

**BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA**

Joint Application of Nevada Power Company d/b/a NV Energy and Sierra Pacific Power Company d/b/a NV Energy for approval of their 2027-2046 integrated resource plan, 2027-2029 Action Plan and 2027-2029 Energy Supply Plan.

Docket No. 26-05 \_\_\_\_

**VOLUME 15 OF 41**

**TECHNICAL APPENDIX  
RENEWABLES**

<b>DESCRIPTION</b>	<b>PAGE NUMBER</b>
REN-8-DLE2(a) Dry Lake East Energy Storage II PPA (Redacted)	2
REN-8-DLE2(b) Dry Lake East Energy Storage II Due Diligence (Confidential)	215
REN-8-DLE2(c) Dry Lake East Energy Storage II NAC-NRS Compliance	216
REN-8-DLE2(d) Dry Lake East Energy Storage II Key Provisions	227

**REN-8-DLE2(a)**

**LONG-TERM ENERGY STORAGE AGREEMENT**

**BETWEEN**

**NEVADA POWER COMPANY D/B/A NV ENERGY**

**AND**

**DRY LAKE EAST ENERGY STORAGE II, LLC**

**Dry Lake East Energy Storage II  
Clark County, Nevada**

---

**TABLE OF CONTENTS**

<u>ARTICLE</u>	<u>PAGE</u>
1. DEFINITIONS.....	1
2. TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS .....	17
3. SUPPLY SERVICE OBLIGATIONS .....	18
4. PRICE OF STORAGE PRODUCT .....	23
5. [RESERVED] .....	24
6. RIGHT OF FIRST OFFER; RIGHT OF FIRST REFUSAL; PURCHASE OPTIONS; END OF TERM PURCHASE OPTION .....	24
7. METERING, INVOICING AND PAYMENTS .....	26
8. FACILITY CONSTRUCTION; OPERATIONS AND MODIFICATIONS .....	30
9. EMERGENCY.....	39
10. CURTAILMENT & DISPATCHABILITY .....	40
11. PLANNED OUTAGES .....	40
12. REPORTS; OPERATIONAL LOG .....	41
13. COMMUNICATIONS.....	44
14. SCHEDULING NOTIFICATION .....	45
15. COMPLIANCE.....	46
16. APPROVALS .....	47
17. SECURITY .....	48
18. INDEMNIFICATION.....	51
19. LIMITATION OF LIABILITY .....	53
20. FORCE MAJEURE .....	54
21. DISPUTES.....	57
22. NATURE OF OBLIGATIONS.....	58
23. ASSIGNMENT .....	58
24. DEFAULT AND REMEDIES.....	61
25. REPRESENTATIONS AND WARRANTIES OF SUPPLIER.....	66
26. REPRESENTATIONS AND WARRANTIES OF BUYER .....	72
27. INSURANCE.....	73
28. NO EXPECTATION OF CONFIDENTIALITY; PUBLIC STATEMENTS.....	75
29. MISCELLANEOUS .....	76

**EXHIBITS**

EXHIBIT 1	DESCRIPTION OF FACILITY .....	1-1
EXHIBIT 2A	PRODUCT RATES .....	2A-1
EXHIBIT 2B	FORM OF MONTHLY INVOICE.....	2B-1
EXHIBIT 2C	RESERVED.....	2C-1
EXHIBIT 3A	DESCRIPTION OF PROJECT SITE .....	3A-1
EXHIBIT 3B	MAP DEPICTING PROJECT SITE .....	3B-1
EXHIBIT 4	NOTICES, BILLING AND PAYMENT INSTRUCTIONS.....	4-1
EXHIBIT 5	ONE-LINE DIAGRAM OF FACILITY AND DELIVERY POINT .....	5-1
EXHIBIT 6	PROJECT MILESTONE SCHEDULE .....	6-1
EXHIBIT 7	PERFORMANCE TESTS .....	7-1
EXHIBIT 7A	PERFORMANCE TESTING .....	7A-1
EXHIBIT 8	FORM OF AVAILABILITY NOTICE.....	8-1
EXHIBIT 9	BUYER’S REQUIRED REGULATORY APPROVALS.....	9-1
EXHIBIT 10	SUPPLIER’S REQUIRED REGULATORY APPROVALS.....	10-1
EXHIBIT 11	TECHNICAL SPECIFICATIONS .....	11-1
EXHIBIT 12	REQUIRED FACILITY DOCUMENTS .....	12-1
EXHIBIT 13	RESERVED.....	13-1
EXHIBIT 14	DIAGRAM OF FACILITY .....	14-1
EXHIBIT 15	OPERATION AND MAINTENANCE AGREEMENT; OPERATOR GOOD STANDING CERTIFICATE .....	15-1
EXHIBIT 16	PRIMARY FREQUENCY RESPONSE .....	16-1
EXHIBIT 17	FORM OF LETTER OF CREDIT.....	17-1
EXHIBIT 18	RESERVED.....	18-1
EXHIBIT 19	FORM OF LENDERS CONSENT.....	19-1
EXHIBIT 20	FORM OF GUARANTY.....	20-1
EXHIBIT 21	WORK SITE AGREEMENT .....	21-1
EXHIBIT 22	RESERVED.....	22-1
EXHIBIT 23	APPROVED CONTRACTORS .....	23-1
EXHIBIT 23A	EQUIPMENT SPECIFICATIONS (BESS) .....	23A-1
EXHIBIT 23B	EQUIPMENT SPECIFICATIONS (HV/MV) .....	23B-1
EXHIBIT 24	OPERATING PROCEDURES.....	24-1
EXHIBIT 25	STORAGE CAPACITY TESTS .....	25-1
EXHIBIT 26	AVAILABILITY TESTS AND AVAILABILITY DAMAGES .....	26-1
EXHIBIT 27	CYBERSECURITY.....	27-1
EXHIBIT 28	STORAGE ROUND TRIP EFFICIENCY GUARANTEE.....	28-1
EXHIBIT 29	SHARED FACILITIES AGREEMENT.....	29-1
EXHIBIT 30	RESERVED.....	30-1
EXHIBIT 31	PERMITTING AND REAL ESTATE OPINION.....	31-1

## LONG-TERM ENERGY STORAGE AGREEMENT

This Long-Term Energy Storage Agreement (this “Agreement”) is made and entered into as of February 19, 2026 (the “Effective Date”) by and between **NEVADA POWER COMPANY**, a Nevada corporation, d/b/a NV Energy acting in its merchant function capacity (“Buyer”), and **DRY LAKE EAST ENERGY STORAGE II, LLC**, a Delaware limited liability company (“Supplier”). Buyer and Supplier are sometimes referred to individually as a “Party” and collectively as the “Parties.”

**WHEREAS**, Buyer is an operating electric public utility, subject to the applicable rules and regulations of the PUCN and FERC (as such terms are defined below);

**WHEREAS**, Buyer seeks the ability to dispatch battery energy storage systems at a fixed price in order to reduce its reliance on fossil fuels, to meet peak energy demand and obtain Ancillary Services (as such term is defined below);

**WHEREAS**, Supplier intends to construct or cause to be constructed the Facility (as such term is defined below) upon the terms and conditions set forth herein; and

**WHEREAS**, Supplier desires to deliver and make available to Buyer, and Buyer desires to purchase and receive from Supplier, Storage Product (as such term is defined below) from the Facility upon the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the covenants and conditions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Supplier, intending to be legally bound, hereby agree as follows:

### 1. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings set forth below:

- 1.1 “Affiliate” means, with respect to any Person, each Person that directly or indirectly, controls or is controlled by or is under common control with such Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, operations or policies of such Person, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, (a) with respect to Buyer, unless Buyer assigns this Agreement in accordance with the terms of this Agreement or there is a change of control of Buyer, Affiliate shall only include Berkshire Hathaway Energy Company and its direct and indirect, wholly owned subsidiaries, and (b) with respect to Supplier, unless Supplier assigns this Agreement or there is a Change of Control of Supplier, in each case, in accordance with the terms of this Agreement, Affiliate shall include XPLR Infrastructure Operating Partners, LP,

XPLR Infrastructure, LP, and NextEra Energy Capital Holdings, Inc., and their respective direct or indirect subsidiaries.

- 1.2 “AGC” means automatic generator control.
- 1.3 “Agreement” means this Long-Term Energy Storage Agreement together with the Exhibits attached hereto, as amended from time to time.
- 1.4 “ALTA Survey” means a land survey prepared and certified in accordance with the standards jointly promulgated by the American Land Title Association and the American Congress on Surveying and Mapping.
- 1.5 “Ancillary Services” means those services necessary to support the transmission of electric power from Supplier to Buyer and to maintain reliable operations of the Transmission System, including voltage control, operating reserve, spinning reserve, Primary Frequency Response, secondary and tertiary frequency response through AGC and reactive power.
- 1.6 “ASC” is defined in Section 12.7.
- 1.7 “Assigned”, “Assign”, “Assigning” and “Assignment” are defined in Section 23.
- 1.8 “Availability Liquidated Damages” is defined in Exhibit 26.
- 1.9 “Availability Notice” means a notice delivered by Supplier to Buyer pursuant to Section 14.2 notifying Buyer of the availability of the Facility.
- 1.10 “Average On-Peak Mead” means the simple average of the Mead for the On-Peak hours of the Summer Months or the Non-Summer Months, as applicable.
- 1.11 “Balancing Authority Area” is defined in the OATT (as may be modified from time to time) of the Balancing Authority Area Operator.
- 1.12 “Balancing Authority Area Operator” means a Person, and its agents and any successors thereto, that is responsible for the operation of the electric transmission system and for maintaining reliability of the electric transmission system, including the Transmission System, within the Balancing Authority Area where the Facility is located. As of the Effective Date, the Balancing Authority Area Operator is the Transmission Provider.
- 1.13 “Billing Period” is defined in Section 7.2.1.
- 1.14 “BLM” means the United States Department of the Interior – Bureau of Land Management, and any successor agency thereto.
- 1.15 “Business Day” means any day other than Saturday, Sunday and any day that is a holiday observed by Buyer.

- 1.16 “Buyer” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.17 “Buyer ROFO Notice” is defined in Section 6.1.1.
- 1.18 “Buyer’s Required Regulatory Approvals” means the approvals, consents, authorizations or permits of, or filing with, or notification to the Governmental Authorities listed on Exhibit 9, and such others as are deemed by Buyer to be necessary or desirable from time to time.
- 1.19 “Change of Control” means, in respect of Supplier or any direct or indirect upstream owner of Supplier, the occurrence, whether in a single transaction or in a series of related transactions at any time during the Term, of (a) a transfer of a Controlling Interest in Supplier or such owner, or (b) any consolidation or merger of Supplier or such owner in which Supplier or such owner, as the case may be, is not the continuing or surviving entity, or (c) a sale or conveyance of any direct or indirect ownership interest in Supplier following which NextEra Energy, Inc. is no longer the direct or indirect owner of at least fifty percent (50%) of the ownership interests of Supplier, provided, however, that a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.
- 1.20 “Charging Energy” means all energy from the Transmission System, less transformation and transmission losses, if any, delivered by Buyer to Supplier at the Delivery Point in accordance with a Charging Notice from Buyer pursuant to Section 3.6.4. All Charging Energy shall be used solely to charge the Storage Facility.
- 1.21 “Charging Notice” means an operating instruction, and any subsequent updates thereto, given by Buyer to Supplier, directing the Storage Facility to charge at a specific MW rate using Charging Energy at the Delivery Point, provided that any operating instruction and updates shall be in accordance with the Operating Procedures. Charging Notices may be communicated electronically, via facsimile, telephonically or other verbal means, provided that telephonic or other verbal communications shall be documented promptly after making such communications (either recorded by tape, electronically or in writing), and such recordings shall be made available to both Buyer and Supplier upon request for settlement purposes. For the avoidance of doubt, any Buyer request to initiate a Storage Capacity Test shall not be considered a Charging Notice.
- 1.22 “Code” means the United States Internal Revenue Code of 1986, as amended.
- 1.23 “Commercial Operation” means that: (a) the Storage Facility is fully capable of charging, storing and discharging energy up to the Expected Storage Facility Nameplate Capacity Rating; (b) Supplier shall have received or obtained all Required Facility Documents; and (c) which occurs when all of the requirements set forth in Sections 8.1, 8.3 and 17.2 and Exhibits 6, 7 and 7A (i) have occurred, and (ii) remain simultaneously true and accurate: (A) as of the date and time Supplier gives Buyer notice that Commercial Operation has occurred; and (B) for

the period Buyer has to review Supplier's notice of Commercial Operation pursuant to Section 8.2.1.

- 1.24 “Commercial Operation Date” means the date on which Commercial Operation occurs.
- 1.25 “Commercial Operation Deadline” means the date specified in Exhibit 6 by which the Commercial Operation Date must occur, as such date shall automatically be extended: (i) if the PUCN Approval is not obtained on or before November 26, 2026, then on a day-for-day basis for the number of days between such date and the day after the PUCN Approval Date, and (ii) if and to the extent Supplier fails to achieve the Commercial Operation Date as a result of Force Majeure or an Interconnection Delay.
- 1.26 “Construction Contract” means one or more construction agreements (excluding any Major Equipment Contract), in each case, between a Construction Contractor and Supplier (or one of its Affiliates), pursuant to which, in the aggregate, the Facility will be designed, engineered, constructed, tested and commissioned.
- 1.27 “Construction Contractor” means, with respect to a Construction Contract, the construction contractor that is party to such Construction Contract and is among the approved construction contractors listed on Exhibit 23.
- 1.28 “Contract Representative” of a Party, means the individual designated by that Party in Exhibit 4 as responsible for ensuring effective communication, coordination and cooperation between the Parties. A Party may change its Contract Representative by providing notice of such change to the other Party in accordance with the procedures set forth in Section 29.1.
- 1.29 “Contract Year” means each year during the Term beginning on January 1 and ending on December 31 of the year following the Commercial Operation Date (or commencing on the Commercial Operation Date if the Commercial Operation Date is January 1).
- 1.30 “Controlling Interest” with respect to a Person, means more than fifty percent (50%) of the outstanding ownership interest of such Person, or the power to vote such percentage of ownership interest.
- 1.31 “Covered Facility” is defined in Section 24.5.1.
- 1.32 “COVID-19” means the viral pneumonia named coronavirus disease 2019 (COVID-19) by the World Health Organization and caused by the virus named Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) by the International Committee on Taxonomy of Viruses and any mutations or variants thereof or related or associated epidemics, pandemics or disease outbreaks.
- 1.33 “Credit Rating” of a Person means the credit rating then assigned by a Relevant Rating Agency to the long-term, senior, unsecured, non-credit-enhanced indebtedness of that Person.

- 1.34 “Critical Project Milestone” means a Project Milestone designated as a Critical Project Milestone on Exhibit 6.
- 1.35 “Critical Project Milestone Deadline” means, in respect of a Critical Project Milestone, the date specified in Exhibit 6 by which such Critical Project Milestone must occur, as such date may be extended if and to the extent Supplier fails to achieve such Critical Project Milestone as a result of Force Majeure or an Interconnection Delay.
- 1.36 “Critical Project Milestone Daily Delay Damage” means an amount equal to: (a) with respect to the first (1<sup>st</sup>) through and including the sixtieth (60<sup>th</sup>) day subsequent to any Critical Project Milestone Deadline, Two Hundred Ninety-One Dollars and Sixty-Seven Cents (\$291.67) per MW of the Expected Nameplate Capacity Rating per day; (b) with respect to the sixty-first (61<sup>st</sup>) through and including the one-hundred-twentieth (120<sup>th</sup>) day subsequent to any Critical Project Milestone Deadline, Five Hundred Eighty-Three Dollars and Thirty-Four Cents (\$583.34) per MW of the Expected Nameplate Capacity Rating per day; and (c) with respect to the one-hundred-twenty-first (121<sup>st</sup>) through and including the one hundred and eightieth (180<sup>th</sup>) day subsequent to any Critical Project Milestone Deadline, Eight Hundred Seventy-Five Dollars (\$875.00) per MW of the Expected Nameplate Capacity Rating per day.
- 1.37 “Cure Period” is defined in Section 24.3.
- 1.38 “Current Conflicts” means (a) the military conflict between Ukraine and the Russian Federation beginning on February 24, 2022, and (b) the military conflict between Israel and Hamas beginning on October 7, 2023, and the subsequent military confrontations related thereto through the Effective Date
- 1.39 “Daily Delay Damages” means an amount equal to: (a) with respect to the first (1<sup>st</sup>) through and including the sixtieth (60<sup>th</sup>) day subsequent to the Commercial Operation Deadline, Three Hundred Eighty-Eight Dollars and Eighty-Nine Cents (\$388.89) per MW of the Expected Storage Facility Nameplate Capacity Rating per day; (b) with respect to the sixty-first (61<sup>st</sup>) through and including the one-hundred-twentieth (120<sup>th</sup>) day subsequent to the Commercial Operation Deadline, Seven Hundred Seventy-Seven Dollars and Seventy-Eight Cents (\$777.78) per MW of the Expected Storage Facility Nameplate Capacity Rating per day; and (c) with respect to the one-hundred-twenty-first (121<sup>st</sup>) through and including the one hundred and eightieth (180<sup>th</sup>) day subsequent to the Commercial Operation Deadline, One Thousand One Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$1,166.67) per MW of the Expected Storage Facility Nameplate Capacity Rating per day.
- 1.40 “Defaulting Party” is defined in Section 24.1.
- 1.41 “Delivery Point” means the point of interconnection between the Facility and the Transmission System, as further described in Exhibit 5.
- 1.42 “Development Security” is defined in Section 17.1.

- 1.43 “Discharging Energy” means all energy discharged by the Storage Facility, less transformation and transmission losses, if any, delivered to the Delivery Point.
- 1.44 “Discharging Notice” means an operating instruction, and any subsequent updates thereto, given by Buyer to Supplier, directing the Storage Facility to discharge Discharging Energy at a specific MW rate, provided that any operating instruction and updates shall be in accordance with the Operating Procedures. Discharging Notices may be communicated electronically, via facsimile, telephonically or other verbal means, provided that telephonic or other verbal communications shall be documented promptly after making such communications (either recorded by tape, electronically or in writing), and such recordings shall be made available to both Buyer and Supplier upon request for settlement purposes.
- 1.45 “Dispute” is defined in Section 21.1.
- 1.46 “Early Purchase Option” is defined in Section 6.2.
- 1.47 “Effective Date” is defined in the preamble of this Agreement.
- 1.48 “Electric System Authority” means each of NERC, WECC, WREGIS, Balancing Authority Area Operator, Market Operator, a Regional Transmission Organization, a regional or sub-regional reliability council or authority, and any other similar council, corporation, organization or body of recognized standing with respect to the operations of the electric system in the WECC region.
- 1.49 “Emergency” means any circumstance or combination of circumstances or any condition of the Facility, the Transmission System or the transmission system of other transmission operators, which is determined or reported by Buyer, Supplier (with respect to the Facility only), the Transmission Provider or any Electric System Authority to be (a) reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property or (b) reasonably likely to adversely affect, degrade or impair Transmission System reliability or transmission system reliability of the transmission system of other electric utilities.
- 1.50 “Energy Imbalance Market” means generation facilities electrically located within the Balancing Authority Area that are, from time to time, bid into or otherwise subject to dispatch instructions issued or originating from the Market Operator.
- 1.51 “Environmental Contamination” means the introduction or presence of Hazardous Substances at such levels, quantities or locations, or of such form or character, as to constitute a violation of Laws and present a material risk under Laws that the Project Site will not be available or usable for the purposes contemplated by this Agreement.
- 1.52 “Environmental Law” means any Law relating to the protection, preservation or restoration of human health, the environment, or natural resources, including any Law relating to the releases or threatened releases of Hazardous Substances into any medium (including ambient air, surface water, groundwater, land, surface and

subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, release, transport and handling of Hazardous Substances.

