allow the Project to receive Charging Energy from the grid at the Point of Delivery to the ESS, in the event Buyer elects to charge from the grid, receive Charging Energy from the grid at the Point of Delivery to the ESS. Buyer acknowledges and agrees that the Interconnection Agreement establishes a maximum capacity amount and that such capacity shall be a limit on, and jointly used by, the Project and the Solar Facility, provided that delivery of Energy from the Solar Facility to the Transmission Provider’s Transmission System shall take priority over Discharge Energy, and the Solar Facility may not be curtailed during a period in which the ESS is concurrently being discharged, except as required to maintain reliability by the Balancing Area Authority.

(B) Seller shall be responsible for the costs of interconnection and other infrastructure costs required to receive Charging Energy at the Point of Delivery and deliver Discharge Energy to the Point of Delivery for the Project, including the costs of any associated network upgrades. Except as provided in this Section 5.1 and Section 7.4, Seller shall not be responsible for costs and charges related to scheduling and imbalances.

(C) Buyer shall be responsible for the costs of Charging Energy and for the costs required to deliver Charging Energy to, and Discharge Energy from and beyond, the Point of Delivery.

(D) Buyer shall secure all necessary transmission service arrangements, including scheduling arrangements, if any, to (i) take Discharge Energy at the Point of Delivery and deliver it to points beyond, and (ii) after the Recapture Period, in the event Buyer elects to charge from the grid pursuant to Section 3.11, deliver Charging Energy to the Point of Delivery.

5.2 Availability Reporting. Seller shall be responsible for providing accurate and daily updates no later than 6:00 AM on the current availability of the Project to Buyer's SCC. Format and content of the daily report shall be subject to review and approval by Buyer.

5.3 Electric Metering Devices.

(A) Seller shall ensure that the Charging Energy and Discharge Energy delivered pursuant to this ESA shall be metered and accounted for separately from any electric generation facility, including the Solar Facility, that utilizes the same Electric Interconnection Point. Seller shall install Electric Metering Devices and Back-Up Metering, each in an arrangement consistent with the configuration depicted in Exhibit B, or as otherwise agreed between the Parties.

(B) The following provisions of this Section shall govern Electric Metering Devices except to the extent the Interconnection Agreement modifies or otherwise conflicts with these provisions, in which case the Interconnection Agreement shall govern.

(C) All Electric Metering Devices used to measure the Charging Energy and Discharge Energy and to monitor and coordinate operation of the Project shall be owned, installed, and maintained in accordance with the Interconnection Agreement at no cost to Buyer under this ESA. Calibration records shall be maintained by Seller for a period not less than two (2) years and shall be provided to Buyer within forty-five (45) Days of their availability. The design of the Electric Metering Device system shall be subject to Buyer approval prior to commencement of construction of the Project. The Seller 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 Buyer upon completion of the testing. ESS Electric Metering Devices shall be bi-directional and shall be capable of measuring and reading instantaneous and hourly real and reactive Energy and capacity, if supplied by either the grid, solar generation system or ESS system. ESS Electric Metering Devices shall be programmed such that meter readings will reflect losses between the Electric Metering Device and the Point of Delivery. Seller shall provide or arrange with the Transmission Provider to provide Buyer reasonable access to all Electric Metering Devices for all purposes necessary to perform under this ESA and shall provide Buyer the reasonable opportunity to be present at any time when such Electric Metering Devices are to be inspected and tested or adjusted. Buyer shall also have the right to conduct its own tests of the Electric Metering Devices in Buyer's reasonable discretion, in accordance with Prudent Utility Practices, and upon reasonable advance notice to Seller; and Seller shall have the right to be present at Buyer's tests of the Electric Metering Devices. Seller shall provide Buyer with all authorizations necessary to have access to the Electric Metering Devices, including obtaining any consent or other agreement from the Transmission Provider necessary to allow Buyer such access. Energy shall be metered using solid state, high precision, digital display meters of ANSI 0.1 accuracy class or better, with the specific model approved by the Buyer.

(D) In addition to the Electric Metering Devices to be installed by Seller, Seller shall install and maintain, at its own expense, backup metering devices (“**Back-Up Metering**”), which installation and maintenance shall be performed in a manner acceptable to the Buyer. The Seller shall, at its own expense, inspect and test Back-Up Metering upon installation and at least annually thereafter and provide all test results to Buyer upon completion of the testing. The Seller shall provide Buyer with reasonable advance notice of, and permit Buyer to witness and verify, such inspections and tests, *provided, however*, that Buyer shall not unreasonably interfere with or disrupt the activities of the Seller and shall comply with all applicable safety standards. Upon written request from Buyer, the Seller shall perform additional inspections or tests of Back-Up Metering and shall permit a qualified representative of the Buyer to inspect or witness the testing of Back-Up Metering, *provided, however*, that the Buyer shall not unreasonably interfere with or disrupt the activities of the Seller and shall comply with all applicable safety standards. The actual expense of any such requested additional inspection or testing shall be borne by the Buyer, unless, upon such inspection or testing, Back-Up Metering is found to register inaccurately by more than the allowable limits established in this Article, in which case the expense of the requested additional inspection or testing shall be borne by the Seller. If requested in writing, the Seller shall provide copies of any inspection or testing reports to the Buyer.

(E) If any Electric Metering Devices, or Back-Up Metering, are found to be defective or inaccurate outside the bounds of the selected device’s manufacturer’s performance standards, they shall be adjusted, repaired, replaced, and/or recalibrated as near as practicable to a condition of one-half percent (0.5%) error by the Seller, at Seller’s expense.

5.4 Adjustment for Inaccurate Meters. If an Electric Metering Device, or Back-Up Metering, fails to register, or if the measurement made by an Electric Metering Device, or Back-Up Metering, is found upon testing to be inaccurate by more than one-half percent (0.5%), an adjustment shall be made correcting all measurements by the inaccurate or defective Electric Metering Device, or Back-Up Metering, for both the amount of the inaccuracy and the period of the inaccuracy, in the following manner:

(A) If the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-up Metering to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering has been tested and maintained in accordance with the provisions of this Article. In the event that Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one-half percent (0.5%), the Parties shall estimate the amount of the necessary adjustment on the basis of deliveries of 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 Electric Metering Device was registering accurately. The adjustment shall be made for the period during which inaccurate measurements were made.

(B) If the Parties cannot agree on the actual period during which the inaccurate measurements were made, the period during which the measurements are to be adjusted shall be the shorter of (i) the last one-half of the period from the last previous test of the Electric Metering Device to the test that found the Electric Metering Device to be defective or inaccurate, or (ii) the one hundred eighty (180) Days immediately preceding the test that found the Electric Metering Device to be defective or inaccurate.

ARTICLE 6
Conditions Precedent

6.1 Conditions Precedent. The obligations of the Parties under this ESA are subject to satisfaction of the following conditions precedent:

(A) Subject to Section 17.3, receipt of NMPRC Approval

(B) NMPRC Approval of the PPA;

(C) Receipt of approval of the Boards of Directors of Buyer and its parent company of the PPA and this ESA, which approval has been received

6.2 Notice. As soon as reasonably practicable after satisfaction of a condition precedent specified in Section 6.1 or after confirmation that a specified approval is not required, Buyer shall provide Seller written notice of such satisfaction or confirmation as applicable; provided, however, that Buyer's failure to provide such notice shall not constitute a breach of this ESA.

ARTICLE 7
Sale and Purchase of Product

7.1 Sale and Purchase of Product. In accordance with and subject to the terms and conditions of this ESA, commencing on the Commercial Operation Date and continuing through the end of the Term ("**Delivery Term**"), Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Product made available by Seller at the Point of Delivery in accordance with Article 5; *provided, however*, that, subject to Section 8.1(A), Buyer shall not be required to receive and Seller shall not be required to make available, Product when and to the extent that (a) a Party's performance is excused by a Force Majeure Event; (b) a Seller Forced Outage is continuing; (c) a Seller Scheduled Maintenance Outage is continuing; (d) a Seller Curtailment is continuing; or (e) Seller fails to perform and its failure is excused during Seller Excused Hours. At its sole discretion, Buyer may resell or use for another purpose all or a portion of the Product. Buyer will have exclusive rights to offer, bid, or otherwise submit the Product for resale in the market and retain and receive any and all related revenues. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this ESA.

7.2 Title and Risk of Loss. Buyer shall be deemed to be in control of all Charging Energy up to delivery, but not including, receipt at the Point of Delivery. Seller shall be deemed to be in control of such Charging Energy from and after such delivery until such Charging Energy is redelivered (less AC losses and ESS Roundtrip Efficiency losses) to Buyer as Discharge Energy up to the Point of Delivery. Buyer shall be deemed to be in control of such Discharge Energy from and after Seller's delivery and upon Buyer's receipt at the Point of Delivery. Buyer shall retain title and risk of loss for Charging Energy, Energy stored in the ESS, and Discharge Energy at all times. Title and risk of loss related to any Future Environmental Attributes shall transfer from Seller to Buyer at the Point of Delivery.

7.3 Future Environmental Attributes and Changes in Law. The Parties acknowledge and agree that (a) Future Environmental Attributes may be recognized by a Governmental Authority after the Execution Date; (b) in accordance with the terms of this ESA all right and title to such Future Environmental Attributes is included in the ESS Capacity Payment Rate; and (c) such Future Environmental Attributes shall pass to Buyer in accordance with Section 7.2 of this ESA. If, in order for Buyer to receive the benefit of any Future Environmental Attributes, Seller must incur any third-party costs not otherwise provided for in this ESA, or if any change in law or regulation relating to such Future Environmental Attributes occurs after the Execution Date that causes Seller to incur any third-party costs not otherwise provided for in this ESA in order to deliver the additional Environmental Attributes, then such costs shall, if Seller incurs such costs at Buyer's request, be reimbursed promptly to Seller by Buyer; provided, that Seller shall not be required to incur any costs for Buyer to receive the benefit of Future Environmental Attributes unless requested to do so by Buyer. Seller shall deliver a good faith estimate of such additional costs to Buyer prior to incurring such costs, and following receipt of such estimate, Buyer shall notify Seller of its continued election to have Seller incur such costs; *provided* that, if the additional costs exceed Seller's good faith estimate by more than ten percent (10%), Buyer shall have the right to notify Seller of its election to have Seller cease incurring the additional costs, and Seller shall be excused thereafter from any obligation hereunder to deliver such Future Environmental Attributes. For the avoidance of doubt, Buyer shall remain liable to Seller for all costs incurred prior to Seller's receipt of Buyer's notice. The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes.

7.4 Scheduling.

(A) Buyer shall 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 (i) Discharge Energy, Charging Energy or Ancillary Services during Seller Forced Outages, Scheduled Maintenance Outages, Force Majeure Events, and Seller Curtailments, or (ii) Discharge Energy that would reduce the quantity of Energy that the Solar Facility would otherwise be capable of delivering to Buyer subject to Section 5.1(A).

(B) If at any point during the Delivery Term, (i) an alternative market design is implemented in which the Project will or can participate in an energy market, or (ii) if either the Project, the Electric Interconnection Point or Buyer no longer reside in the same market ((i) and (ii) a "Market Event") and such Market Event materially changes the interconnection and delivery requirements in this ESA, the Parties shall cooperate in good faith to facilitate the delivery of Product from the Point of Delivery to Buyer, at the least possible cost to the Parties, consistent with this ESA to the extent possible.

(C) Seller shall provide to Buyer its good faith, non-binding estimates of the daily ESS availability for each week (Sunday through Saturday) by 4:00 p.m. MPT on the date falling at least three (3) Days prior to the beginning of that week.

(D) Unless otherwise specified by superseding policies or procedures of WECC, including the WECC pre-scheduling calendar, and SCC as applicable, Seller shall, by 6:00 a.m. MPT on each Day, submit a good faith estimate of the hourly ESS availability for the next six (6) Days.

(E) If, at any time following submission of a good faith estimate as described in Section 7.4(C) above, Seller becomes aware of any change that materially alters the values previously provided to Buyer, Seller shall promptly notify Buyer of such change or predicted change.

7.5 Forced Outages.

(A) Buyer and Seller shall promptly advise one another of events that may form the basis for a declaration of the existence or termination of Seller Excused Hours or a Seller Forced Outage. Buyer or Seller (as appropriate) shall at the earliest practicable date provide the other Party written notice (“**Outage Notice**”) of the declaration of the existence of Seller Excused Hours or a Seller Forced Outage. Seller shall provide such notice to Buyer’s System Control Center. An Outage Notice provided by either Party shall contain information regarding the beginning date and time of the event, the expected end date and time of such event, and the expected Product, if any, that would be available for delivery and purchase at the Point of Delivery during such event. Buyer or Seller (as appropriate) shall keep the other Party informed of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. In addition, Seller shall comply with all then-current Buyer, NERC and WECC generating unit outage reporting requirements, as they may be revised from time-to-time.

(B) Within five (5) business Days after the end of the Month, Seller shall prepare, maintain and deliver to Buyer a schedule that identifies all Scheduled Maintenance Outages, deratings and Seller Forced Outages that occurred during the Month. The data reported must meet all requirements specified in the NERC Generating Availability Data System (GADS) manual. In the event of any disagreement between Buyer and Seller concerning the schedule prepared by Seller, the Parties shall promptly confer to resolve the disagreement.

ARTICLE 8 Payment Calculations

8.1 Billing Components. The total due from Buyer to Seller for each Monthly Billing Period during the Term shall be paid in accordance with the invoicing procedures set forth in Section 9.1. Charges will consist of the following, and will begin on the Commercial Operation Date:

(A) **Monthly ESS Capacity Payment.** Subject to Section 14.4, Buyer shall pay Seller an amount equal to the ESS Capacity not to exceed Guaranteed ESS Capacity multiplied by the ESS Capacity Payment Rate (the “**ESS Capacity Payment**”).

(B) If Supplemental State Tax Incentives become available in connection with the Product, Seller shall use commercially reasonable efforts to become eligible for and to obtain any such incentives.

(C) In the event that Seller, an Affiliate of Seller or a Tax Equity Investor, if any, becomes eligible to receive any Supplemental State Tax Incentives with respect to the Project, the value of such Supplemental State Tax Incentives will be shared between the Parties. No later than thirty (30) Days after utilization of any Supplemental State Tax Incentives by Seller, Affiliate of Seller, or Tax Equity Investor, Seller will remit to Buyer a payment equal to sixty percent (60%) 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 ESA consistent with Applicable Law.

8.3 Survival on Termination. The provisions of this Article 8 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties due and payable prior to any such repudiation, termination or expiration. This Section 8.3 shall only apply to Section 8.1(C) to the extent such Supplemental State Tax Incentives are applicable to the time period before the repudiation, termination or expiration of this ESA.

ARTICLE 9 Billing and Payment Procedures

9.1 Statements and Payment of Electricity Payments.

(A) Seller shall read or have read on its behalf the Electric Metering Devices at the Point(s) of Delivery at 11:59 p.m. MPT on the last Day of each Month, unless otherwise mutually agreed by the Parties.

(B) Payments due shall be determined and adjusted in accordance with Article 8 and Section 3.15. From and after the Commercial Operation Date, Buyer shall pay to Seller, monthly in arrears, payments in accordance with the provisions of clause (C) below.

(C) On or before the tenth (10th) Day of each Month following the Month in which the Commercial Operation Date occurs, Seller shall prepare an invoice showing the amount payable by Buyer pursuant to Article 8 of this ESA (in Dollars) payable to Seller for the preceding Month. Each such invoice shall show the ESS Capacity Payment, information and calculations, in reasonable detail.

(D) Buyer shall, subject to Sections 9.5 and 9.9, pay all invoices within thirty (30) Days after the date Buyer receives Seller's invoice. If Buyer should dispute a portion of the charges set forth on any invoice, it shall nonetheless pay all amounts not in dispute by the applicable due date.

(E) If banks in the State of New Mexico are permitted to close on any date on which any payment by Buyer would otherwise have been due, then Buyer shall make such payment on the Business Day that immediately follows such payment date.

(F) All payments specified in this Section 9.1 shall be made to an account designated by Seller and notified in writing to Buyer.

9.2 Miscellaneous Payments. Any amounts due to either Seller or Buyer under this ESA, other than those specified in Section 9.1 above, shall be paid within thirty (30) Days following receipt by the other Party of an itemized invoice from the Party to whom such amounts are due setting forth, in reasonable detail, the basis for such payment.

9.3 Currency and Method of Payment. Notwithstanding anything contained in this ESA, all payments to be made by either Seller or Buyer under this ESA shall be made in Dollars in immediately available cleared funds by wire transfer into the relevant account specified in this ESA or, if no account is specified, into the account designated in writing by the receiving Party.

9.4 Default Interest. Except where payment is the subject of a bona fide dispute (in which case it shall be treated under Section 9.5 below), or where otherwise waived by the Party entitled to interest, if any payment due from Buyer to Seller or from Seller to Buyer under this ESA is not paid when due, then, in addition to such unpaid amount, interest shall be due and payable thereon. Applicable interest shall be calculated at a rate equal to the lower of (a) the “prime” rate as published in *The Wall Street Journal* on the first business Day of each Month plus one-half percent (0.5%); and (b) the maximum interest rate allowed by Applicable Law (“**Default Rate**”), as in effect from time to time and shall continue to accrue from the date on which such payment became overdue to and until the date such payment is made in full (both dates inclusive).

9.5 Disputed Items.

(A) Either Party (“**Disputing Party**”) may dispute in good faith the accuracy of a reading of the Electric Metering Devices and/or the accuracy of an invoice. Where a reading or bill is the subject of a dispute in good faith, the Disputing Party shall give written notice to the other Party within sixty (60) Days after the delivery of the invoice or statement by the other Party, together with details of its reasons for such dispute. The Disputing Party shall make payment of any undisputed amounts to the other Party by the due date for payment specified in such invoice. The Parties shall use all reasonable efforts to resolve the dispute in accordance with Section 13.8. Any amount or adjustment with respect to a meter reading subsequently agreed to by the Parties or determined to be due shall be made (in each case in settlement of a dispute) by a credit or additional charge on the next bill rendered (as the case may be).

(B) All amounts paid as a result of the settlement of a dispute shall be paid with interest thereon at the Default Rate from the Day on which such payment originally fell due to and until the date such payment is made in full (both dates inclusive), unless otherwise waived by the Party entitled to such interest.

9.6 Statement Errors. If either Party becomes aware of any error in any statement, such Party shall, immediately upon discovery of the error, notify in writing the other Party of the error

and shall rectify such error (whether such error was in the form of an underpayment or overpayment) within thirty (30) Days of such notification. Provided that the other Party is satisfied (in its sole and reasonable discretion) that the aforementioned notification requirements have been complied with in good faith by the Party who has made the error, no interest shall be payable in respect of any amount that was erroneously overpaid or underpaid.

9.7 Taxes.

(A) On all invoices, Seller shall separately show all New Mexico gross receipts, compensating, sales, and other similar taxes charged to Buyer provided that in no event will interest or penalties on such taxes be reimbursable by Buyer. If the sale of Product takes place on tribal land, Seller will comply with applicable state and tribal laws governing the reporting and payment of gross receipts taxes on those transactions. Buyer shall reimburse Seller for any Sales Taxes, if any, imposed on Seller's sale of and Buyer's purchase of Product and on Buyer's payment and Seller's receipt of amounts due under this ESA provided, however, that in no event shall Buyer be liable for any Taxes other than Sales Taxes in respect of Seller's revenue, income, or gain arising from Seller's sale of the Product to Buyer pursuant to this ESA.

(B) Seller shall be responsible and shall pay when due all income, gross receipts, compensating, use, valued added, employment, ad valorem, personal real property or other similar Taxes, including any associated interest and penalty assessments and any and all franchise fees or similar fees assessed against Seller or the Project due to the construction, ownership, leasing, operation or maintenance of the Project, or any components or appurtenances thereof, including all Taxes, fees, allowances, trading credits and other offsets and impositions for wastes and emissions (including carbon-based compounds, oxides of nitrogen and sulfur, mercury and other Hazardous Materials) produced by the Project. Seller's prices under Article 8 are inclusive of such Taxes, allowances and credits described in this Section 9.7(B) during the Term. If Buyer is assessed any Taxes or associated fees as a result of the improvement of the Site due to the existence of the Project on the Site, Buyer shall immediately notify Seller. Buyer and Seller shall cooperate in contesting such assessment. If, after resolution of the matter, Taxes are imposed on Buyer as a result of the improvement of the Site due to the existence of the Project on the Site, Seller shall reimburse Buyer for such Taxes. Seller shall not be obligated to pay or reimburse Buyer for Taxes imposed on or measured by the Buyer's overall revenues or income.

(C) If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Taxes. Consistent with Applicable Law, the Parties shall use all reasonable efforts to administer this ESA and implement the provisions in this ESA in a manner that will minimize Taxes due and payable by all Parties.

(D) The Parties shall provide each other, upon written request, copies of any documentation respecting this ESA or the Project that may be reasonably necessary in the ordinary course of any inter-governmental, state, local, municipal or other political subdivision tax audit inquiry or investigation.

(E) Consistent with Applicable Law, the Parties shall cooperate to minimize Taxes; however, no Party shall be obligated to incur any extraordinary financial burden to reduce Taxes for which the other Party is responsible hereunder.

9.8 Setoff and Payment Adjustments. Except as otherwise expressly provided for in this ESA, including Section 9.9 below, all payments between the Parties under this ESA shall be made free of any restriction or condition and without deduction or withholding on account of any other amount, whether by way of setoff or otherwise.

9.9 Netting.

(A) A Party at any time may offset against any and all amounts that may be due and owed to the other Party under this ESA, including damages and other payments that are owed by a Party to the other Party pursuant to this ESA. Undisputed and non-offset portions of amounts invoiced under this ESA shall be paid on or before the due date or shall be subject to the late payment interest charges set forth in Section 9.4.

(B) If Seller and Buyer net their obligations to each other under this ESA, then such amounts will be aggregated, and Seller and Buyer will discharge their obligations to pay through netting of payments on a current accounting basis. If the amounts owed by Buyer or Seller to the other are equal on a current accounting basis, neither shall be required to make payment under this ESA.

9.10 Survival on Termination. The provisions of this Article 9 shall survive the repudiation, termination or expiration of this ESA for so long as may be necessary to give effect to any outstanding payment obligations of the Parties that became due and payable prior to any such repudiation, termination or expiration.

ARTICLE 10
Operations and Maintenance

10.1 Construction of the Project.

(A) Seller will diligently pursue the development and construction of the Project using commercially reasonable efforts consistent with Prudent Utility Practices and in compliance with the terms and conditions of the Interconnection Agreement and this ESA. Seller will be solely responsible for, and the ESS Capacity Payment Rate will not be adjusted to accommodate, increased costs or any failure to obtain any Tax Benefits. On and after the Execution Date through the start of construction, Seller will provide Buyer monthly development and construction updates. During the construction phase of the Project, Seller shall employ apprentices as set forth in, and at levels required by, the New Mexico Public Utility Act.

(B) On and after the start of construction and through the Commercial Operation Date, Seller will provide Buyer monthly construction updates no later than the 15th of each month. For cases where the 15th falls on a weekend, construction updates shall be provided on the following Business Day. At a minimum, monthly updates shall include the Project Schedule and list of schedule risks and material cost risks. If Seller becomes aware of any critical milestone that will not be achieved by the required date, Seller must provide Buyer written notice and a recovery plan

to minimize any delay in the Commercial Operation Date. In no event will Seller's failure to complete one or more critical milestones by the established dates change, delay or otherwise affect the requirement to achieve Commercial Operation by the Guaranteed Start Date. Buyer shall have the right to monitor the construction, commissioning, start-up, testing and operations of the Project and to be present during the commissioning, start-up and testing of the Project.

(C) Seller may not materially modify, alter or otherwise change the Project without the prior written consent of Buyer, except (i) as required by Prudent Utility Practices or Applicable Law; (ii) for modifications, alterations, expansions or other changes that would not be expected to materially alter the Guaranteed ESS Capacity, ESS Unit Capabilities, or availability of the Project or materially and adversely impact the capabilities of the Project; or (iii) in connection with maintenance on the Project, including repairs and like-kind replacement of equipment, as determined to be reasonable or necessary by Seller. Buyer acknowledges that certain assets of Seller related to the Project, including certain equipment, buildings, and facilities, transformers, Interconnection Facilities, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate, may be shared with other electricity generation and/or storage projects; provided that Seller's sharing of such facilities shall not materially and adversely affect Seller's performance of its obligations hereunder.

(D) Seller shall designate (by a written notice delivered to Buyer by the Execution Date, a Project Manager reasonably acceptable to Buyer who shall have full responsibility for the performance of the construction, commissioning, start-up and testing by Seller and shall act as a single point of contact in all matters on behalf of Seller ("**Project Manager**"). Seller may designate a new Project Manager from time to time by a written notice delivered to Buyer, subject to Buyer's consent, which consent shall not be unreasonably denied or delayed. Seller's Project Manager shall be deemed to have full authority to act on behalf of Seller, and notices given by Buyer to the Project Manager shall be deemed as having been given to Seller.

(E) Other than the rights and obligations of Buyer specified in this ESA and any documents ancillary hereto, neither this ESA nor any such ancillary document shall be interpreted to create in favor of Buyer, and Buyer specifically disclaims, any right, title or interest in any part of the Project.