- 1.53 “Equipment Specifications” means those requirements and specifications for all equipment procured pursuant to the Major Equipment Contracts and set forth in Exhibit 23A and Exhibit 23B.
- 1.54 “Event of Default” is defined in Section 24.1.
- 1.55 “EWG” means an “exempt wholesale generator” as defined in the Public Utility Holding Company Act of 2005 and in implementing regulations issued thereunder.
- 1.56 “Excess Charging Energy” is defined in Section 3.4.6.3.
- 1.57 “Expected Storage Facility Nameplate Capacity Rating” is defined in Exhibit 1.
- 1.58 “Facility” means the Storage Facility.
- 1.59 “Fair Market Value” means the greater of (a) the depreciated net book value of the Facility and (b) the price which a willing buyer would pay for the Facility in an arm’s-length transaction to a willing seller under no compulsion to sell and taking into account any outstanding indebtedness and Tax Credits associated with the Facility and accommodating all commercially reasonable make-whole payments required to be paid to Supplier’s Lenders pursuant to applicable financing agreements, as such price shall be determined by mutual agreement of the Parties or, absent mutual agreement of the Parties, pursuant to Article 21; provided, that Supplier shall provide reasonable and verifiable evidence, including reasonable supporting documentation, of the depreciated net book value of the Facility and any outstanding indebtedness, Tax Credits and make-whole payments required to be paid to Supplier’s Lenders as a condition to such items being accounted in the Fair Market Value.
- 1.60 “FERC” means the Federal Energy Regulatory Commission and any successor.
- 1.61 “Fitch” means Fitch Ratings Ltd. and any successor.
- 1.62 “Force Majeure” is defined in Section 20.2.
- 1.63 “Good Utility Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, whether or not the Party whose conduct at issue is a member of any relevant organization and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale storage facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to

acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale storage facilities in the Western United States. Good Utility Practice shall include compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

- 1.64 “Governmental Approval” means any authorization, approval, consent, license, ruling, permit, tariff, certification, exemption, order, recognition, grant, confirmation, clearance, filing, notification, or registration of, by, with or to any Governmental Authority.
- 1.65 “Governmental Authority” means, as to any Person, any federal, state, local, tribal, or other governmental, regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over such Person or its property or operations, and with respect to Supplier, specifically includes FERC, the BLM, PUCN, NERC, WECC and WREGIS.
- 1.66 “Guaranteed Storage Availability” is defined in Section 3.4.8.1.
- 1.67 “Guaranty” means a guaranty substantially and in all material respects in the form of Exhibit 20.
- 1.68 “Hazardous Substance” means: (a) any petroleum or petroleum products, flammable materials, explosives, radioactive materials, friable asbestos, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls (PCBs) in regulated concentrations; (b) any chemicals or other materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “contaminants,” “pollutants” or words of similar import under any Environmental Law; and (c) any other chemical or other material or substance, exposure to which is now or hereafter prohibited, limited or regulated as such under any Environmental Law, including the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. section 9601 et seq., or any similar state statute.
- 1.69 “IA” means the Large Generator Interconnection Agreement executed on February 18, 2020, as amended from time to time, between Supplier and the Transmission Provider for the Facility.
- 1.70 “IEEE-SA” means the Institute of Electrical and Electronics Engineers Standards Association and any successor entity thereto.

- 1.71 “Indemnified Party” is defined in Section 18.1.
- 1.72 “Indemnifying Party” is defined in Section 18.1.
- 1.73 “Interconnection Delay” means any actual delay in the achievement of Commercial Operation that arises from the Transmission Provider’s failure to achieve the “In-Service Date” (as defined in the IA) by November 1, 2026, and that such delay is not caused by the acts or omissions of Supplier and could not have been mitigated or avoided by Supplier despite the exercise of diligent and commercially reasonable efforts by Supplier; provided that in no event shall the total amount of Interconnection Delay exceed one hundred eighty (180) days
- 1.74 “Invoice” means the statements described in Section 7.2 setting forth the information required therein, as well as the associated payment due for the Billing Period, the Measurement Period or the Contract Year, as the case may be, in accordance with Exhibits 2B and 2C.
- 1.75 “ITC” means the investment tax credit established pursuant to Section 48 of the Code, or the clean energy investment tax credit pursuant to Section 48E of the Code, as may be amended, supplemented or replaced (in whole or in part) from time to time, and any successor provisions thereto.
- 1.76 “Law” means any federal, state, local or other law (including any Environmental Laws), common law, treaty, code, rule, ordinance, binding directive, regulation, order, judgment, decree, ruling, determination, permit, certificate, authorization, or approval of a Governmental Authority which is binding on a Party, its contractors, its suppliers, or any of its or their property.
- 1.77 “Licensed Professional Engineer” means a person proposed by Supplier and acceptable to Buyer, such acceptance not to be unreasonably withheld, conditioned or delayed, who: (a) is licensed in Nevada to practice engineering in the appropriate engineering discipline for the required certification being made; (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion; (c) has no economic relationship, association, or nexus with Supplier for services currently being rendered to Supplier or its members or Affiliates (other than in a materially similar role to provide certification, evaluation, or opinion with respect to other, wholly separate matters which Affiliates of Supplier are involved and to which Supplier is not involved), and is not an employee of Supplier or its members or Affiliates; and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility.
- 1.78 “Loss” with respect to a Person means, any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, Penalties, sanctions, Taxes, judgments, damages, losses or expenses imposed by a third party upon such Person or incurred in connection with a claim by a third party against such Person.

- 1.79 “Major Equipment Contract” means one or more battery supply agreements and transformer supply agreements, entered into by Supplier (or one of its Affiliates) to procure batteries and transformers, respectively, for construction of the Facility, each of which shall meet the Equipment Specifications. Major Equipment Contracts shall specify delivery schedules for each type of equipment.
- 1.80 “Major Equipment Contractor” means, with respect to a Major Equipment Contract, the equipment supplier or contractor that is party to such Major Equipment Contract.
- 1.81 “Market Operator” means, if applicable, the California Independent System Operator Corporation or any other entity performing the market operator function for the Energy Imbalance Market.
- 1.82 “Material Adverse Effect” means, with respect to a Party, a material adverse effect on: (a) the ability of such Party to perform its obligations under this Agreement, individually or in the aggregate; (b) the validity or enforceability of this Agreement or the transaction contemplated hereby; or (c) on the business, assets, operations, property or condition (financial or otherwise) of such Party.
- 1.83 “Mead” means the Hourly Mead Index published by Powerdex.
- 1.84 “Measurement Period” means each two (2) consecutive Contract Years commencing with the first two (2) Contract Years of the Term (i.e., Contract Years one (1) and two (2) shall comprise the first such Measurement Period, Contract Years three (3) and four (4) shall comprise the second Measurement Period, Contract Years five (5) and six (6) shall comprise the third Measurement Period, etc.).
- 1.85 “Meter” means any of the physical or electronic metering devices, data processing equipment and apparatus associated with the meters required for: (a) accurate determination of the: quantities of Station Usage from the Facility, the quantities of Charging Energy delivered to the Delivery Point, the amount of Discharging Energy delivered to the Delivery Point, and for recording other related parameters required for the reporting of data to Supplier; (b) the computation of the payments due from one Party to another under this Agreement; and (c) compliance with requirements of any Electric System Authority, any Governmental Authority or Transmission Provider. Meters do not include any check meters Supplier may elect to install as contemplated by Section 7.1.1.
- 1.86 “Minimum Credit Rating” of a Person means that the Credit Rating of that Person meets at least two (2) of the following: (a) “Baa3” or higher by Moody’s, (b) “BBB-” or higher by S&P, or (c) “BBB-” or higher by Fitch.
- 1.87 “Monthly Storage Availability” is defined in Exhibit 26.
- 1.88 “Moody’s” means Moody’s Investor Services, Inc. and any successor.
- 1.89 “MW” means megawatts of electrical power in AC.

- 1.90 “MWh” and “MWhs” mean a megawatt hour or megawatt hours of electrical energy.
- 1.91 “NAC” means the Nevada Administrative Code.
- 1.92 “NERC” means the North American Electric Reliability Corporation and any successor.
- 1.93 “Network Resource” is defined in the OATT.
- 1.94 “Non-Conforming Dispatch Instruction” means (a) a Charging Notice or Discharging Notice that is contrary to the Operating Procedures or (b) a Discharging Notice that would cause the Discharging Energy delivered to the Delivery Point to exceed 150 MW at any given moment.
- 1.95 “Non-Defaulting Party” means the Party other than the Defaulting Party.
- 1.96 “Non-Summer Months” means all months of the Stub Period or a Contract Year, not including the Summer Months.
- 1.97 “Notice” is defined in Section 29.1.1.
- 1.98 “Notice to Proceed” means a full notice to proceed issued by Supplier to its Construction Contractor(s) pursuant to the Construction Contract to commence work under the Construction Contract(s).
- 1.99 “NRS” means the Nevada Revised Statutes.
- 1.100 “OATT” means Transmission Provider’s or the Balancing Authority Area Operator’s then-effective Open Access Transmission Tariff, which has been accepted for filing by FERC.
- 1.101 “OFAC” is defined in Section 25.15.1.
- 1.102 “OFAC Sanctions List” is defined in Section 25.15.1.
- 1.103 “Offered Interests” is defined in Section 6.1.1.
- 1.104 “Off-Peak” means hours ending 01:00 through 06:00 PPT and hours ending 23:00 through 24:00 PPT of each day.
- 1.105 “On-Peak” means hours ending 07:00 through 22:00 PPT of each day.
- 1.106 “Operating Procedures” is defined in Section 8.8.
- 1.107 “Operating Representative” of a Party means any of the individuals designated by that Party, as set forth in Exhibit 4, to transmit and receive routine operating and Emergency communications required under this Agreement. A Party may change any of its Operating Representatives by providing notice of the change to the other Party in accordance with the notice procedures set forth in Section 29.1.

- 1.108 “Operating Security” is defined in Section 17.2.
- 1.109 “Operation Date” means the first date on which the Storage Facility is fully capable of charging, storing and discharging energy up to the Expected Storage Facility Nameplate Capacity Rating and receiving instructions to charge, store and discharge energy.
- 1.110 “Other Shared Facilities Agreement” is defined in Section 8.1.
- 1.111 “Output Right of First Offer” is defined in Section 24.5.1.
- 1.112 “Party” or “Parties” means each entity set forth in the preamble of this Agreement and its permitted successor or assigns.
- 1.113 “Penalties” means any penalties, fines, damages, or sanctions attributable to Supplier’s failure to perform under this Agreement and actually imposed on Buyer by any Governmental Authority, the Transmission Provider or any Electric System Authority.
- 1.114 “Permitted Transfer” means any of the following:
- (a) transactions among Affiliates of Supplier, including any corporate reorganization, merger, combination or similar transaction or transfer of assets or ownership interests involving Supplier or its Affiliates; provided (i) NextEra Energy, Inc. retains the authority, directly or indirectly, to control Supplier, or (ii) a wholly-owned, indirect subsidiary of NextEra Energy, Inc. operates the Facility during the entire Term;
  - (b) any foreclosure by Supplier’s Lenders pursuant to any financing, including tax equity financing, or other financial arrangements for the Facility;
  - (c) a Change of Control of NextEra Energy, Inc.;
  - (d) any change of economic and voting rights triggered in Supplier’s organizational documents arising from the non-Affiliate financing of the Facility and which does not result in the transfer of ownership, economic or voting rights in any entity that had no such rights immediately prior to the change;
  - (e) the direct or indirect transfer of shares of, or equity interests in Supplier to Supplier’s Lenders as part of a tax equity or other equity financing;
  - (f) the assignment, collateral assignment, or pledge of Supplier’s interest in this Agreement or in the Facility, or undergo a pledge of Supplier’s membership interests or the membership interests of its direct or indirect owner, to a non-Affiliate financing party including in connection with a portfolio financing; and/or
  - (g) a transfer of the Facility packaged with any of the following: (i) all or substantially all of the assets of NextEra Energy Resources, LLC or NextEra Energy, Inc.; (ii) all or substantially all of NextEra Energy Resources, LLC’s or

NextEra Energy, Inc.'s solar generation or energy storage portfolio; or (iii) all or substantially all of NextEra Energy Resources, LLC's or NextEra Energy, Inc.'s renewable energy generation portfolio; provided, that in the case of each of (i), (ii) and (iii), the entity that operates the Facility following such transfer has (or contracts with an entity that has) sufficient experience to operate the Facility successfully, including a minimum of three (3) years' experience in the renewable energy generation and operation business, and ownership, control or operation of a minimum of three hundred (300) MWs of solar energy generation capacity.

- 1.115 "Person" or "Persons" means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.
- 1.116 "Planned Outage" is defined in Section 11.1.
- 1.117 "PPT" means Pacific Standard Time or Pacific Daylight Time, whichever is then prevailing in Las Vegas, Nevada, on a 0100 through 2400 time scale of measurement.
- 1.118 "Primary Frequency Response" means the primary frequency response (also known as fast frequency response) provided through the Facility's governor and governed by the provisions of Exhibit 16 and subject to the limitations set forth in the Operating Procedures.
- 1.119 "Prohibited Country" or "Prohibited Countries" is defined in Section 25.16.
- 1.120 "Prohibited Regions" is defined in Section 25.17.
- 1.121 "Project Milestone" means each of the milestones listed in Exhibit 6.
- 1.122 "Project Site" means the site for the Facility, as more particularly described in Exhibit 3A and depicted in Exhibit 3B.
- 1.123 "PUCN" means the Public Utilities Commission of Nevada and any successor.
- 1.124 "PUCN Approval" is defined in Section 16.2.
- 1.125 "PUCN Approval Date" is defined in Section 16.2.
- 1.126 "PUCN Approval Deadline" means two hundred seventy (270) days after the regulatory filing is made by Buyer.
- 1.127 "Qualified Financial Institution" means a financial institution having an office in the United States, with a total tangible net worth of at least Ten Billion Dollars (\$10,000,000,000) U.S. and whose Credit Rating is at least "A-" by S&P and "A3" by Moody's.

- 1.128 “Qualified Guarantor” means a Person, which at the time it provides a Guaranty, either (a) meets Buyer’s minimum credit requirements as determined by Buyer in its sole and absolute discretion, or (b) meets the Minimum Credit Rating.
- 1.129 “Qualified Transferee” means a Person that is at least as financially and operationally qualified as Supplier as of the Effective Date, and, at a minimum, (a) has a tangible net worth of at least Thirty Million Dollars (\$30,000,000) or provides adequate assurance in an amount and form reasonably acceptable to Buyer, and (b) has (or agrees to contract with an operator who has) at least three (3) years of experience operating a generating plant which has been integrated with a storage facility of similar technology and similar size to the Storage Facility.
- 1.130 “Relevant Rating Agency” means Moody’s, S&P, or Fitch.
- 1.131 “Required Facility Documents” means the Governmental Approvals, rights and agreements now or hereafter necessary for construction, operation and maintenance of the Facility set forth in Exhibit 12. Nothing set forth in Exhibit 12 limits Supplier’s obligation to obtain the Governmental Approvals set forth in Exhibit 12 or otherwise required hereunder or with respect to the Facility.
- 1.132 “Restricted Transaction” is defined in Section 6.1.1.
- 1.133 “ROFO” is defined in Section 6.1.
- 1.134 “ROFO Period” is defined in Section 6.1.1.
- 1.135 “ROFO Seller” is defined in Section 6.1.1.
- 1.136 “Round Trip Efficiency” is defined in Exhibit 28.
- 1.137 “Seller ROFO Notice” is defined in Section 6.1.1.
- 1.138 “Shared Facilities” means any facilities shared with an adjacent generation or storage project, including any generating facility, including equipment storage and maintenance facilities, communication networks, roads, water supply facilities, fences, substation, and certain rights under the IA.
- 1.139 “Shared Facilities Agreement” is defined in Section 8.1.
- 1.140 “Standard and Poor’s” or “S&P” means Standard and Poor’s Ratings Group, a division of McGraw Hill, Inc., and any successor.
- 1.141 “Standby Service” means the electric service supplied by Nevada Power Company pursuant to Schedule LSR, Large Standby Service Rider, as such tariff is in effect and as may be amended from time to time.
- 1.142 “Station Usage” means all energy used by the Facility, provided that in no event shall Storage Product or Charging Energy be used to serve the energy needs of the Facility.

- 1.143 “Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge electric energy, and any other products that may be developed or evolve from time to time during the Term that relate to the maximum dependable operating capability of the Storage Facility to discharge electric energy.
- 1.144 “Storage Capacity Test” means the testing procedures, requirements and protocols set forth in Section 3.4.7 and Exhibit 25.
- 1.145 “Storage Contract Capacity” means the total capacity (in MW) of the Storage Facility determined in accordance with Section 3.4.7 and Exhibit 25, as the same may be adjusted from time to time pursuant to Section 3.4.7 and Exhibit 25.
- 1.146 “Storage Facility” means Supplier’s energy storage facility as described in Exhibit 1 (including the operational requirements of the energy storage facility), located at the Project Site as identified in Exhibit 3A and 3B and including mechanical equipment and associated facilities and equipment required to deliver Storage Product, including items as further described in Exhibits 1, 3A, 3B, 5 and 14, and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.
- 1.147 “Storage Facility Final Purchase Option” is defined in Section 6.3.
- 1.148 “Storage Product” means (a) Discharging Energy, (b) Storage Capacity, and (c) Ancillary Services, in each case arising from or relating to the Storage Facility.
- 1.149 “Storage Rate” means, for any period, the applicable charge set forth in Exhibit 2A.
- 1.150 “Storage Round Trip Efficiency Guarantee” is defined in Section 3.4.9.1.
- 1.151 “Stored Energy Level” means, at a particular time, the amount of electric energy in the Storage Facility, expressed in MWh.
- 1.152 “Stub Period” means the period of time commencing on the Commercial Operation Date and ending on December 31 of the year in which the Commercial Operation Date occurs (provided, however, that if the Commercial Operation Date occurs on January 1, then the term “Stub Period” will have no application to this Agreement).
- 1.153 “Summer Months” means the months of June, July, August and September occurring during the Stub Period or a Contract Year.
- 1.154 “Supplier” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.155 “Supplier’s Lenders” means any Person, other than an Affiliate of Supplier, and its permitted successors and assigns, providing money or credit in connection with any development, bridge, construction, takeout, permanent debt, tax equity financing or other equity financing or refinancing for the Facility, including lease, inverted lease, sale-leaseback, partnership-flip, monetization of tax benefits, back-leverage financing, or credit derivative arrangements.

- 1.156 “Supplier’s Required Regulatory Approvals” means the Governmental Approvals listed on Exhibit 10.
- 1.157 “Supply Chain Audit” means an audit or investigation of the supply chain through which all equipment and materials to be incorporated into the Facility are sourced, including the mines, factories and other facilities of Supplier and its contractors, subcontractors, vendors, suppliers and materialmans, of any tier, and the contracts, policies and procedures, codes of conduct and other documentation relating to the foregoing, for the purpose of validating compliance with the requirements of Section 25.17.
- 1.158 “Tax” or “Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.
- 1.159 “Tax Credits” means any federal, state, or local production investment tax credits (including the ITC), tax deductions, or other tax benefits specific to the production of renewable energy and/or investments in energy storage facilities.
- 1.160 “Term” is defined in Section 2.2.
- 1.161 “Transmission Provider” means Nevada Power Company or any successor operator or owner of the Transmission System.
- 1.162 “Transmission Provider Instructions” means any instructions, requirements, or demands given to Supplier or Buyer for the purpose of operating, maintaining, improving or modifying the transmission or distribution system whether planned or unplanned, regardless of the amount of advance notice provided to Supplier.
- 1.163 “Transmission System” means the facilities used for the transmission of electric energy in interstate commerce, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Provider.
- 1.164 “UFLPA” is defined in Section 25.15.1.
- 1.165 “WECC” means the Western Electric Coordinating Council (formerly Western System Coordinating Council) and any successor.
- 1.166 “Work Site Agreement” is defined in Section 25.14.

- 1.167 “WREGIS” means the Western Renewable Energy Generation Information System and any successor.

## 2. TERM; TERMINATION AND SURVIVAL OF OBLIGATIONS

- 2.1 Effective Date. Subject to Article 16, this Agreement shall become effective on the Effective Date.
- 2.2 Term. Supplier’s obligation to deliver Storage Product, and Buyer’s obligation to accept and pay for Storage Product, shall commence on the Operation Date and shall continue for the Term. The Term shall commence on the Commercial Operation Date and shall continue for a period of twenty (20) Contract Years, subject to earlier termination of this Agreement pursuant to the terms hereof (the “Term”); provided, however, that Buyer’s obligations to pay for or accept any Storage Product are conditioned on the receipt of the PUCN Approval in form and substance acceptable to Buyer in its sole discretion. Buyer shall not be obligated to accept or pay for any Storage Product and Supplier shall not be obligated to sell or deliver any Storage Product, unless the PUCN Approval is received in form and substance acceptable to Buyer in its sole discretion or Buyer waives its right to terminate this Agreement pursuant to Article 16.
- 2.3 Termination.
- 2.3.1 For Cause. Except as provided below in this Section 2.3.1, this Agreement may be terminated at any time by the Non-Defaulting Party upon fifteen (15) Business Days’ prior notice to the Defaulting Party if an Event of Default has occurred and is continuing (after the applicable Cure Period (if any) in Section 24.3 has expired); provided, however, that any purported termination by a Party shall first require that such Party deliver Notice to the other Party stating prominently therein in type font no smaller than 14 point all-capital letters that “THIS IS A TERMINATION NOTICE UNDER A LONG-TERM ESA. YOU MUST CURE A DEFAULT, OR THE LONG-TERM ESA WILL BE TERMINATED,” and shall state therein any amount purported to be owed and wiring instructions. Notwithstanding any provision to the contrary contained in this Agreement, a Party will not have any right to terminate this Agreement if the Event of Default that gave rise to the termination right is cured within fifteen (15) Business Days after receipt of such notice.
- 2.3.2 Failed Conditions Precedent. This Agreement may be terminated by Buyer, in accordance with Article 16 without payment or penalty or liability of any kind.
- 2.3.3 Force Majeure. This Agreement may be terminated by Buyer by written notice to Supplier if Supplier’s obligations hereunder have been excused by the occurrence of an event of Force Majeure for longer than (a) twelve (12) consecutive months or (b) three hundred sixty (360) days in any five hundred forty (540) day period; provided, that if prior to the Commercial

Operation Date Buyer has not exercised or waived its termination right within one (1) year after the occurrence of (a) or (b) above, then Supplier may terminate this Agreement by providing Buyer written notice thereof.

- 2.4 Effect of Termination - Survival of Obligations. The termination or expiration of this Agreement shall not release either Party from any applicable provisions of this Agreement with respect to:
- 2.4.1 The payment of any amounts owed to the other Party arising prior to or resulting from termination or breach of this Agreement;
  - 2.4.2 The Storage Facility Final Purchase Option and any rights to elect to exercise such Storage Facility Final Purchase Option after termination, which shall survive to the end of the period in which Buyer may exercise such option pursuant to Section 6.3;
  - 2.4.3 Indemnity obligations contained in this Agreement, including Article 18, which shall survive to the full extent of the statute of limitations period, applicable to any third-party claim;
  - 2.4.4 Limitation of liability provisions contained in Article 19;
  - 2.4.5 For a period of two (2) years after the termination date, the right to submit a payment Dispute pursuant to Article 21;
  - 2.4.6 The resolution of any Dispute submitted pursuant to Article 21 prior to, or resulting from, termination; or
  - 2.4.7 The confidentiality obligations of the Parties under Article 28 shall remain in full force and effect for two (2) years following the termination of this Agreement.

### 3. SUPPLY SERVICE OBLIGATIONS

- 3.1 Dedication. One hundred percent (100%) of the Storage Product from the Facility shall be dedicated exclusively to Buyer for so long as this Agreement is in force and effect. Subject to Section 24.2, Supplier shall not: (a) sell, divert, grant, transfer or assign Storage Product to any Person other than Buyer; (b) provide Buyer with any Storage Product from any source other than the Facility; or (c) divert, redirect or make available the Facility or any resource therefrom to another generating facility or storage facility or any third party. The Parties agree that remedies at Law may be inadequate in the event of a breach of this Section 3.1, and Supplier agrees that Buyer shall be entitled, without proof of actual damages and without necessity of posting bond or other security, to temporary, preliminary and permanent injunctive relief from any Governmental Authority of competent jurisdiction restraining Supplier from committing or continuing any breach of this Section 3.1.

- 3.2 Purchase and Sale. For and in consideration of Buyer's payment for the Storage Product, Supplier sells to Buyer, and Buyer purchases from Supplier, all rights, title and interest that Supplier may have in and to the Storage Product, including Ancillary Services existing during the Term.
- 3.3 No Double Sales. Supplier represents that it has not sold, and covenants that during the Term it will not sell or attempt to sell to any other Person, the Storage Product, other than as provided in Section 24.2. During the Term, Supplier shall not report to any person or entity that the Storage Product, including the Ancillary Services existing during the Term, belong to anyone other than Buyer. Buyer may report to any person that it exclusively owns the Storage Product. At Buyer's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Storage Product to Buyer.
- 3.4 Delivery Responsibilities.
- 3.4.1 Storage Product. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and throughout the Term, Supplier shall supply and deliver the Storage Product to Buyer at the Delivery Point.
- 3.4.2 Discharge Energy. Buyer shall take delivery of the Discharging Energy at the Delivery Point in accordance with the terms of this Agreement. Supplier shall be responsible for paying or satisfying when due all costs or charges imposed in connection with the scheduling and delivery of Discharging Energy up to the Delivery Point, including any operation and maintenance charges imposed by the Transmission Provider up to the Delivery Point. Buyer shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Charging Energy to the Delivery Point and the delivery of Discharging Energy at and after the Delivery Point, including transmission costs and transmission line losses and imbalance charges. Without limiting the generality of the foregoing, Buyer, in its merchant capacity, shall not bear costs associated with the modifications to the Transmission System (including system upgrades) caused by or related to: (a) the interconnection of the Facility with the Transmission System; and (b) any increase in Storage Capacity of the Storage Facility permitted pursuant to this Agreement. The Parties agree that the terms of the IA shall govern the allocation of costs associated with any modifications or upgrades to the Transmission System. To the extent any terms of this Agreement conflict with the IA, the terms of the IA shall prevail.
- 3.4.3 Title and Risk of Loss. Buyer shall at all times have title to all Charging Energy and Discharging Energy. Supplier shall have risk of loss with respect to (a) all Charging Energy received at the Delivery Point and (b) all Discharging Energy until delivered to Buyer at the Delivery Point. Buyer shall have risk of loss with respect to all (a) Charging Energy prior to the Delivery Point and (b) all Discharging Energy from and after receipt at the Delivery Point. Supplier warrants that all Storage Product delivered to

Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

3.4.4 [Reserved.]

3.4.5 [Reserved.]

3.4.6 Charging Energy Management.

3.4.6.1 Supplier shall take any and all action necessary to accept the delivery of Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Supplier's possession or control used to accept the delivery Charging Energy at the Delivery Point.

3.4.6.2 During the Term, Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), using Charging Energy delivered at the Delivery Point by providing a Charging Notice to Supplier, subject to the requirements and limitations set forth in this Agreement and the Operating Procedures. Each Charging Notice will be effective unless and until Buyer modifies such Charging Notice by providing Supplier with an updated Charging Notice. If an electronic submittal is not possible for reasons beyond Buyer's control, Buyer may provide Charging Notices by (in order or preference, unless the Parties agree to a different order) electronic mail, facsimile transmission or telephonically to Supplier's personnel designated in Exhibit 4 to receive such communications.

3.4.6.3 Supplier shall not charge the Storage Facility during the Term other than pursuant to a Charging Notice, the Operating Procedures or in connection with a Storage Capacity Test. If during the Term Supplier (a) charges the Storage Facility in excess of the amount provided for in the Charging Notice, (b) charges the Storage Facility without Buyer providing a Charging Notice or (c) charges the Storage Facility otherwise not in accordance with the Operating Procedures ("Excess Charging Energy"), then (x) Supplier shall be responsible for all costs associated with such Excess Charging Energy, (y) Buyer shall not be required to pay for such Excess Charging Energy, and (z) Buyer shall be entitled to discharge such Excess Charging Energy and to all of the benefits (including Storage Product) associated with discharging such Excess Charging Energy.

### 3.4.7 Storage Capacity Tests.

3.4.7.1 Prior to the Commercial Operation Date, Supplier shall schedule and complete one or more Storage Capacity Tests in accordance with Exhibit 25. Thereafter, at least once per Contract Year, Supplier shall schedule and complete a Storage Capacity Test in accordance with Exhibit 25. Buyer and Supplier shall have the right to run a retest of the Storage Capacity Test in accordance with Exhibit 25.

3.4.7.2 Storage Capacity Tests may be performed remotely. Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests, regardless of whether Supplier attends or not. If Storage Capacity Tests are performed remotely, then Buyer shall have the right to have one or more representatives witness such Storage Capacity Tests in person, in real-time remotely, or by other means reasonably acceptable to Buyer. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. All other costs of any Storage Capacity Test shall be borne by Supplier (other than any third party costs incurred by Supplier for any retest required by Buyer pursuant to Section 3.4.7, unless such retest shall result in the Storage Contract Capacity being reduced from the Storage Contract Capacity established by the immediately preceding Storage Capacity Test, in which case Supplier shall be responsible for such costs).

3.4.7.3 Following each Storage Capacity Test, Supplier shall submit a testing report to Buyer in accordance with Exhibit 25 and reasonable support data requested by Buyer. If the actual capacity determined pursuant to a Storage Capacity Test is greater or less than the then current Storage Contract Capacity set forth on Exhibit 1, then the actual capacity determined pursuant to such Storage Capacity Test shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement. Notwithstanding the above, if the Storage Capacity Test results in an actual capacity greater than the Expected Storage Facility Nameplate Capacity Rating, the Storage Contract Capacity shall be deemed to be the Expected Storage Facility Nameplate Capacity Rating.

### 3.4.8 Storage Availability.

3.4.8.1 During the Term, the Storage Facility shall maintain a Monthly Storage Availability during the On-Peak hours of each of the Summer Months of no less than (a) ninety-five percent (95%) for the Stub Period (or, if there is no Stub Period because the Commercial Operation Date is January 1<sup>st</sup>, for the first Contract Year), (b) ninety-six percent (96%) for the first Contract Year (or, if there was no Stub Period because the Commercial Operation Date was January 1<sup>st</sup>, for the second Contract Year), and (c) ninety-seven percent (97%) for the remainder of the Term (the “Guaranteed Storage Availability”), which Monthly Storage Availability shall be calculated in accordance with Exhibit 26.

If the Monthly Storage Availability during the On-Peak hours of any Summer Month is less than the Guaranteed Storage Availability, then Supplier shall cure such failure by paying to Buyer Availability Liquidated Damages calculated in accordance with Exhibit 26. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such Availability Liquidated Damages in accordance with Exhibit 26.

3.4.8.2 The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.4.8 is an appropriate remedy and that any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement. The Parties further acknowledge and agree that the amount payable by Supplier pursuant to this Section 3.4.8 is difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.

### 3.4.9 Storage Round Trip Efficiency Test.

3.4.9.1 During the Term, the Storage Facility shall maintain a Round Trip Efficiency of no less than eighty four percent (84.0%), declining at three tenths of one percent (.3%) per year (the “Storage Round Trip Efficiency Guarantee”), which Round Trip Efficiency shall be calculated in accordance with Exhibit 28.

3.4.9.2 If the Round Trip Efficiency of the Storage Facility is less than the Storage Round Trip Efficiency Guarantee, then Supplier shall cure such failure by paying to Buyer Storage

Round Trip Efficiency Damages calculated in accordance with Exhibit 28. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such Storage Round Trip Efficiency Damages in accordance with Exhibit 28.

3.4.9.3 The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.4.9 is an appropriate remedy and that any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement. The Parties further acknowledge and agree that the amount payable by Supplier pursuant to this Section 3.4.9 is difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.

3.5 Standby Service; Station Usage. Supplier shall obtain Standby Service from its load-serving entity to provide Station Usage. Supplier shall separately meter Station Usage with a Meter for Station Usage. Supplier will design, construct and operate the Storage Facility such that Storage Product or Charging Energy does not serve Station Usage.

#### 4. PRICE OF STORAGE PRODUCT

4.1 Storage Product Payments. All Storage Product from and after the Commercial Operation Date shall be paid at the Storage Rate based on the applicable Storage Contract Capacity of the Storage Facility, as such Storage Contract Capacity may be adjusted from time to time in accordance with Section 3.4.7 and Exhibit 25; provided, however, that such payment constitutes the entirety of the amount due to Supplier from Buyer for the Storage Product, including Storage Product associated with Discharging Energy.

4.2 [Reserved.]

4.3 Tax Credits. The Parties agree that the Storage Rate is not subject to adjustment or amendment if Supplier fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Supplier or the Facility in whole or in part, or Supplier or its investors are unable to benefit from any Tax Credits. Supplier shall bear all risks, financial and otherwise, throughout the Term, associated with Suppliers or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Supplier's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Supplier's obligation to deliver Storage Product, shall be effective regardless of whether the Storage Facility is eligible for, or receives Tax Credits during the Term.

## 5. [RESERVED]

## 6. RIGHT OF FIRST OFFER; RIGHT OF FIRST REFUSAL; PURCHASE OPTIONS; END OF TERM PURCHASE OPTION

### 6.1 Right of First Offer (“ROFO”).

- 6.1.1 Except in accordance with this Section 6.1.1, Supplier: (a) shall not sell, transfer or offer or negotiate to sell or transfer, the Facility; and (b) shall cause its immediately upstream owner(s) (together with Supplier, each a “ROFO Seller”) not to sell, transfer or offer or negotiate to sell or transfer, any ownership interest in Supplier (the Facility and ownership interests in Supplier, each the “Offered Interests”) other than to an Affiliate in accordance with the provisions of Section 23.2 or in connection with the collateral assignment of this Agreement pursuant to Section 23.8 (each a “Restricted Transaction”). If a ROFO Seller intends to enter into a Restricted Transaction, Supplier shall provide Buyer with written notice of same (a “Seller ROFO Notice”) subject to reasonable confidentiality restrictions, and Buyer shall have a right of first offer with respect to the purchase of such Offered Interests. Within thirty (30) days after receipt of the Seller ROFO Notice, Buyer shall notify Supplier in writing of its decision whether or not to negotiate with ROFO Seller for the purchase of the Offered Interests (the “Buyer ROFO Notice”). If Buyer elects to negotiate with ROFO Seller for the purchase of the Offered Interests, Supplier shall cause ROFO Seller to negotiate in good faith and exclusively with Buyer, for a period of not less ninety (90) days following ROFO Seller’s receipt of the Buyer ROFO Notice, the terms of a purchase by Buyer or its designee of the Offered Interests (such thirty (30)-day period as extended, if applicable, by such ninety (90)-day period, the “ROFO Period”). Buyer may seek PUCN approval of the final agreement for the acquisition of the Offered Interests. If Buyer elects not to negotiate with ROFO Seller, or, after commencing negotiations, if Buyer determines that it will not purchase the Offered Interests, then, in either case, Buyer shall promptly notify Supplier thereof, and the ROFO Period shall terminate as of the date that any such notice is provided by Buyer. Furthermore, if definitive transaction documents between ROFO Seller and Buyer or its designee have not been executed with respect to the Offered Interests within the ROFO Period, the ROFO Period shall terminate as of such expiration date. Buyer’s failure to respond to a Seller ROFO Notice within thirty (30) days after receipt shall be deemed to be an election by Buyer not to negotiate with ROFO Seller.
- 6.1.2 In the event that: (a) Buyer does not elect to negotiate with ROFO Seller for the purchase of the Offered Interests pursuant to Section 6.1.1, or (b) negotiations commence pursuant to Section 6.1.1 but Buyer thereafter notifies Supplier that it has determined it will not purchase the Offered

Interests; or (c) if definitive transaction documents between ROFO Seller and Buyer or its designee have not been executed with respect to the Offered Interests within the ROFO Period (the earlier of (a), (b) and (c), as applicable, the “ROFO Expiration Date”), ROFO Seller may negotiate a Restricted Transaction with any other Person within one hundred twenty (120) days following the ROFO Expiration Date, subject, in all cases, to the terms and conditions of this Agreement, including Section 6.1.3 and the provisions of Article 23. In no event may ROFO Seller enter into a Restricted Transaction with any other Person on terms less favorable to ROFO Seller than such terms, if any, as were offered by Buyer during the ROFO Period.