10.2 Commissioning Tests.

(A) Seller shall give Buyer at least sixty (60) Days' prior notice of the approximate test date and of the proposed tests scheduled relating to the commissioning of the Project ("**Commissioning Tests**") as described in Exhibit F. Representatives of Buyer shall have the right to be present at all such testing. Seller shall promptly notify Buyer of any changes to the test date or the date of any Commissioning Tests relating to the Project in order that Buyer may arrange for its respective representatives to attend.

10.3 Access to and Inspection of the Project.

(A) Seller shall provide Buyer and its authorized agents, employees and inspectors reasonable access to the Project, including the control room and Seller's Interconnection Facilities, for the purposes set forth herein. Buyer acknowledges that such access does not provide

Buyer with the right to direct or modify the operation of the Project in any way and further acknowledges that any exercise by Buyer of its rights under this Section 10.3(A) shall be at its own risk and expense; provided, however, that Buyer shall comply with Seller's applicable safety and health rules and requirements and shall conduct itself in a manner that will not unreasonably interfere with the Project's operations.

(B) No inspections of the Project, whether by Buyer or otherwise, and no acceptance or approval given under this ESA, shall relieve Seller of or reduce its obligation to maintain the Project and operate the same in accordance with this ESA, the Interconnection Agreement and Prudent Utility Practices. In no event shall any statement, representation, or lack thereof by Buyer, either express or implied, relieve Seller of its exclusive responsibility for the Project. Any inspection of Seller's property or equipment by Buyer, or any review by Buyer or consent by Buyer to Seller's plans, shall not be construed as endorsing the design, fitness or operation of the Project equipment or as a warranty or guarantee.

10.4 Operating Parameters.

(A) Seller shall operate or procure the operation of the Project in accordance with Prudent Utility Practices and the ESS Operating Restrictions ("**Operating Parameters**"), subject only to Emergency Conditions and Force Majeure Events; *provided* that, during the Term of this ESA, Seller shall: (i) have the sole responsibility to, and shall at its sole expense, operate and maintain the Project in accordance with all requirements set forth in this ESA; and (ii) comply with reasonable requirements of Buyer regarding day-to-day or hour-by-hour communications with Buyer. Subject to compliance with the Operating Parameters, Seller agrees to operate the Project in such a manner that Discharge Energy delivered by Seller will meet all requirements for voltage level, harmonics, power factor, VARs, Ancillary Services and other electrical specifications required by the Transmission Provider and will have the capabilities to be dispatched manually by Seller as is necessary to comply with the provisions of this ESA. Seller shall provide Buyer with all real time measurement parameters of the Project including system availability data made available to Buyer via a SCADA or equivalent interface. Seller shall provide Buyer, and shall maintain during the Term, a data link into the forecasting tools used by Seller.

(B) Seller shall operate the Project such that all system protective equipment is in service whenever the Project is connected to, or is operated in parallel with, the Transmission Provider's Transmission System, except for normal testing and repair. Seller shall provide adequate system protection and control devices to ensure safe and protected operation of all energized equipment during normal testing and repair. The Project's protective equipment shall meet Institute of Electrical and Electronic Engineers and Prudent Utility Practices. Seller shall have qualified personnel test, calibrate and certify in writing the proper functioning of all protective equipment, in accordance with NERC Protection and Control (PRC) standards and Prudent Utility Practices, at least once every twelve (12) Months. Seller shall perform a unit functional trip test after each overhaul of the Project's major equipment and shall provide results to Buyer in writing prior to returning the equipment to service. All of the foregoing shall be conducted in accordance with Prudent Utility Practices. PNM reserves the right to audit and/or observe Seller's testing and calibration of the protective equipment. Seller shall provide Buyer with a ten (10) Day written notice of planned testing and/or calibration.

10.5 Operating Procedures.

(A) Not later than ninety (90) Days before the Commercial Operation Date Seller shall provide Buyer a draft of all Operating Procedures. Not later than thirty (30) days before the Commercial Operation Date, an operating committee consisting of Seller and Buyer representatives shall develop mutually agreeable written Operating Procedures for integration of the Project into Buyer's system. Buyer and Seller shall review and mutually agree on any appropriate updates to the Operating Procedures at least once per calendar year or more frequently as changes dictate. Operating Procedures shall include, but not be limited to, methods of day-to-day communications; metering, telemetering, telecommunications, and data acquisition procedures; key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party; clearances and switching practices; operations and maintenance scheduling and reporting; scheduling and forecasting practices; daily capacity, Charging Energy, and Discharge Energy reports; unit operations log; Seller Forced Outage and planned outage reporting, and such other matters as may be mutually agreed upon by the Parties. Seller must staff, operate, maintain and control the Project at all times consistent with the Operating Procedures, the ESA, Prudent Utility Practices, Applicable Laws, the Interconnection Agreement and required permits. The Operating Procedures also will require Seller to take all measures necessary to remediate or otherwise correct any breach of environmental protection regulations as required under Applicable Law. Personnel of Seller capable of starting, running, and stopping the Project must be continuously available, either at the Project or capable of being at the Project on ninety (90) minutes' notice, and must be continuously available by phone. Seller will make qualified personnel available twenty-four (24) hours per day, seven (7) days per week to perform scheduling and receive and give communications relating to the operation and dispatch of the Project. Buyer will use commercially reasonable efforts to notify Seller twenty-four (24) hours in advance of potentially critical start-ups.

(B) Seller will prepare detailed test protocols and procedures for any tests to be performed in connection with achieving Commercial Operation and for periodic tests as required within this ESA. The protocols and procedures will be developed by Seller in accordance with the requirements of the ESA and the appropriate power test code standards for energy storage facilities. Draft protocols and procedures must be submitted to Buyer for review and approval, which approval will not be unreasonably denied or delayed.

(C) Seller will perform, at Seller's expense, an annual ESS Unit Capabilities test in accordance with applicable test protocols and procedures set forth in Exhibit F and promptly provide the results to Buyer. Seller will have thirty (30) Days from the test date to cure any deficiencies in the test. 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 liquidated damages set forth in Section 3.13, adjustment to the ESS Roundtrip Efficiency payment as set forth in Section 3.15, or adjustment to the ESS Capacity Payment as set forth in Section 8.1(A).

10.6 Project Maintenance.

(A) Seller shall maintain all Project equipment or cause the same to be maintained at all times in accordance with Prudent Utility Practices and otherwise in accordance

with this ESA. At least sixty (60) Days before the Commercial Operation Date, Seller will provide Buyer a notice of Scheduled Maintenance Outages for the Project for the first Commercial Operation Year within the Term. Thereafter, no later than September 1 of each Commercial Operation Year, Seller shall provide Buyer with a non-binding notice of the annual Scheduled Maintenance Outages for the following Commercial Operation Year and a notice of estimated long-term Scheduled Maintenance Outages for the next four (4) Commercial Operation Years. Each notice of Scheduled Maintenance Outages must identify each planned interruption and/or reduction of the Project's capacity, including the duration of such event. Each annual Scheduled Maintenance Outage for the Commercial Operation Year will be subject to approval by Buyer. Buyer may, within fifteen (15) Days after receipt of the schedule, request reasonable modifications to the schedule. Seller may not schedule any interruption or reduction to the 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. Seller must give Buyer no less than ninety (90) Days' advance written notice of any proposed change in the annual maintenance schedule. Such requested changes in the schedule shall not materially adversely impact Buyer, and Seller agrees to compensate Buyer for any costs incurred by Buyer as a result of such change.

(B) Seller shall be responsible (at its own cost and expense) for timely obtaining, maintaining, and complying with all agreements, arrangements and permits necessary for delivery of the Product to the Point of Delivery. Upon the written request of Buyer, Seller shall make available to Buyer copies of any environmental permits, plans, and/or studies related to the Project.

10.7 Sales to Third Parties. As of the start of the Test Period, Seller shall not sell or divert Product to any Person other than Buyer.

ARTICLE 11 Future Environmental Attributes

11.1 Sale of Future Environmental Attributes. This Article 11 shall apply if and only if Future Environmental Attributes become available.

(A) Other than as specified in Sections 11.1(D), effective from the date on which the Project first makes Product available to Buyer at the Point of Delivery, Seller shall transfer to Buyer, free and clear of all claims, liens, security interests and encumbrances, of any kind, nature and description, all right, title and interest in and to Future Environmental Attributes associated with the Project. Upon generation and documentation of Future Environmental Attributes, Seller shall make the Future Environmental Attributes available to Buyer no later than five (5) Business Days after creation. The value of the Future Environmental Attributes transferred under this ESA shall be included in the ESS Capacity Payment Rate.

(B) Seller and Buyer shall execute all documents and instruments necessary to effect transfer of the Future Environmental Attributes to Buyer or its respective designee(s).

(C) Ownership by Buyer of Future Environmental Attributes shall include any Future Environmental Attributes that are reserved or “banked” throughout the Term of this ESA, but not used, sold, assigned or otherwise transferred during the Term of this ESA. Buyer may, to the extent permitted by Applicable Law and this ESA, assign its rights, title and interest in and to any Future Environmental Attributes associated with the Project to one or more third parties under any transaction permitted by Applicable Law.

(D) Except as otherwise provided in Section 8.1, Tax Benefits in effect on the Execution Date of this ESA or any successor or other provision providing for a federal, state and/or local tax credit or financial benefit determined by reference to renewable electric energy produced from renewable energy resources or the storage of electrical energy shall be owned by Seller.

(E) Seller shall timely register the Project, as necessary, so that the Project is compliant with reporting requirements related to Future Environmental Attributes and certification requirements under any applicable federal, state or regional program or Applicable Law.

ARTICLE 12 Default and Remedies

12.1 Events of Default of Seller.

(A) Any of the following events shall constitute an Event of Default of Seller upon its occurrence and no cure period shall be applicable other than as set forth in Section 12.1(A)(6) and 12.1(A)(7) below:

- (1) Seller’s dissolution or liquidation;
- (2) Seller’s assignment of this ESA (or any of its rights hereunder) for the benefit of creditors, except as permitted pursuant to Article 18 and in any consent to collateral assignment with a Lender;
- (3) Seller’s filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any state, or Seller’s voluntarily taking advantage of any such law by answer or otherwise;
- (4) The intentional 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 or other material misrepresentation or willful misconduct in connection with this ESA or the operation of the Project;
- (6) The failure of Seller to maintain Security in accordance with Article 19, unless remedied within ten (10) Business Days of receipt by Seller of written notice of such failure from Buyer or the entity providing such Security;
- (7) The failure of Seller Guarantor or Seller to make, when due, any payment due to Buyer under or in connection with this ESA, or the failure of any Seller

Guarantor to meet the criteria as set forth in the definition of Seller Guarantor if no other acceptable form of Security is provided pursuant to Section 19.2, unless remedied within ten (10) Days of receipt by Seller of written notice of such failure from Buyer (subject to Seller's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Seller may have pursuant to this ESA); or

(8) Seller's failure to achieve the Commercial Operation Date for the Project on or prior to the Guaranteed Start Date, as may be extended subject to Section 3.6, or other date mutually agreed to by the Parties.

(B) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within thirty (30) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's Abandonment of construction or operation of the Project;

(2) Except to the extent arising from the acts or omissions of the Transmission Provider or Buyer, Seller is not able to make Product available at the Point of Delivery as a result of the Project not maintaining its interconnection with the Transmission Provider's Interconnection Facilities or otherwise fails to maintain in effect any agreements required to make Product available at the Point of Delivery;

(3) Seller's failure to comply with any other material obligation under this ESA, which would result in an adverse impact on Buyer;

(4) The Project fails, after the Commercial Operation Date, to obtain an Actual ESS Availability Percentage of at least eighty-five percent (85%) over any twenty-four (24) consecutive months during the Term; provided, however, the Parties agree that there is not an Event of Default under this Section 12.1(B)(4) if Seller (i) demonstrates to Buyer's reasonable satisfaction that the Project was maintained and operated consistent with Prudent Utility Practices, including in connection with the supply of available spare parts and equipment, (ii) within ten (10) Business Days after the end of such twenty-fourth consecutive month, provides Buyer a remediation plan to return to compliance with the Actual ESS Availability Percentage requirements, and (iii) remediates the cause of the shortfall of the Actual ESS Availability Percentage requirements as soon as reasonably practicable, however, in no event later than ninety (90) Days after falling below the eighty percent (85%) value.

(5) Seller fails to timely register the Project or should Future Environmental Attributes become available, fails to ensure timely registration of the Future Environmental Attributes in accordance with the terms of this ESA; or

(6) The Project fails, after the Commercial Operation Date, to achieve ninety percent (90%) of Guaranteed ESS Capacity during annual testing pursuant to Section 10.5(C), provided in no case shall tests be performed when major equipment is not operational.

(C) Any of the following events shall constitute an Event of Default of Seller upon the failure of Seller to cure within sixty (60) Days after the date of written notice from Buyer to Seller, or such longer period as may be necessary to effectuate a cure provided that Seller has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Seller's assignment of this ESA, or any Change of Control of Seller, or Seller's sale or transfer of its interest, or any part thereof, in the Project, except as permitted in accordance with Article 18;

(2) Any representation or warranty made by Seller in this ESA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer; or

(3) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor; provided, however, that Seller does not obtain a stay or dismissal of the filing within the cure period.

12.2 Events of Default of Buyer.

(A) Any of the following shall constitute an Event of Default of Buyer upon its occurrence, and no cure period shall be applicable:

(1) Buyer's dissolution or liquidation provided that division of Buyer into multiple entities shall not constitute dissolution or liquidation;

(2) Buyer's assignment of this ESA (or any of its rights hereunder) for the benefit of creditors; or

(3) Buyer's filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency law of any State, or Buyer voluntarily taking advantage of any such law by answer or otherwise.

(B) Buyer's failure to make any payment due hereunder (subject to Buyer's rights with respect to disputed payments under Article 9 and net of outstanding damages and any other rights of offset that Buyer may have pursuant to this ESA) shall constitute an Event of Default upon the failure of Buyer to cure within twenty (20) Days of written notice from Seller to Buyer.

(C) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within thirty (30) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) Buyer's actual fraud or other material misrepresentation or willful misconduct in connection with this ESA or the operation of the Project; or

(2) Buyer's failure to comply with any other material obligation under this ESA, which would result in a material adverse impact on Seller.

(D) Any of the following shall constitute an Event of Default of Buyer upon the failure of Buyer to cure within sixty (60) Days after the date of written notice from Seller to Buyer, or such longer period as may be necessary to effectuate a cure provided that Buyer has commenced and diligently continues its efforts to effectuate a cure, not to exceed an additional thirty (30) Days:

(1) The filing of an involuntary case in bankruptcy or any proceeding under any other insolvency law against Buyer; *provided, however*, that Buyer does not obtain a stay or dismissal of the filing within the cure period;

(2) Buyer's assignment of this ESA, except as permitted in accordance with Article 18; or

(3) Any representation or warranty made by Buyer in this ESA shall prove to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Seller.

12.3 Damages Prior to Termination.

(A) Upon the occurrence of an Event of Default, and subject in each case to the limitation on damages set forth in Section 12.7, the Non-Defaulting Party shall have the right to (i) collect damages accruing prior to the Early Termination Date of this ESA from the Defaulting Party as set forth in Section 12.3(B); (ii) exercise its rights pursuant to Section 12.5; (iii) suspend performance; (iv) with respect to a Seller Event of Default, exercise its rights pursuant to Section 12.10 with respect to any Security; and (v) exercise its rights to terminate this ESA pursuant to Section 12.4.

(B) For all Events of Default, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such Event of Default prior to the Early Termination Date; provided, that if an Event of Default has occurred and has continued uncured for a period of one hundred eighty (180) Days, the Non-Defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this ESA as provided for in Section 12.4. If Seller is the Defaulting Party, the Parties agree that the damages recoverable by Buyer hereunder on account of an Event of Default of Seller shall include, to the extent applicable, an amount of cover damages equal to Replacement ESS Costs minus the product of (x) the quantity of Product so replaced, and (y) the ESS Capacity Payment Rate. Further, Seller acknowledges and agrees that in addition to the foregoing, Seller shall be obligated to pay Buyer any such damages associated with replacement of Product notwithstanding the availability or prices of electric energy and capacity from other fuel sources, such as natural gas. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental Authority in connection with Seller's failure to deliver to Buyer any Future Environmental Attributes that may become available pursuant to this ESA, provided that Buyer has used commercially reasonable efforts to avoid, minimize or mitigate such penalties. Seller also shall be obligated to pay Buyer any penalties levied by any Governmental

Authority in connection with Seller's failure to deliver to Buyer any Future Environmental Attributes pursuant to this ESA, if such failure arises out of Seller's negligence or willful misconduct. Seller acknowledges that Buyer entered into this ESA for the procurement of Product, which includes Future Environmental Attributes. If Buyer is the Defaulting Party, the Parties agree that damages recoverable by Seller hereunder on account of an Event of Default of Buyer shall include costs and losses incurred by Seller due to such Event of Default, including, to the extent applicable, an amount of cover damages equal to the 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 Capacity Payment Rate; provided that the foregoing amount shall be reduced by an amount equal to (A) the amount of any revenues that Seller, using commercially reasonable efforts, is able to obtain by selling Product to a third party or into the market, less (B) Seller's costs and expenses incurred to effectuate any such sales.

12.4 Termination. Upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right to declare a date, which shall be between fifteen (15) and sixty (60) Days after the notice thereof, upon which this ESA shall terminate ("**Early Termination Date**"). Upon the effective designation of an Early Termination Date, the Non-Defaulting Party will have the right to immediately suspend performance under this ESA, except that Seller may not suspend performance of its obligation to post and maintain Development Security and Delivery Term Security in accordance with Article 19. Neither Party shall have the right to terminate this ESA except as provided for upon the occurrence of an Event of Default as described above or as may be otherwise explicitly provided for in this ESA. Upon the termination of this ESA under this Section 12.4 for an Event of Default, the Non-Defaulting Party shall be entitled to receive the Termination Payment from the Defaulting Party, subject to the limitation on damages set forth in Section 12.7. As soon as practicable after the Early Termination Date, the Non-Defaulting Party shall (a) calculate the Termination Payment; and (b) give notice to the Defaulting Party of the amount of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such notice is effective. If Seller is the Defaulting Party, the Termination Payment will equal the Buyer Termination Payment less any amounts due from Buyer (net of any amounts due from Seller), and if Buyer is the Defaulting Party, the Termination Payment will equal the Seller Termination Payment plus any amounts due from Buyer (net of any amounts due from Seller). Notwithstanding the foregoing, if the Commercial Operation Date has not occurred by the Guaranteed Start Date, as may be extended subject to Section 3.6, Buyer may terminate this ESA in accordance with this Section 12.4, and the maximum Buyer Termination Payment, and Seller's maximum liability hereunder, will be an amount equal to the Development Security less any Delay Damages already paid to Buyer.

(A) If Seller is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Buyer shall calculate the Buyer Termination Payment in a commercially reasonable manner as of the Early Termination Date in accordance with this Section 12.4(A). The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Buyer shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and

other sources of market information. Buyer shall not have to enter into a replacement contract to establish a Buyer Termination Payment. Any dispute between the Parties with respect to the Buyer Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

(B) If Buyer is the Defaulting Party, as soon as practicable after notice of the Early Termination Date, Seller shall deliver written notice to Buyer of the amount of the Seller Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. In calculating such amount, Seller shall use information from third parties who may include dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. Seller shall not have to enter into a replacement contract to establish a Seller Termination Payment. Any dispute between the Parties with respect to the Seller Termination Payment calculation shall be subject to the dispute resolution provisions set forth in Section 13.8.

12.5 Specific Performance. In addition to the other remedies specified in this Article 12, each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of any actual or threatened breach of any material performance obligation of the other Party under this ESA.

12.6 Remedies Cumulative. Subject to limitations on damages set forth in Section 12.7, each right or remedy of the Parties provided for in this ESA shall be cumulative of and shall be in addition to every other right or remedy provided for in this ESA, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

12.7 Waiver and Exclusion of Other Damages. The Parties confirm that the express remedies and measures of damages provided in this ESA satisfy its essential purposes. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to direct, actual damages only. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages by statute, in tort or contract (except to the extent expressly provided herein). To the extent any damages are required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.8 Payment of Amounts Due to Buyer. Without limiting any other provisions of this Article 12 and at any time before or after termination of this ESA, Buyer may send Seller an invoice for such damages or other amounts as are due to Buyer at such time from Seller under this ESA, and such invoice shall be payable in the manner, and in accordance with the applicable provisions, set forth in Article 9, including the provision for late payment charges.

12.9 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this ESA.

12.10 Security Rights. Upon or at any time after the occurrence and during the continuation of an Event of Default enumerated in Section 12.1 or an Early Termination Date affecting Seller, Buyer may exercise any of the rights and remedies with respect to any Security, including any ancillary rights and remedies under Applicable Law then in effect. Buyer shall apply the proceeds of the Security realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this ESA, subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE 13

Contract Administration and Notices

13.1 Notices in Writing. Notices required by this ESA shall be addressed to the other Party at the addresses noted in Exhibit D as either Party updates them from time to time by written notice to the other Party. Any notice, request, consent, or other communication required or authorized under this ESA to be given by one Party to the other Party shall be in writing. It shall either be hand delivered or mailed via overnight service with signature required upon receipt, to the representative of said other Party. If hand delivered, the notice, request, consent or other communication shall be simultaneously sent by facsimile or other electronic means. Any such notice, request, consent, or other communication shall be deemed to have been received by the close of the Business Day on which it was hand delivered or transmitted electronically (unless hand delivered or transmitted after such close in which case it shall be deemed received at the close of the next Business Day). Real-time or routine communications concerning operation of the Project shall be exempt from this Section.

13.2 Representative for Notices. Each Party shall maintain a designated representative to receive notices, who shall be identified on Exhibit D to this ESA. Either Party may, by written notice to the other Party, change the representative or the address to which such notices and communications are to be sent.

13.3 Authority of Representatives. The Parties' representatives designated above shall have authority to act for their respective principals in all technical matters relating to performance of this ESA and to attempt to resolve disputes or potential disputes. However, in their capacity as representatives, they shall not have the authority to amend or modify any provision of this ESA.

13.4 Records. Seller and Buyer shall each keep and maintain complete and accurate records and all other data required by each of them for the purposes of proper administration of this ESA, including but not limited to books and records necessary for billing and payments and such records as may be required by any Governmental Authority or pursuant to Applicable Law. All records of Seller and Buyer pertaining to the operation of the Project or this ESA as specified herein or otherwise shall be maintained at the Project or in an office of Seller or Buyer, as applicable, in such format as may be required by Applicable Law and/or any Governmental Approval. Each Party shall have the right at its sole cost and expense, upon reasonable prior written notice to the other Party, during normal business hours, to examine and/or make copies of the records and data of such

other Party relating to this ESA (including all records and data relating to or substantiating any charges paid by or to such other Party, MWh of delivered Discharge Energy, MWh of delivered Charging Energy, Seller's operating procedures, the Project equipment manuals and Operating Records). All records required hereunder shall be maintained in accordance with, and for the applicable time periods required by, Applicable Law and the Party's retention policies, but in no event less than five (5) years after the final payment is made under this ESA. Seller shall provide Buyer copies of Operating Records upon Buyer's request.

(A) **Operating and Maintenance Records.** Seller shall maintain an accurate and up-to-date operating log, in electronic format, at the Project that will include, without limitation, dispatch and scheduled Discharge Energy delivered, Charging Energy received, and House Energy consumption; changes in operating status; planned outages, deratings and curtailments; any unusual conditions found during inspections; environmental records including environmental permits, plans, and/or studies; meteorological data; maintenance; any other operating or maintenance records as may be required by state or federal regulatory authorities and WECC and any other information required under Prudent Utility Practices or any Project agreement (in the prescribed format); and Seller Forced Outages ("**O&M Records**").

(B) **Billing and Payment Records.** To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments in accordance with the provisions of Article 9 and grant the other Party reasonable access to those records.

(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 of any new condition or event that may have a material adverse effect on the timely completion of the Project, when and as Seller becomes aware of any such condition or event.

(2) No later than thirty (30) Days prior to the start of the Test Period, (i) evidence demonstrating that Seller has obtained all Governmental Approvals then required to be obtained for the ownership, operation and maintenance of, and the supply of Product from, the Project in accordance with this ESA; and (ii) a list identifying the remaining Governmental Approvals for which Seller is responsible under the terms of this ESA, which Governmental Approvals are not yet required for the operation and maintenance of, and the supply of Product from, the Project, together with a plan for obtaining such Governmental Approvals and an estimate of the time within which such Governmental Approvals will be obtained by Seller; provided, however, that the plan for obtaining any outstanding Governmental Approvals that relate to environmental, health and safety matters shall be reasonably acceptable to Buyer.

(3) As soon as available, but not later than sixty (60) Days following the Commercial Operation Date for the Project, two (2) copies of all results of Commissioning Tests performed on the ESS.

(4) Upon request by Buyer, one (1) signed and sealed copy of all as-built drawings for the Project, including the civil and architectural works.