6.1.3 If ROFO Seller and such other Person do not agree upon the terms, conditions and pricing for the Offered Interests by entering into definitive transaction documents within one hundred twenty (120) days following the ROFO Expiration Date, ROFO Seller and any Offered Interests shall again be subject to this Section 6.1 with respect to any Restricted Transaction.

6.2 Purchase Options. Supplier hereby grants to Buyer options to purchase the Facility (“Early Purchase Option”) on a date chosen by Buyer during the six (6) months after the Facility’s 8<sup>th</sup> and 14<sup>th</sup> anniversaries of the Commercial Operation Date at the Fair Market Value, which option may be exercised by Buyer providing written notice to Supplier no less than one hundred and eighty (180) days before the applicable anniversary.

6.3 End of Term Purchase Option. Supplier hereby grants to Buyer the option to purchase the Storage Facility at the end of the Term (applicable to the Storage Facility and whether scheduled pursuant to Section 2.2 or as a result of the earlier termination of this Agreement pursuant to Section 2.3.1 as a result of a Supplier Event of Default) at the Fair Market Value (the “Storage Facility Final Purchase Option”), which option may be exercised by Buyer providing written notice to Supplier of Buyer’s election to exercise such option no less than one hundred and eighty (180) days (a) prior to the end of the Term in the event of a scheduled termination pursuant to Section 2.2, or (b) after the end of the Term in the event of the earlier termination of this Agreement pursuant to Section 2.3.1 as a result of a Supplier Event of Default.

6.4 Efforts Required to Transfer Facility and Offered Interests. If Buyer exercises the Early Purchase Option, the Storage Facility Final Purchase Option or otherwise agrees to purchase the Facility pursuant to Section 6.1, then such purchase shall occur pursuant to a form of purchase and sale agreement, which form shall contain customary representations, warranties and covenants and otherwise be in form reasonably acceptable to the Parties. It shall be a condition of any such purchase that Buyer obtains all necessary Governmental Approvals and notwithstanding any language to the contrary in this Agreement. Buyer shall be given sufficient time to obtain such approvals in accordance with applicable statutes and regulations. Pursuant to the purchase and sale agreement, Supplier will take all commercially reasonable actions necessary to transfer by deed, bill of sale, or both, the Facility to

Buyer, as well as all other improvements placed on the Project Site by Supplier that are required for the continued and uninterrupted use, maintenance and operation of the Facility, free and clear from any lien or monetary encumbrance created by or on behalf of Supplier or its Affiliates. In addition, Supplier will assign to Buyer all transferrable Governmental Approvals applicable to the Facility and Required Facility Documents, and all transferrable warranties for the Facility. Supplier shall reasonably cooperate with Buyer to assign and enforce any and all warranties that apply to the Facility or any of its component parts, which obligation shall survive the termination of this Agreement for a period of one (1) year.

- 6.5 Due Diligence; Cooperation; Governmental Approvals; Notice of Rights. Supplier will provide in a timely manner, information regarding the Offered Interests which is reasonably requested by Buyer to allow Buyer to perform due diligence for the purchase of the Offered Interests pursuant to this Article 6. Supplier shall further provide commercially reasonable cooperation and assistance to Buyer, without further compensation throughout Buyer's efforts to properly account for and obtain any necessary Governmental Approvals with respect to the purchase of the Offered Interests pursuant to this Article 6. Notwithstanding anything in this Agreement or any definitive transaction documentation, Buyer shall not be obligated to proceed with the purchase of any Offered Interests pursuant to this Article 6 if Buyer does not receive all necessary Governmental Approvals in connection with such transaction. Supplier shall put any Person with which it enters into discussions or negotiations regarding a Restricted Transaction on notice of the rights of Buyer set forth in this Article 6. Buyer shall be permitted to file a notice of the rights contained in this Article 6 with respect to the Project Site.
- 6.6 Termination of Agreement. Upon the acquisition of the Facility by Buyer pursuant to Section 6.4, this Agreement shall terminate and neither Party shall have any obligation to the other under this Agreement, except with respect to the terms and provisions hereof that expressly survive the termination of this Agreement.

## 7. METERING, INVOICING AND PAYMENTS

### 7.1 Metering.

- 7.1.1 Meters. Buyer shall, at Supplier's cost, provide, install, own, operate and maintain all Meter(s) in good operating condition. The metering system design shall be subject to Buyer's approval and shall be submitted to Buyer not later than Supplier's completion of the Project Milestone in Section 2(A) of Exhibit 6. The meter system shall have Buyer specified equipment to connect with Buyer's automated meter database. The Meters shall be used for quantity measurements under this Agreement. Such equipment shall be bi-directional, shall be capable of measuring and reading instantaneous and hourly real and reactive energy and capacity and account for losses from the meter location to the Delivery Point. The Meters shall also be used for, among other things, metering Station Usage of the Facility. Supplier, at its expense, may install additional check meters. Supplier shall

not install any check-metering equipment on or connected to Buyer-owned facilities including instrument transformers or metering circuitry wiring. Supplier shall, at its sole expense, install any additional or different Meters or related equipment necessary to comply with the requirements of Transmission Provider, any Electric System Authority or any Governmental Authority.

7.1.2 [Reserved.]

7.1.3 Location. Meters shall be installed at the location(s) specified in Exhibit 5, or as otherwise may be reasonably determined by Buyer to effectuate this Agreement.

7.1.4 Non-Interference. Supplier shall not undertake any action that may interfere with the operation of the Meters. Supplier shall be liable for all costs, expense, and liability associated with any such interference with the Meters. Metering requirements shall apply such that there is no impact on the infrastructure and output associated with the Facility due to the presence of any other contiguous project.

7.1.5 Meter Testing. Meters shall be tested at least once every two (2) years by Buyer. Either Party may request a special test of Meters or check meters, but the requesting Party shall bear the cost of such testing unless there is an inaccuracy outside the limits established in American National Standard Institute Code for Electricity Metering (ANSI C12.1, latest version), in which case the Party whose meters were found to be inaccurate shall be responsible for the costs of the special testing. Meters installed pursuant to this Agreement shall be sealed and the seal broken only when the meters are to be adjusted, inspected or tested. Authorized representatives of both Parties shall have the right to be present at all routine or special tests and to inspect any readings, testing, adjustment or calibration of the Meters or check meters. Buyer's Operating Representative shall provide fifteen (15) Business Days prior notice of routine Meter testing to Supplier's Operating Representative. If Supplier has installed check meters in accordance with Section 7.1.1, Supplier shall test and calibrate each such meter at least once every two (2) years. Supplier's Operating Representative shall provide fifteen (15) Business Days prior notice of routine check meter testing to Buyer's Operating Representative. In the event of special Meter testing, the Parties' Operating Representatives shall notify each other with as much advance notice as practicable.

7.1.6 Metering Accuracy. If the Meters are registering but their accuracy is outside the limits established in ANSI C12.1, Buyer shall repair and recalibrate or replace the Meters and Buyer shall adjust payments to Supplier as appropriate for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal

to one-half of the elapsed time since the latest prior test and calibration of the Meters; provided, however, that the adjustment period shall not exceed one hundred eighty (180) days. If adjusted payments are required, Buyer shall render a statement describing the adjustments to Supplier within thirty (30) days of the date on which the inaccuracy was rectified. Additional payments to Supplier by Buyer shall be made within thirty (30) days of receipt of Buyer's statement. Any payments due Buyer pursuant to this Section 7.1.6 shall accompany Supplier's next Billing Period statement.

- 7.1.7 Failed Meters. If the Meters fail to register, Buyer shall make payments to Supplier based upon Supplier's check metering; provided, however, that if the accuracy of the check meters is subsequently determined to be outside the limits established in ANSI C12.1, Buyer shall adjust the payments to Supplier as appropriate using the check meters for the lesser of the period in which the inaccuracy existed and ninety (90) days. If the period in which the inaccuracy existed cannot be determined, adjusted payments shall be made for a period equal to one-half of the elapsed time since the latest prior test and calibration of the check meters; provided, however, that the adjustment period shall not exceed ninety (90) days. If no such metering is available, payments shall be based upon the Parties' best estimate. In such event, such payments made based upon the Parties' estimate shall be in full satisfaction of payments due hereunder. If the Parties cannot agree on a best estimate then the Dispute shall be resolved in accordance with Article 21.

## 7.2 Invoices.

- 7.2.1 Monthly Invoicing and Payment. On or before the tenth (10<sup>th</sup>) day of each month, Supplier shall send to Buyer an Invoice for the prior month (a "Billing Period"). Supplier shall calculate the Invoice based upon Meter data available to Supplier and as set forth in Exhibit 2B. Any correction or Dispute with respect to an Invoice is waived unless Buyer is notified within twenty-four (24) months, or Supplier is notified within thirty-six (36) months, after the Invoice is rendered or any specific adjustment to the Invoice is made. If an Invoice is not delivered to Buyer within twenty-four (24) months after the close of the Billing Period, the right to payment for such Billing Period is waived.

- 7.2.2 [Reserved.]

- 7.2.3 Amounts Owing to Buyer. The Invoice referred to in Section 7.2.1 shall offset any amounts owing to Buyer with amounts owing to Supplier, and shall indicate the net payment due Supplier or Buyer, as applicable. Supplier shall provide supporting data in reasonable detail to support its calculations of any amounts owing to Buyer. Buyer may prepare and send to Supplier an Invoice for amounts owing to Buyer under this Agreement, and any such amounts will be payable to Buyer within twenty (20) Business Days from

Supplier's receipt of such Invoice, subject to the terms and provisions of Section 7.2.5.

- 7.2.4 Method of Payment. Buyer or Supplier, as applicable, shall remit the payment of any undisputed amounts by wire or electronic fund transfer or otherwise pursuant to the instructions stated in Exhibit 4. Payment will be made on or before the later of the twentieth (20<sup>th</sup>) day following the end of each Billing Period (or the next following Business Day, if such twentieth (20<sup>th</sup>) day does not fall on a Business Day) or ten (10) Business Days from receipt of Invoice.
- 7.2.5 Examination and Correction of Invoices. As soon as practicable either Party shall notify the other Party in writing of any alleged error in an Invoice.
- 7.2.5.1 If a Party notifies the other Party of an alleged error in an Invoice, the Parties agree to use good faith efforts to reconcile the billing and mutually agree on the appropriate correction, if any.
- 7.2.5.2 If a correction is determined to be required, the invoicing Party shall provide an adjusted Invoice to the invoiced Party. If such error results in an additional payment to the invoicing Party, the invoiced Party shall pay such invoicing Party the amount of the adjusted Invoice within thirty (30) days of the date of receipt of the adjusted Invoice. If such error resulted in a refund owed to the invoiced Party, the invoicing Party shall pay the invoiced Party the amount of the adjusted Invoice within thirty (30) days of the date of receipt of the statement or at the invoiced Party's option, the invoiced Party may net such amount against the subsequent monthly payment to the invoicing Party.
- 7.3 Overdue Amounts and Refunds. Overdue amounts and refunds of overpayments shall bear interest from and including, the due date or the date of overpayment, as the case may be, to the date of payment of such overdue amounts or refund at a rate calculated pursuant to 18 C.F.R. § 35.19a.
- 7.4 Access to Books and Records. Supplier agrees to make available for inspection, at its Juno Beach, Florida headquarters (or wherever the applicable books and records with respect to the Facility are held) during normal business hours, upon five (5) Business Days written notice from Buyer its books and records for the purpose of allowing Buyer to verify the information contained within the invoices presented pursuant to Section 7.2; provided, that Supplier will first make commercially reasonable efforts to make such books and records available to Buyer pursuant to e-mail or via an electronic database upon such five (5) Business Day written notice.
- 7.5 Parties' Right to Offset. Either Party shall have the right to offset any amounts owed to the other Party under this Agreement including amounts owed by Supplier to Buyer for Standby Service.

- 7.6 Taxes. Buyer is responsible for any Taxes imposed on or associated with the Discharging Energy or its delivery from and after the Delivery Point. Supplier is responsible for any Taxes imposed on or associated with the Discharging Energy or its delivery up to or at the Delivery Point. Either Party, upon written request of the other Party, shall provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from Taxes, and shall use reasonable efforts to obtain and cooperate with the other Party in obtaining any exemption from or reduction of any Tax. Each Party shall hold harmless the other Party in accordance with Article 18 from and against Taxes imposed on the other Party as a result of such Party's actions or inactions in contravention of this Section 7.6.

## 8. FACILITY CONSTRUCTION; OPERATIONS AND MODIFICATIONS

- 8.1 Construction of Facility; Selection of Construction Contractor. Supplier shall construct or cause the Facility to be constructed in accordance with Good Utility Practice and the Project Milestones and to ensure that: (a) Supplier is capable of meeting its supply and delivery obligations with respect to Storage Product over the Term; and (b) the Facility is consistent with the technical specifications set forth in Exhibit 11. Supplier shall deliver to Buyer an ALTA Survey of the Project Site within ten (10) Business Days of such final survey becoming available to Supplier, but in no event later than the issuance of the Notice to Proceed in accordance with Exhibit 6. Supplier shall provide to Buyer in a form reasonably satisfactory to Buyer: (y) not later than the Project Milestone described in Section 2(A) of Exhibit 6, a completed version of Exhibits 11 and 14; and (z) within thirty (30) days after the Commercial Operation Date, a revised version of Exhibit 14 reflecting the Facility as built. Within fifteen (15) Business Days of each of Supplier's (a) commencement of discussions with and (b) selection of the Construction Contractor primarily responsible for the engineering, construction and procurement of the Facility and any Major Equipment Contractor, Supplier shall provide notice of such commencement and selection and the Construction Contractor and/or the Major Equipment Contractor selected to Buyer. Within ten (10) Business Days after execution of each of the Construction Contract and the Major Equipment Contracts, Supplier shall deliver to Buyer a certificate of an officer of Supplier providing excerpted pages, or portions thereof, from the relevant Construction Contract or Major Equipment Contract, as the case may be, containing the following information and certifying that such information is true, correct and complete as of the date provided: (1) confirmation that the Construction Contracts and Major Equipment Contracts provide for the construction of the Facility consistent with the Project Milestones of this Agreement, including confirmation of the deliverability of the Facility by the Commercial Operation Deadline; (2) the applicable construction and delivery schedules set forth in the Construction Contracts and Major Equipment Contracts; and (3) the name and any other reasonably necessary identifying information regarding the applicable Construction Contractor or Major Equipment Contractor. Supplier shall have the right to seek confidential treatment from any Governmental Authority entitled to receive such information, documents,

officer's certifications, and attachments thereto communicated from Supplier to Buyer pursuant to the immediately preceding sentence. Under no circumstances shall the Facility share facilities with another facility, whether owned by an Affiliate of Supplier or not, other than (i) as set forth in one (1) or more co-tenancy or common facilities agreements with a party having an interest in the Shared Facilities, in form and substance reasonably satisfactory to Buyer (together, such agreement(s), the "Shared Facilities Agreement"); and (ii) any other facilities which are part of the Facility with the owner(s) of any other generating or storage facility if Supplier (A) provides Buyer with a true and correct copy of the shared facilities agreement governing the use of such other facilities between or among Supplier and such owner(s) (the "Other Shared Facilities Agreement") and (B) obtains the prior written consent of Buyer, such consent not to be unreasonably withheld, conditioned or delayed; provided, further, that in no event shall the Shared Facilities Agreement or Other Shared Facilities Agreement, including any amendment or modification thereto, or the sharing of facilities and/or rights under the IA thereunder adversely impact or effect the operation or performance of the Facility, including the operating characteristics and limitations and technical specification of the Facility as set forth in Exhibits 1, 5, 11, 13, 14, 18, 22 and 24, or the ability of Supplier to comply with any of its obligations under this Agreement. Supplier shall obtain the prior written consent of Buyer, such consent not to be unreasonably withheld, conditioned, or delayed, for any amendment or modification to the Shared Facilities Agreement or the Other Shared Facilities Agreement, provided that any such amendment or modification shall be subject to the requirements of this Section 8.1. Except as provided in this Section 8.1, the Facility and its mechanical components, buildings, infrastructure and associated facilities and equipment, including interconnection facilities, shall be used solely for the purpose of generating, charging, storing and discharging energy under this Agreement.

- 8.1.1 Selection of Construction Contractor and Major Equipment Contractor. If Supplier wishes to select a construction contractor not listed on Exhibit 23, then, before the start of negotiations of the Construction Contract between Construction Contractor and Supplier, Supplier shall notify Buyer as to the identity of the proposed Construction Contractor. Buyer shall review the selection of such Construction Contractor and shall either accept or reject the use of such Construction Contractor with respect to the Construction Contract within fifteen (15) Business Days of such notification. In the event of any rejection by Buyer of Supplier's proposed Construction Contractor, Supplier shall, within forty-five (45) Business Days of such rejection, propose an alternate Construction Contractor for Buyer's review under this Section, except that Buyer shall have no right to review Supplier's proposed alternate Construction Contractor if such proposed alternate Construction Contractor is listed on Exhibit 23.
- 8.2 Performance of Project Milestones. Supplier shall complete each Project Milestone specified in Exhibit 6 on or before 16:00 hours PPT on the date specified for each Project Milestone listed in Exhibit 6, as such date may be extended by Force

Majeure or an Interconnection Delay (or, in the case of the Commercial Operation Date, if the PUCN Approval is not obtained on or before November 26, 2026), in each case, in accordance with the terms of this Agreement.

8.2.1 Completion of Project Milestones. Upon Supplier's completion of each Project Milestone, Supplier shall provide to Buyer in writing, pursuant to Section 29.1, documentation as specified in Exhibit 6 and reasonably satisfactory to Buyer demonstrating such Project Milestone completion. Such documentation shall be provided within thirty (30) days of such completion but not later than the date specified for such Project Milestone listed in Exhibit 6. Buyer shall acknowledge receipt of the documentation provided under this Section 8.2.1 and shall provide Supplier with written acceptance or denial of each Project Milestone within fifteen (15) Business Days of receipt of the documentation. If Buyer does not acknowledge receipt or provide written acceptance or denial of any Project Milestone within fifteen (15) Business Days, then such Project Milestone will be deemed to occur on the date that such documentation was provided to Buyer. Failure of Supplier to achieve a Critical Project Milestone after expiration of the applicable period for which Critical Project Milestone Delay Damages are owed by Supplier pursuant to Section 8.2.3 (or, in the case of the Commercial Operation Deadline, after expiration of the applicable period for which Daily Delay Damages are owed by Supplier pursuant to Section 8.5.1), will constitute an Event of Default as provided in Article 24. If any Project Milestone (other than a Critical Project Milestone) is not completed on or before the date specified in Exhibit 6, Supplier will (i) inform Buyer of a revised projected date for the occurrence or completion of such Project Milestone (which will be deemed the new deadline for such Project Milestone), and any impact on the timing of the Commercial Operation Date (and on any other Project Milestone) and (ii) provide Buyer with a written report containing Supplier's analysis of the reasons behind the failure to meet the original Project Milestone deadline and whether remedial actions are necessary or appropriate, and describing any remedial actions that Supplier intends to undertake to ensure the timely achievement of the Commercial Operation Date. Provided that Supplier complies with the preceding sentence, including taking any commercially reasonable remedial action that may be necessary to achieve the Commercial Operation Date by the Commercial Operation Deadline, then no failure of Supplier to achieve a Project Milestone (other than a Critical Project Milestone) on or before the scheduled date will constitute an Event of Default.

8.2.2 Progress Towards Completion. Supplier shall notify Buyer's Contract Representatives promptly (and in any event within ten (10) Business Days) following its becoming aware of information that leads to a reasonable conclusion that a Project Milestone will not be met, and shall convene a meeting with Buyer to discuss the situation not later than fifteen (15) Business Days after becoming aware of this information. Supplier shall

notify Buyer within three (3) Business Days if there is any delay of fifteen (15) Business Days or more in the delivery schedule for any equipment in the Major Equipment Contracts and such notification shall include a plan to mitigate any applicable delays in the original delivery schedule in the executed Major Equipment Contracts.

### 8.2.3 Critical Project Milestone Delay Damages.

8.2.3.1 In the event Supplier fails to achieve any Critical Project Milestone (other than the Commercial Operation Date) by the applicable Critical Project Milestone Deadline then, for each day up to, but not exceeding, one hundred and eighty (180) days, that Supplier fails to achieve such Critical Project Milestone, Supplier shall be obligated to pay to Buyer liquidated damages equal to the Critical Project Milestone Daily Delay Damages for such Critical Project Milestone. If Critical Project Milestone Daily Delay Damages have accrued for a Critical Project Milestone for one hundred and eighty (180) days and such Critical Project Milestone has not been achieved, then Buyer may terminate this Agreement. Supplier shall pay any amounts owed to Buyer under this Section 8.2.3 in the Billing Periods immediately succeeding the Billing Period during which Supplier's obligation to pay such amounts arose pursuant to Section 7.2.3. For the avoidance of doubt, Critical Project Milestone Daily Delay Damages shall accrue individually and concurrently for each Critical Project Milestone that is not achieved by the applicable Critical Project Milestone Deadline and, subject to this Section 8.2.3, the achievement of any Critical Project Milestone shall not relieve Supplier from any liability for other Critical Project Milestone Daily Delay Damages owed with respect to a separate Critical Project Milestone.

8.2.3.2 Notwithstanding the foregoing, in the event that Supplier achieves Commercial Operation by the Commercial Operation Deadline, Buyer shall refund the full amount of any Critical Project Milestone Daily Delay Damages paid by Supplier (minus any Penalties pursuant to Section 8.2.3.3) or drawn by Buyer on the Development Security, and Supplier shall have no liability for any outstanding Critical Project Milestone Daily Delay Damages yet to be paid by Supplier.

8.2.3.3 In addition to amounts payable pursuant to Section 8.2.3.1, Supplier shall be liable, in accordance with Section 18.1, for any Penalties incurred or suffered by Buyer as a result of Supplier's failure to achieve any Critical Project Milestone

(other than the Commercial Operation Date) by the applicable Critical Project Milestone Deadline.

8.2.3.4 The provisions of this Section 8.2.3 are in addition to, and not in lieu of, any of Buyer's rights or remedies under Article 24.

8.2.3.5 The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if Supplier does not meet its obligations hereunder prior to the applicable Critical Project Milestone Deadline with respect to such Critical Project Milestone, and, accordingly, the Parties agree that payment by Supplier of Critical Project Milestone Daily Delay Damages is reasonable as liquidated damages, and is not a penalty

### 8.3 Commercial Operation Date.

8.3.1 Notice of Testing. Supplier shall notify Buyer's Contract Representatives at least ten (10) Business Days prior to the commencement of any performance tests required by the Construction Contract, including any performance tests required by Exhibit 7 and Exhibit 7A, except that Supplier shall notify Buyer's Contract Representative at least three (3) Business Days prior to any retest. Buyer shall have the right to witness all tests or have Buyer's representatives witness all tests. The presence of Buyer or a Buyer representative shall not be construed as an obligation on Buyer's part to design, conduct, monitor or endorse any test results or as a ratification or acceptance thereof. Buyer shall be deemed to waive its right to be present at the performance tests if Buyer fails to appear at the scheduled time for the performance tests.

8.3.2 Certifications. Within five (5) Business Days of the successful completion of the performance tests pursuant to Exhibit 7 and Exhibit 7A, Supplier shall provide Buyer with written notice stating when the Facility has achieved Commercial Operation, comprised of the following written certifications.

8.3.2.1 A certification by a duly authorized officer of Supplier stating the following:

"I, [Name], in my capacity as the duly appointed [Title] of [Supplier] ("Supplier") hereby certify, on behalf of Supplier that: (a) the Facility has been constructed in accordance with Good Utility Practice; (b) all of the requirements set forth in Sections 8.1, 8.3 and 17.2, and Exhibits 6, 7 and 7A of the Long-Term Energy Storage Agreement between Supplier and Buyer dated February 19, 2026, ("Agreement") have been satisfied; (c)

I am authorized to act on behalf of and bind Supplier with respect to this certificate; (d) Supplier has received the Supplier Required Regulatory Approvals listed in Exhibit 10 and has entered into or obtained all Required Facility Documents as listed in Exhibit 12, true, correct and complete copies of which are attached (other than confidential or commercial terms which have been redacted) or, in the case of Construction Contracts and Major Equipment Contracts, true, correct and complete summaries of the material terms and conditions of such Construction Contracts and Major Equipment Contracts which are attached, including counterparties, execution dates, relevant quantities and delivery schedules; (e) Supplier acknowledges that Buyer is relying on this certification in connection with carrying out its obligations under the Agreement and Supplier will indemnify Buyer for any inaccuracy related to this certification; and (f) the Storage Facility is fully capable of charging, storing and discharging energy up to the Expected Storage Facility Nameplate Capacity Rating.”

- 8.3.2.2 A certificate addressed to Buyer from a Licensed Professional Engineer confirming: (1) the requirements for the performance tests required by Exhibit 7 and Exhibit 7A have been satisfied; and (2) that the Storage Facility is able to charge, store and discharge energy reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof, including the Operating Procedures.
- 8.3.2.3 A certificate addressed to Buyer from a Licensed Professional Engineer stating that, all required interconnection tests have been completed and the Facility is physically interconnected with the Transmission System and able to deliver Discharging Energy consistent with the terms of this Agreement.
- 8.3.2.4 An opinion from an attorney licensed in the state of Nevada that is not an employee of Supplier (or any Affiliate) and has no financial interest in the Facility addressed to Buyer with respect to such customary permitting and real estate matters similar to the form attached hereto as Exhibit 31.
- 8.3.3 Dispute of Commercial Operation. Buyer will have ten (10) Business Days after receipt of the certifications required by this Section 8.3 in which to provide a written notice to Supplier of Dispute with respect to the Commercial Operation Date, which notice shall set forth reasonable detail regarding Buyer’s belief that the Commercial Operation Date has not occurred; provided, that Supplier acknowledges that the form, substance or detail of such written notice of Dispute shall in no event serve as a basis to claim that Buyer has not provided adequate notice of Dispute with respect

to the Commercial Operation Date as required pursuant to this Section 8.3.3. In the event of such a Dispute, Buyer and Supplier will attempt in good faith to resolve the Dispute. If the Parties are unable to resolve the Dispute within fifteen (15) Business Days after Buyer's notice of Dispute, then either Party may seek resolution of the Dispute in accordance with Article 21. If a Dispute concerning the Commercial Operation Date is resolved to conclude that Commercial Operation occurred when Supplier delivered the certifications required by Section 8.3, Supplier shall not be liable for any Daily Delay Damages that accrued between the date Supplier delivered the certifications and the date the Dispute is resolved. Notwithstanding the foregoing, Buyer's failure to Dispute the certification will in no way affect its rights to indemnification for any inaccuracy related to the certification, including overpayments that may be paid by Buyer due to such inaccurate certification.

#### 8.4 Failure to Achieve Commercial Operation.

8.4.1 In the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline (as such date may be extended in accordance with the definition thereof) and Supplier fails to pay Daily Delay Damages within ten (10) days of the end of each calendar month in which such Daily Delay Damages are incurred, as provided in Section 8.5.1, Buyer may elect to terminate this Agreement and Supplier shall pay to Buyer, and Buyer shall be entitled to collect or retain, as applicable, the full Development Security amount as liquidated damages for Supplier's failure to meet its obligations prior to the Commercial Operation Deadline. Upon Buyer's collection of the full Development Security amount from Supplier (or from security provided on Supplier's behalf), this Agreement will be terminated, and neither Party will have any further obligations hereunder including under Section 8.5, except those obligations expressly provided to survive termination pursuant to Section 2.4 and except as provided pursuant to Section 8.4.2. The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if Supplier does not meet its obligations hereunder prior to the Commercial Operation Deadline, and, accordingly, the Parties agree that retention by Buyer of the full Development Security is reasonable as liquidated damages, and is not a penalty.

8.4.2 Subject to Section 19.2, the provisions of this Section 8.4 are in addition to, and not in lieu of, any of Buyer's rights or remedies under this Agreement, including Article 24.

#### 8.5 Delay Damages.

8.5.1 In the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline (as it may be extended under this

Agreement) then, for each day up to, but not exceeding, one hundred and eighty (180) days, that Supplier fails to achieve Commercial Operation, Supplier shall be obligated to pay to Buyer liquidated damages equal to Daily Delay Damages. If Daily Delay Damages have accrued for one hundred and eighty (180) days and Commercial Operation has not been achieved, then Buyer may terminate this Agreement. Supplier shall pay any amounts owed to Buyer under this Section 8.5 in the Billing Periods immediately succeeding the Billing Period during which Supplier's obligation to pay such amounts arose pursuant to Section 7.2.3.

8.5.2 In addition to amounts payable pursuant to Section 8.5.1, Supplier shall be liable, in accordance with Section 18.1, for any Penalties incurred or suffered by Buyer as a result of Supplier's failure to achieve Commercial Operation by the Commercial Operation Deadline.

8.5.3 The provisions of this Section 8.5 are in addition to, and not in lieu of, any of Buyer's rights or remedies under Article 24.

8.5.4 The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if Supplier does not meet its obligations hereunder prior to the Commercial Operation Deadline, and, accordingly, the Parties agree that payment by Supplier of Daily Delay Damages is reasonable as liquidated damages, and is not a penalty.

8.6 [Reserved.]

8.7 Modification. Supplier shall not be permitted to make any modification to the Facility inconsistent with the operating characteristics and limitations and technical specification of the Facility as set forth in Exhibits 1, 5, 11, 14, 22 and 24 without the prior written consent of Buyer, which may not be unreasonably withheld, conditioned or delayed. The above shall not prevent Supplier from substituting substantially equivalent materials and equipment, from using newer technology, from replacing vendors and contractors (subject to Section 25.13), from performing maintenance and repairs (including replacement of equipment and replacement, oversizing or augmentation of batteries) to the Facility so long as such maintenance and repairs do not alter the Facility except as permitted in this Agreement. Any modifications for which Buyer has provided written consent shall be conducted in accordance with Good Utility Practice and all applicable Laws and reliability criteria, as such may be amended from time to time, and the requirements of Article 11. If Supplier makes a modification to the Facility without the prior written consent of Buyer as set forth in the first sentence of this Section 8.7, Buyer shall be entitled to receive in addition to any other remedy available to Buyer as liquidated damages the full amount of the Development Security or Operating Security, as applicable. The Parties agree that it would be extremely difficult and impracticable under presently known and anticipated facts and circumstances to ascertain and fix the actual damages Buyer would incur if Supplier does not meet its obligations hereunder, and, accordingly, the Parties agree that payment by Supplier of

Development Security or Operating Security, as applicable, is reasonable as liquidated damages, and is not a penalty. Notwithstanding any provision of this Section 8.7 to the contrary, Supplier may make all repairs and related replacements of equipment it determines in its sole discretion to be necessary or appropriate, provided that such repairs and modifications do not violate this Section 8.7.

- 8.8 Operation and Maintenance. Supplier, at all times shall install, operate, maintain and repair the Facility in accordance with Good Utility Practice and applicable Laws and to ensure Supplier is capable of meeting its obligations to deliver and make available Storage Product over the Term. Supplier shall (x) maintain records of all operations of the Facility in accordance with Good Utility Practice, and (y) follow all regulations, directions and procedures of Transmission Provider, any Electric System Authority and any other Governmental Authority to protect and prevent the Transmission System from experiencing any negative impacts resulting from the operation of the Facility. In the event of an inconsistency between any applicable procedures, Buyer may direct which procedures shall govern (or barring direction from Buyer, the more stringent procedure shall govern). Supplier shall use all reasonable efforts to avoid any interference with Buyer's operations, including interference with Buyer's Meters and Buyer's maintenance and operations of Buyer's equipment. Supplier shall operate the Facility consistent with WECC, NERC, Electric System Authority, Governmental Authority and Transmission Provider requirements and generally applicable Buyer requirements. Prior to the beginning of the Term, the Parties shall mutually develop written procedures governing operations of the Storage Facility, not in contravention or amendment of any right or obligation set forth herein, including (a) minimum and maximum operating parameters; (b) procedures for scheduling and dispatch, (c) methods of day-to-day communications, (d) key personnel lists, (e) recordkeeping and (f) such other procedures and protocols as the Parties deem appropriate for implementation of this Agreement (the "Operating Procedures"), provided that failure to agree on such procedures shall not relive either of the Parties of its obligations under this Agreement. The initial Operating Procedures are provided in Exhibit 24 and shall be updated by the Parties in accordance with Exhibit 24. For avoidance of doubt, the Operating Procedures are illustrative unless otherwise set forth in Exhibit 24, and may be amended at the written request of either Party including to try and optimize the operations of the Storage Facility in furtherance of the purposes of this Agreement and consistent with the terms of this Agreement, which request shall not be unreasonably withheld, conditioned or delayed.
- 8.9 Operation and Maintenance Agreement. No later than one hundred eighty (180) days prior to the Commercial Operation Date, if Supplier intends to subcontract any material aspect of the operation of the Facility to a Person other than an Affiliate of Supplier, Supplier shall provide a copy of any proposed agreement between Supplier and such sub-operator which requires the sub-operator to operate the Facility in accordance with the terms hereof which shall be attached to this Agreement as Exhibit 15. Supplier shall also provide a certified copy of a certificate warranting that the sub-operator is a corporation, limited liability company or partnership in good standing with the State in which the Facility is located, which

shall be attached to this Agreement as part of Exhibit 15. Buyer shall have fifteen (15) days in which to notify Supplier of its objection to any proposed sub-operator, in which case Supplier shall not subcontract with such sub-operator. Notwithstanding the foregoing, Buyer hereby consents to Supplier's contracting with NextEra Energy Operating Services, LLC, an indirect wholly-owned subsidiary of NextEra Energy Resources, LLC, for the operation and maintenance of the Facility.

- 8.10 Right to Review. Buyer shall have the right to review during normal business hours, upon no less than five (5) Business Days' prior notice at Supplier's headquarters office located in Juno Beach, FL, the relevant books and records of Supplier to confirm the accuracy of anything relating to this Agreement; *provided*, that Supplier will first make commercially reasonable efforts to make such books and records available to Buyer pursuant to e-mail or via an electronic database upon such five (5) Business Day written notice. Buyer is under no obligation to exercise any of these review rights. Buyer shall have no liability to Supplier for failing to advise it of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by Buyer with respect to the Facility or this Agreement.
- 8.11 Undertaking of Agreement; Professionals and Experts. Supplier has engaged those professionals or other experts it believes necessary to understand its rights and obligations pursuant to this Agreement. All professionals or experts, including engineers, attorneys or accountants, that Supplier may have consulted or relied on in undertaking the transactions contemplated by this Agreement have been solely those of Supplier. In entering into this Agreement and the undertaking by Supplier of the obligations set forth herein, Supplier has investigated and determined that it is capable of performing hereunder and has not relied upon the advice, experience or expertise of Buyer in connection with the transactions contemplated by this Agreement.

## 9. EMERGENCY

- 9.1 Compliance. Supplier shall promptly comply with any applicable requirements of any Electric System Authority, Governmental Authority, Transmission Provider, transmission operator or their successors, regarding the reduced or increased production of the Facility or otherwise in the event of any Emergency.
- 9.2 Notification. Supplier shall provide prompt oral and written notification to Buyer of any Emergency, including a description in reasonable detail of the Emergency and any actions undertaken to prevent, avoid or mitigate Loss therefrom or to expedite the restoration of service.
- 9.3 Due Care. In the event of an Emergency, Supplier shall take all reasonable actions to prevent, avoid or mitigate Loss therefrom or to expedite the restoration of service; *provided*, *however*, that Supplier shall give Buyer prior notice, if

practicable, before taking any action. This Section 9.3 shall not be construed to supersede Sections 9.1 and 9.2.

9.4 [Reserved.]

9.5 No Buyer Liability. Notwithstanding any provision to the contrary contained in this Agreement, Buyer shall have no obligation to pay Supplier in respect of any Storage Product Supplier is unable to deliver or Buyer is unable to receive in accordance with the requirements of this Agreement due to an Emergency or Force Majeure.

## 10. CURTAILMENT & DISPATCHABILITY

10.1 Transmission Provider Instructions. Supplier shall obey all Transmission Provider Instructions for curtailment of Charging Energy or Discharging Energy by the Transmission Provider or any Electric System Authority.

10.2 Network Resource Designation. Within sixty (60) days after the Effective Date, Buyer will submit an application to Transmission Provider to designate the Facility as a Network Resource. Supplier will provide all information related to the Facility required for such application within thirty (30) days after the Effective Date. Buyer will provide a copy of such application to Supplier.