(5) The receipt of the above schedules, data, certificates and reports by Buyer (i) shall not be construed as an endorsement by Buyer of the design of the Project; (ii) does not constitute a warranty by Buyer as to the safety, durability or reliability of the Project; (iii) does not otherwise relieve Seller of any of its obligations or potential liabilities under the Project contracts; or (iv) except with respect to the obligations of Buyer to maintain the confidentiality of documents and information received by it, impose any obligation or liability on Buyer.

13.5 Provision of Real-Time Data. Upon request by Buyer, Seller shall provide real-time, read-only and downloadable electronic access to Buyer of all meteorological and other related data collected at the Project and corresponding unit availability data.

13.6 Examination of Records. Buyer may review operating procedures, equipment manuals, Operating Records and data kept by Seller relating to transactions under and administration of this ESA, at any time during the period the records are required to be maintained, from time to time upon request and during normal business hours. Buyer shall have the right, upon reasonable notice and at its sole expense (unless Seller has defaulted under this ESA, in which case Seller will bear the expense), to examine the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this ESA. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and any underpayment by Buyer will be paid, and any overpayment by Buyer will be reimbursed by Seller, promptly in accordance with payment provisions in this ESA.

13.7 Exhibits. Either Party may change the information for its notice addresses in Exhibit D at any time without the approval of the other Party. Exhibit A, Exhibit B, and Exhibit E may be changed at any time with the mutual consent of both Parties.

13.8 Resolution of Issues. The Parties agree that it is in the best interest of both Parties to attempt to resolve disputes that arise under this ESA in a quick and inexpensive manner. To that end, the Parties commit to use commercially reasonable efforts to resolve disputes informally. For all disputes that arise under this ESA, the Parties immediately, through their designated representatives, shall negotiate with one another in good faith in order to reach resolution of the dispute. Such negotiation shall commence within five (5) Business Days of the date of the letter from one Party representative to the other Party representative notifying that Party of the nature of the dispute. In the event that the Parties' representatives cannot agree to a resolution of the dispute within thirty (30) Days after the commencement of negotiations, written notice of the dispute ("**Dispute Notice**"), together with a statement describing the issues or claims, shall be delivered, within five (5) Business Days after the expiration of such thirty (30) Day period, by each of the Parties' representatives to its respective senior officer or official (such senior officer or official to be selected by each of the Party representatives in his or her sole discretion, provided such senior officer or official has authority to bind the respective Party). Within five (5) Business Days after receipt of the Dispute Notice, the senior officers or officials for both Parties shall negotiate in good faith to resolve the dispute, *provided* that the failure to deliver such Dispute Notice shall not prejudice either Party's right to submit such dispute to litigation. In the event that the senior officers

or officials cannot resolve such dispute within thirty (30) Days after the matter was submitted to them, then either Party may submit the matter to mediation under the New Mexico Mediation Procedures Act. If mediation does not resolve the dispute within thirty (30) Days of the submission to mediation, then either Party may seek legal and equitable remedies. If a Party receiving notice of a demand for mediation does not agree in writing within ten (10) Days to participate in mediation, then the Party demanding mediation may, after giving three (3) Business Days' written notice, declare the mediation process unsuccessful and initiate the pursuit of legal and equitable remedies.

ARTICLE 14 Force Majeure

14.1 Definition.

(A) Neither Party will be considered to be in default in respect to any obligation hereunder if delays in or failure of performance is due to a Force Majeure Event, except for the obligation to pay monies due. A “**Force Majeure Event**” shall mean an event or circumstance that arises after the Execution Date that is beyond the reasonable control of and is not caused by the negligence or lack of due diligence of the affected Party or its contractors or suppliers and adversely affects the performance by that Party of its obligations under or pursuant to this ESA. Such events or circumstances may include, but are not limited to: actions or inactions of any Governmental Authority or any civil, tribal, or military authority, acts of God, war, riot or insurrection, terrorism, blockades, embargoes, sabotage (including arson and vandalism), epidemics (including circumstances related to COVID-19 that occur after the Execution Date), 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 (D) (viii) below, strikes, lockouts or other labor disputes (not caused by the failure of the affected Party to comply with the terms of a collective bargaining agreement).

(B) Equipment breakdown or the inability of Seller to use equipment due to its design, construction, operation, or maintenance shall not be considered a Force Majeure Event, unless Seller can demonstrate that such equipment was of a quality consistent with Prudent Utility Practice, operated within its useful life, installed and maintained properly, and not subject to known systemic quality problems.

(C) 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.

(D) Notwithstanding the foregoing, the term Force Majeure Event does not include (i) inability by Seller to procure equipment for the Project or any component parts therefor, for any reason (the risk of which is assumed by Seller); (ii) any other acts or omissions of any third party, including any vendor, materialman, customer, or supplier of Seller, or any full or partial curtailment in the Product of the Project caused by or arising from the acts or omissions of such third parties, unless such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure

Event, as the definition is applied to Seller; (iii) any delay in the Interconnection Date caused by Seller; (iv) any full or partial curtailment in the electric output of the Project that is caused by or arises from a mechanical or equipment breakdown, or other mishaps, events or conditions, attributable to normal wear and tear; (v) failure to abide by Prudent Utility Practices; (vi) changes in market conditions or actions of Governmental Authorities (or other events or circumstances) that affect the cost of equipment, labor, materials or supplies, or that affect demand for power or price for any of Seller's or Buyer's products; (vii) except as set forth in (A) above, any labor strikes, slowdowns or stoppages, or other labor disruptions against a Party or its contractors or subcontractors; or (viii) weather events or sudden actions of the natural elements within twenty (20) year normal weather patterns, including normal lightning strikes, but excluding unusually severe events, such as tornadoes and floods.

(E) In no event will any delay or failure of performance caused by a Force Majeure Event extend this ESA beyond its stated Term. Notwithstanding any other provision in this ESA to the contrary, in the event that any delay or failure of performance caused by a Force Majeure Event affecting Seller continues for an uninterrupted period of one hundred eighty (180) Days from its inception, either Party (or Buyer as provided in Section 3.6) may, at any time following the end of such period, terminate this ESA upon written notice to the affected Party, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(F) Except as otherwise provided in this ESA, each Party shall be excused from performance when non-performance was caused, directly or indirectly, by a Force Majeure Event but only and to the extent thereof, and existence of a condition of Force Majeure Event shall not relieve the Parties of certain obligations under this ESA (including payment obligations) to the extent that performance of such obligations is not precluded by the condition of Force Majeure Event.

14.2 Notification Obligations. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party claiming that a Force Majeure Event has occurred shall notify the other Party as soon as reasonably practicable by telephone and/or email, and in writing as soon as reasonably practicable but in no case later than ten (10) Business Days thereafter; provided that failure to provide notice within ten (10) Business Days only waives the Force Majeure Event as to periods prior to when the notice is given of such occurrence, of the nature, cause, date of commencement thereof and the anticipated duration, and shall indicate whether any deadlines or date(s) imposed hereunder may be affected thereby. The suspension of performance shall be of no greater scope and of no greater duration than is necessary. A Party claiming that a Force Majeure Event has occurred shall not be entitled to relief therefor unless and until it has delivered a notice therefor as required in this Section. The Party claiming that a Force Majeure Event has occurred shall notify the other Party of the cessation of the Force Majeure Event or of the conclusion of the affected Party's cure for the Force Majeure Event, in either case as soon as reasonably practicable.

14.3 Duty to Mitigate. The Party claiming that a Force Majeure Event has occurred shall use its commercially reasonable efforts to cure the cause(s) preventing its performance of this ESA and shall provide to the other Party weekly progress reports describing actions taken to end the Force Majeure Event; *provided, however*, that the settlement of strikes, lockouts and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be

required to settle such strikes, lockouts or other labor disputes by acceding to demands which such Party deems to be unreasonable.

14.4 Force Majeure Event Occurring After Commercial Operation. Upon the occurrence and during the continuance of any of the following: (i) a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event prevents the ability of the Solar Facility to supply Charging Energy to the Project during the Recapture Period, (ii) a Force Majeure Event and the effects thereof, to the extent that a Force Majeure Event prevents the ability of the ESS to deliver Product, or (iii) an unscheduled outage of the Solar Facility to the extent that such outage prevents the ability of the Solar Facility to supply Charging Energy to the Project during the Recapture Period that lasts longer than forty-eight (48) hours, then in the case of (i) the hours during which the Force Majeure Event occurs, in the case of (ii) the hours of the reduced delivery of Product, and in the case of (iii) the hours beyond the forty-eight (48) hour duration shall be excluded from the determination of the ESS Capacity Payment as set forth in Section 8.1.

ARTICLE 15

Representations, Warranties and Covenants

15.1 Seller's Representations, Warranties and Covenants. Seller hereby represents and warrants as follows:

(A) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller is qualified to do business in each other jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller; and Seller has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Seller have been duly authorized by all necessary limited liability company action, and do not and will not:

(1) require any consent or approval by any governing body of Seller, other than that which has been obtained and is in full force and effect;

(2) violate any Applicable Law, or violate any provision in any formation documents of Seller, the violation of which could have a material adverse effect on the ability of Seller to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Seller's formation documents or bylaws, or under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA;
or

(4) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than in favor of a Lender or as otherwise may be contemplated by this ESA) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this ESA.

(C) The obligations of Seller under this ESA are valid and binding obligations of Seller.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Seller is a party or any judgment, order, statute, or regulation that is applicable to Seller or the Project.

(E) To the knowledge of Seller, and except for those permits, consents, approvals, licenses and authorizations identified in Exhibit E, which Seller anticipates will either not be needed or be obtained by Seller in the ordinary course of business, all Governmental Approvals necessary for Seller's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

(F) Seller shall comply with all Applicable Laws in effect or that may be enacted during the Term, with which the failure to comply shall have a material adverse effect on the Parties.

(G) Seller shall disclose to Buyer the extent of, and as soon as it is known to Seller, any violation of any Applicable Laws arising out of the construction of the Project, the presence of Environmental Contamination at the Project (actual or alleged), or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to such Environmental Contamination.

(H) To the full extent authorized by FERC regulations and the FERC standards of conduct, Seller hereby authorizes Buyer to contact and obtain information concerning the Project and Interconnection Facilities directly from the Transmission Provider.

(I) To the extent applicable, Seller will have good and marketable title to the Future Environmental Attributes immediately prior to delivery to Buyer.

(J) Seller will not sell, deliver or transfer the Future Environmental Attributes to any other Person, in whole or in part.

(K) To the extent applicable, all right, title and interest in and to the Future Environmental Attributes will be free and clear of any liens, Taxes, claims, security interests or other encumbrances except for any right or interest by any entity claiming through Buyer.

(L) To the extent applicable, each Future Environmental Attribute will 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, as each may be amended.

(M) As soon as practical but in no event longer than fifteen (15) Days after the execution thereof, Seller shall provide a true and correct copy of the Interconnection Agreement to Buyer. On and after the execution of the Interconnection Agreement, Seller shall provide copies of any material amendments to the Interconnection Agreement to Buyer.

(N) After the Commercial Operation Date, Seller will not incur, assume or carry any Debt in connection with the Project.

(O) To the extent applicable, Seller is in compliance with the Executive Order.

15.2 Buyer's Representations, Warranties and Covenants. Buyer hereby represents and warrants as follows:

(A) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico and is qualified in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Buyer. Buyer has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this ESA.

(B) The execution, delivery, and performance of its obligations under this ESA by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(1) require any consent or approval of Buyer's shareholders, officers or directors, except as set forth in Section 6.1;

(2) violate any Applicable Law, or violate any provision in any corporate documents of Buyer, the violation of which could have a material adverse effect on the ability of Buyer to perform its obligations under this ESA;

(3) result in a breach or constitute a default under Buyer's corporate charter or bylaws, or under any agreement relating to the management or affairs of Buyer, or any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA; or

(4) result in, or require the creation or imposition of, any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this ESA) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this ESA.

(C) Assuming this ESA is a valid and binding obligation of Seller, this ESA is a valid and binding obligation of Buyer, subject to the contingencies identified in Article 6.

(D) The execution and performance of this ESA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which Buyer is a party or any judgment, order, statute, or regulation that is applicable to Buyer.

(E) To the knowledge of Buyer, and except for the NMPRC Approval(s) identified in Sections 6.1 and 17.3, all required Governmental Approvals necessary for Buyer's execution, delivery and performance of this ESA have been duly obtained and are in full force and effect.

ARTICLE 16 Insurance

16.1 Evidence of Insurance.

(A) Seller shall, at least thirty (30) Days prior to the commencement of any work on the Project, and thereafter, on each policy anniversary, provide Buyer 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 provided by the ISO form or an equivalent with regard to this Project. All such insurance shall be primary insurance. All policies shall be written with insurers rated at least A- VII by A.M. Best or that Buyer, in its reasonable discretion, deems acceptable (such acceptance shall not be unreasonably withheld or delayed by Buyer). Seller's liability under this ESA shall not be limited to the amount of insurance coverage required herein.

16.2 Term and Modification of Insurance.

(A) All liability insurance required under this ESA shall cover occurrences during the Term of this ESA on an "occurrence" basis. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the Execution Date and such insurance shall be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five (5) calendar years after the Term.

(B) Seller may self-insure either all or any portion of the foregoing coverages so long as there is no material decrease in its net worth or means that renders the same insufficient for purposes of self-insurance. If at any time during the Term Buyer, in its reasonable discretion, determines that it will no longer accept self-insurance from Seller, Buyer shall provide notice to Seller and Seller shall obtain the insurance coverages required by Exhibit G within sixty (60) Days.

16.3 Endorsements and Other Requirements.

(A) Seller shall provide Buyer thirty (30) Days' prior written notice of non-renewal or cancellation of insurance (except that such notice shall be ten (10) Days for non-payment of premiums) and endorsements that waive all rights of subrogation against Buyer and its Affiliates, officers, directors, agents, subcontractors and employees.

(B) Seller shall provide endorsements providing that the insurance required under this ESA is primary and non-contributory with respect to other insurance carried by Buyer.

(C) Seller shall provide endorsements providing that the liability insurance required pursuant to paragraphs (B), (C) and (D) of Exhibit G includes Buyer and its Affiliates, officers, directors, and employees as additional insureds for ongoing 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 PNM of any material investigations, notices of alleged violations or findings of violation of Applicable Law from any Governmental Authority, including any audit, notification, inspection or inquiry that has been commenced by any Governmental Authority in respect of a potential violation of Applicable Law with regard to the Project or the ESA. Seller shall give all required notices, shall timely procure and maintain all Seller required permits, and shall timely pay all charges and fees in connection therewith. Seller shall make available to Buyer, upon reasonable request, any personnel or records relating to the Project or this ESA to the extent Buyer requires the same to fulfill any regulatory reporting requirements, or for purposes of litigation or regulatory proceedings, including but not limited to, litigation or proceedings before the NMPRC, FERC, or other regulatory bodies. The Parties shall treat information disclosed pursuant to this Section 17.1 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 the execution and performance of this ESA and a final order or other regulatory determination from the NMPRC that Buyer may procure renewable energy and associated RECs pursuant to the PPA and may recover the cost of such procurement (collectively, "**Requested Actions**"). In particular, but without limitation:

(A) Buyer agrees to use commercially reasonable efforts to request and obtain NMPRC Approval of the Requested Actions, and Seller agrees to cooperate with and assist Buyer in these efforts as Buyer may reasonably request.

(B) NMPRC Approval shall be considered received when the NMPRC issues a final written order that is no longer subject to appeal or further proceedings on remand (i) approving the Requested Actions, including authorization to recover the costs of procurement of the Renewable Energy Output, as that term is defined in the PPA; or (ii) approving the Requested Actions in part or subject to conditions or substantial modifications, provided that each of Seller and Buyer agrees, subject to its reasonable discretion, to accept those conditions, modifications or such partial approval as sufficient (collectively, "**NMPRC Approval**").

(1) If the NMPRC disapproves any of the Requested Actions, then this ESA shall automatically terminate ten (10) Days after the date of such action by the NMPRC and shall be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person.

(2) If any NMPRC Approval is issued as described in clause (B)(ii) above, then the Parties shall meet and confer no later than fifteen (15) Days after the date of the NMPRC Approval order regarding whether Buyer or Seller will elect to amend this ESA to address any conditions or substantial modifications or not to accept any partial or conditioned approval or substantial modification of this ESA, including a potential extension to the Expected Commercial Operation Date and the Guaranteed Start Date. If the Parties are unable to mutually agree on any amendments to this ESA to address such NMPRC Approval order, then this ESA shall automatically terminate ten (10) Days after the date on which the parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

(3) If the NMPRC, for any reason, has not entered an order upon the request for approval of all Requested Actions by January 5, 2021 (“**Regulatory End Date**”), then the Parties shall meet and confer no later than fifteen (15) Days after the Regulatory End Date regarding a potential extension of the Regulatory End Date. If the Parties are unable to mutually agree to an extension of the Regulatory End Date, including a potential extension to the Expected Commercial Operation Date and the Guaranteed Start Date, then this ESA shall automatically terminate ten (10) Days after the date on which the Parties conferred and be of no further force or effect, with no further obligation or liability of either Party to the other Party or to any other Person, unless Buyer and Seller mutually agree in writing within such ten (10) Day period that this ESA remain in effect.

17.4 Compliance with Reliability Standards. To the extent that new reliability standards applicable to the operation and maintenance of the Project are promulgated by the WECC, NERC, FERC, or NMPRC, or any successor agencies, any and all costs incurred as a result of actions required for compliance with the new reliability standards shall be borne by Seller. To the extent that (i) a negligent or wrongful action or inaction or (ii) a violation of such reliability standard by Seller results in monetary penalties being assessed to Buyer by WECC, NERC, FERC or any successor agency, for lack of compliance with reliability standards related to the operation and maintenance of the Project, Seller shall reimburse Buyer for its share of monetary penalties

17.5 Compliance Information. Each Party acting reasonably shall, for the purpose of gathering information and/or providing oral or written reports, testimony, affidavits or other submissions relevant to any Governmental Approvals, Non-Governmental Compliance Obligations, Additional Consents, Applicable Laws or in connection with any litigation, arbitration or administrative proceeding before any authority of competent jurisdiction: (i) deliver or cause to be delivered to the other Party any necessary or required certificates of its officers, accountants,

engineers or agents; and/or (ii) make available necessary personnel with knowledge as to such matters.

ARTICLE 18 Assignment and Other Transfer Restrictions

18.1 No Assignment Without Consent. Except as permitted in this Article 18, neither Party shall sell, transfer, or assign this ESA, in whole or in part, and Seller shall not sell, transfer or assign the Project, in whole or in part, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned and so long as any proposed assignee satisfies the conditions set forth in this Article 18.

(A) Buyer's consent shall not be required for: (i) any assignment or transfer of this ESA by Seller to an Affiliate of Seller; or (ii) any assignment or transfer of this ESA by Seller in connection with a Seller Permitted Transfer, *provided* that in the case of any assignment or transfer pursuant to clauses (i) or (ii) above that are not Changes of Control of Seller, such assignee 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; and, *provided further*, that in the case of any assignment or transfer pursuant to clause (i) above, such assignee (a) is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project (or otherwise agrees not to interfere with the existing Qualified Operator for the Project); (b) delivers evidence reasonably satisfactory to Buyer that such assignee's creditworthiness is equal to or better than that of Seller; and (c) shall have complied with the obligations of the assigning Party to provide Development Security or Delivery Term Security, as applicable, in accordance with Article 19 of this ESA (or otherwise agrees to maintain the existing Development Security or Delivery Term Security, as applicable, for the Project).

(B) Seller's consent shall not be required for any assignment of this ESA by Buyer to any Affiliate or in connection with the merger, reorganization, consolidation or the sale of all or substantially all assets and/or stocks 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 any such assignee delivers evidence reasonably satisfactory to Seller that such assignee has NMPRC Approval of this ESA as and if required by NMPRC regulations.

18.2 Conditions on Transfers. If the rights and interests of a Party in this ESA shall be sold, transferred or assigned to an Affiliate, upon satisfaction of the conditions set forth in this Article 18, and upon the Affiliate's agreement in writing to be bound by and to assume the terms and conditions hereof and any and all obligations to the non-assigning Party arising or accruing hereunder from and after the date of such assumption, and provided that the assigning Party is not then in default of its obligations under this ESA or that any then-existing default is cured no later than the date of assignment, then the assigning Party shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date, and non-assigning Party shall continue this ESA with the Affiliate as if such Person had been named under this ESA; *provided, however*, that the assigning Party shall not be released and discharged from and shall remain liable for any and all obligations to the other Party arising or accruing hereunder prior to such assumption.

18.3 Change of Control. Except for a Seller Permitted Transfer, any Change of Control of Seller, whether voluntary or by operation of law, shall require the prior written consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed.

18.4 Transfer Without Consent Is Null and Void. Any Change of Control or sale, transfer, or assignment of any interest in the Project or in this ESA made without fulfilling the requirements of this ESA shall be null and void and shall constitute an Event of Default pursuant to Article 12.

18.5 Subcontracting. Seller may subcontract its duties or obligations under this ESA without the prior written consent of Buyer; *provided*, that no such subcontract shall relieve Seller of any of its duties or obligations hereunder. All subcontractors required by law to be qualified to do business in the State of New Mexico or licensed in accordance with New Mexico law shall be so qualified or licensed. Seller shall be solely responsible for the engagement, supervision, management, satisfactory performance of the subcontractors or unsatisfactory performance.

18.6 Assignment to Lenders.

(A) Cooperation. In connection with any assignment of this ESA by Seller to its Lenders, as soon as reasonably practicable after reasonable request from Seller or any Lender, Buyer will cooperate reasonably with Seller and Lender to agree upon and enter into a consent and agreement, or, if applicable, an estoppel certificate, an estoppel and consent agreement, or similar instrument, all in a form acceptable to Buyer including exclusions, assumptions and caveats typical for such documents or necessary for the accuracy or delivery thereof, providing for, among other things, provisions containing at least the following: (i) an option, but not an obligation, for the Lenders to cure any monetary Event of Default of Seller within thirty (30) Days of the expiration of the cure period provided therefor in Section 12.1, and cure any non-monetary Event of Default of Seller within sixty (60) Days of the expiration of the cure period provided therefor in Section 12.1, prior to Buyer terminating this ESA; (ii) Buyer providing written notice to Lenders of any Events of Default of Seller; and (iii) Buyer not terminating this ESA if Lenders need to foreclose on the Project prior to curing any Event of Default of Seller giving rise to such termination, but only to the extent that the period required for such foreclosure and cure does not exceed one hundred eighty (180) Days from receipt by Lenders of written notice of such Event of Default of Seller. Buyer's consent shall not be required in connection with a Lender's exercise of remedies under its financing agreements for the Project, provided however, that in any case where a Lender's remedy involves the direct or indirect transfer of shares of, or equity interests in, Seller (including a Change of Control of Seller), or assignment of this ESA or any of Seller's rights or obligations hereunder, in either case, then any such transfer or assignment shall only be to a Person who (1) is or retains a Qualified Operator, (2) either has (x) a long-term senior unsecured debt credit rating of "Baa3" or higher by Moody's and "BBB-" or higher by S&P, or (y) a tangible net worth of no less than one hundred million dollars (\$100,000,000) and (3) except in the event of a Change of Control of Seller, agrees in writing to be bound by the terms of this ESA; provided that, in all cases, (a) Buyer will have no obligation to alter or modify the terms of this ESA or provide any consent or enter into any agreement that has a material adverse effect on Buyer, and (b) Seller will be responsible for Buyer's reasonable costs (including, but not limited to, attorneys' fees) associated with Buyer's review, negotiation, execution and delivery of any documents in connection with such assignment. Nothing in this Section 18.6 shall impair Buyer's right to receive all of the damages

arising out of or relating to Seller's default, including damages accruing prior to termination as set forth in Section 12.3 of this ESA.

(B) Financing Liens. Either Party may, without the other Party's consent, transfer, sell, pledge, encumber or assign this ESA or the revenues or proceeds therefrom in connection with any financing, *provided* that such a collateral assignment by Seller shall not place any limitation on Buyer's rights or materially expand Buyer's liability, risks or obligations under this ESA; and *further provided* that Seller shall not be relieved of any of its obligations or liability under this ESA and that the Lender in any such collateral assignment acknowledges and agrees that the Project shall be operated and maintained by a Qualified Operator. Promptly after making any such encumbrance, Seller shall notify Buyer in writing of the name, address, and telephone and facsimile numbers of each Lender, collateral agent or trustee, as applicable, to which Seller's interest under this ESA has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer notice of any change in the information provided in the initial notice or any revised notice.

ARTICLE 19

Credit and Security Requirements

19.1 Security. Seller shall post and maintain, at its sole cost and expense, security equal to Sixty Thousand Dollars (\$60,000) per MW multiplied by the Guaranteed Capacity within the earlier of (a) thirty (30) Days after the receipt of NMPRC Approval and (b) the commencement of construction of the Project ("**Development Security**"). 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 Seventy Five Thousand Dollars (\$75,000) per MW multiplied by the Guaranteed Capacity (the "**Delivery Term Security**"). Seller shall replenish the Delivery Term Security, as applicable, to such required amount within fifteen (15) Days after any draw by Buyer. Upon achievement of the Commercial Operation Date or promptly after Buyer terminates this ESA as a result of Seller's failure to achieve Commercial Operation on or before the Guaranteed Start Date, Buyer shall return the Development Security to Seller, less any amounts drawn against the Development Security pursuant to Section 12.10. In the event that no amounts are due and owing under this ESA and provided no claims are then outstanding, Seller's Delivery Term Security shall be released to Seller upon the earlier of (x) the fifteenth (15th) Business Day after termination of this ESA in accordance with its terms; and (y) on the fifteenth (15th) Business Day after the expiration of the Term.