## 11. PLANNED OUTAGES

11.1 Approvals. Supplier shall request and obtain Buyer's prior written approval, which approval shall not be unreasonably withheld, before conducting any non-forced outage of the Facility or reducing the capability of the Storage Facility to receive Charging Energy or deliver Discharging Energy (each such reduction or outage, a "Planned Outage") so as to minimize the impact on the availability of the Facility. Supplier shall only schedule Planned Outages during the months of March, April, October and November, unless otherwise approved by Buyer, and as may be otherwise restricted by Law.

11.2 Schedules. Planned Outages will be scheduled and conducted in accordance with the following:

11.2.1 Within ninety (90) days prior to the Commercial Operation Date and on or before October 1 of each Contract Year, Supplier shall provide Buyer with a schedule of proposed Planned Outages for the remainder of the year or upcoming Contract Year, as applicable. The proposed schedule will designate the hours and amount (in MW) in which the Storage Capacity will be reduced in whole or in part by the proposed Planned Outages. Each proposed schedule shall include all applicable information, including the following: the month, day and hour each requested outage will begin and conclude, the facilities impacted, the purpose of the requested outage, and any other relevant information.

- 11.2.2 Buyer shall promptly review Supplier's proposed schedule of Planned Outages and either request modifications or approve the proposed schedule within thirty (30) days of Buyer's receipt of such schedule. If Buyer requests modifications to the proposed schedule, then Supplier shall promptly circulate a revised schedule of Planned Outages to Buyer consistent with Buyer's requested modifications. Under no circumstances will Supplier schedule Planned Outages to occur during the Summer Months. Supplier shall make reasonable efforts to accommodate any proposed revisions by Buyer to the approved Planned Outage schedule.
- 11.2.3 Regardless of approval of a Planned Outage, Supplier shall not start a Planned Outage on the Facility without confirming the approved Planned Outage with Buyer's Operating Representative five (5) Business Days prior to the start of such Planned Outage.
- 11.2.4 If following a notice pursuant to Section 11.2.3, Buyer requests that Supplier not undertake an approved Planned Outage as scheduled, for reasons other than Force Majeure, Transmission Provider Instruction or Emergency, then Supplier may promptly deliver to Buyer a written reasonable estimate of the costs expected to be incurred as a result of Supplier not undertaking the Planned Outage as scheduled. If Buyer agrees to the estimated costs, then Supplier shall not undertake the Planned Outage, and Buyer shall reimburse Supplier for its documented out-of-pocket costs actually incurred by Supplier in connection with not undertaking such Planned Outage (not to exceed the written estimated costs prepared by Supplier and delivered to Buyer). Any Planned Outage that is not instituted pursuant to this Section 11.2.4 will be rescheduled to occur in the same Contract Year in which it was originally scheduled, to the maximum extent practicable, in accordance with Section 11.2.2.

## 12. REPORTS; OPERATIONAL LOG

- 12.1 Copies of Communications. Supplier shall promptly provide Buyer with copies of any orders, decrees, letters or other written communications to or from any Governmental Authority asserting or indicating any violation of Laws which relate to Supplier or construction, operation or maintenance of the Facility. Supplier shall keep Buyer apprised of the status of any such matters.
- 12.2 Notification of Facility Regulatory Status. Supplier shall notify Buyer of the regulatory status of the Facility as an EWG, if applicable, no later than ninety (90) days prior to the Operation Date, and will provide Buyer with evidence documenting receipt of the required Governmental Approvals related to such designation (as such approvals are set forth in Exhibit 10). Following the Operation Date, Supplier shall notify Buyer, as soon as practicable, of any changes in regulatory status of the Facility, and will provide Buyer with evidence documenting receipt of the required Governmental Approvals related to such changed regulatory

status (as such approvals are set forth in Exhibit 10) and reasonable support data requested by Buyer.

12.3 Notices of Change in Facility. In addition to any consent required pursuant to Section 8.7, Supplier shall provide notice to Buyer as soon as practicable prior to any material temporary or permanent change to the performance, operating characteristics or major components (such as batteries or similar equipment, as applicable) of the Facility. Such notice shall describe any changes, expected or otherwise, to the Expected Storage Facility Nameplate Capacity Rating, interconnection and transmission issues, and any additional information reasonably requested by Buyer.

12.4 Project Reports and Project Review Meetings.

12.4.1 Prior to the Commercial Operation Date. Prior to the Commercial Operation Date, Supplier shall provide to Buyer a project report on a monthly basis, in form and substance reasonably satisfactory to Buyer, which shall include the following: status in obtaining Project Milestones, including level one schedule; progress in obtaining any Governmental Approvals in connection with achieving the Commercial Operation Date; a discussion of Supplier's progress with respect to the satisfaction or achievement of each Project Milestone, including a reasonable description of any material facts, events or circumstances which reasonably could be expected to delay Supplier in satisfying or achieving any Project Milestone within the period of time required pursuant to Exhibit 6; and the contact information for one or more persons with oversight and responsibility for the subject matter of the information contained in the monthly report who shall be available to meet with and answer questions from Buyer with respect to each report. The monthly project reports will be provided to Buyer no later than ten (10) Business Days after expiration of the previous month. The Parties shall conduct meetings every six (6) months (or more frequently if requested by Buyer) to review this data and any information related to Supplier's completion of or progress toward the Project Milestone activities listed in Exhibit 6. In addition to any other requirements for Commercial Operation under this Agreement, Supplier shall: (a) provide notice to Buyer of its best estimate of the projected Operation Date and Commercial Operation Date; (b) notify Buyer as soon as Supplier becomes aware of any changes in such projected dates; and (c) coordinate with Buyer regarding the commencement of operation of the Facility. In addition to the foregoing, Supplier will provide Buyer with such other operational or technical data as Buyer may reasonably request and as may be reasonably necessary to determine Supplier's compliance with its obligations hereunder and its progress toward Commercial Operation.

12.4.2 After Commercial Operation Date. After the Commercial Operation Date, Supplier shall provide to Buyer within thirty (30) days of the end of each quarter throughout the Term, in electronic format, a report which shall

include all pertinent information in connection with the Facility, including: (a) any available site condition reports; (b) all reporting information maintained in the operational log and any other SCADA data from the Facility; (c) any as may be reasonably requested by Buyer and which should be maintained by Supplier in accordance with Good Utility Practice for the relevant technology; and (d) any reports or other data with respect to the Facility as may be requested by the PUCN or any other Governmental Authority. In addition, Supplier shall provide remote access to Buyer for the Facility's operations and maintenance data for purposes of Buyer integrating such data into Buyer's Monitoring & Diagnostics center.

12.4.3 Operations Log. Supplier shall maintain in accordance with Good Utility Practice an operations log, which shall include: (a) all Planned Outages and unplanned outages, alarms, circuit breaker trip operations, partial deratings of equipment, mechanical impairments defects or unavailability with respect to battery equipment; (b) the cause (including any root cause analysis undertaken) and remediation undertaken by Supplier with respect to the events listed in (a); and (c) any other significant event or information related to the operation of the Facility or the delivery of Storage Product. The operations logs shall be available for inspection by Buyer upon two (2) Business Days' notice together with all data maintained by Supplier as support for such logs. Supplier shall be responsible for maintaining sufficient evidentiary support in order to document the information contained in such operation logs.

12.5 Financial Information. Within thirty (30) days of Buyer's written request, Supplier shall provide Buyer with copies of Supplier's (or Supplier's ultimate parent's) most recent quarterly and annual unaudited financial statements, which financial statements shall be prepared in accordance with generally accepted accounting principles. If the financial statements of Supplier's ultimate parent are publicly available electronically on its website, Supplier is deemed to have met the requirements of this Section 12.5.

12.6 Information to Governmental Authorities. Supplier shall, promptly upon written request from Buyer and subject to any confidentiality obligation to which Supplier may be bound, provide Buyer with data collected by Supplier related to the construction, operation and maintenance of the Facility reasonably required by Buyer for reports to, and information requests from, any Governmental Authority, or any intervenor or party in any rate case or regulatory proceeding of Buyer. In addition, Supplier shall provide to Buyer copies of all submittals to a Governmental Authority directed by Buyer or an Affiliate thereof and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Supplier's knowledge after due inquiry. Supplier shall use best efforts to provide this information to Buyer with sufficient advance notice to enable Buyer to review such information and meet any submission deadlines imposed by the requesting Governmental Authority.

- 12.7 Accounting Standards. If Buyer or one of its Affiliates determines that it may hold a variable interest in Supplier under the Accounting Standards Codification (“ASC”) 810, Consolidation of Variable Interest Entities, or requirements of Law, but it lacks the information necessary to make a definitive conclusion, Supplier hereby agrees to provide, upon Buyer’s written request, sufficient financial and ownership information so that Buyer or its Affiliate may confirm whether a variable interest does exist under ASC 810 or requirements of Law. If Buyer or its Affiliate determines that, it holds such a variable interest in Supplier, Supplier hereby agrees to provide, upon Buyer’s written request, sufficient financial and other information to Buyer or its Affiliate so that Buyer may properly consolidate the entity in which it holds the variable interest or present the disclosures required by ASC 810 or applicable Law. Supplier shall have the right to seek confidential treatment of any such information from any Governmental Authority entitled to receive such information. Information provided pursuant to this Section 12.7 is subject to Buyer’s rights to disclose such information pursuant to this Agreement and pursuant to any applicable requirements of Law.
- 12.8 Documents to Governmental Authorities. Supplier shall provide to Buyer a copy of any statement, application, or report or any document submitted to or received from any Governmental Authority relating to operation and maintenance of the Facility no later than ten (10) Business Days of receipt or transmission of such documents by Supplier.
- 12.9 Environmental Information. Supplier shall, no later than ten (10) Business Days after receipt of a written request from Buyer, provide Buyer with all data reasonably requested by Buyer relating to environmental information under any Required Facility Document listed in Exhibit 12 or otherwise in effect with respect to the Facility. Supplier shall further provide Buyer with information relating to environmental impact mitigation measures it is taking in connection with the Facility’s construction or operation that are required by any Governmental Authority. As soon as practicable after it is known to Supplier, Supplier shall disclose to Buyer: (a) the extent of any actual or alleged (in writing by a Governmental Authority) violation of any Environmental Laws arising out of the construction or operation of the Facility, or (b) the actual or alleged (in writing by a Governmental Authority) presence of Environmental Contamination at the Facility or on the Project Site, or (c) occurrence of any enforcement, legal or regulatory action or proceeding relating to the foregoing.

### 13. COMMUNICATIONS

- 13.1 Supplier’s Operating Representative. Supplier’s Operating Representative shall be available to address and make decisions on all operational matters under this Agreement on a twenty-four (24) hour per day, seven (7) day per week basis. Supplier shall, at its expense, provide a protocol with Buyer’s Operating Representative at Buyer’s operations center and with Buyer’s scheduling personnel, as listed on Exhibit 4, to maintain communications between personnel at the

Facility and Buyer's Operating Representative, Buyer's schedulers and Electric System Authorities at all times.

13.2 Communications. In connection with meeting its obligations pursuant to this Article 13, Supplier shall provide at its expense:

13.2.1 For the purposes of telemetering, a telecommunications circuit from the Facility to Buyer's operations center, or other readily accessible real-time performance monitoring (e.g., a web-based performance monitoring system);

13.2.2 Two (2) dedicated and geographically diverse fiber lines, including any fiber circuit isolation gear required by the local fiber provider, for purposes of accessing Buyer's metering equipment and for communications with Buyer's operations center. The fiber line will originate at Buyer's telecom equipment location at Supplier's facility and terminate at a location to be specified by Buyer; and

13.2.3 Equipment to transmit to and receive email from Buyer and the Balancing Authority Area Operator, including cellular telephones.

#### **14. SCHEDULING NOTIFICATION**

14.1 Scheduling Notification. Supplier shall provide to Buyer's Operating Representative notices containing information including Supplier's good faith daily and hourly forecast of the Planned Outages that may affect the availability of Storage Product otherwise, in accordance with the Availability Notice procedures in Section 14.2.

14.2 Availability Notice Procedures.

14.2.1 No later than 05:00 PPT each day or as otherwise specified in the Operating Procedures or by Buyer consistent with Good Utility Practice, Supplier shall deliver to Buyer's Operating Representative an Availability Notice in the form set forth in Exhibit 8 and containing such information as may be required by the Operating Procedures. The Availability Notice will cover WECC scheduling practices for day-ahead energy or such other period specified by Buyer consistent with Good Utility Practice. The Parties agree to modify the Availability Notice as may be required consistent with other scheduling practices which may be applicable to the Facility from time to time.

14.2.2 Supplier shall update the Availability Notice and notify Buyer's Operating Representative as provided for in the Operating Procedures.

14.3 Storage Facility Scheduling.

- 14.3.1 During the Term, Buyer has the exclusive right to schedule or designate the Storage Facility to deliver the Storage Product to Buyer and/or accept Charging Energy, as the case may be, in accordance with the Operating Procedures and the operational requirements specified in Exhibit 1. The operational requirements specified in Exhibit 1 will allow Buyer to schedule the Storage Facility for seven (7) days per week and twenty-four (24) hours per day (including holidays) for all available components of the Storage Product, unless the Storage Facility is, in whole or in part, incapable of operations due to Force Majeure, an Emergency, Transmission Provider Instructions or a Planned Outage. During the Term, Supplier shall operate the Storage Facility to charge or discharge the Storage Facility in accordance with Buyer's instruction pursuant to Section 3.4.6, except that Supplier shall have no obligation to operate the Facility in accordance with a Non-Conforming Dispatch Instruction (but in the case of a Discharging Notice that is a Non-Conforming Dispatch Instruction, only to the extent the amount of Discharging Energy delivered to the Delivery Point would exceed one hundred fifty (150) MW at any given time), nor any liability (to Buyer or otherwise) for refusing to operate the Facility in accordance with such a Non-Conforming Dispatch Instruction. Notwithstanding any provision to the contrary contained in this Agreement, in no event shall Buyer have any liability (to Supplier or otherwise) for any Discharging Notice which is a Non-Conforming Dispatch Instruction. During the Term, Supplier shall not dispatch and operate the Storage Facility other than pursuant to an instruction by Buyer pursuant to Section 3.4.6.

## 15. COMPLIANCE

- 15.1 Laws. Each Party shall comply with all applicable Laws in connection with the performance of its obligations under this Agreement. Supplier shall at its sole expense, maintain in full force and effect all relevant material Governmental Approvals required for the maintenance of the Facility and the performance of its obligations under this Agreement. Each Party and its representatives shall comply with all relevant requirements of each Electric System Authority, Transmission Provider and each Governmental Authority to ensure the safety of its employees and the public.
- 15.2 Good Utility Practice. Each of Buyer and Supplier shall perform, or cause to be performed, its obligations under this Agreement in all material respects in accordance with Good Utility Practice.
- 15.3 Safety of Premises.
- 15.3.1 Supplier shall maintain each such real property agreement, including leases and easements, required for the construction, ownership, operation and maintenance of the Storage Facility or the performance of any obligations of Supplier in this Agreement through the period when such real property

agreement is required for any such purpose in accordance with Good Utility Practice and applicable requirements of Law.

- 15.3.2 Supplier (i) shall ensure that there is no less than a twenty-five (25) yard perimeter of gravel or compacted dirt surrounding the Storage Facility, and that the Storage Facility is otherwise in accordance with the National Fire Protection Association's Standard 855 (Installation of Stationary Energy Storage Systems) and (ii) shall use commercially reasonable efforts to maintain a vegetation-free perimeter (including by mowing or tilling or other mechanical or manual removal of vegetation) within the six (6) feet immediately surrounding the entire perimeter in clause (i) above. Failure of Supplier to comply with the immediately preceding sentence within ten (10) Business days after Buyer giving Notice thereof to Supplier shall be an Event of Default by Supplier.
- 15.3.3 Supplier shall provide written notice to the county in which the Facility is located, the local fire department having jurisdiction over the Project Site and any other applicable Governmental Authority prior to Supplier's, Construction Contractor's or any Major Equipment Contractor's (as the case may be) transportation to or from the Project Site of (i) of any flammable materials or (ii) any batteries comprising the Storage Facility. Supplier shall provide such notice as soon as reasonably practicable prior to such transportation, and Supplier shall ensure that it and its Construction Contractors and Major Equipment Contractors adhere to Good Utility Practice and all applicable Laws with respect to such transportation.

## 16. APPROVALS

- 16.1 Condition Precedent. Notwithstanding any provision to the contrary contained in this Agreement, Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 of this Agreement, and each Party's respective rights and obligations thereunder, shall not become effective unless and until Buyer has obtained the PUCN Approval described in Section 16.2 before the PUCN Approval Deadline in form and substance satisfactory to Buyer in its sole discretion.
- 16.2 PUCN Approval. Within one hundred eighty (180) days after the Effective Date and in accordance with the requirements of Law, Buyer shall submit this Agreement to the PUCN for approval ("PUCN Approval"), which approval means a final order issued by the PUCN pursuant to NRS Section 704.751 accepting Buyer's 2025 triannual Integrated Resource Plan, which order (a) approves the transactions contemplated by this Agreement, in form and substance satisfactory to Buyer in its sole discretion, and (b) is not the subject of (i) a petition for reconsideration or rehearing filed pursuant to NAC Section 703.801, (ii) a petition for judicial review filed pursuant to NRS Section 703.373, or (iii) a petition for a preliminary injunction filed pursuant to NRS Section 703.374 (the expiration of the dates for items (b)(i), (ii), and (iii) with respect to such PUCN Approval being the "PUCN Approval Date"), and which PUCN Approval includes:

- 16.2.1 A determination that the terms and conditions of this Agreement are just and reasonable; and
- 16.2.2 A determination that the costs of purchasing Storage Product under this Agreement are prudently incurred and that Buyer may recover all just and reasonable costs of Storage Product purchased under this Agreement.
- 16.2.3 Buyer will promptly notify Supplier after PUCN Approval is obtained or if the PUCN does not grant PUCN Approval.
- 16.3 Failure to Obtain PUCN Approval; Conditions of PUCN Approval. If the PUCN fails to grant the PUCN Approval on or before the PUCN Approval Deadline or grants the PUCN Approval on or before the PUCN Approval Deadline, but in form and substance not acceptable to Buyer in its sole discretion, then within thirty (30) days after the PUCN Approval Deadline or the date PUCN grants the PUCN Approval, as the case may be, Buyer shall have the right to terminate this Agreement upon ten (10) Business Days prior written notice to Supplier. Under no circumstances shall either Party have any liability to the other Party due to the failure of the PUCN to grant PUCN Approval by the PUCN Approval Deadline or the inclusion of conditions to the PUCN Approval which are unacceptable to Buyer.
- 16.4 Cooperation. If requested by Buyer, Supplier shall cooperate with Buyer as Buyer may reasonably deem necessary in order to obtain any Governmental Approval (including the PUCN Approval, and any FERC approval) in connection with this Agreement, including providing affidavits, providing timely responses to data requests of the relevant Governmental Authority, intervening in any relevant dockets, and requesting “commenter” or “intervener” status in any relevant docket. Each Party agrees to notify the other Party of any significant developments in obtaining any Governmental Approval in connection with achieving Commercial Operation of the Facility, including the PUCN Approval. Each Party shall use reasonable efforts to obtain such required Governmental Approvals and shall exercise due diligence and shall act in good faith to cooperate with and assist each other in acquiring each Governmental Approval necessary to effectuate this Agreement.