19.2 Form of Security. The following are deemed acceptable methods for posting Security, which methods may be used in any combination, in the discretion of Buyer: (a) cash, (b) a Letter of Credit in form reasonably acceptable to the Buyer issued by a U.S. bank or a U.S. branch of a foreign bank with credit ratings by both S&P and Moody's of at least A- and A3, respectively and at least Ten Billion Dollars (\$10,000,000,000) in U.S.-based assets ("**Issuer Minimum Requirements**"), (c) a Seller Guaranty from Seller Guarantor, or (d) other security as may be reasonably acceptable to Buyer. If at any time there shall occur a Downgrade Event with respect to Seller Guarantor, then Buyer may require Seller to post a Letter of Credit or cash in a pledged

collateral account in an amount equal to the then-applicable amount of any outstanding Seller Guaranty comprising the Seller Security. Upon receipt of the Letter of Credit or cash, the Seller Guaranty shall be returned promptly to Seller. Notwithstanding the foregoing, Seller's obligation to provide a Letter of Credit in lieu of a Seller Guaranty under this Section 19.2 shall be suspended during any period that (x) Seller Guarantor is no longer experiencing a Downgrade Event and (y) the Seller Guaranty is reinstated by Seller Guarantor in accordance with the requirements of this Section 19.2. Any Letter of Credit provided hereunder shall be renewed by Seller for successive one-year or shorter periods. Seller shall notify Buyer not less than thirty (30) Days prior to the termination of any Letter of Credit. If Buyer receives notice from the issuing bank that the Letter of Credit will not be extended, Seller must provide a substitute Letter of Credit from an alternative bank satisfying the Issuer Minimum Requirements or alternative acceptable Security. The receipt of the substitute Letter of Credit or other acceptable Security must be effective on or before the expiration date of the expiring Letter of Credit and delivered to Buyer at least thirty (30) Days before the expiration date of the original Letter of Credit. If Seller fails to supply a substitute Letter of Credit or other acceptable Security as required, then Buyer will have the right to draw on the total amount of the expiring Letter of Credit. If (a) the credit rating of the issuer bank of a Letter of Credit falls below the Issuer Minimum Requirements, (b) the issuer bank fails to honor a properly documented request to draw on such Letter of Credit or disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit, or (c) the issuer of the outstanding Letter of Credit fails to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit, then Seller shall have five (5) Business Days (or such longer period as Buyer in its sole discretion may permit in writing) following written notice from Buyer to obtain a suitable Letter of Credit from another bank that meets the Issuer Minimum Requirements.

19.3 Grant of Security Interest. To the extent that Seller posts cash to secure its obligations under this ESA, Seller hereby grants to Buyer a present and continuing security interest in, and lien on (and right of setoff against), and collateral assignment of, all cash collateral provided by Seller to Buyer as collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer. Seller agrees to take such actions as reasonably required to perfect in favor of Buyer a first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

19.4 Use of Security. In addition to any other remedy available to it, Buyer in its sole discretion may draw from, offset against or make demand under such security to recover any amounts owing to it arising out of this ESA, including any damages due to Buyer and any amount for which Buyer is entitled to indemnification under this ESA. Buyer may draw from, offset against or make demand under all or any part of the amounts due to it from any form of Security provided to Buyer and from all such forms, in any sequence and at any time before or after termination of the ESA, as Buyer may select until such time as the Security is exhausted.

ARTICLE 20
Indemnity; Insurance Proceeds

20.1 Indemnification.

(A) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Seller shall defend, save harmless and indemnify on an After Tax Basis the Buyer, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all third-party claims, demands, losses, liabilities and expenses, including reasonable attorneys' fees, for personal injury, death or damage to real property and tangible personal property of any third party (collectively, "**Losses**") to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Seller, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties. Notwithstanding the foregoing, Seller shall not be required to indemnify Buyer for penalties assessed on Buyer that are associated with the performance or non-performance of the ESS that are otherwise covered herein by liquidated damages, including those damages set forth in Sections 3.7, 3.8, 3.13, 3.14, and Exhibit I.

(B) Subject to the provisions of Article 12, and to the fullest extent permitted by law, Buyer shall defend, save harmless and indemnify on an After Tax Basis the Seller, its Affiliates, and their respective directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable, from and against all Losses to the extent arising out of, resulting from, or caused by the negligence or willful misconduct of Buyer, its Affiliates, directors, officers, employees, agents, subcontractors, or anyone directly or indirectly employed by any of them or anyone for whose acts any one of them may be liable; *provided* that, the waiver of consequential damages set forth in Section 12.7 shall not apply with respect to claims made by third parties.

20.2 Notice of Claims; Procedure. The indemnitee shall, with reasonable promptness after obtaining knowledge thereof, provide the indemnitor with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. Indemnitor shall have thirty (30) Days after its receipt of the claim notice to notify indemnitee in writing whether or not indemnitor agrees that the claim is subject to this Article 20 and, if so, whether indemnitor elects to undertake, conduct and control, through counsel of its choosing acceptable to indemnitee and at indemnitor's sole risk and expense, the settlement or defense of the claim. If within thirty (30) Days after its receipt of the claim notice, indemnitor notifies indemnitee that it elects to undertake the settlement or defense of the claim, indemnitee shall cooperate with indemnitor in connection therewith including by making available to indemnitor all relevant information and the testimony of employees and agents material to the defense of the claim. Indemnitor shall reimburse indemnitee for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as indemnitor is contesting the claim in good faith and with diligence, indemnitee shall not pay or settle the claim. Notwithstanding the

foregoing, indemnitee shall have the right to pay or settle any claim at any time without the consent of indemnitor; *provided* that, in such event it waives any right to indemnification therefor. If indemnitor does not provide a responsive notice within the thirty (30) Day period set forth in this Section 20.2, or otherwise fails to assume or diligently prosecute the defense of any claim in accordance with this Section 20.2, the indemnitee shall have the absolute right to control the defense of such claim, and the fees and expenses of such defense, including reasonable attorneys' fees of the indemnitee's counsel and any amount determined to be owed by the indemnitee pursuant to such claim shall be borne by the indemnitor; *provided* that, the indemnitor shall be entitled, at its sole expense, to participate in (but not control) such defense. Subject to the foregoing, (a) the indemnitor shall control the settlement of all claims as required under the insurance policies set forth in Article 16, as applicable, as to which it has assured the defense; *provided, however*, that (i) such settlement shall include dismissal with prejudice of the claim and an explicit and unconditional release from all indemnitees; and (ii) the indemnitor shall not conclude any settlement without the prior approval of the indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed; and (b) except as provided in the preceding sentence concerning the indemnitor's failure to assume or to diligently prosecute the defense of any claim, no indemnitee seeking reimbursement pursuant to the foregoing indemnity shall, without the prior written consent of the indemnitor, settle, compromise, consent to the entry of any judgment or otherwise seek to terminate any action, claim suit, investigation or proceeding for which indemnity is afforded hereunder unless the indemnitee waives any right to indemnification therefor or reasonably believes that the matter in question involves potential criminal liability.

20.3 Insurance Proceeds. In the event that an indemnifying Party is obligated to indemnify the indemnified Party under this Article 20, the amount owing to the indemnified Party will be the amount of the indemnified Party's Loss net of any insurance proceeds received by the indemnified Party following a reasonable effort by such Party to obtain such insurance proceeds.

ARTICLE 21 Governmental Charges

21.1 Allocation of Governmental Charges. Seller shall pay or cause to be paid all Governmental Charges on or with respect to the Project or on or with respect to the sale and making available to Buyer the Product that are imposed prior to the Point of Delivery or prior to the transfer of the Future Environmental Attributes pursuant to Article 11. Buyer shall pay or cause to be paid all Governmental Charges (other than any Governmental Charges for which Seller is liable under this Section 21.1) on or with respect to the taking and purchase by Buyer of the Product that are imposed at and from the taking of the Product by Buyer at the Point of Delivery or at and after the transfer of the Future Environmental Attributes pursuant to Article 11. If a Party is required to remit or pay Governmental Charges that are the other Party's responsibility hereunder, such Party shall promptly reimburse the other for such Governmental Charges. Both Parties shall use reasonable efforts to administer this ESA and implement the provisions in accordance with their intent to minimize Governmental Charges, so long as no Party is materially adversely affected by such efforts. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charge for which it is exempt under Applicable Law. In the event any sale of Product hereunder is exempt from or not subject to any particular Governmental Charge, Buyer shall provide Seller with all reasonably requested documentation within thirty (30) Days after requested by Seller to evidence such exemption or exclusion.

ARTICLE 22 Miscellaneous

22.1 Waiver. Subject to the provisions of Section 13.8, the failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions of this ESA, or to take advantage of any of its rights thereunder, shall not constitute a waiver or relinquishment of any such terms, conditions, or rights, but the same shall be and remain at all times in full force and effect.

22.2 Fines and Penalties. Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Seller and for which adequate financial reserves have been set aside to pay such fines, penalties or costs in the event of an adverse determination. Buyer shall pay when due all fees, fines, penalties or costs incurred by Buyer or its agents, employees or contractors for noncompliance by Buyer, its employees, or subcontractors with any provision of this ESA, or any contractual obligation, permit or requirements of law except for such fines, penalties and costs that are being actively contested in good faith and with due diligence by Buyer.

22.3 Rate Changes. Absent the agreement of all Parties to the proposed change, the standard of review for changes to this ESA whether proposed by a Party, a non-party, or the Federal Energy Regulatory Commission acting sua sponte shall be the “public interest” standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

22.4 Disclaimer of Certain Third Party Beneficiary Rights. In executing this ESA, Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with Seller. Nothing in this ESA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any Person not a party to this ESA.

22.5 Relationship of the Parties.

(A) This ESA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

(B) Seller shall be solely liable for the payment of all wages, Taxes, and other costs related to the employment of Persons to perform services for Seller, including all federal, state, and local income, social security, payroll, and employment taxes and statutorily mandated workers’ compensation coverage. None of the Persons employed by Seller shall be considered employees of Buyer for any purpose; nor shall Seller represent to any Person that he or she is or shall become a Buyer employee.

22.6 Equal Employment Opportunity Compliance Certification. Seller acknowledges that, as a government contractor, Buyer is subject to various federal laws, executive orders, and

regulations regarding equal employment opportunity and affirmative action. These laws may also be applicable to Seller as a subcontractor to Buyer. To the extent such laws are applicable to Seller, all applicable equal opportunity and affirmative action clauses shall be deemed to be incorporated herein as required by federal laws, executive orders, and regulations, including 41 C.F.R. § 60-1.4(a)(1)-(7).

22.7 Survival of Obligations. Cancellation, expiration, or earlier termination of this ESA shall not relieve the Parties of obligations that by their nature should survive such cancellation, expiration, or termination, prior to the term of the applicable statute of limitations, including warranties, and remedies which obligation shall survive for the period of the applicable statute(s) of limitation.

22.8 Severability. In the event any of the terms, covenants, or conditions of this ESA, its Exhibits or Schedules, or the application of any such terms, covenants, or conditions, shall be held invalid, illegal, or unenforceable by any court or administrative body having jurisdiction, all other terms, covenants, and conditions of the ESA and their application not adversely affected thereby shall remain in force and effect; *provided, however*, that Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment in the provisions of this ESA with a view toward effecting the purposes of this ESA by replacing the provision that is held invalid, illegal, or unenforceable with a valid provision the economic effect of which comes as close as possible to that of the provision that has been found to be invalid, illegal or unenforceable.

22.9 Complete Agreement; Amendments. The terms and provisions contained in this ESA constitute the entire agreement between Buyer and Seller with respect to the Project and shall supersede all previous communications, representations, or agreements, either oral or written, between Buyer and Seller with respect thereto. Subject to approval by any Governmental Authority with jurisdiction over this ESA, this ESA may be amended, changed, modified, or altered, *provided* that such amendment, change, modification, or alteration shall be in writing and signed by both Parties hereto, and *provided, further*, that the Exhibits and Schedules attached hereto may be changed according to the provisions of Section 13.7.

22.10 Binding Effect. This ESA, as it may be amended from time to time pursuant to this Article, shall be binding upon and inure to the benefit of the Parties hereto and their respective successors-in-interest, legal representatives, and assigns permitted hereunder.

22.11 Headings. Captions and headings used in this ESA are for ease of reference only and do not constitute a part of this ESA.

22.12 Counterparts. This ESA or any supplement, modification, amendment or restatement hereof may be executed in two or more counterpart copies of the entire document or of signature pages to the document, each of which may have been executed by one or more of the signatories hereto and thereto and deliveries by mail, courier, telecopy or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

22.13 Governing Law and Choice of Forum. The interpretation and performance of this ESA and each of its provisions shall be governed and construed in accordance with the laws of the

State of New Mexico notwithstanding its conflict of laws rules or any principles that would trigger the application of any other law. All disputes arising out of or related to this ESA shall be brought in the United States District Court for the District of New Mexico.

22.14 Confidentiality.

(A) For purposes of this Section 22.14, “Disclosing Party” refers to the Party disclosing information to the other Party, and the term “Receiving Party” refers to the Party receiving information from the other Party.

(B) Other than in connection with this ESA, the Receiving Party will not use the Confidential Information (as defined below) and will keep the Confidential Information confidential. The Confidential Information may be disclosed to the Receiving Party or its Affiliates and any of their directors, officers, employees, financial advisers, Lenders, potential Lenders, legal counsel and accountants (collectively, “**Receiving Party’s Representatives**”), but only if such Receiving Party’s Representatives need to know the Confidential Information in connection with this ESA. The Receiving Party shall not disclose the Confidential Information to any Person other than as permitted hereby, and shall safeguard the Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). Subject to Section 22.14(E), to the extent the Disclosing Party is required to submit Confidential Information to a Governmental Authority or is required to submit Confidential Information pursuant to any other legal process, the Disclosing Party shall use commercially reasonable efforts to ensure that such Confidential Information is not made public.

(C) As used in this Section 22.14, “**Confidential Information**” means all information that is furnished in connection with this ESA to the Receiving Party or its Receiving Party’s Representatives by the Disclosing Party, or to which the Receiving Party or its Receiving Party’s Representatives have access by virtue of this ESA (in each case, whether such information is furnished or made accessible in writing, orally, visually or by any other means (including electronic means and any information processed or stored on computers or other electronic media by PNM or on PNM’s behalf)), or which concerns this ESA, the Disclosing Party or the Disclosing Party’s affiliates or subsidiaries, or their respective officers, directors, and employees, other than as excluded below. Any such information furnished to the Receiving Party or its Receiving Party’s Representatives by a director, officer, employee, Affiliate, consultant, agent or representative of the Disclosing Party will be deemed furnished by the Disclosing Party for the purpose of this ESA. Notwithstanding the foregoing, the following will not constitute Confidential Information for purposes of this ESA:

- (1) information that is or becomes generally available to the public other than as a result of a disclosure or other act by the Receiving Party or its Representatives;
- (2) information that can be shown by the Receiving Party to have been already known to the Receiving Party on a non-confidential basis before being furnished to the Receiving Party by the Disclosing Party; and

(3) information that becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or a representative of the Disclosing Party if to the knowledge of the Receiving Party such source was not subject to any prohibition against transmitting the information to the Receiving Party.

(D) The Confidential Information will remain the property of the Disclosing Party. Any Confidential Information that is reduced to writing, except for that portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party in connection with this ESA, will be returned to the Disclosing Party immediately upon its request after expiration or termination of this ESA, unless such Confidential Information has been destroyed by the Receiving Party, and no copies will be retained by the Receiving Party or its Receiving Party's Representatives, unless the Parties agree otherwise. That portion of the Confidential Information that may be found in analyses, compilations, studies or other documents prepared by or for the Receiving Party, oral or visual Confidential Information, and written Confidential Information not so required to be returned will be held by the Receiving Party and kept subject to the terms of this ESA, or destroyed. Notwithstanding the foregoing, information developed by the Parties during the negotiation of this ESA that relates solely to this ESA shall be deemed proprietary to both Parties, each of whom shall be free to use such information, as they would any information already known to the Parties before negotiation of this ESA, provided that such information remains Confidential Information and shall be treated as such.

(E) In any proceeding before any applicable Governmental Authority, or pursuant to any other legal or regulatory process, each Party shall be entitled to disclose Confidential Information. In such event, the Party making the disclosure in the proceeding shall use commercially reasonable efforts to limit the scope of any disclosure of Confidential Information to make such disclosure of Confidential Information subject to a protective order or other similar procedure; provided, however, Seller acknowledges and agrees that Buyer may disclose this ESA and related documents, without seeking a protective order or similar process, in any proceeding before the NMPRC or pursuant to any other regulatory process under NMPRC jurisdiction. In the event that Buyer intends to disclose additional requested or supporting documents that include any of Seller's Confidential Information in any proceeding before the NMPRC or pursuant to any other regulatory process under NMPRC jurisdiction, Buyer shall provide notice to Seller of such intended disclosure and, if Seller responds within two (2) Business Days (or other shorter response time as may be required or directed by the NMPRC) of receiving Buyer's notice and requests that Buyer seek a protective order or similar procedure, Buyer shall seek a protective order or similar procedure to limit the disclosure. Seller shall reasonably cooperate with Buyer in seeking protection from the disclosure of Seller's Confidential Information.

22.15 Marketing Rights; Press Releases and Media Contact; Access. Buyer shall have the right to advertise, market, and promote to the general public the benefits of this ESA, including, but not limited to, the exclusive right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or sociological benefits arising from this ESA (all such materials, in whatever media, whether print, electronic, broadcast or otherwise, that are associated with such advertising, marketing or promotional purposes are the "**Promotional Materials**"). Seller shall make available to Buyer a basic description of the Project and any press releases or statements that Seller produces regarding the Project. Seller will grant to Buyer or its

designee reasonable access to the Project for the purposes of furthering the creation, production and dissemination of Promotional Materials.

22.16 Right to Mortgage. Buyer shall have the right to mortgage, create or provide for a security interest, or convey in trust, all or a part of its interest in this ESA, under deeds of trust, mortgages, indentures or security agreements, as security for its present or future bonds or other obligations or securities, without consent of Seller; *provided*, that Buyer shall not be relieved of any of its obligations or liability under this ESA. Seller shall cooperate reasonably with Buyer to execute, or arrange for the delivery of, those normal, reasonable and customary documents, and to provide such other normal, reasonable and customary representations or warranties, all in a form reasonably acceptable to Seller, as may be necessary to assist Buyer in consummating such transactions, and Buyer shall be responsible for Seller's reasonable costs associated with assisting Buyer in such transactions.

22.17 Forward Contract and Master Netting Agreement. Notwithstanding any other provision of this ESA, the Parties acknowledge that this ESA is a forward contract and master netting agreement within the meaning of the safe harbor provisions of the Bankruptcy Code. Accordingly, the Parties agree, notwithstanding any other provision in this ESA, that this ESA may be terminated and remedies exercised hereunder by either Party upon the commencement of a proceeding by the other Party under any chapter of the Bankruptcy Code, and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination or to the exercise of the remedies set forth herein.

22.18 Accounting Matters. The Parties agree that Generally Accepted Accounting Principles in the United States of America (“GAAP”) and the rules of the United States Securities and Exchange Commission (“SEC”) require Buyer to evaluate if Buyer must consolidate Seller's financial information. The Parties shall determine, through consultation with their respective independent registered public accounting firms, whether this ESA (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 840 - Consolidation (including any subsequent amendments to these sections or future guidance issued by accounting profession governance bodies or SEC that affects Buyer's accounting treatment for the ESA, jointly the “Accounting Standards”). Seller agrees to provide Buyer with information Buyer reasonably believes is necessary for Buyer to make the foregoing determinations. If, as a result of the Parties' review (or subsequent reviews as Buyer deems necessary), and consultations with their respective independent registered public accounting firms, Buyer, in its reasonable discretion, determines that such consolidation is required for a given period, then the Parties agree to the following provisions for such period:

(A) Within fifteen (15) Days following the end of each calendar quarter, including the fourth quarter of the calendar year, Seller shall deliver to Buyer: (i) an unaudited year-to-date statement of income, (ii) an unaudited year-to-date statement of cash flows, (iii) an unaudited balance sheet as of the end of such calendar quarter, and (iv) related supporting schedules that are prepared by the Seller's Guarantor, or if Seller has not provided a Seller Guaranty to satisfy its Security requirements pursuant to Article 19, then Seller, in order to allow the Seller's parent to complete its quarterly filings with the SEC, shall deliver to Buyer any other information reasonably requested by Buyer to comply with the consolidation requirements of GAAP. If audited financial

statements are deemed necessary by Buyers external auditors to complete an audit of Buyer's consolidated financial statements, Buyer agrees to provide notice to Seller no later than sixty (60) Days before the end of the calendar year, and Seller agrees to provide audited financial statements within thirty (30) Days of each calendar year end thereafter.

(B) The financial statements to be delivered by Seller in accordance with Section 22.18(A) (“**Seller’s Financial Statements**”) shall be prepared in accordance with GAAP and fairly present in all material respects the consolidated financial position, results of operations, and cash flows of Seller Guarantor, or Seller, as applicable. Seller shall maintain a system of internal accounting controls sufficient to provide reasonable assurance that the financial statements of Seller or Seller Guarantor, as applicable, are prepared in conformity with GAAP. If audited financial statements are prepared for the Seller, other than to satisfy the requirements for financial statements set forth in Section 22.18(A), Seller shall provide such statements to Buyer within five (5) Business Days after those statements are issued.

(C) Upon reasonable notice from Buyer, during normal business hours and mutually agreed terms and dates, Seller shall allow Buyer access to Seller's records and personnel, so that Buyer and Buyer's independent registered public accounting firm can conduct financial statement reviews and audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). All reasonable expenses for the foregoing that are incremental to Seller's normal operating expenses shall be borne by Buyer.

(D) Once during each calendar quarter, Buyer and Seller shall meet (either in person or by conference call) at a mutually agreed upon date and time to conduct due diligence and Form 8K disclosure review and discuss Seller's internal control over financial reporting.

(E) Buyer shall treat Seller's Financial Statements or other financial information provided under the terms of this Section in confidence in accordance with Section 22.14 and, accordingly, shall: (i) utilize such Seller financial information only for purposes of preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements (including any required disclosures in the financial statement presentation and notes), for making regulatory, tax or other filings required by Applicable Law in which Buyer is required to demonstrate or certify its or any Affiliate's financial condition or to obtain credit ratings; (ii) make such Seller financial information available only to its or its Affiliates' officers, directors, employees or auditors who are responsible for preparing, reviewing, auditing or certifying Buyer's or any Affiliate's financial statements, to the SEC and the Public Company Accounting Oversight Board (United States) in connection with any oversight of Buyer's or any Affiliate's financial statements and to those Persons who are entitled to receive Confidential Information in accordance with Section 22.14; (iii) not disclose any of Seller's financial information provided under the terms of this Section 22.18 to the extent that such information is not required by the Accounting Standards or Applicable Law; (iv) limit submission of Seller's financial information provided under the terms of this Section 22.18 to that information that reflects Seller's operations of the Project; *provided*, such limited submission is not contrary to the Accounting Standards or other Applicable Law; and (v) use reasonable efforts to disclose to and consult with Seller with respect to any information respecting Seller or the Project that Buyer intends to submit pursuant to this Section 22.18 and use good faith efforts to incorporate any of Seller's comments thereto in any such submission. Notwithstanding the foregoing, if Buyer discloses information that, based on the advice of its

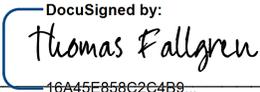
counsel, is legally required to be disclosed, Buyer may make such disclosure without being in violation of this Section.

22.19 Telephone Recording. Each Party to this ESA acknowledges and agrees to the taping or electronic recording (“**Recording**”) of conversations between the Parties with respect to all scheduling and dispatch issues, whether by one or the other or both Parties, and that the Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any suit, action or proceedings relating to this ESA. Each Party waives any further notice of that monitoring or Recording and agrees to notify its personnel of the monitoring or Recording and to obtain any necessary consent of those personnel. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request. In the event of a dispute between the Parties, each Party with a Recording relating to such dispute shall provide a copy of such Recording to the other Party upon request.

[Signature page(s) follow]

IN WITNESS WHEREOF, the Parties have caused this ESA to be duly executed as of the date first above written. This ESA shall not become effective as to either Party unless and until executed by both Parties.

PUBLIC SERVICE COMPANY OF NEW MEXICO

By 16A45E858C2C4B9...

Name Thomas Fallgren

Title Vice President, PNM Generation

309SJ 8ME LLC

By 111E22F12E0449A...