## 17. SECURITY

- 17.1 Development Security. As a condition of Buyer’s execution of and continuing obligations under this Agreement, Supplier shall provide to Buyer, as security for the performance of Supplier’s obligations hereunder, either: (a) a letter of credit from a Qualified Financial Institution substantially in the form attached hereto as Exhibit 17 (or such other form acceptable to Buyer) in an amount equal to Four Million Five Hundred Thousand Dollars (\$4,500,000); (b) a cash deposit in an amount equal to Four Million Five Hundred Thousand Dollars (\$4,500,000), or (c) a Guaranty from a Qualified Guarantor in an amount equal to Four Million Five Hundred Thousand Dollars (\$4,500,000) (the “Development Security”). Supplier shall post the Development Security on the Effective Date. Upon the PUCN Approval Date, the Development Security shall increase to an amount equal to

Twelve Million Seven Hundred Fifty Thousand Dollars (\$12,750,000). The revised Development Security shall be posted within ten (10) Business Days after the PUCN Approval Date and be maintained until fifteen (15) Business Days after the Commercial Operation Date. Buyer shall have the right to draw upon the Development Security, at Buyer's sole discretion: (i) as a non-exclusive remedy available to Buyer under Article 24; (ii) in the event Supplier fails to achieve any Critical Project Milestone (other than the Commercial Operation Date) by the applicable Critical Project Milestone Deadline and fails to pay Critical Project Milestone Daily Delay Damages; (iii) in the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline and fails to pay Daily Delay Damages as provided in Section 8.5.1; or (iv) if Supplier fails to make any payments owing under this Agreement, including to reimburse Buyer for costs, including Penalties, that Buyer has incurred as a result of Supplier's failure to perform its obligations under this Agreement. Unless this Agreement is terminated, any such drawing on the Development Security by Buyer shall give rise to an obligation of Supplier to replenish the Development Security to its required amount within five (5) Business Days of the drawing. If this Agreement is terminated prior to the Commercial Operation Date, Buyer shall release the Development Security to Supplier by the later of the day that is fifteen (15) Business Days after (i) termination of this Agreement in accordance with its terms, and (ii) the day that any amounts due and owing by Supplier to Buyer are paid in full. In the event that no amounts are due and owing by Supplier to Buyer under this Agreement and Supplier has provided the Operating Security to Buyer, the Development Security shall be released to Supplier upon the earlier of (x) termination of this Agreement in accordance with its terms or (y) the fifteenth (15<sup>th</sup>) Business Day after the Facility achieves Commercial Operation. With the consent of Buyer, Supplier may apply and maintain the Development Security as a portion of Operating Security required to be provided by Supplier pursuant to Section 17.2.

- 17.2 Operating Security. As a condition to achieving Commercial Operation, Supplier shall provide to Buyer, as security for the performance of Supplier's obligations hereunder, either: (a) a letter of credit from a Qualified Financial Institution substantially in the form attached hereto as Exhibit 17 (or such other form acceptable to Buyer) in an amount equal to Twenty-Five Million Seventy-Four Thousand Dollars (\$25,074,000); (b) a cash deposit in an amount equal to Twenty-Five Million Seventy-Four Thousand Dollars (\$25,074,000), or (c) a Guaranty from a Qualified Guarantor in an amount equal to Twenty-Five Million Seventy-Four Thousand Dollars (\$25,074,000) (the "Operating Security"). Supplier shall post the Operating Security with Buyer no later than five (5) Business Days prior to the Commercial Operation Date. Buyer shall have the right to draw upon the Operating Security, at Buyer's sole discretion: (1) as a non-exclusive remedy available to Buyer in the event this Agreement is terminated under Article 24; (2) in the event Supplier fails to timely make any payments owing under this Agreement; or (3) if Supplier fails to reimburse Buyer for costs, including Penalties that Buyer has incurred as a result of Supplier's failure to perform its obligations under this Agreement in accordance with Sections 7.2.2 and 7.2.4. Unless this Agreement is terminated, any such drawing on the Operating Security by Buyer shall give rise to

an obligation of Supplier to replenish the Operating Security to its original amount within five (5) Business Days of the drawing, except that, subject to Section 24.1.7, Supplier shall have no obligation to replenish the Operating Security beyond a maximum aggregate amount of three times (3x) the initial amount of the Operating Security. The Operating Security shall be released to Supplier upon the later of the fifteenth (15<sup>th</sup>) Business Day after the earlier of (i) (x) termination of this Agreement in accordance with its terms or (y) the expiration of the Term, and (ii) the day that any remaining amounts due and owing by Supplier to Buyer under this Agreement are paid in full.

- 17.3 Letters of Credit. With respect to any letter of credit posted by Supplier as Development Security or Operating Security: (a) no later than thirty (30) days prior to the expiration date of any such letter of credit, Supplier shall cause the letter of credit to be renewed or replaced with another letter of credit in an equal amount satisfying the requirements of Sections 17.1 and 17.2, as applicable; (b) in addition to the conditions specified in Sections 17.1 and 17.2, Buyer shall have the right to draw on such letter of credit, at Buyer's sole discretion and hold the cash received in accordance with this Agreement, (i) if such letter of credit has not been renewed or replaced at least thirty (30) days prior to the date of its expiration or (ii) if the Credit Rating of the financial institution that issued such letter of credit has been downgraded to below that required of a Qualified Financial Institution and Supplier has not caused a replacement letter of credit to be issued for the benefit of Buyer within seven (7) Business Days of such downgrade pursuant to Section 17.4.
- 17.4 Maintaining Letter of Credit. If at any time after the Effective Date of this Agreement, the Credit Rating of the financial institution issuing a letter of credit pursuant to this Agreement falls below that required of a Qualified Financial Institution, then Supplier shall: (a) provide Buyer with written notice of such downgrade within five (5) Business Days of Supplier being notified of any such downgrade; and (b) cause a replacement letter of credit satisfying the conditions of Section 17.3 or other acceptable Development Security or Operating Security, as applicable, to be issued in favor of Buyer within seven (7) Business Days of such downgrade. In the event such a downgrade also constitutes an Event of Default pursuant to Article 24, then the requirements of this Section 17.4 are in addition to, and not in lieu of, the provisions of Article 24. Supplier shall take all necessary action and shall be in compliance with Section 17.1 and/or Section 17.2, as the case may be, within seven (7) Business Days of the downgrade.
- 17.5 Guarantors. Supplier shall promptly notify Buyer regarding downgrade or other material change regarding the creditworthiness or financial condition of any guarantor providing a Guaranty pursuant to Sections 17.1 or 17.2. If at any time after the Effective Date, any Person providing a Guaranty pursuant to Sections 17.1 or 17.2 fails to have at least the Minimum Credit Rating, then Buyer shall notify Supplier in writing and Supplier shall cause a replacement Guaranty from a Qualified Guarantor, a letter of credit from a Qualified Financial Institution, or cash in the amount of the Development Security or Operating Security, as the case may be, to be delivered to Buyer within five (5) Business Days of such notice. Failure

to provide the Development Security or Operating Security pursuant hereto in a timely manner shall constitute an Event of Default pursuant to Article 24.

- 17.6 No Interest on Supplier Security. Supplier shall not earn or be entitled to any interest on any security provided pursuant to this Article 17, including any cash amounts deposited.
- 17.7 Grant of Security Interest. To secure its payment obligations under this Agreement, Supplier hereby grants to Buyer, as the secured party, a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all Development Security or Operating Security, as the case may be, posted with Buyer in the form of cash collateral and cash equivalent 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. Supplier agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such performance assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Development Security or Operating Security, as applicable, including any such rights and remedies under Law then in effect; (b) exercise its right of setoff against any and all of the Development Security or Operating Security, as applicable; (c) draw on any outstanding letter of credit issued for its benefit; and (d) liquidate all Development Security or Operating Security, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever by Supplier, including any equity or right of purchase or redemption by Supplier. Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Supplier's payment obligations under the Agreement (Supplier remaining liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.
- 17.8 Waiver of Buyer Security. Supplier hereby waives any and all rights it may have, including rights at Law or otherwise, to require Buyer to provide financial assurances or security (including cash, letters of credit, bonds or other collateral) in respect of its obligations under this Agreement.
- 17.9 Security is Not a Limit on Supplier's Liability. The security contemplated by this Agreement: (a) constitutes security for, but is not a limitation of, Supplier's obligations hereunder; and (b) shall not be Buyer's exclusive remedy for Supplier's failure to perform in accordance with this Agreement.

## 18. INDEMNIFICATION

- 18.1 Indemnification for Losses. Each Party to this Agreement (the "Indemnifying Party") shall indemnify, defend and hold harmless, on and after state and federal

Tax basis, the other Party, its Affiliates, and each of their officers, directors, employees, attorneys, agents and successors and assigns (each an “Indemnified Party”) from, for and against any and all Losses arising out of, relating to, or resulting from the Indemnifying Party’s breach, or performance or non-performance of its obligations under this Agreement, including the Indemnifying Party’s negligence and willful misconduct (including reasonable attorneys’ fees and costs); provided, however, that no Party shall be indemnified hereunder for any Loss to the extent resulting from its own gross negligence, fraud or willful misconduct. Supplier shall be solely responsible for (and shall defend and hold Buyer harmless against) any damage that may occur as a direct result of Supplier’s acts that affect the Transmission System. In addition to and not in limitation on the foregoing indemnification, Supplier (as the Indemnifying Party) shall indemnify, defend and hold harmless, on an after state and federal Tax basis, Buyer, its Affiliates, and each of their officers, directors, employees, attorneys, agents and successors and assigns (each as an Indemnified Party) from, for and against any and all Losses incurred by each such Indemnified Party arising out of, relating to, or resulting from any action by any Governmental Authority due to noncompliance by Supplier with any applicable Laws or Governmental Approvals or the breach by Supplier of any of its representations, warranties or covenants in Sections 25.15, 25.16, 25.17 or 25.19.

18.1.1 In furtherance of the foregoing indemnification and not by way of limitation thereof, the Indemnifying Party hereby waives any defense it otherwise might have against the Indemnified Party under applicable workers’ compensation Laws.

18.1.2 In claims against any Indemnified Party by an agent of the Indemnifying Party, or anyone directly or indirectly employed by them or anyone for whose acts the Indemnifying Party may be liable, the indemnification obligation under this Article 18 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Indemnifying Party or a subcontractor under workers’ or workmen’s compensation acts, disability benefit acts or other employee benefit acts.

18.2 No Negation of Existing Indemnities; Survival. Each Party’s indemnity obligations under this Agreement shall not be construed to negate, abridge or reduce other rights or obligations, which would otherwise exist at Law or in equity. The obligations contained herein shall survive the termination or expiration of this Agreement to the extent that any third-party claim is commenced during the applicable statute of limitations period.

18.3 Indemnification Procedures.

18.3.1 Any Indemnified Party seeking indemnification under this Agreement for any Loss shall give the Indemnifying Party notice of such Loss promptly but in any event on or before thirty (30) days after the Indemnified Party’s actual knowledge of such claim or action. Such notice shall describe the

Loss in reasonable detail, and shall indicate the amount (estimated if necessary) of the Loss that has been, or may be sustained by, the Indemnified Party. To the extent that the Indemnifying Party will have been actually and materially prejudiced as a result of the failure to provide such notice, the Indemnified Party shall bear all responsibility for any additional costs or expenses incurred by the Indemnifying Party as a result of such failure to provide notice.

18.3.2 In any action or proceeding brought against an Indemnified Party by reason of any claim indemnifiable hereunder, the Indemnifying Party may, at its sole option, elect to assume the defense at the Indemnifying Party's expense, and shall have the right to control the defense thereof and to determine the settlement or compromise of any such action or proceeding. Notwithstanding the foregoing, an Indemnified Party shall in all cases be entitled to control its own defense in any action if it:

18.3.2.1 May result in injunctions or other equitable remedies with respect to the Indemnified Party;

18.3.2.2 May result in material liabilities which may not be fully indemnified hereunder; or

18.3.2.3 May have a Material Adverse Effect on the Indemnified Party (including a Material Adverse Effect on the Tax liabilities, earnings, ongoing business relationships or regulation of the Indemnified Party) even if the Indemnifying Party pays all indemnification amounts in full.

18.3.3 Subject to Section 18.3.2, neither Party may settle or compromise any claim for which indemnification is sought under this Agreement without the prior written consent of the other Party; provided, however, that said consent shall not be unreasonably withheld, conditioned or delayed.

## 19. LIMITATION OF LIABILITY

19.1 Responsibility for Damages. Except where caused by the other Party's breach of its obligations, non-performance of its obligations or negligence in its performance under this Agreement, each Party shall be responsible for all physical damage to or destruction of the property, equipment and/or facilities owned by it, and each Party hereby releases the other Party from any reimbursement for such damage or destruction.

19.2 Limitation on Damages. To the fullest extent permitted by Law and notwithstanding any other provisions of this Agreement to the contrary, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages

and lost business opportunities), exemplary or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement (unless due to the willful or intentional breach of this Agreement by such Party, in which case the limitation shall not apply); provided, however, for clarification purposes that the following shall not be deemed to conflict with the foregoing prohibitions: damage calculations under Section 3.4 for Guaranteed Storage Availability, Critical Project Milestone Daily Delay Damages as liquidated damages under Section 8.2.3, Development Security as liquidated damages under Section 8.4, Daily Delay Damages as liquidated damages under Section 8.5, to satisfy Penalties owing under Section 15.1, and indemnification obligations under Section 18.1. In addition, this limitation on damages shall not apply with respect to claims brought by unaffiliated third parties for which a Party is entitled to indemnification under this Agreement.

- 19.3 Survival. The provisions of this Article 19 shall survive the termination or expiration of this Agreement.

## 20. FORCE MAJEURE

- 20.1 Excuse. Subject to the provisions of this Article 20, neither Party will be liable under this Agreement for any delay or failure in the performance of its obligations under this Agreement, nor will any such delay or failure become an Event of Default, to the extent such delay or failure is directly caused by an event of Force Majeure. Notwithstanding any other provision to the contrary contained in this Agreement, the sole relief available for an event of Force Majeure or claim of Force Majeure shall be an extension of time on a day-for-day basis for the period of demonstrated delay or failure directly caused by the event of Force Majeure. In no event shall a Force Majeure Event or claim of Force Majeure entitle Supplier to an increase to any compensation due Supplier hereunder. In all circumstances, the Party seeking relief on the asserted basis of Force Majeure shall bear the burden to show that the requirements of this Article 20 have been met, that such Party is entitled to relief, and the extent of any relief to which such Party is entitled.
- 20.2 Definition. “Force Majeure” or “an event of Force Majeure” means an event that: (a) is not reasonably anticipated as of the Effective Date; (b) is not within the reasonable control of the affected Party or any Person (of any tier) performing any portion of such Party’s obligations hereunder; (c) is not the result of the negligence, fault or failure to act by the affected Party or any Person (of any tier) performing any portion of such Party’s obligations hereunder; and (d) could not be overcome or its effects mitigated by the use of due diligence by the affected Party or any Person (of any tier) performing any portion of such Party’s obligations hereunder. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the requirements set forth in the preceding sentence): acts of God such as storms, hail, hurricanes, floods, lightning, fire, explosion, earthquakes, or other natural disasters; civil disturbance; sabotage; strikes, lock-outs, or work stoppages, in each case, not attributable to the actions of the affected Party or any Person (of any tier) performing any portion of such Party’s obligations hereunder; action or restraint by

court order or Governmental Authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such action or restraint, and so long as the action or restraint does not arise out of the actions of the affected Party or any Person (of any tier) performing any portion of such Party's obligations hereunder).

20.3 Exclusions. Notwithstanding the foregoing, none of the following shall constitute Force Majeure:

20.3.1 Economic hardship of either Party, including lack of money, or the breach of contract by any Person (of any tier) performing any portion of the affected Party's obligations hereunder;

20.3.2 [Reserved.]

20.3.3 A Party's failure to obtain or delay or other problem associated with the issuance, suspension, renewal, administration or withdrawal of, or any other problem directly or indirectly relating to, any Governmental Approval from a Governmental Authority;

20.3.4 A Party's failure to meet a Project Milestone, except to the extent it is caused by an independent event of Force Majeure;

20.3.5 The imposition of costs or Taxes on a Party;

20.3.6 Supplier's failure to obtain, or perform under, the IA, or its other contracts and obligations to Transmission Provider unless due to an independent event of Force Majeure;

20.3.7 [Reserved.]

20.3.8 Any breakdown or malfunction of the Facility's equipment (including any serial equipment defect) that is not caused by an independent event of Force Majeure at the Project Site;

20.3.9 Delay or failure of Supplier to obtain or perform any Required Facility Document unless due to an independent event of Force Majeure;

20.3.10 Any delay, alleged breach of contract, or failure by the Transmission Provider unless due to an independent event of Force Majeure at the Project Site;

20.3.11 Maintenance upgrade or repair of any facilities or right of way corridors whether performed by or for Supplier, or other third parties (except for repairs made necessary as a result of an independent event of Force Majeure at the Project Site);

- 20.3.12 Inability to obtain any supply of goods or services, unless caused by an independent event of Force Majeure;
- 20.3.13 Delays in customs or similar regulatory clearance, unless due to an independent event of Force Majeure;
- 20.3.14 The imposition of tariffs, anti-dumping or countervailing duties that may apply to any products or equipment or other fines, penalties or other actions as a result of violation of Laws regarding unfair trade practices;
- 20.3.15 The occurrence after the Effective Date of an enactment, promulgation, modification or repeal of one or more Laws, including regulations or national defense requirements that affects the cost or ability of either Party to perform under this Agreement; or
- 20.3.16 The increased cost of electricity, materials, equipment, steel, labor, services, or transportation.

For the avoidance of doubt, the existence of the facts or circumstances described as exceptions to or qualifications of the exclusions to Force Majeure listed in the clauses above shall not establish the existence of Force Majeure, which shall only occur if the requirements of this Article 20 are fully satisfied.