Name Thomas Buttgenbach

Title President

EXHIBIT A
(to Energy Storage Agreement)

**DESCRIPTION OF SELLER'S GENERATION FACILITIES,
SITE MAP AND PROJECT SCHEDULE**

1. Name of Seller's Project: Rockmont Storage Project

Location: San Juan County, New Mexico
2. Owner (if different from Seller): 309SJ 8me LLC
3. Operator: Seller or Affiliate thereof
4. Equipment/Fuel:
 - a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Energy Storage; Biomass (including Fuel)): Energy Storage
 - b. Total number of units at the Project: 15 (subject to change in final design)
 - c. Total nameplate capacity (AC): 30 MW
 - d. Total capacity at point of delivery: 30 MW
 - e. Additional technology-specific information:
5. Project Schedule:

Key Milestone	Date
PNM Confirmation of San Juan Satellite Station Location	January 30, 2021
LGIA Execution	March 31, 2021
Major Equipment Supply Agreements Executed	June 30, 2021
Discretionary Permits	October 31, 2021
Close Financing	November 24, 2021
Start of Project Construction	December 1, 2021
First Major Equipment Delivered to Site	January 30, 2022
Interconnection In-Service Date	March 1, 2022
Commissioning Start Date	March 15, 2022
Expected Commercial Operation	June 20, 2022

6. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the Energy Storage Agreement.

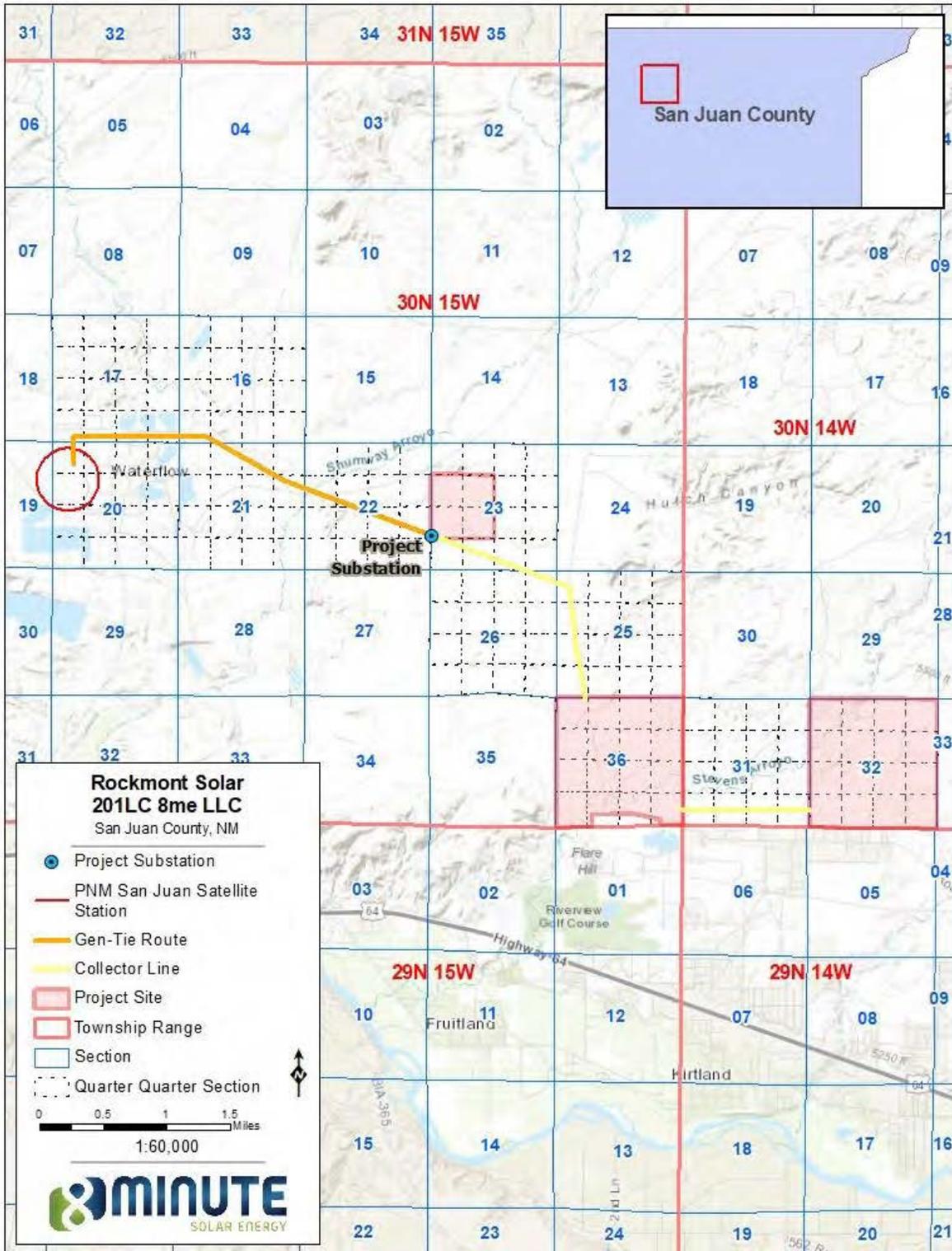


EXHIBIT B (to Energy Storage Agreement)

ONE-LINE DIAGRAM OF PROJECT AND INTERCONNECTION FACILITIES

See attached one-line diagram of the Project, which indicates the Interconnection Facilities, the network upgrades, the Point of Delivery into WECC Path 48 and ownership and location of meters. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.

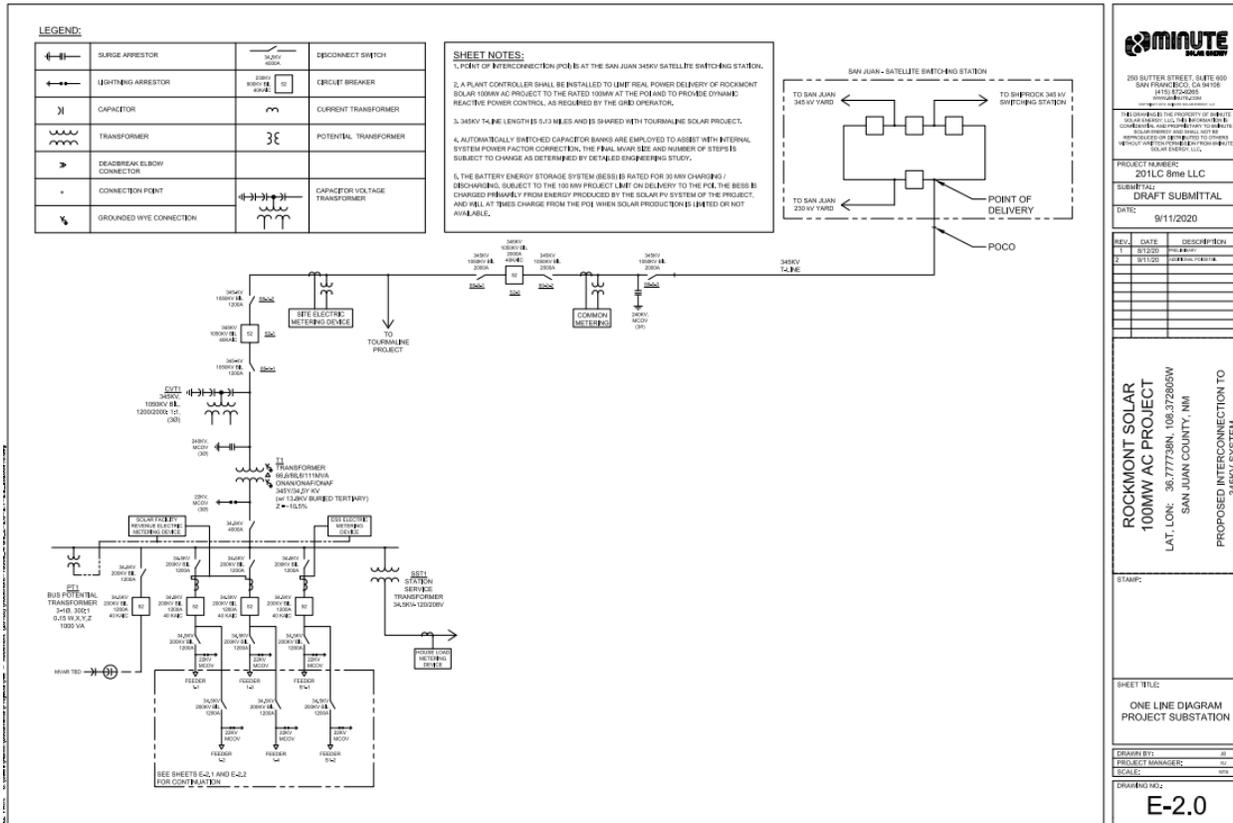


EXHIBIT C
(to Energy Storage Agreement)

DESCRIPTION OF SITE

SURVEYOR'S DESCRIPTION of: San Juan County, State of New Mexico, and being more particularly described as follows:

Section 32 contained in Township 30 North Range 14 West

Section 36 contained in Township 30 North Range 15 West

South $\frac{1}{2}$ Northwest $\frac{1}{4}$ and North $\frac{1}{2}$ Southwest $\frac{1}{4}$ of Section 23, Township 30 North, Range 15 West

The above described Tract of Land contains 1,421 acres more or less in area.

EXHIBIT D
(to Energy Storage Agreement)
NOTICE ADDRESSES

**PUBLIC SERVICE COMPANY OF
NEW MEXICO**

309SJ 8ME LLC

Notices:

All Notices/Invoices:

Delivery Address:

Delivery Address:

Public Service Company of New Mexico
414 Silver Ave. SW
Albuquerque, NM 87102

309SJ 8me LLC
c/o 8minute Solar Energy LLC
4370 Town Center Blvd., Suite 110
El Dorado Hills, CA 95762

Invoices:

Attn: Transactions
Phone: (916) 608-9060
Fax: (916) 608-98691
Email: transactions@8minute.com

Attn: Energy Analysis
Phone: (505)541-2585
Fax: (505) 241-2434
Email:

Invoices: invoice@8minute.com

PNMEAM@pnmresources.com

Mailing Address (if different from above):

Scheduling:

Wire Transfer:

Attn: Traders
Phone: (505) 855-6226 day-ahead
(505)855-6216 real time
Fax: (505) 241-4188
Email: zz-WPMTraders@pnm.com

Wells Fargo Bank
ABA: 121000248
ACCT: 4066482027

Payments:

**With additional Notice of an Event of
Default, termination and other legal
notices to:**

Public Service Company of New Mexico
2401 Aztec Rd. NE, MS Z-160
Albuquerque, NM 87107
Attn: Albuquerque Division Cash

309SJ 8me LLC
Attn: Transactions
C/o 8minute Solar Energy LLC
5455 Wilshire Blvd., Suite 2010
Los Angeles, CA 90036
Phone: (323) 525-0900
Fax: (310) 424-7112

Wire Transfer:

Wells Fargo Bank
ABA# [121000248]
Albuquerque, New Mexico
ME Whsle Pwr Depository: 651-537-7916
Attn: EA-Wholesale Power Marketing

Project Manager:

Public Service Company of New Mexico
Attention: Casey Kalberg
PO Box 227
Waterflow, N.M 87421
Telephone: (505) 598-7613

Project Manager:

201LC 8me LLC
C/o 8minute Solar Energy LLC
Attn: Ben New
Email: bnew@8minute.com
Phone: (415) 271-1234

**With additional Notice of an Event of
Default, termination and other legal notices
to:**

Public Service Company of New Mexico
Attention: Tom Fallgren
2401 Aztec Rd. NE
Albuquerque, NM 87107
Telephone: (505) 241-4148
Fax: (505) 241-2375

With a copy to:

Public Service Company of New Mexico
Attention: Madonna N. Bixby, Senior
Corporate Counsel
414 Silver Ave. SW, MS0805
Albuquerque, NM 87102
Telephone: (505) 241-4929
Fax: (505) 241-4318

EXHIBIT E
(to Energy Storage Agreement)

**SELLER'S REQUIRED GOVERNMENTAL AUTHORITY PERMITS, CONSENTS,
APPROVALS, LICENSES AND AUTHORIZATIONS TO BE OBTAINED**

PERMIT, CONSENT, APPROVAL, LICENSE AND/OR AUTHORIZATION	GOVERNMENTAL ENTITY
<i>Clean Water Act (CWA) Section 402, National Pollution Discharge Elimination System (NPDES). Construction Stormwater General Permit NMR1000000</i>	<i>US Environmental Protection Agency (EPA)</i>
<i>CWA Sec 401 Water Quality Certification</i>	<i>New Mexico Environment Department (NMED) Surface Water Quality Bureau</i>
<i>CWA Sec 404, Nationwide Permit (NWP) #12 (utility lines), NWP #14 (access roads), NWP #51 (renewal energy facilities) (if required)</i>	<i>U.S. Army Corps of Engineers</i>
<i>National Environmental Policy Act, Finding of No Significant Impact for an Environmental Assessment</i>	<i>U.S. Bureau of Land Management, Farmington Field Office</i>
<i>Right of Way Grant and Notice to Proceed</i>	<i>U.S. Bureau of Land Management, Farmington Field Office</i>
<i>National Historic Preservation Act Section 106 Finding of Eligibility, Consultation, and Approval</i>	<i>New Mexico State Historic Preservation Office</i>
<i>State of New Mexico Business Site Lease (ROW Grant)</i>	<i>State of New Mexico – State Lands Office</i>
<i>Ground Disturbance Permit</i>	<i>New Mexico State Lands Office – Commercial Resources Division</i>
<i>San Juan County New Commercial/Addition Structures Permit</i>	<i>San Juan County, Building Division</i>
<i>San Juan County Floodplain Permit</i>	<i>San Juan County</i>
<i>Transmission Line Location and Right-of-Way Permit</i>	<i>New Mexico Public Regulatory Commission</i>
<i>No Hazard Determination</i>	<i>Federal Aviation Administration</i>

EXHIBIT F

(to Energy Storage Agreement)

COMMISSIONING AND ANNUAL TESTS

Commissioning Tests

- A. Automatic Generation Control (AGC) Functionality Test (or equivalent)
- B. SCADA Functionality Test (or equivalent)
- C. Owner Control and Data Link Functionality Tests (See Section 3.4)
- D. ESS Solar Capacity Firming Test
- E. ESS Unit Capabilities Tests

The following tests shall be conducted and satisfied as a requirement to achieve the Commercial Operation Date.

A. Automatic Generation Control (AGC) Functionality Test

Purpose:

This test will demonstrate the ability of the ESS to synch to AGC.

System starting state:

The ESS will be in the on-line state at between 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. This profile shall not cause the ESS to charge from the grid.

Procedure:

1. Record the ESS active power level at the ESS Electric Metering Device.
2. Command the ESS to follow a simulated AGC discharging signal every four (4) seconds for ten (10) minutes.
3. Upon confirmation of the availability of sufficient Solar Energy Output, command the ESS to follow a simulated AGC charging signal every four (4) seconds for ten (10) minutes.
4. Record and store the ESS active power response (in seconds).

System end state:

The ESS will be in the on-line state and at a commanded active power level of 0 MW.

B. SCADA Functionality Test

Seller shall prepare and submit to Buyer a SCADA Functionality Test procedure no later than 120 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such SCADA Functionality Test procedure and Seller shall perform and successfully demonstrate the SCADA functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

C. Owner Control and Data Link Functionality Test

Seller shall prepare and submit to Buyer an Owner Control and Data Link Functionality Test procedure no later than 120 Days prior to the Expected Commercial Operation Date. Buyer and Seller shall mutually agree on such Owner Control and Data Link Functionality Test procedure and Seller shall perform and successfully demonstrate the Owner Control and Data Link functionality in accordance with such test procedure as a requirement to achieve Commercial Operation.

D. ESS Solar Capacity Firming Test

Seller shall perform a test of the ESS control system to validate its capability to maintain a constant energy delivery from the combined PPA and ESA to the Point of Delivery (“POD”). The test shall be performed over a three (3) hour test period given a fixed MW setpoint at the Point of Delivery from the integrated Solar Facility and ESS. The test shall validate the ability of the ESS control system to autonomously charge solar generation or discharge to maintain a constant POD output within two (2) percent of the output setpoint and within the limits of the ESS Unit Capabilities and ESS Operating Restrictions. The constant POD setpoint shall be between the ESS PMAX and the POD rating minus PMAX or reasonably adjusted according to the solar generation forecast on the day of the test. The test shall be deemed successful if the ESS is able to regulate the POD to the output setpoint, within two (2) percent, at all times during the three (3) hour test when the charging or discharging of the ESS to maintain the output setpoint would not violate the ESS Unit Capabilities or ESS Operating Restrictions.

Commissioning and Annual Tests

The following tests shall be conducted as a requirement to achieve the Commercial Operation Date and will be repeated annually (or more frequently as allowed under the ESA) throughout the term of the ESA.

E. ESS Unit Capabilities Testing

E.1 ESS CAPACITY TEST

E.1.1 General

The ESS Capacity Test (“**ESS Capacity Test**” or “**ECT**”) is a test performed to determine the then-current ESS Capacity and Roundtrip Efficiency (RTE). Each ESS Capacity Test (including the initial ESS Capacity Test performed prior to Commercial Operation and each subsequent ESS Capacity Test) shall be conducted in accordance with Prudent Utility Practices and the provisions of this Exhibit F. Buyer or its representative may be present for any ECT and may, for informational purposes only, use its own metering equipment (at Buyer’s sole cost).

E.1.2 Requirements Applicable to all ESS Capacity Tests

A. Purpose of Test. Each ECT shall:

- (1) verify compliance with the Guaranteed ESS Capacity or otherwise determine any lower ESS Capacity for the purposes of this ESA;
 - (2) determine the Roundtrip Efficiency (RTE) of the ESS;
- B. Parameters. During each ECT, the following parameters shall be measured and recorded simultaneously for the ESS:
- (1) discharge time (minutes);
 - (2) ESS Charging Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh (“ESS Meter Energy In”);
 - (3) ESS Discharge Energy measured at the ESS Electric Meter Device prior to any compensation, in MWh (“ESS Meter Energy Out”);
 - (4) ESS Discharge Energy measured at the ESS Electric Meter Device including the accounting of losses from the ESS Electric Meter Device to the Point of Delivery, in MWh (“Point of Delivery Energy Out”);
 - (5) ESS Charging Energy measured at the ESS Electric Meter Device accounting for losses from the Point of Delivery to the ESS Electric Meter Device, in MWh (“Point of Delivery Energy In”);
- C. Site Conditions. During each ECT, the ambient air temperature (°C) at the Site shall be measured and recorded at thirty (30)-minute intervals.
- D. Test Elements and Sequence. Each ECT shall include the following test elements:
- (1) the discharging of the ESS from a 100% State of Charge at a power discharge setpoint rate equal to the Guaranteed ESS Capacity (MW);
 - (2) the determination of Point of Delivery Energy Out, as measured by the ESS Electric Meter Device, that is discharged from the ESS to the Point of Delivery until either a 0% State of Charge is achieved or four (4) hours have elapsed from commencement of the ECT. The Point of Delivery Energy Out divided by four (4) hours shall determine the ESS Capacity. The ESS Electric Metering Device shall be programmed to correct for losses between the ESS Electric Metering Device and the Point of Delivery, not including any losses from other facilities that share the common Point of Delivery with this ESS;
 - (3) the discharging of the ESS to a 0% State of Charge or such State of Charge achieved after four (4) hours of discharging the Guaranteed ESS Capacity;
 - (4) starting at a 0% State of Charge, the charging of the ESS at a constant power charge rate equal to the lesser of the Guaranteed ESS Capacity and the

generating capacity (in MW) of the Solar Facility, subject to Section E.1.2.E(2) below;

- (5) the determination of Point of Delivery Energy In, as measured by the ESS Electric Metering Device, that is required to charge the ESS until a 100% State of Charge is achieved as of the commencement of the ESS Capacity Test.

E. Test Conditions.

- (1) General. At all times during an ECT, the ESS shall be operated in compliance with Prudent Utility Practices, the ESS Operating Restrictions and all operating protocols required by the manufacturer for operation. The ESS shall have charged and discharged at least 80% of one (1) Equivalent Full Cycle in the twenty-four (24)-hour period prior to the ECT, charged to a 100% State of Charge using Charging Energy on the day of the ECT and maintained at a 100% State of Charge for at least two (2) hours prior to commencement of the ECT. The ECT shall commence within one (1) hour after sunset or other such time as mutually agreed by the Parties, and the Solar Facility shall be disconnected prior to commencement of such ECT. Buyer may regulate the ESS power factor between 0.95 leading or lagging during the ECT as needed for the sole purpose of grid reliability and the ESS shall otherwise be at unity (1.00) power factor.
- (2) Abnormal Conditions. If abnormal operating conditions that prevent the recording of any required parameter occur during an ECT (including a level of irradiance that does not permit the Solar Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such ECT in accordance with Section E.1.2.F of these ESS Capacity Test Procedures. The ECT will not be postponed or rescheduled for insufficient irradiance if the Solar Facility produces sufficient power to demonstrate charging at the ESS Guaranteed Capacity for at least 80% of the charging period during the ECT and sufficient energy is available for the ESS to reach a 100% State of Charge at least one hour prior to sunset.
- (3) Weather Conditions. Ambient outside dry bulb air temperature of 25°C. Seasonal weather patterns may prevent the occurrence of an ECT. In such circumstances, Seller shall supply adjusted performance metrics for the ESS at a range of ambient conditions for Buyer's review and approval (such approval not to be unreasonably conditioned, delayed or withheld) ninety (90) Business Days prior to the scheduled ECT to determine whether the scheduled ECT is feasible.
- (4) Instrumentation and Metering. Seller shall provide all instrumentation,

metering and data collection equipment required to perform the ECT. The instrumentation, metering and data collection equipment, and electrical meters shall be calibrated in accordance with prudent operating practice and Section 5 of the ESA.

- F. Incomplete Test. If any ECT is not completed in accordance herewith (including as a result of any conditions specified in Section E.1.2.E(2) of this ESS Capacity Test Procedure), Seller may, in its sole discretion: (i) accept the results up to the time the ECT was suspended; provided, however, that to the extent Buyer reasonably objects to such results, Buyer may require that the ECT be repeated or that the portion thereof that was not completed, be completed within a reasonable specified time period; (ii) require that the portion of the ECT that was not completed to be completed within a reasonable specified time period; or (iii) require that the ECT be entirely repeated. Notwithstanding the foregoing, if Seller is unable to complete an ECT due to a Force Majeure event or the actions or inactions of Buyer or the Transmission Provider, Seller shall be permitted to reconduct such ECT on dates and at times reasonably acceptable to the Parties.
- G. Final Report. Within ten (10) Business Days after the completion of any ECT, Seller shall prepare and submit to Buyer a written report of the results of the ECT, which report shall include:
- (1) A record of the personnel present during the ECT that served in an operating, testing, monitoring or other such participatory role;
 - (2) the measured data for the ESS Electric Meter Device readings as well as each parameter set forth in this ESS Capacity Test Procedure, as applicable, including copies of the raw data taken during the ECT and plant log sheets verifying the operating conditions and output of the ESS;
 - (3) The ESS Capacity as determined by the ECT, including supporting calculations; and
 - (4) Seller's statement of either Seller's acceptance of the ECT or Seller's rejection of the ECT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the ECT results or Buyer's rejection of the ECT and reason(s) therefor.

If either Party reasonably rejects the results of any ECT, such ECT shall be repeated in accordance with Section E.1.2.F of this ESS Capacity Test Procedure.

- H. Supplementary ESS Capacity Test Protocol. No later than one hundred twenty (120) days prior to the Commercial Operation Date, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) a supplement to this Exhibit F with additional and

supplementary details, procedures and requirements applicable to ESS Capacity Tests based on the then-current design of the Facility (collectively, the “Supplementary ESS Capacity Test Protocol”). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably conditioned, delayed or withheld) any Seller-recommended updates to the then-current Supplementary ESS Capacity Test Protocol. The initial Supplementary ESS Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit F. Future modifications to the Supplementary ESS Capacity Test Protocol, as mutually agreed, shall be documented and maintained by the Parties.

- I. Adjustment to ESS Capacity. The total amount of the Point of Delivery Energy Out (expressed in MWh-AC) during the first four (4) hours of discharge of any ECT (up to, but not in excess of, the product of (i) the Guaranteed ESS Capacity, as such Guaranteed ESS Capacity may have been adjusted (if at all) under this ESA, multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the new ESS Capacity to the extent such new ESS Capacity is less than the Guaranteed ESS Capacity. The actual capacity determined pursuant to an ESS Capacity Test, not to exceed the Guaranteed ESS Capacity, shall become the new ESS Capacity at the beginning of the day following the completion of the ESS Capacity Test for all purposes under this ESA.
- J. ESS Roundtrip Efficiency Test Calculations. The ESS Roundtrip Efficiency shall be calculated as a result of the ECT measurements. The ESS Roundtrip Efficiency shall be calculated as the ratio of ESS Meter Energy Out (MWh-AC) and the ESS Meter Energy In (MWh-AC) as below:

$$\text{Roundtrip Efficiency (\%)} = \frac{\text{ESS Meter Energy-Out (MWh-AC)}}{\text{ESS Meter Energy-In (MWh-AC)}} \times 100\%$$

E.2 ESS RESPONSE DELAY TEST

Purpose of Test:

1. Determine the Charge Ramp Rate of the ESS
2. Determine the Discharge Ramp Rate of the ESS

Test Conditions:

The ESS Facility will be in the on-line state at between 15% and 85% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. This test shall not cause the ESS to charge from the grid.

Test procedure:

Measured Charge Ramp Rate:

1. Send an active power charge command of PMAX to charge the batteries
2. The time measured from when the ESS receives the PMAX charge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of charge PMAX shall be the Charge Ramp Latency
3. The time measured to ramp from 1% to charge PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Charge Ramp Rate

Measured Discharge Ramp Rate:

1. Send an active power discharge command of PMAX to discharge the batteries
2. The time measured from when the ESS receives the PMAX discharge command until the power measured at the ESS Electric Metering Device changes from 0MW to at least 1% of discharge PMAX shall be the Discharge Ramp Latency
3. The time measured to ramp from 1% to discharge PMAX with a plus-or-minus two and one-half percent (2.5%) tolerance on the commanded power shall be the Actual Discharge Ramp Rate

Determination of ESS Response Delay:

The calculation below will demonstrate the determination of the ESS Response Delay used to determine ESS Response Delay Damages according to Section 3.13.

- a) An “Actual System Latency” shall be calculated, which shall be equal to:

$$\text{Actual System Latency} = \text{Max}(\text{Charge Ramp Latency}, \text{Discharge Ramp Latency})$$

- b) An “Actual System Latency Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} \text{Actual System Latency Delay} \\ &= \text{Max}(\text{Guaranteed System Latency}, \text{Actual System Latency}) \\ &\quad - \text{Guaranteed System Latency} \end{aligned}$$

- c) An “Actual Discharge Ramp Rate Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} \text{Actual Discharge Ramp Rate Delay} \\ &= \text{Max}(\text{Guaranteed Discharge Ramp Rate}, \text{Actual Discharge Ramp Rate}) \\ &\quad - \text{Guaranteed Discharge Ramp Rate} \end{aligned}$$

- d) An “Actual Charge Ramp Rate Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} \text{Actual Charge Ramp Rate Delay} \\ &= \text{Max}(\text{Guaranteed Charge Ramp Rate}, \text{Actual Charge Ramp Rate}) \\ &\quad - \text{Guaranteed Charge Ramp Rate} \end{aligned}$$

- e) The “Charging ESS Response Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \textit{Charging ESS Response Delay} \\ & = \textit{Actual Charge Ramp Rate Delay} \\ & + \textit{Actual System Latency Delay} \end{aligned}$$

- f) The “Discharging ESS Response Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \textit{Discharging ESS Response Delay} \\ & = \textit{Actual Discharge Ramp Rate Delay} \\ & + \textit{Actual System Latency Delay} \end{aligned}$$

- g) The “ESS Response Delay” shall be calculated, which shall be equal to:

$$\begin{aligned} & \textit{ESS Response Delay} \\ & = \textit{Max(Charging ESS Response Delay, Discharging ESS Response Delay)} \end{aligned}$$

For any instance in which the ESS Response Delay, as measured by the ESS Electric Metering Device is a positive value during an ESS Unit Capabilities Test or during operation of the Project, Seller shall pay to Buyer the ESS Response Delay Damages identified in Section 3.13.

EXHIBIT G
(to Energy Storage Agreement)
INSURANCE COVERAGES

Seller shall obtain and maintain the following insurance coverages, at a minimum:

A. Workers' Compensation Insurance, if exposure exists, that complies with statutory limits under workers' compensation laws of any applicable jurisdiction and employer's liability coverage with limits of One Million Dollars (\$1,000,000) per accident, One Million (\$1,000,000) for disease, and One Million (\$1,000,000) for each employee, covering all of Seller's employees, whether full-time, leased, temporary, or casual.

B. Commercial General Liability Insurance, written on a standard ISO occurrence form, or the equivalent, with a combined single limit of One Million Dollars (\$1,000,000) per occurrence. This policy will include coverage for bodily injury liability, broad form property damage liability, blanket contractual, products liability and completed operations.

C. Business Automobile Liability Insurance, or the equivalent, with a limit of One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage with respect to Seller's vehicles whether owned (if exposure exists), hired, or non-owned.

D. Excess or Umbrella Liability. Excess or Umbrella Liability Insurance on a following form basis covering claims in excess of the underlying insurance described in paragraphs (A) (with respect to only Employer's Liability Insurance), (B) and (C) with a limit per occurrence and aggregate of Ten Million dollars (\$10,000,000) written on a per occurrence basis

The amounts of insurance required in the foregoing paragraphs (A), (B), (C) and (D) may be satisfied by purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

E. Property Insurance. During construction and operation, Seller shall provide or arrange the provision of standard form "All Risk" insurance covering one hundred percent (100%) of the Project cost. For the avoidance of doubt, builders' risk insurance shall qualify as "All Risk" insurance during the construction period. The All-Risk Property insurance shall cover physical loss or damage to the Project including the period during testing and startup. A deductible may be carried, which deductible shall be the absolute responsibility of Seller. All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake, subject to industry standard limits acceptable to Seller's financing parties, 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, including boilers and engines, in an amount equal to their probable maximum loss.

EXHIBIT H
(to Energy Storage Agreement)

NOT USED

EXHIBIT I
(to Energy Storage Agreement)

AVAILABILITY GUARANTEES

Section 1. Definitions.

Capitalized terms used in this Exhibit I and not defined herein shall have the meaning assigned in Article 1 of the ESA.

“Actual ESS Availability Percentage” means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all ESS Available Hours divided by (ii) the sum of all ESS Period Hours in the relevant Commercial Operation Year.

“Aggregate ESS Availability Damages Cap” has the meaning set forth in Section 2.1(C) of this Exhibit.

“Annual ESS Availability Damages Cap” has the meaning set forth in Section 2.1(C).

“Annual Report” has the meaning set forth in Section 2.3 of this Exhibit.

“ESS Availability Damages” has the meaning set forth in Section 2.1(B) of this Exhibit.

“ESS Available Hours” means for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of ESS Period Hours in such Commercial Operation Year, minus (b) the aggregate ESS Unavailable Hours in such Commercial Operation Year.

“ESS Excused Hours” means, in any Commercial Operation Year, (a) the aggregate Seller Excused Hours for such Commercial Operation Year to the extent that the ESS is affected during such hours; provided that, for purposes of the Guaranteed ESS Availability Percentage, only the first fifty (50) hours of Scheduled Maintenance Outages in the aggregate for any portion of the Project per Commercial Operation Year shall be treated as ESS Excused Hours, and (b) all hours during which a Seller Curtailment occurs in such Commercial Operation Year.

“ESS Period Hours” means eight thousand seven hundred sixty (8,760) hours for any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year.

“ESS Unavailable Hours” means those hours, other than ESS Excused Hours, that the ESS is not available to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition); (b) in “run” status and faulted; (c) included in Scheduled Maintenance Outages in excess of fifty (50) hours in aggregate for the Project in any Commercial Operation Year; (d) incapable of being remotely controlled via its AGC system; or (e) otherwise not operational or capable of delivering Discharge Energy or accepting Charging Energy.

“Guaranteed ESS Availability Percentage” has the meaning set forth in Section 2.1(A) of this Exhibit.

Section 2. Availability Guarantees.

1. ESS Availability Guarantee.

(A) ESS Availability Guarantee. Seller guarantees that the ESS shall achieve an Actual ESS Availability Percentage equal to or greater than ninety-five percent (95%) in each Commercial Operation Year after the Commercial Operation Date (“**Guaranteed ESS Availability Percentage**”).

(B) ESS Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed ESS Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to One Thousand Five Hundred Dollars (\$1,500) per MW of Guaranteed ESS Capacity per one percent (1%) shortfall in the Guaranteed ESS Availability Percentage, calculated annually and prorated for any portion of a Commercial Operation Year (“**ESS Availability Damages**”), but in no event in excess of the Annual ESS Availability Damages Cap and the Aggregate ESS Availability Damages Cap. A sample calculation of the ESS Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit I.

(C) ESS Availability Damages Cap, Termination and Cure Rights. The total ESS Availability Damages payable by Seller for failure to meet the Guaranteed ESS Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to Fifteen Thousand Dollars (\$15,000) per MW of Guaranteed ESS Capacity (“**Annual ESS Availability Damages Cap**”) and in the aggregate at a value equivalent to Forty-Five Thousand (\$45,000) per MW of Guaranteed ESS Capacity (“**Aggregate ESS Availability Damages Cap**”) over the Term of the ESA.

2. Sole Remedy. The Parties agree that Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for any deficiency in the performance of the Project (including any failure to meet the Guaranteed ESS Availability Percentage) shall be the payment of damages up to the Annual ESS Availability Damages Cap and the Aggregate ESS Availability Damages Cap, as applicable, and the right to declare an Event of Default pursuant to Section 12.1(B)(5) of the ESA, and shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default giving rise to a termination payment obligation except pursuant to Section 12.1(B)(5) of the ESA, as applicable. Notwithstanding the foregoing, the limitations set forth herein shall not be applicable to any indemnification claims pursuant to Article 20 of the ESA and Seller’s material breach of its obligation to operate and maintain the Project in accordance with Prudent Utility Practices or Seller’s failure to pay ESS Availability Damages when due if not timely cured pursuant to the provisions of Article 12 of the ESA are an Event of Default of Seller for which Buyer may terminate the ESA and seek damages in accordance with Section 12.4 of the ESA.

3. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller’s computation of Actual ESS Availability Percentage for the previous Commercial Operation Year and the ESS Availability Damages, if any, due to Buyer (the “**Annual Report**”). Such Annual Report shall include the total amount of

ESS Availability Damages paid to Buyer under the ESA and shall provide notice that the Aggregate ESS Availability Damages Cap has been reached, if applicable. If ESS Availability Damages are due from Seller, Seller shall pay such damages no later than twenty (20) Business Days after providing the Annual Report.

5. Disputes. Disputes as to any calculations under this Exhibit I shall be addressed as provided in Section 13.8 of the ESA.

ATTACHMENT 1 TO EXHIBIT I
EXAMPLE CALCULATION OF ESS AVAILABILITY DAMAGES

I. Example of Actual ESS Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

The ESS had the following operating characteristics:

	Hours
ESS Period Hours (“EPH”)	8,760
ESS Unavailable Hours (“EUH”)	700

Given these assumed facts, the ESS Available Hours for the ESS during the Commercial Operation Year would be calculated as follows:

Sum of ESS Available Hours = EPH – EUH: $8,060 = 8,760 - 700$

Actual ESS Availability Percentage

Given these assumed facts, the Actual ESS Availability Percentage for the Project during the Commercial Operation Year in question would be calculated as follows:

- (a) Sum of ESS Available Hours: 8,060 hours
- (b) Sum of ESS Period Hours: 8,760 hours
- (c) Actual ESS Availability Percentage: $(\text{Sum of ESS Available Hours} / \text{Sum of ESS Period Hours}) \times 100 = (8,060 / 8,760) \times 100 = 92.0\%$

II. Example of ESS Availability Damages

Example of ESS Availability Damages based on the following assumed facts:

- (a) Seller’s Guaranteed ESS Availability Percentage in Commercial Operation Year 4 = 95%.
- (b) Seller’s Actual ESS Availability Percentage in Commercial Operation Year 4 = 92%.
- (c) Seller’s Guaranteed ESS Capacity = 30 MW.

Given these assumed facts, Seller calculates the ESS Availability Damages due to Buyer as follows:

(Seller's Guaranteed ESS Availability Percentage in Commercial Operation Year 4 – Seller's Actual ESS Availability Percentage in Commercial Operation Year 4) (the latter two expressed as a decimal) x (100) x Liquidated Damage Value x Seller's Guaranteed ESS Capacity = ESS Availability Damage

$$(0.95 - 0.92) \times 100 \times \$1,500 \times 30 = \$135,000$$

As specified in the definition of "ESS Unavailable Hours," all ESS Excused Hours are excluded from the calculation of ESS Unavailable Hours. Thus, in the example above, the 700 hours of ESS Unavailable Hours does not include any hours that are ESS Excused Hours.

EXHIBIT J
(to Energy Storage Agreement)

FORM OF SELLER GUARANTY

GUARANTY

THIS GUARANTY (this “**Guaranty**”), dated as of _____, ____ (the “**Effective Date**”), is made by [●]. (“**Guarantor**”), in favor of *[INSERT COUNTERPARTY’S NAME IN ALL CAPS]* (“**Counterparty**”).

RECITALS:

A. WHEREAS, Counterparty and Guarantor’s indirect, wholly-owned subsidiary *[INSERT OBLIGOR’S NAME IN ALL CAPS]* (“**Obligor**”) have entered into, or concurrently herewith are entering into, that certain _____ Energy Storage Agreement dated/made/entered into/effective as of _____, 20__ (the “**Agreement**”); and

B. WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Obligor and Counterparty;

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty’s execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

* * *

1. GUARANTY. Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement, including with respect to any damages that Obligor owes to Counterparty for failing to perform under the Agreement (collectively, the “**Obligations**”). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be subject to the following limitations:

- (a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ *[spell out the dollar amount]* U.S. Dollars (U.S. \$_____) (the “**Maximum Recovery Amount**”), plus reasonable costs of collection and/or enforcement of this Guaranty (including reasonable attorneys’ fees), to the extent that a court of competent jurisdiction finally declares that amounts are due and payable hereunder, but in no event shall such costs exceed [_____].
- (b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement (even if such payments are

deemed to be damages), as well as costs of collection and enforcement of this Guaranty (including attorneys' fees) to the extent reasonably and actually incurred by Counterparty (subject, in all instances, to the limitations imposed by the Maximum Recovery Amount as specified in Section 1(a) above). Except as expressly payable by Obligor pursuant to the Agreement, Guarantor shall not be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages.

2. DEMANDS AND PAYMENT.

- (a) If Obligor fails to pay any Obligation to Counterparty when such Obligation is due and owing under the Agreement (an "**Overdue Obligation**"), Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Overdue Obligation pursuant to this Guaranty (a "**Payment Demand**"). Delay or failure by Counterparty in making a Payment Demand shall in no event affect Guarantor's obligations under this Guaranty.
- (b) A Payment Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Obligor has failed to pay and explain why such payment is due, with a specific statement that Counterparty is calling upon Guarantor to pay under this Guaranty. Such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and the specific Overdue Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.
- (c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Overdue Obligation(s) specified in that Payment Demand, and Guarantor shall be required to make payment with respect to the Overdue Obligation(s) specified in that Payment Demand within five (5) Business Days after Guarantor receives such demand. As used herein, the term "**Business Day**" shall mean all weekdays (*i.e.*, Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of New Mexico.

3. REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants that:

- (a) it is a limited liability company duly organized and validly existing under the laws of the State of _____ and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution, delivery and performance of this Guaranty; and
- (c) the execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor, and this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of

any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. **RESERVATION OF CERTAIN DEFENSES.** Without limiting Guarantor's own defenses hereunder, Guarantor reserves to itself and may assert as a defense to enforcement of this Guaranty any defense to enforcement of the Agreement that Obligor may assert that is based on Counterparty's breach of the Agreement or the failure of a material condition precedent to Obligor's performance obligations. Notwithstanding the foregoing, Guarantor agrees that it will remain bound upon this Guaranty notwithstanding any defenses that, pursuant to the laws of suretyship or guaranty, would otherwise relieve a guarantor of its obligations. In furtherance and not limitation of the foregoing, Guarantor expressly waives (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor or any lack of power or authority of Obligor to enter into and/or perform the Agreement or the lack of validity or enforceability of Obligor's obligations under the Agreement. Guarantor further reserves to itself any rights, setoffs or counterclaims that Guarantor may have against Obligor, *provided, however*, that Guarantor agrees such rights, setoffs or counterclaims may only be asserted against Obligor in an independent action, and not as a defense to Guarantor's obligations under this Guaranty.

5. **AMENDMENT OF GUARANTY.** No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty.

6. **WAIVERS AND CONSENTS.** Guarantor agrees that its obligations under this Guaranty are irrevocable, absolute, independent, unconditional and continuing (subject only to the defenses to enforcement of this Guaranty reserved by Guarantor in *Section 4*) and shall not be affected by any circumstance that constitutes a legal or equitable discharge of a guarantor or surety other than payment in full of the Obligations. In furtherance of the foregoing and without limiting the generality thereof, Guarantor agrees, subject to and in accordance with the other terms and provisions of this Guaranty:

(a) Except for the Payment Demand as required in *Section 2* above, Guarantor hereby waives, to the maximum extent permitted by applicable law, (i) notice of acceptance of this Guaranty; (ii) promptness, diligence, presentment, demand, protest, setoff and counterclaim concerning the liabilities of Guarantor; (iii) any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof; (iv) any defense arising by reason of the incapacity, lack of authority or disability of Obligor or based on any illegality, lack of validity or unenforceability of any Obligation; (v) any duty of Counterparty to protect or not impair any security for the Obligations; (vi) any defense based upon an election of remedies by Counterparty; (vii) any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder (and, for the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, Guarantor shall hold such amount for the benefit of, and promptly pay such amount to, Counterparty); (viii) any defense of waiver, release, res judicata, statute of frauds, fraud (with respect to Obligor), incapacity (with respect to Obligor), minority or usury; and (ix) any other circumstance or any existence of or reliance

on any representation by Counterparty that might otherwise constitute a defense available to, or a legal or equitable discharge of, Guarantor or any other guarantor or surety.

- (b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses to which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).
- (c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor’s obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; (iii) receive, substitute, surrender, exchange or release any collateral or other security for this Guaranty or any or all of the Obligations and apply any such collateral or security and direct the order or manner of sale thereof, or exercise any other right or remedy that Counterparty may have against any such collateral or security; or (iv) exercise any other rights available to Counterparty under the Agreement, at law or in equity.

7. **REINSTATEMENT.** Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder or under the Agreement while this Guaranty is in effect is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor or Guarantor, or similar proceeding, all as though such payments had not been made.

8. **TERMINATION.** Subject to reinstatement under *Section 7*, this Guaranty and the Guarantor’s obligations hereunder will terminate automatically and immediately upon the earlier of (a) the termination or expiration of the Agreement, and (b) 11:59:59 Eastern Prevailing Time of [insert date] years plus six (6) months after expected COD]; provided, however, Guarantor agrees that the obligations and liabilities hereunder shall continue in full force and effect with respect to any Obligations under any Agreement entered into on or prior to the date of such termination.

9. **NOTICE.** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called “**Notice**”) by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (a) U.S. certified mail with postage prepaid and return receipt requested, or (b) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this *Section 9*):

<i><u>TO GUARANTOR:</u></i> *	<i><u>TO COUNTERPARTY:</u></i>
[●] <i><u>Attn:</u></i> Treasurer	[●] <i><u>Attn:</u></i>

<i>[Tel: [●] -- for use in connection with courier deliveries]</i>	<i>[Tel: [●] -- for use in connection with courier deliveries]</i>
--	--

Any Notice given in accordance with this Section 9 will (x) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (y) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. MISCELLANEOUS.

- (a) This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New Mexico, without regard to principles of conflicts of laws thereunder.
- (b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign this Guaranty in part or in whole except (i) with the prior written consent of Guarantor, or (ii) to an assignee of the Agreement in conjunction with an assignment of the Agreement in its entirety accomplished in accordance with the terms thereof.
- (c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.
- (d) The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).
- (e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
- (f) Counterparty (by its acceptance of this Guaranty) and Guarantor each hereby irrevocably:
 - (i) consents and submits to the exclusive jurisdiction of the United States District Court for the District of New Mexico for the purposes of any suit, action or other proceeding arising out of this Guaranty or the subject matter hereof or any of the transactions contemplated hereby brought by Counterparty, Guarantor or their respective successors or assigns; and
 - (ii) waives (to the fullest extent permitted by applicable law) and agrees not to assert any

claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty or the subject matter hereof may not be enforced in or by such court.

(g) COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR EACH HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR’S EXECUTION AND DELIVERY OF THIS GUARANTY.

* * *

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date.

[•]

By: _____

Name: _____

Title: _____

EXHIBIT K
(to Energy Storage Agreement)

**COMMERCIAL OPERATION
FORM OF CERTIFICATION**

This certification (“Certification”) of Commercial Operation is delivered by [●] (“Seller”) to Public Service Company of New Mexico (“Buyer”) in accordance with the terms of that certain Energy Storage Agreement dated [●] (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) An Energy Storage System with a designed power output capability of [●] MW for four ([●]) 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 is not in breach of the Interconnection Agreement; and
- (3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Product and meet, at a minimum, the requirements indicated in items (1) and (3) above.

EXECUTED by SELLER this _____ day of _____, 20__.

[●]

[Licensed Professional Engineer]

Signature: _____
 Name: _____
 Title: _____

Signature: _____
 Name: _____
 Title: _____
 Date: _____

License Number and LPE Stamp: _____

EXHIBIT L
(to Energy Storage Agreement)

ROUNDTRIP EFFICIENCY GUARANTEE

Year	Annual R/T Eff
1	86.7%
2	86.47%
3	86.25%
4	86.03%
5	85.80%
6	85.58%
7	85.36%
8	85.13%
9	84.91%
10	84.69%
11	84.47%
12	84.25%
13	84.03%
14	83.81%
15	83.60%
16	83.38%
17	83.16%
18	82.95%
19	82.73%
20	82.52%

EXHIBIT M
(to Energy Storage Agreement)

Optional Pricing Structure - > 365 Annual Equivalent Full Cycles

Quantity of Cycles	ESS Cycle Pricing Structure
366 to 380	\$4,200 per additional cycle

EXHIBIT N
(to Energy Storage Agreement)

ESS Operating Restrictions

Subject to the terms of this ESA, the ESS shall be operated in accordance with the following operating restrictions:

1. Except as otherwise allowed in Section 3.11, during the Recapture Period, the ESS shall exclusively be charged using Energy produced by the Solar Facility.
2. Except as allowed in Section 5.1(A), the amount of Discharge Energy at any point in time shall be limited to the interconnection limit minus the contemporaneous Energy production by the Solar Facility.
3. The number of ESS cycles in any Commercial Operation Year shall be limited according to Section 4.1(B).
4. If the annual average state of charge percentage is greater than fifty percent (50%) at the end of any Commercial Operation Year, then Buyer shall pay to Seller six hundred dollars (\$600) per MW of Guaranteed ESS Capacity for each percentage point (including partial percentage points on a pro rata basis) by which the annual average state of charge percentage exceeds fifty percent (50%).
5. The ESS will be operated in order to maintain a state of charge between zero (0) MWh and one hundred twenty (120) MWh, inclusive.

First Amendment to PPA for 299 MW Solar Project with San Juan Solar 1, LLC and First Amendment to ESA for 130 MW Battery Storage Project with SJS 1 Storage, LLC

PNM Exhibit TGF-8

Is contained in the following 32 pages.

**FIRST AMENDMENT
TO POWER PURCHASE AGREEMENT – SAN JUAN SOLAR 1
FACILITY**

This First Amendment to Power Purchase Agreement – San Juan Solar 1 Facility (this “**First Amendment**”), is entered into this 25th day of September, 2020 (“**Execution Date**”), by and between Public Service Company of New Mexico, a New Mexico corporation (“**Buyer**”), and San Juan Solar 1, LLC, a Delaware limited liability company (“**Seller**”). Buyer and Seller may be referred to in this First Amendment individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Parties are party to that certain Power Purchase Agreement – San Juan Solar 1 Facility, dated as of September 25, 2020 (the “**Original Agreement**”);

WHEREAS, the Parties wish to amend the Original Agreement as described herein;

WHEREAS, pursuant to Section 22.9 of the Original Agreement, the Original Agreement may be amended or modified from time to time only by a written instrument signed by each of the Parties.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. Defined Terms. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided to such terms in the Original Agreement.

2. Amendments. Effective upon the Effective Date (as defined below), the Original Agreement shall be automatically amended without further action of the Parties as follows:

a. The second recital in the Original Agreement is amended by replacing the recital in its entirety with the following:

“WHEREAS, Seller desires to develop, design, construct, own and operate a solar energy electric generating facility with an expected total maximum power output of approximately two hundred and ninety-nine (299) MW (“Project”), as further defined herein and in Exhibit A, which Project will be integrated with an Energy Storage System (as defined below); and”

b. Section 3.1 Commercial Terms, of the Original Agreement is amended by replacing the information in the box entitled “Guaranteed Solar Capacity (MWs)” in its entirety with the following:

“**Guaranteed Solar Capacity (MWs):** 299 MW_{AC} subject to degradation in accordance with Exhibit K”

c. Section 3.1 Commercial Terms, of the Original Agreement is amended by

replacing the information in the box entitled “Solar Energy Output Payment Rate” in its entirety with the following:

“Solar Energy Output Payment Rate: \$25.50 per MWh”

d. Exhibits A, B, C, H, and L to the Original Agreement are hereby replaced in their entirety by the updated respective exhibits enclosed in this First Amendment.

3. Conditions Precedent for First Amendment. The effectiveness of Section 2 of this First Amendment is subject to satisfaction of the following conditions precedent (the date of satisfaction of all of the following conditions, which conditions in Section 3(c) or (d) will be deemed satisfied for this purpose if waived by Seller, shall be the “**Effective Date**”):

a. Buyer receives NMPRC Approval of the PPA as specified in the PPA, and the PPA is otherwise effective and binding on the Parties;

b. Buyer receives NMPRC Approval of this First Amendment in accordance with the terms of Section 17.3 of the PPA;

c. Seller shall have obtained sufficient Site control for the Project, in its discretion, no later than October 23, 2020 or waived the condition in this Section 3(c) in a written notice to Buyer (which waiver notice may be delivered by email); and

d. Seller shall have executed and delivered, in its discretion, an EPC contract incorporating the Expected Commercial Operation Date and Guaranteed Commercial Operation Date set forth in the PPA no later than October 23, 2020 or waived the condition in this Section 3(d) in a written notice to Buyer (which waiver notice may be delivered by email).

If (i) NMPRC Approval is not obtained for the PPA or this First Amendment, or (ii) the conditions specified in Section 3(c) and (d) are not satisfied or waived by Seller, in its sole discretion, in each case on or before October 23, 2020, this First Amendment 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 hereunder and the terms of the Original Agreement shall control the obligations of the parties thereunder.

Seller will provide notice to Buyer of the satisfaction of the conditions in Section 3(c) and (d) promptly following such satisfaction, if applicable.

4. No Other Changes. Except as modified hereby, all of the terms and provisions of the Original Agreement shall remain in full force and effect.

5. Further Assurances. Each Party agrees to execute and deliver any instruments or documents as may be reasonably requested by the other Party to confirm the satisfaction and/or waiver (if applicable) of the conditions in Section 3 and the resulting effectiveness of this Amendment, or the failure of the conditions in Section 3, as applicable, in order to give full effect to this First Amendment and to carry out the intent of this First Amendment.

6. Counterparts; Delivery. This First Amendment 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 deliveries by mail, courier, telecopy

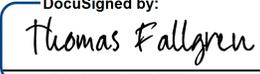
or other electronic means, but all of which taken together shall constitute a single agreement, and each executed counterpart shall have the same force and effect as an original instrument.

7. Governing Law. The interpretation and enforcement of this First Amendment 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.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be duly executed as of the Execution Date.

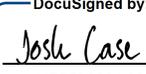
PUBLIC SERVICE COMPANY OF NEW MEXICO

By: 
16A45E858C2C4B9...

Name: Thomas Fallgren

Title: Vice President, Generation

SAN JUAN SOLAR 1, LLC

By: 
117773C6AAC642C...

Name: Josh Case

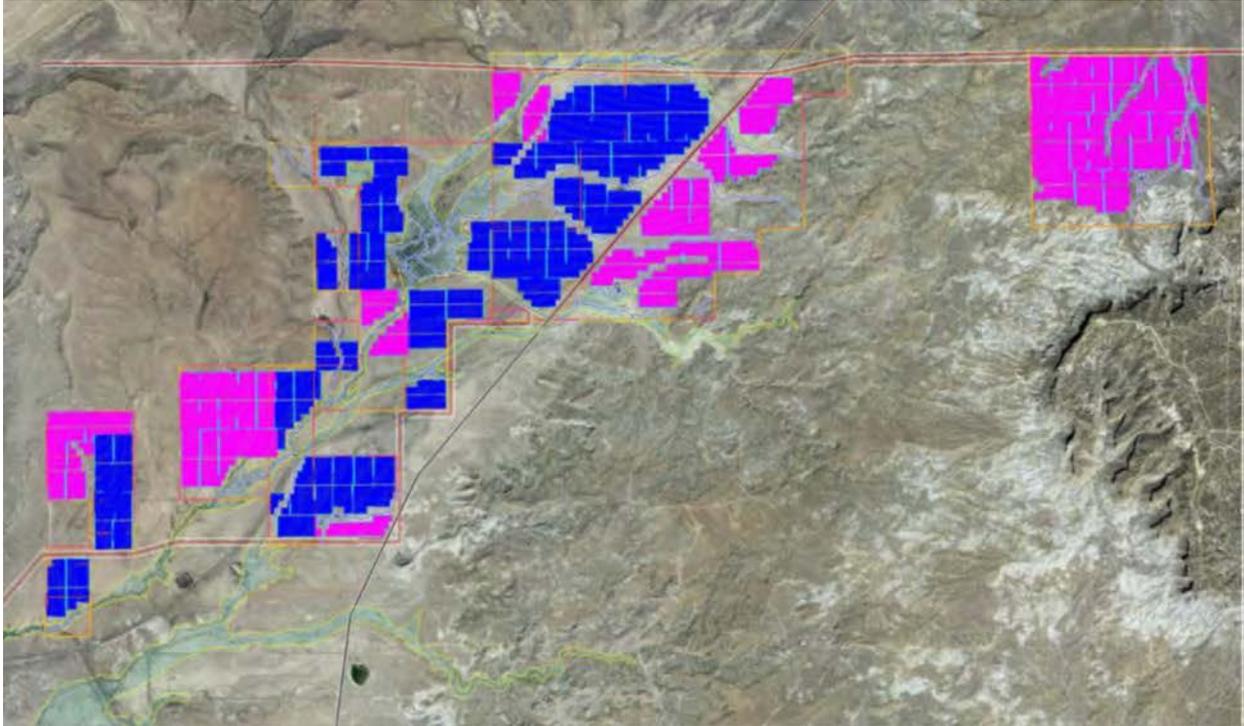
Title: Authorized Person

EXHIBIT A
(to Power Purchase Agreement)

**DESCRIPTION OF SELLER'S GENERATION FACILITIES,
SITE MAP AND PROJECT SCHEDULE**

1. Name of Seller's Project: San Juan Solar 1
2. Location: 36°49'48.73"N,108°21'7.27"W
3. Owner (if different from Seller): N/A
4. Operator: Seller or Affiliate thereof
5. Equipment/Fuel:
 - a. Type of facility and conversion equipment (e.g., Solar PV; Solar Thermal; Wind; Biomass (including Fuel)): Solar PV
 - b. Total number of units at the Project: 93
 - c. Total nameplate capacity (MWp): 359 MWdc
 - d. Total capacity at point of delivery: 299 MWac
 - e. Additional technology-specific information: Bifacial Panels on Single Axis Trackers

6. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the PPA.



7. Project Schedule:

Milestone Items	Dates
LGIA Executed	October 2020
Start of Construction/EPC Notice to Proceed	March 2021
Permitting Complete	July 2021
Major Equipment Supply Agreements Executed	September 2021
Start of Major Equipment Deliveries	September 2021
Start of Equipment Commissioning	September 2021
Interconnection In-Service Date (ISD)	Feb 2022
Financing Closed	February 2022
Interconnection - Sync Date	March 2022
Expected COD	June 10, 2022
Guaranteed COD	Expected COD + 180 Days

EXHIBIT B
(to Power Purchase Agreement)

ONE-LINE DIAGRAMS OF PROJECT AND INTERCONNECTION FACILITIES

See attached one-line diagram of the Project, which indicates the Interconnection Facilities, the network upgrades, the Electric Interconnection Point, the Point of Delivery (if different than the Electric Interconnection Point) and ownership and location of meters. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.

EXHIBIT C
(to Power Purchase Agreement)

DESCRIPTION OF SITE

SURVEYOR'S DESCRIPTION of: SAN JUAN SOLAR 1 PROJECT, State of New Mexico,
and being more particularly described as follows:

All or a portion of the following San Juan County Tax Assessor's tax parcels numbers. The Project Site is located on approximately +/- 3933 acres of land commonly described as San Juan County Tax Assessor's tax parcel numbers 2087176198462, 2087177198005, 2087177066033, 2087177066132, 2087177066212, 2084179396132, 2087177066363, 2087177198330, 2086178264066, 2085179396198, 2085177396264, 2085178462066, 2085178462462, 2084179462396, 2084179198396, 2086179066198, 2085179132132, , and 2081179264264 are described as follows:

*APN: 2087176198462
County: San Juan County, New Mexico
Legal: NW/NE Less the North 8 Acres in Sec. 22 T30N R15W NMPM*

*APN: 2087177198005
County: San Juan County, New Mexico
Legal: South 24 Acres SW/SE Sec 15, T30N R15W NMPM
North 8 Acres NW/NE Sec 22, T30N R15W NMPM*

*APN: 2087177066033
County: San Juan County, New Mexico
Legal: South 32 AC OF SE/SE OF SEC 15, T30N R15W NMPM*

*APN: 2087177066132
County: San Juan County, New Mexico
Legal: South 8 ACRES OF NE/SE OF SEC 15, T30N R15W NMPM
North 8 ACRES OF SE/SE OF SEC 15, T30N R15W NMPM
North 16 ACRES OF SW/SE OF SEC 15, T30N R15W NMPM*

*APN: 2087177066212
County: San Juan County, New Mexico
Legal: North 32 Acres NE/SE Sec. 15, T30N R15W NMPM*

*APN: 2084179396132
County: San Juan County, New Mexico
Legal: SW/4 Sec. 6, T30N R15W NMPM
N2/NE, S/2 SE/NE Sec. 15, T30N R15W NMPM*

*APN: 2087177066363
County: San Juan County, New Mexico
Legal: N2 SE/NE Sec. 15, T30N R15W NMPM*

APN: 2087177198330
County: San Juan County, New Mexico
Legal: SW/NE Sec. 15, T30N R15W NMPM

APN: 2086178264066
County: San Juan County, New Mexico
Legal: SE/SW & SW/SE OF Sec. 11, T30N R15W NMPM
E/2 NW & W/2 NE OF Sec. 14, T30N R15W NMPM

APN: 2085179396198
County: San Juan County, New Mexico
Legal: N/2 SW, SE/4, SESW Sec. 1, T30N R15W NMPM
SE/SE Sec 11, T30N R15W NMPM
E2/NE/4, NE/SE Sec 14, T30N R15W NMPM
NW/SW, E/2SE, NE Sec. 12, T30N R15W NMPM

APN: 2085177396264
County: San Juan County, New Mexico
Legal: S2/NW, N2/SW Sec. 13, T30N R15W NMPM

APN: 2085178462066
County: San Juan County, New Mexico
Legal: SW/SW, SE/NW, E/2SW Sec. 12, T30N R15W NMPM

APN: 2085178462462
County: San Juan County, New Mexico
Legal: NW/NW & North 440 FT OF SW/NW Sec. 12, T30N R15W NMPM

APN: 2084179462396
County: San Juan County, New Mexico
Legal: W/2NW Sec. 6, T30N R15W NMPM

APN: 2084179198396
County: San Juan County, New Mexico
Legal: E2/NW, W/2NE Sec. 6, T30N R15W NMPM

APN: 2086179066198
County: San Juan County, New Mexico
Legal: NE/SE Sec. 2, T30N R15W NMPM

APN: 2085179132132
County: San Juan County, New Mexico
Legal: SE/4, SE/SW Sec. 1 T30N R15W NMPM
NE/NW, W2/SE, NE/4 Sec. 12, T30N R15W NMPM

APN: 2081179264264
County: San Juan County, New Mexico
Legal: ALL Sec. 3, T30N R14W NMPM
W/2, W/2E/2, NE/NE Sec. 5, T30N R14W NMPM
E/2NE, SE/4 Sec. 6, T30N R14W NMPM

N1/2 Sec. 7, T30N R14W NMPM
W1/2NW, NE/NW Sec. 8, T30N R14W NMPM

The fenced area of the above described Tract of Land contains approximately 1500 acres more or less in area.

EXHIBIT H
(to Power Purchase Agreement)

AVAILABILITY GUARANTEE

Section 1. Definitions.

Capitalized terms used in this Exhibit H and not defined herein shall have the meaning assigned in Article 1 of the PPA.

“Actual Solar Availability Percentage” means a percentage calculated as (a) one hundred (100), multiplied by (b) the result of (i) the sum of all Solar Available Hours for all inverters incorporated into the Solar Units that were part of the Project at the beginning of the relevant Commercial Operation Year for all Daylight Intervals, divided by (ii) the sum of all Solar Period Hours in the relevant Commercial Operation Year for all inverters incorporated into the Solar Units that were part of the Project on the Commercial Operation Date.

“Actual Solar Energy Output” means the Energy (in MWh) generated by the Project and delivered to the Point of Delivery.

“Aggregate Solar Availability Damages Cap” has the meaning set forth in Section 2(3) of this Exhibit.

“Annual Solar Availability Damages Cap” has the meaning set forth in Section 2(3) of this Exhibit.

“Annual Report” has the meaning set forth in Section 2(5) of this Exhibit.

“Daylight Interval” means each hour where plane of array irradiance conditions are 50 W/m² or greater. Data will be collected as hourly averages for all installed plane of array sensors at the Site.

“Guaranteed Solar Availability Percentage” has the meaning set forth in Section 2(1) of this Exhibit.

“Solar Availability Damages” has the meaning set forth in Section 2(2) of this Exhibit.

“Solar Available Hours” means for each inverter incorporated into a Solar Unit, for a relevant Commercial Operation Year, an amount of hours equal to (a) the number of Solar Period Hours in such Commercial Operation Year, minus (b) the aggregate Solar Unavailable Hours for such inverter in such Commercial Operation Year, plus (c) the aggregate Solar Excused Hours for such inverter in such Commercial Operation Year.

“Solar Excused Hours” means, in any Commercial Operation Year, (a) the aggregate Seller Excused Hours during Daylight Intervals for such Commercial Operation Year; provided that for purposes of the Availability Guaranty only the first fifty (50) hours of Scheduled Maintenance Outages in the aggregate for the Project per Commercial Operation Year shall be treated as Excused Hours, and (b) all hours during which a Seller Curtailment occurs in such Commercial Operation Year.

“Solar Period Hours” means the number of Daylight Intervals within any given Commercial Operation Year, as may be prorated for any partial Commercial Operation Year.

“**Solar Unavailable Hours**” means those hours an inverter incorporated into a Solar Unit is not available during Daylight Intervals to operate because it is (a) in an emergency, stop, service mode or pause state (except to the extent that such emergency, stop, service mode or pause state also constitutes an Emergency Condition, in which case the hours when an Emergency Condition occurs shall be deemed a Transmission Provider Curtailment and included in Seller Excused Hours); (b) in “run” status and faulted; (c) included in Scheduled Maintenance Outages in excess of fifty (50) hours in aggregate for the Project in any Commercial Operation Year; (d) incapable of being remotely controlled via its AGC system; or (e) otherwise not operational or capable of delivering Energy to the Point of Delivery.

Section 2. Solar Availability Guarantee.

1. Solar Availability Guarantee. Seller guarantees that the Project shall achieve an Actual Availability Percentage equal to or greater than ninety percent (90%) in each Commercial Operation Year after the Commercial Operation Date (“**Guaranteed Availability Percentage**”).

2. Availability Damages. For any Commercial Operation Year during which Seller fails to meet the Guaranteed Solar Availability Percentage, Seller shall pay Buyer liquidated damages in the amount equal to (x) the Solar Energy Output Payment Rate, multiplied by (y) the Guaranteed Solar Availability Percentage minus the Actual Solar Availability Percentage for such Commercial Operation Year (both expressed as a decimal), multiplied by (z) the Actual Solar Energy Output for such Commercial Operation Year divided by the Actual Solar Availability Percentage (expressed as a decimal), multiplied by the Guaranteed Solar Availability Percentage (expressed as a decimal) (the “**Solar Availability Damages**”), but in no event in excess of the Annual Solar Availability Damages Cap and the Aggregate Solar Availability Damages Cap. A sample calculation of the Solar Availability Damages that would be owed by Seller under certain stated assumptions is provided as Attachment 1 to this Exhibit H.

3. Damages Cap, Termination and Cure Rights. The total Solar Availability Damages payable by Seller for failure to meet the Guaranteed Solar Availability Percentage in any Commercial Operation Year shall be capped annually at a value equivalent to Twenty-Six Thousand Dollars (\$26,000) per MW of Guaranteed Solar Capacity (“**Period Availability Damages Cap**”) and in the aggregate at a value equivalent to Seventy-Eight Thousand Dollars (\$78,000) per MW of Guaranteed Solar Capacity (“**Aggregate Solar Availability Damages Cap**”) over the Term of the PPA.

4. Sole Remedy. The Parties agree that Buyer’s sole and exclusive remedy, and Seller’s sole and exclusive liability, for any deficiency in the performance of the Project (including any failure to meet the Guaranteed Solar Availability Percentage) shall be the payment of damages up to the Annual Solar Availability Damages Cap and Aggregate Solar Availability Damages Cap, and the right to declare an Event of Default pursuant to Section 12.1(B)(7) of the PPA, if and to the extent applicable, and shall not be subject to the collection of any other damages or any other remedies, including specific performance, and shall not be an Event of Default giving rise to a termination payment obligation except pursuant to Section 12.1(B)(7) of the PPA, as and to the extent applicable. Notwithstanding the foregoing, the limitations set forth herein shall not (i) be applicable to any indemnification claims pursuant to Article 20 of the PPA, or (ii) affect Buyer’s rights to claim an Event of Default of Seller and pursue remedies under Section 12.4 of the PPA if Seller fails to pay Solar Availability Damages when due if not timely cured pursuant to the provisions of Article 12 of the PPA.

5. Annual Report. No later than the thirtieth (30th) Day of such Commercial Operation Year (or thirty (30) Days after the end of the last Commercial Operation Year), Seller shall deliver to Buyer a calculation showing Seller’s computation of the Actual Solar Availability Percentage for the previous Commercial Operation Year and the Solar Availability Damages, if any, due to Buyer (the “**Annual Report**”). Such Annual Report shall include the total amount of Solar Availability Damages paid to Buyer

under the PPA and shall provide notice that the Aggregate Solar Availability Damages Cap has been reached, if applicable. If Solar Availability Damages are due from Seller, Seller shall pay such damages no later than fifteen (15) Business Days after providing the Annual Report.

6. Disputes. Disputes as to any calculations under this Exhibit H shall be addressed as provided in Section 13.8 of the PPA.

ATTACHMENT 1 TO EXHIBIT H
EXAMPLE CALCULATION OF SOLAR AVAILABILITY DAMAGES

I. Example of Actual Solar Availability Percentage Calculation

The sample calculation set forth below is based on the following assumed facts:

During the Commercial Operation Year in question, 93 Solar Units were part of the Project.

The inverters incorporated into the Solar Units had the following operating characteristics:

	Hours	Solar Units Affected	Solar Unit Hours
Solar Period Hours (“PH”)	4,000	93	372,000
Solar Unavailable Hours (“UH”)			15,000
Solar Excused Hours (“EH”)			1,500

Given these assumed facts, the Available Hours for the Solar Units during the Commercial Operation Year would be calculated as follows:

$$\text{Sum of Available Hours} = \text{PH} - \text{UH} + \text{EH}: 358,500 = 372,000 - 15,000 + 1,500$$

Actual Solar Energy Availability Percentage

Given these assumed facts, the Actual Solar Availability Percentage for the Project during the Commercial Operation Year in question would be calculated as follows:

- (a) Sum of Solar Available Hours: 358,500 hours
- (b) Sum of Solar Period Hours: 372,000 hours
- (c) Actual Solar Availability Percentage: $(\text{Sum of Solar Available Hours} / \text{Sum of Solar Period Hours}) \times 100 = (358,500 / 372,000) \times 100 = 96.4\%$

II. Example of Availability Damages

Example of Solar Availability Damages based on the following assumed facts:

- (a) Seller’s Guaranteed Solar Availability in Commercial Operation Year 4 = 90%.
- (b) Seller’s Actual Solar Availability in Commercial Operation Year 4 = 85%.
- (c) Solar Energy Output Payment Rate = \$25.50
- (d) Actual Solar Energy Output = 719,750 MWh

Given these assumed facts, Seller calculates the Availability Damages due to Buyer as follows:

Solar Energy Output Payment Rate x (Guaranteed Solar Availability Percentage in Commercial Operation Year 4 — Actual Solar Availability Percentage for Commercial Operation Year 4 (each expressed as a

decimal)) x (Actual Solar Energy Output for Commercial Operation Year 4 ÷ Actual Solar Availability Percentage for Commercial Operation Year 4 x Guaranteed Solar Availability Percentage for Commercial Operation Year 4 (the latter two expressed as a decimal)) = Solar Availability Damage:

$$\$25.50 \times (.90 - .85) \times (719,750 \div .85 * .90) = \$971,662.50$$

EXHIBIT L
(to Power Purchase Agreement)

FIRST YEAR GENERATION FORECAST

The following represents the first year forecast of net, AC generation delivered to the Point of Delivery.

On-Peak Hours are considered to be hour ending 0700 through and including 2200 Pacific prevailing time which is 16 hours, Monday through Saturday excluding any NERC holidays which are the major holidays. All other hours and all day Sundays are off-peak.

Month	On-Peak Energy Delivered (MWh)	Off-Peak Energy Delivered (MWh)
January	35,311	8,164
February	41,526	7,432
March	64,873	8,700
April	70,358	12,311
May	73,490	21,474
June	81,633	17,691
July	70,231	21,995
August	72,546	12,879
September	63,706	11,601
October	53,798	10,448
November	39,395	7,409
December	34,432	5,356
Total Annual	701,300	145,460
Total Combined Annual	846,760	
Annual Capacity Factor	32.3%	

**FIRST AMENDMENT
TO ENERGY STORAGE AGREEMENT – SJS 1 STORAGE FACILITY**

This First Amendment to Energy Storage Agreement – SJS 1 Storage Facility (this “**First Amendment**”), is entered into this 25th day of September, 2020 (“**Execution Date**”), by and between Public Service Company of New Mexico, a New Mexico corporation (“**Buyer**”), and SJS 1 Storage, LLC, a Delaware limited liability company (“**Seller**”). Buyer and Seller may be referred to in this First Amendment individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, the Parties are party to that certain Energy Storage Agreement – SJS 1 Storage Facility, dated as of September 25, 2020 (the “**Original Agreement**”);

WHEREAS, the Parties wish to amend the Original Agreement as described herein;

WHEREAS, pursuant to Section 22.9 of the Original Agreement, the Original Agreement may be amended or modified from time to time only by a written instrument signed by each of the Parties.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. Defined Terms. Capitalized terms used herein but not otherwise defined herein shall have the meanings provided to such terms in the Original Agreement.

2. Amendments. Effective upon the Effective Date (as defined below), the Original Agreement shall be automatically amended without further action of the Parties as follows:

a. The following definitions in the Original Agreement are hereby replaced in their entirety by the following:

“**Project**” means Seller’s energy storage facility, located in San Juan County, New Mexico with a designed maximum power discharge capability of 130 MW for four (4) hours (520 MWh), as identified and described in Article 3 and Exhibit A to this ESA, including all of the following (and any additions, modifications or replacements), the purpose of which is to store electricity and deliver such electricity to the Buyer at the Point of Delivery: Seller’s equipment, buildings, all of the conversion facilities, including the Energy Storage Systems, step-up transformers, output breakers, Seller’s Interconnection Facilities and Seller’s Shared Facilities necessary to connect the ESS to the Electric Interconnection Point, protective and associated equipment, improvements, and other tangible assets, contract rights, easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation, and maintenance of the energy storage facilities that make the Product available subject to this ESA.

b. Subsection (A) of Section 3.12 ESS Unit Capabilities, of the Original

Agreement is hereby replaced in its entirety by the following updated provision:

(A) Guaranteed PMAX of 130 MW of charging and discharging capability as measured at the Point of Delivery, and as may be adjusted pursuant to Section 3.8;

c. Subsection (D) of Section 3.12 ESS Unit Capabilities, of the Original Agreement is hereby replaced in its entirety by the following updated provision:

(D) Guaranteed Discharge Ramp Rate of 65 MW per second measured between 85% state of charge and 15% state of charge representing the maximum rate that the ESS can change its output power;

d. Subsection (E) of Section 3.12 ESS Unit Capabilities, of the Original Agreement is hereby replaced in its entirety by the following updated provision:

(E) Guaranteed Charge Ramp Rate of 65 MW per second measured between 15% state of charge and 85% state of charge representing the maximum rate that the ESS can change its input power;

e. Subsection (G) of Section 3.12 ESS Unit Capabilities, of the Original Agreement is hereby replaced in its entirety by the following updated provision:

(G) Guaranteed Frequency Response Capability of 50 MW/0.1Hz with battery responses in accordance with Section 3.12 (a) through (f);

f. Exhibits A, B, C, K, and M to the Original Agreement are hereby replaced in their entirety by the updated respective exhibits enclosed in this First Amendment.

3. Conditions Precedent for First Amendment. The effectiveness of Section 2 of this First Amendment is subject to satisfaction of the following conditions precedent (the date of satisfaction of all of the following conditions, which conditions in Section 3(c) or (d) will be deemed satisfied for this purpose if waived by Seller, shall be the "Effective Date"):

a. Buyer receives NMPRC Approval of the ESA as specified in the ESA, and the ESA is otherwise effective and binding on the Parties;

b. Buyer receives NMPRC Approval of this First Amendment in accordance with the terms of 17.3 of the ESA;

c. Seller shall have obtained sufficient Site control for the Project, in its discretion, no later than October 23, 2020 or waived the condition in this Section 3(c) in a written notice to Buyer (which waiver notice may be delivered by email); and

d. Seller shall have executed and delivered, in its discretion, an EPC contract incorporating the Expected Commercial Operation Date and Guaranteed Commercial Operation Date set forth in the PPA no later than October 23, 2020 or waived the condition in this Section 3(d) in a written notice to Buyer (which waiver notice may be delivered by email).

If (i) NMPRC Approval is not obtained for the PPA or this First Amendment, or (ii) the conditions specified in Section 3(c) and (d) are not satisfied or waived by Seller, in its sole discretion, in each

case on or before October 23, 2020, this First Amendment 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 hereunder and the terms of the Original Agreement shall control the obligations of the parties thereunder.

4. No Other Changes. Except as modified hereby, all of the terms and provisions of the Original Agreement shall remain in full force and effect.

5. Further Assurances. Each Party agrees to execute and deliver any instruments or documents as may be reasonably requested by the other Party to confirm the satisfaction and/or waiver (if applicable) of the conditions in Section 3 and the resulting effectiveness of this Amendment, or the failure of the conditions in Section 3, as applicable, in order to give full effect to this First Amendment and to carry out the intent of this First Amendment.

6. Counterparts; Delivery. This First Amendment 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 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.

7. Governing Law. The interpretation and enforcement of this First Amendment 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.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this First Amendment to be duly executed as of the Execution Date.

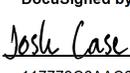
PUBLIC SERVICE COMPANY OF NEW MEXICO

By: 
16A45E858C2C4B9...

Name: Thomas Fallgren

Title: Vice President, Generation

SAN JUAN SOLAR 1, LLC

By: 
117773C6AAC642C...

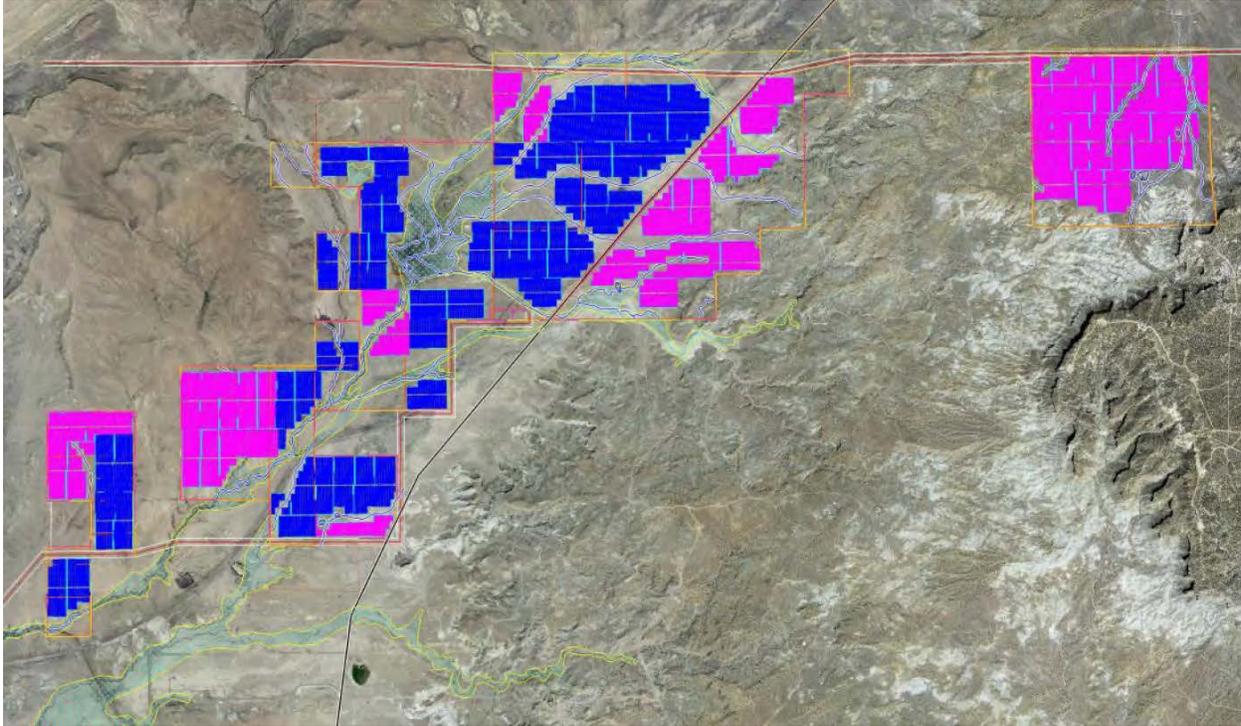
Name: Josh Case

Title: Authorized Person

EXHIBIT A
(to Energy Storage Agreement)

**DESCRIPTION OF SELLER'S GENERATION FACILITIES,
SITE MAP AND PROJECT SCHEDULE**

1. Name of Seller's Project: SJS 1 Storage
Location: San Juan County, New Mexico at 36°49'48.73"N,108°21'7.27"W
2. Owner (if different from Seller): N/A
3. Operator: Seller or an Affiliate thereof
4. Equipment/Fuel:
 - a. Type of facility and conversion equipment: Battery Energy Storage
 - b. Total number of units at the Project: 57
 - c. Total nameplate capacity (AC): 135 MW
 - d. Total capacity at point of delivery: 130 MW_{ac} / 520 MWh
 - e. Additional technology-specific information: Lithium Ion
5. Site Map: Attach a scaled map that complies with the requirements of Section 3.3 of the Energy Storage Agreement.

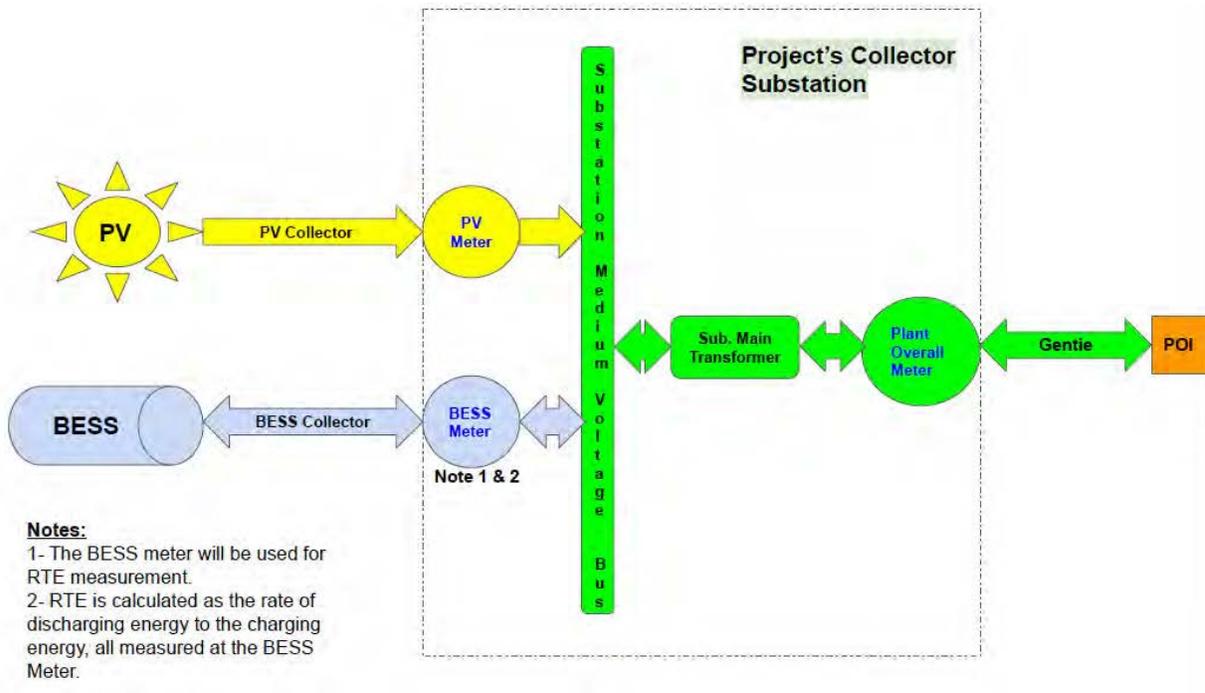


6. Project Milestone Schedule

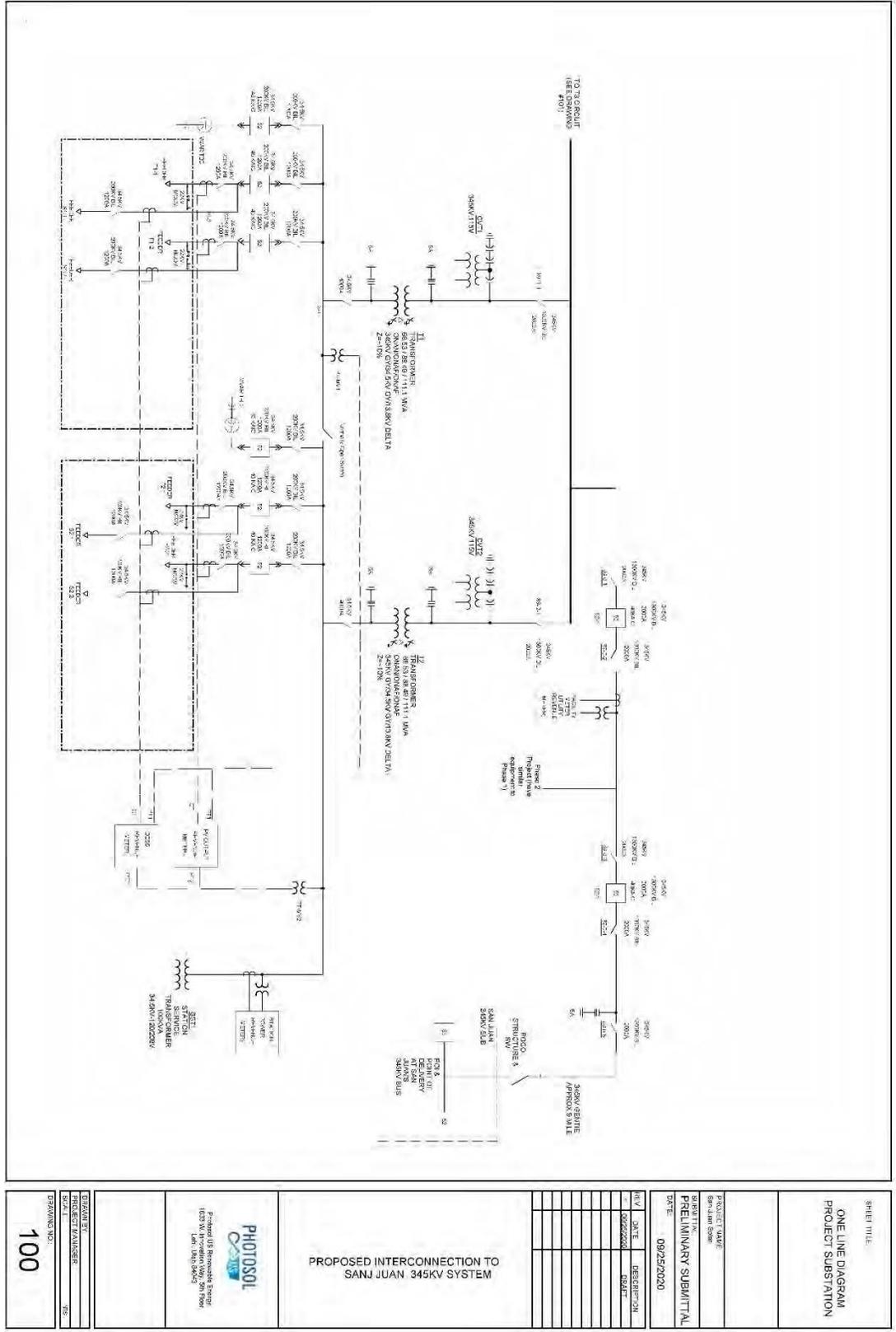
Milestone Items	Dates
LGIA Executed	October 2020
Start of Construction/EPC Notice to Proceed	March 2021
Permitting Complete	July 2021
Major Equipment Supply Agreements Executed	September 2021
Start of Major Equipment Deliveries	September 2021
Start of Equipment Commissioning	September 2021
Interconnection In-Service Date (ISD)	Feb 2022
Financing Closed	February 2022
Interconnection - Sync Date	March 2022
Expected COD	March 2022
Expected COD	June 10, 2022
Guaranteed COD	Expected COD + 180 Days

EXHIBIT B
(to Energy Storage Agreement)

ONE-LINE DIAGRAM OF PROJECT AND INTERCONNECTION FACILITIES



See attached one-line diagram of the Project, which indicates the Interconnection Facilities, the network upgrades, the Point of Delivery into WECC Path 48 and ownership and location of meters. Seller shall provide any necessary updates upon execution of the Interconnection Agreement.



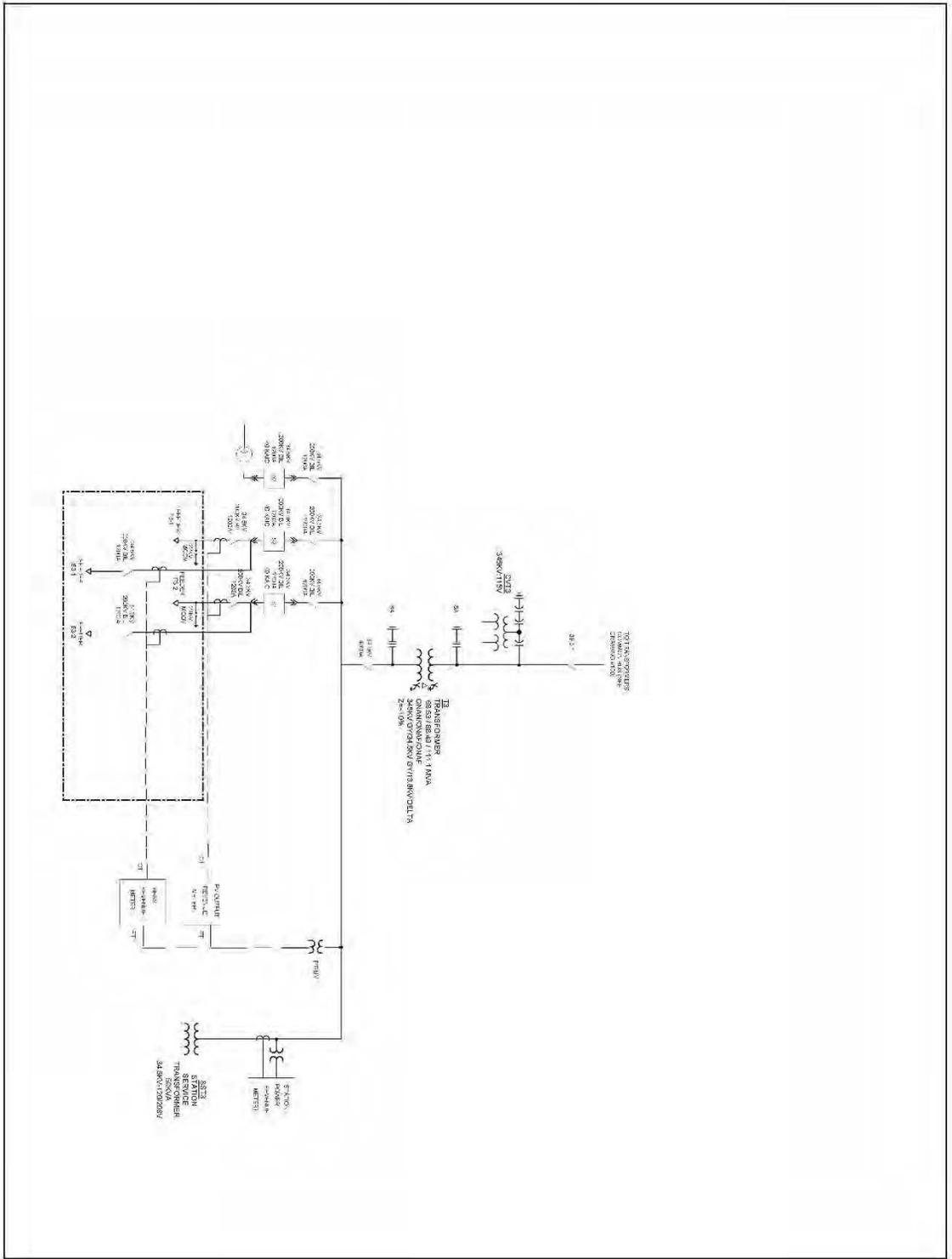
B-2

PROPOSED INTERCONNECTION TO SAN JUAN 345KV SYSTEM

PHOTOSOL
345KV/138KV TRANSFORMER

100

PROJECT NAME	ONE LINE DIAGRAM PROJECT SUBSTATION
PROJECT NUMBER	99-1400000
DATE	09/25/2020
REVISION	ISSUE FOR PERMITTING
DESIGNER	
CHECKER	
APPROVER	
DATE	
PROJECT MANAGER	
DRAWING NO.	100



<p>SHEET TITLE ONE LINE DIAGRAM PROJECT SUBSTATION</p>	<p>PROJECT NAME San Juan Subst</p> <p>SUBMITTAL PRELIMINARY SUBMITTAL</p> <p>DATE 09/29/2020</p>	<p>PROPOSED INTERCONNECTION TO SAN JUAN 345KV SYSTEM</p>	<p>PHOTOSOL Specialty US Removable Energy -4833 W. Revolution Way, 5th Floor 19th, Lombard, CA</p>	<p>DRAWN BY PROJECT MANAGER SCALE DRAWING NO. 101</p>
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EXHIBIT C
(to Energy Storage Agreement)

DESCRIPTION OF SITE
PARCEL SURVEY FOR
SJS 1 STORAGE PROJECT

NOTE: The SJS 1 Storage Project will be located within the boundaries of the San Juan Solar 1 Project in the State of New Mexico, and being more particularly described as follows:

All or a portion of the following San Juan County Tax Assessor's tax parcels numbers. The Project Site is located on approximately +/- 3933 acres of land commonly described as San Juan County Tax Assessor's tax parcel numbers 2087176198462, 2087177198005, 2087177066033, 2087177066132, 2087177066212, 2084179396132, 2087177066363, 2087177198330, 2086178264066, 2085179396198, 2085177396264, 2085178462066, 2085178462462, 2084179462396, 2084179198396, 2086179066198, 2085179132132, , and 2081179264264 are described as follows:

APN: 2087176198462

County: San Juan County, New Mexico

Legal: NW/NE Less the North 8 Acres in Sec. 22 T30N R15W NMPM

APN: 2087177198005

County: San Juan County, New Mexico

Legal: South 24 Acres SW/SE Sec 15, T30N R15W NMPM

North 8 Acres NW/NE Sec 22, T30N R15W NMPM

APN: 2087177066033

County: San Juan County, New Mexico

Legal: South 32 AC OF SE/SE OF SEC 15, T30N R15W NMPM

APN: 2087177066132

County: San Juan County, New Mexico

Legal: South 8 ACRES OF NE/SE OF SEC 15, T30N R15W NMPM

North 8 ACRES OF SE/SE OF SEC 15, T30N R15W NMPM

North 16 ACRES OF SW/SE OF SEC 15, T30N R15W NMPM

APN: 2087177066212

County: San Juan County, New Mexico

Legal: North 32 Acres NE/SE Sec. 15, T30N R15W NMPM

APN: 2084179396132

County: San Juan County, New Mexico

Legal: SW/4 Sec. 6, T30N R15W NMPM

N2/NE, S/2 SE/NE Sec. 15, T30N R15W NMPM

APN: 2087177066363
County: San Juan County, New Mexico
Legal: N2 SE/NE Sec. 15, T30N R15W NMPM

APN: 2087177198330
County: San Juan County, New Mexico
Legal: SW/NE Sec. 15, T30N R15W NMPM

APN: 2086178264066
County: San Juan County, New Mexico
Legal: SE/SW & SW/SE OF Sec. 11, T30N R15W NMPM
E/2 NW & W/2 NE OF Sec. 14, T30N R15W NMPM

APN: 2085179396198
County: San Juan County, New Mexico
Legal: N/2 SW, SE/4, SESW Sec. 1, T30N R15W NMPM
SE/SE Sec 11, T30N R15W NMPM
E2/NE/4, NE/SE Sec 14, T30N R15W NMPM
NW/SW, E/2SE, NE Sec. 12, T30N R15W NMPM

APN: 2085177396264
County: San Juan County, New Mexico
Legal: S2/NW, N2/SW Sec. 13, T30N R15W NMPM

APN: 2085178462066
County: San Juan County, New Mexico
Legal: SW/SW, SE/NW, E/2SW Sec. 12, T30N R15W NMPM

APN: 2085178462462
County: San Juan County, New Mexico
Legal: NW/NW & North 440 FT OF SW/NW Sec. 12, T30N R15W NMPM

APN: 2084179462396
County: San Juan County, New Mexico
Legal: W/2NW Sec. 6, T30N R15W NMPM

APN: 2084179198396
County: San Juan County, New Mexico
Legal: E2/NW, W/2NE Sec. 6, T30N R15W NMPM

APN: 2086179066198
County: San Juan County, New Mexico
Legal: NE/SE Sec. 2, T30N R15W NMPM

APN: 2085179132132

County: San Juan County, New Mexico

Legal: SE/4, SE/SW Sec. 1 T30N R15W NMPM

NE/NW, W2/SE, NE/4 Sec. 12, T30N R15W NMPM

APN: 2081179264264

County: San Juan County, New Mexico

Legal: ALL Sec. 3, T30N R14W NMPM

W/2, W/2E/2, NE/NE Sec. 5, T30N R14W NMPM

E/2NE, SE/4 Sec. 6, T30N R14W NMPM

N1/2 Sec. 7, T30N R14W NMPM

W1/2NW, NE/NW Sec. 8, T30N R14W NMPM

The fenced area of the above described Tract of Land contains approximately 1500 acres more or less in area.

EXHIBIT K
(to Energy Storage Agreement)

**COMMERCIAL OPERATION
FORM OF CERTIFICATION**

This certification (“Certification”) of Commercial Operation is delivered by SJS 1 Storage, LLC (“Seller”) to Public Service Company of New Mexico (“Buyer”) in accordance with the terms of that certain Energy Storage Agreement dated September 25, 2020 (“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 130 MW for four (4) consecutive hours has been constructed, commissioned and tested and is capable of delivering Discharge Energy on a sustained basis (in accordance with the ESS manufacturer’s requirements and the Commissioning Tests);
- (2) Seller has obtained all necessary rights under the Interconnection Agreement for the interconnection and delivery of Discharge Energy to the Point of Delivery and is not in breach of the Interconnection Agreement; and
- (3) the Project has been completed in all material respects (except for Delayed ESS Capacity and punch list items that do not materially and adversely affect the ability of the Project to operate as intended).

A certified statement of the Licensed Professional Engineer, attached hereto, has been provided as evidence of Commercial Operation of the Project to provide Product and meet, at a minimum, the requirements indicated herein.

EXECUTED by SELLER this _____ day of _____, 20__.

SJS 1 STORAGE, LLC

[Licensed Professional Engineer]

Signature: _____
 Name: _____
 Title: _____

Signature: _____
 Name: _____
 Title: _____
 Date: _____

License Number and LPE Stamp: _____

EXHIBIT M
(to Energy Storage Agreement)

ESS Operating Restrictions

Subject to the terms of this ESA, the ESS shall be operated in accordance with the following operating restrictions. Seller is authorized to utilize the BESS control system to enforce these Operating Restrictions:

1. Except as otherwise allowed in Section 12.12, during the Recapture Period, the ESS shall exclusively be charged using Energy produced by the Solar Facility.
2. Except as allowed in Section 5.1(A), the amount of Discharge Energy at any point in time shall be limited to the interconnection limit minus the contemporaneous Energy production by the Solar Facility.
3. The number of ESS Equivalent Full Cycles in any Commercial Operation Year shall be limited according to Section 4.1(C).
4. The annual average state of charge percentage shall be maintained below fifty percent (50%) during any Commercial Operation Year.
5. The ESS will be dispatched in order to maintain a state of charge between zero (0) MWh and five hundred twenty (520) MWh, inclusive.
6. Any delivery of Charging Energy from the grid will be in compliance with the terms of the Interconnection Agreement.
7. The ESS will be operated in accordance with Prudent Utility Practice.

In the event that Buyer's actions violate the above ESS Operating Restrictions, Buyer shall compensate Seller for actual additional maintenance requirements or remedy for any warranty claims directly related to such violation. If the Parties are unable to resolve any dispute concerning a claimed violation of the ESS Operating Restrictions, they shall proceed in accordance with Section 13.8 of the ESA.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF THE APPLICATION)
OF PUBLIC SERVICE COMPANY OF NEW)
MEXICO FOR APPROVAL OF RENEWABLE)
POWER AGREEMENTS AND ENERGY)
STORAGE AGREEMENTS AND)
PROPOSAL FOR DEMAND RESPONSE)
PLAN PURSUANT TO FINAL ORDER IN)
CASE NO. 19-00195-UT)
)
PUBLIC SERVICE COMPANY OF NEW)
MEXICO,)
)
Applicant)
_____)**

Case No. 20-00182-UT

SELF AFFIRMATION

THOMAS FALLGREN, Vice President, PNM Generation, at Public Service Company of New Mexico, upon penalty of perjury under the laws of the State of New Mexico, affirm and state: I have read the foregoing **Direct Testimony of Thomas Fallgren** and it is true and correct based on my personal knowledge and belief.

DATED this 28th day of September, 2020.

/s/ Thomas Fallgren

THOMAS FALLGREN