- 20.3.17 Each Party acknowledges the effects of COVID-19 and the Current Conflicts as of the Effective Date, and that no delay or failure in performance is expected based on the scope of such effects as of the Effective Date. Force Majeure relief related to COVID-19 or any such Current Conflicts and their effects shall be permitted only to the extent of material direct impacts of COVID-19 or such Current Conflicts of which the affected Party was not aware, and should not reasonably have anticipated, as of the Effective Date, and provided that the criteria in the first sentence of Section 20.2 are met.
- 20.4 Conditions. In addition to the conditions set forth in Section 20.2, a Party may rely on a claim of Force Majeure to excuse its performance only to the extent that such Party complies with the following requirements of Section 20.4.1 through 20.4.5; provided that if Supplier fails to comply with such requirements, it shall be deemed to waive any relief to which it would be otherwise entitled by virtue of such claim of Force Majeure:
- 20.4.1 Provides prompt notice of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement (which notice, in the case of Supplier, shall be provided within five (5) Business Days following Supplier's knowledge of the occurrence of the event forming the basis of such Force Majeure event);

- 20.4.2 Exercises all reasonable efforts to continue to perform its obligations under this Agreement;
- 20.4.3 Expeditiously takes action to correct or cure the Force Majeure event excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the event; provided, however, that nothing herein requires a Party to settle a strike or other labor dispute;
- 20.4.4 Exercises all reasonable efforts to mitigate or limit damages to the other Party resulting from the Force Majeure event; and
- 20.4.5 Provides prompt notice to the other Party of the cessation of the Force Majeure event giving rise to its excuse from performance.

## 21. DISPUTES

- 21.1 Dispute or Claim. Any cause of action, claim or dispute which either Party may have against the other Party arising out of or relating to this Agreement, including the interpretation of the terms hereof or any Laws that affect this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity hereof ("Dispute") shall be submitted in writing to the other Party. The written submission of any Dispute shall include a concise statement of the question or issue in dispute together with a statement listing the relevant facts and appropriate supporting documentation.
- 21.2 Good Faith Resolution. The Parties agree to cooperate in good faith to expedite the resolution of any Dispute. Pending resolution of a Dispute, the Parties shall proceed diligently with the performance of their obligations under this Agreement.
- 21.3 Informal Negotiation. The Parties shall first attempt in good faith to resolve any Dispute through informal negotiations by the Operating Representatives or Contract Representatives and senior management of each Party. If the Parties fail to resolve any Dispute through informal negotiations within thirty (30) days after the Dispute is submitted in writing to the other Party in accordance with Section 21.1, then either Party may exercise their rights at equity or law to resolve such Dispute.
- 21.4 Jurisdiction, Venue. Each Party irrevocably: (a) submits to the exclusive jurisdiction of the federal and state courts located in the County of Clark, State of Nevada; (b) waives any objection which it may have to the laying of jurisdiction or venue of any proceedings brought in any such court; and (c) waives any claim that such proceedings have been brought in an inconvenient forum.
- 21.5 Recovery of Costs and Attorneys' Fees. In the event of a Dispute arising from or relating to this Agreement, whether or not an action is commenced in any court to enforce any provision or for damages by reason of any alleged breach of this

Agreement, the prevailing Party will be entitled to recover from the other Party all costs and attorneys' fees reasonably incurred in resolving the Dispute. For purposes hereof, the "prevailing" Party need not prevail on every issue involved in the Dispute, but only on the main issue giving rise to the Dispute.

- 21.6 Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

## 22. NATURE OF OBLIGATIONS

- 22.1 Relationship of the Parties. The provisions of this Agreement shall not be construed to create an association, trust, partnership, or joint venture; or impose a trust or partnership duty, obligation, or liability or agency relationship between the Parties.
- 22.2 No Public Dedication. By this Agreement, neither Party dedicates any part of its facilities nor the services provided under this Agreement to the public.

## 23. ASSIGNMENT

Except as stated below, neither this Agreement nor any of the rights or obligations hereunder shall be sold, transferred, assigned or otherwise disposed of (collectively, "Assigned," "Assign," "Assigning," or "Assignment", as the context may require) by either Party, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Assignment of this Agreement in violation of the foregoing shall be, at the option of the non-assigning Party, void. Furthermore, and notwithstanding anything in this Agreement to the contrary, in no event shall (a) Supplier Assign, whether in whole or in part, this Agreement nor any of its rights or obligations hereunder to any Person (including an Affiliate) prior to the PUCN Approval Date without the prior written consent of Buyer; (b) Supplier Assign, whether directly or indirectly, its ownership interest in the Facility to any Person prior to the PUCN Approval Date without the prior written consent of Buyer; or (c) a Controlling Interest in Supplier be Assigned, whether directly or indirectly and whether through a single transaction or a series of transactions over time, to any Person without Buyer's prior written approval.

- 23.1 Buyer Assignment. Buyer may, without the consent of Supplier, Assign this Agreement or its rights and obligations under this Agreement, in whole or in part, if such Assignment is made to: (a) Sierra Pacific Power Company d/b/a NV Energy; (b) any successor to Buyer, provided that such successor is a public utility holding a certificate of public convenience and necessity granted by the PUCN pursuant to NRS Chapter 704, where such Assignment does not occur by operation of Law; (c) a Person (other than a natural person) providing retail electric service in Nevada

which meets the Minimum Credit Rating or provides adequate credit assurance or a guarantee from a party that meets the Minimum Credit Rating and meets all other requirements under this Agreement; (d) a wholesale electric provider which meets the Minimum Credit Rating or provides adequate credit assurance or a guarantee from a party that meets the Minimum Credit Rating; (e) a Person (other than a natural person) whose Credit Rating, is equal or superior to the Minimum Credit Rating as of the time of Assignment; or (f) a Person (other than a natural person) as otherwise required by Law which meets the Minimum Credit Rating or provides adequate credit assurance or a guarantee from a party that meets the Minimum Credit Rating, and such assignee obtains PUCN approval, if required by Law, and enters into an assignment and assumption agreement pursuant to which such assignee assumes all of Buyer's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement. Buyer shall provide Supplier with written notice of any Assignment pursuant to this Section 23.1.

- 23.2 Supplier Assignment. After the PUCN Approval Date, Supplier may, without the consent of Buyer, Assign a Controlling Interest in Supplier to any of Supplier's Affiliates or this Agreement to any of Supplier's Affiliates in connection with an Assignment of the Facility to such Affiliate or a corporate reorganization between Supplier and its Affiliates so long as Buyer retains its rights under Article 6 following such Assignment; provided that Supplier provides Buyer prior notice of any such Assignment and (a) either (i) the Credit Rating of such Affiliate is equal to or superior to the Credit Rating of Supplier as of the Effective Date, as determined by Buyer in its reasonable discretion, or (ii) the Development Security or Operating Security, as applicable, is maintained without change due to such Assignment or is replaced with Development Security or Operating Security, as applicable, in accordance with the requirements of Article 17, and (b) such Affiliate enters into an assignment and assumption agreement, in form and substance reasonably satisfactory to Buyer, pursuant to which such Affiliate assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement. Supplier agrees that it will provide written notice to Buyer (and, if required, the PUCN Regulatory Operations Staff, and the State of Nevada Attorney General's Bureau of Consumer Protection) of any Assignment of this Agreement by Supplier to an Affiliate pursuant to this Section 23.2, together with information supporting the permissible nature of the Assignment in accordance with the requirements of this Section 23.2, no less than five (5) Business Days prior to the effective date of any such Assignment.
- 23.3 Liability After Assignment. A Party's Assignment of its rights or obligations pursuant to this Article 23 of this Agreement shall relieve such Party from any liability and financial responsibility for the performance thereof arising after any such Assignment, provided that such transferee enters into an assignment and assumption agreement, in form and substance satisfactory to the other Party, pursuant to which such transferee assumes all of the Assigning Party's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.

- 23.4 Transfers of Ownership in the Facility. Subject to the provisions of Article 6, Supplier shall not directly or indirectly Assign its ownership interest in the Facility to any Person absent: (a) an Assignment of this Agreement to such Person; (b) Supplier entering into an assignment and assumption agreement, in form and substance reasonably satisfactory to Buyer, with such Person pursuant to which such Person assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement; (c) Buyer's prior written approval, not to be unreasonably withheld, conditioned or delayed, of such Person; and (d) such Person being a Qualified Transferee. This Section 23.4 shall not apply or restrict any Assignment of the Facility (i) in accordance with the provisions of Sections 23.2 or 23.8, or (ii) that occurs after Buyer has obtained the PUCN Approval described in Section 16.2 before the PUCN Approval Deadline in form and substance satisfactory to Buyer in its sole discretion that complies with the ROFO provisions of Section 6.1, provided that such Assignment is to a Qualified Transferee.
- 23.5 Controlling Interest. Subject to the provisions of Article 6, no Controlling Interest in Supplier may be Assigned (whether through a single transaction or a series of transactions over time) to any Person other than an Affiliate of Supplier pursuant to an internal corporate reorganization that does not change the ultimate control or ownership of Supplier, without Buyer's prior written approval, not to be unreasonably withheld, and then only to a Qualified Transferee. This Section 23.5 shall not apply or restrict any Assignment of a Controlling Interest in Supplier (a) in accordance with the provisions of Section 23.2, (b) that is a Permitted Transfer, or (c) that occurs after Buyer has obtained the PUCN Approval described in Section 16.2 before the PUCN Approval Deadline in form and substance satisfactory to Buyer in its sole discretion and complies with the ROFO provisions of Section 6.1, provided that such Assignment is to a Qualified Transferee.
- 23.6 Assignee Obligations with Respect to Granting a Security Interest. As a condition precedent to granting any Person a security interest in the Facility, Supplier shall (a) satisfy the requirements of Section 23.8 or (b) procure and deliver to Buyer an agreement, enforceable by Buyer and in form and substance satisfactory to Buyer, from each such Person to the effect that, if such Person forecloses on its security interest, (i) it will assume Supplier's obligations under and otherwise be bound by the terms of this Agreement, and (ii) it will not Assign its interest in the Facility to any Person other than in accordance with the provisions of this Article 23.
- 23.7 Successors and Assigns. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective permitted successors and permitted assigns.
- 23.8 Collateral Assignment by Supplier. Supplier may, without the consent of Buyer (and without relieving itself from liability hereunder) transfer, pledge, encumber or collaterally assign this Agreement or the account, revenues or proceeds hereof to Supplier's Lender in connection with any financing, including tax equity financing, or other financial arrangements for the Facility. In the event that Supplier intends

to transfer, pledge, encumber or collaterally assign this Agreement to Supplier's Lenders, Supplier shall provide at least thirty (30) days' prior written notice thereof to Buyer, including the address of Supplier's Lenders. Any negotiation of documentation required in connection with a collateral assignment or other financing activity of Supplier shall be at the sole cost and expense of Supplier, and Supplier shall reimburse Buyer for all documented third-party and internal costs in connection with such activities. As a condition precedent to the effectiveness of any such transfer, pledge, encumbrance or collateral assignment to Supplier's Lenders, Buyer and Supplier and Supplier's Lenders shall have entered into a consent to collateral assignment agreement, which agreement shall be substantially and in all material respects in the form and substance of the Lender's Consent in Exhibit 19.

## 24. DEFAULT AND REMEDIES

- 24.1 Events of Default. An event of default ("Event of Default") shall be deemed to have occurred with respect to a Party (the "Defaulting Party") upon the occurrence of one or more of the following events and expiration of any applicable Cure Period:
- 24.1.1 failure to comply with any of its material obligations under this Agreement (not otherwise specifically addressed below) or failure of any its representations or warranties in this Agreement to be true and correct in all material respects when made or deemed made;
  - 24.1.2 failure to make timely payments due under this Agreement;
  - 24.1.3 failure to comply with the material requirements of any Electric System Authority, Transmission Provider or any Governmental Authority;
  - 24.1.4 [Reserved.]
  - 24.1.5 in the case of Supplier, its failure to install, operate, maintain or repair the Facility in accordance in all material respects with Good Utility Practice;
  - 24.1.6 in the case of Supplier, its failure to timely achieve: (a) any of the Critical Project Milestones (excluding the Commercial Operation Date) before the applicable Critical Project Milestone Deadline as set forth in Exhibit 6, after expiration of the applicable period for which Critical Project Milestone Daily Delay Damages are owed by Supplier pursuant to Section 8.2.3; or (b) the Commercial Operation Date by the Commercial Operation Deadline as set forth in Exhibit 6, after expiration of the applicable period for which Daily Delay Damages are owed by Supplier pursuant to Section 8.5.1;
  - 24.1.7 in the case of Supplier, (a) its failure to comply with the provisions of Article 17 (including any replenishment requirement) or (b) Buyer has drawn the full amount of the Operating Security (including any replenishment requirement provided for in Section 17.2 and any additional

Operating Security delivered to Buyer pursuant to this Section 24.1.7(b)) and Supplier has not delivered to Buyer additional Operating Security in the amount of Twenty-Five Million Seventy-Four Thousand Dollars (\$25,074,000) within five (5) Business Days thereof;

24.1.8 failure to comply with the provisions of Article 23;

24.1.9 in the case of Supplier, its failure to comply with the provisions of Article 27;

24.1.10 if a Party: (a) becomes insolvent, files for or is forced into bankruptcy (and in the case of an involuntary bankruptcy, such proceeding is not dismissed within sixty (60) days); (b) makes an assignment for the benefit of creditors; (c) is unable to pay its debts as they become due; or (d) is subject to a similar action or proceeding (and in the case of an involuntary bankruptcy, such proceeding is not dismissed within ninety (90) days);

24.1.11 in the case of Supplier, if Supplier: (a) relinquished possession and control of all or substantially all of the Facility, other than pursuant to a transfer permitted under this Agreement; or (b) after commencement of the construction of the Facility, and prior to the Commercial Operation Date, completely ceases construction, testing, and inspection of the Facility for ninety (90) consecutive days, if not attributable to an Event of Default of, or request by Buyer, an event of Force Majeure, an Interconnection Delay, or Buyer's failure to obtain the PUCN Approval on or before November 26, 2026;

24.1.12 in the case of Supplier, if: (a) the Storage Contract Capacity of the Storage Facility determined pursuant to a Storage Capacity Test is less than or equal to ninety percent (90%) of the Expected Storage Facility Nameplate Capacity Rating for at least two (2) consecutive Contract Years; or (b) the Monthly Storage Availability is less than or equal to seventy-five percent (75%) for all Summer Months during two (2) consecutive Contract Years (based on the average Monthly Storage Availability of all such Summer Months during such two (2) consecutive Contract Years); and

24.1.13 [Reserved.]

24.1.14 In the case of Supplier, its failure to comply with the provisions of Section 15.3.2.

24.2 Duty/Right to Mitigate. Each Party 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 its obligations under this Agreement. For the purpose of this Section 24.2, commercially reasonable efforts by Supplier shall include maximizing the price for Storage Product received by Supplier from third parties, including efforts to enter into an enabling agreement with, or being affiliated with, one or more power

marketers of nationally recognized standing to market such Storage Product not purchased or accepted by Buyer during a period Buyer is a Defaulting Party and Supplier is entitled to sell such Storage Product to third parties in accordance with the terms of this Agreement.

- 24.3 Cure Period. Other than for an Event of Default under Sections 24.1.6, 24.1.10, or 24.1.12 for which there is no separate cure period, an Event of Default shall not be deemed to have occurred under Section 24.1, unless and until the Defaulting Party shall have had: (a) for purposes of Section 24.1.2, 24.1.7, 24.1.8, and 24.1.9, a period of ten (10) Business Days from the date the applicable payment or performance was due; and (b) for purposes of all other Events of Default described in Section 24.1 (other than Sections 24.1.2, 24.1.6, 24.1.7, 24.1.8, 24.1.9, 24.1.10, or 24.1.12 which are addressed above), a period of thirty (30) days from the date of receipt of written notice of the occurrence of any of the Events of Default described in Section 24.1 (each of the cure periods in Section 24.3(a) and (b), a “Cure Period”) to cure such potential Event of Default; provided that such thirty (30)-day period may be extended for an additional reasonable period of time (not to exceed ninety (90) days) if: (i) the potential Event of Default is not reasonably capable of being cured within such thirty (30)-day period; (ii) such potential Event of Default is capable of being cured within an additional reasonable period of time (not to exceed ninety (90) days); and (iii) the applicable Party is diligently and continuously proceeding to cure such potential Event of Default.
- 24.4 Remedies. If an Event of Default is not cured by the Defaulting Party during the applicable Cure Period, if any, then the Non-Defaulting Party shall be entitled to all legal and equitable remedies that are not expressly prohibited by the terms of this Agreement, including termination of this Agreement as provided in Section 2.3, payment of damages, and in the case of Buyer, drawing upon the Development Security and the Operating Security.
- 24.5 Termination of Duty to Buy. If this Agreement is terminated because of an Event of Default by Supplier, neither Supplier nor any Affiliate of Supplier, nor any successor to Supplier with respect to the ownership of the Facility or the Project Site, may thereafter require or seek to require Buyer to make any purchases from the Facility or any energy storage facility constructed on the Project Site, under the Public Utility Regulatory Policies Act of 1978 or any other Law, for any periods that would have been within the Term had this Agreement remained in effect. Supplier, on behalf of itself and any other entity on whose behalf it may act, hereby waives its rights to require Buyer so to do.
- 24.5.1 Right of First Offer for Storage Product. If either Party terminates this Agreement in accordance with Section 2.3 or Buyer terminates this Agreement due to a Supplier Event of Default then neither Supplier nor Supplier’s Affiliates may sell, or enter into a contract to sell, any Storage Product associated with or attributable to a storage facility (a “Covered Facility”) that from time to time may be constructed by Supplier or any Affiliate of Supplier on the Project Site through the third (3<sup>rd</sup>) anniversary

date of Buyer's notice of termination. Supplier shall provide Buyer with no less than six (6) months' prior written notice of the anticipated commercial operation date for any Covered Facility. Buyer shall notify Supplier within sixty (60) days of receipt of such notice from Supplier as to whether Buyer elects to purchase such Storage Product (the "Output Right of First Offer"). If Buyer elects to purchase such Storage Product, then the same shall be sold to Buyer at the Storage Rate and the Parties shall enter into a binding agreement consistent with the foregoing and otherwise on terms and conditions substantially similar with this Agreement, the same being modified only as necessary to address changes which arise due to the passage of time. Neither Supplier nor Supplier's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Project Site (including the interconnection queue position) so long as the limitations contained in this Section 24.5.1 apply, unless the transferee agrees to be bound by the terms set forth in this Section 24.5.1. Buyer shall be permitted to file a notice of the rights contained in this Section 24.5.1 with respect to the Project Site. Supplier shall indemnify and hold Buyer harmless from all Losses sustained by Buyer as a result of any breach of the covenants contained in this Section 24.5.1.

#### 24.6 Step-In Rights.

24.6.1 Step-In Rights following an Event of Default. If Supplier commits an Event of Default, including pursuant to Section 24.1.6(b), (after taking into account any extension as set forth herein) and this Agreement has not been terminated by Buyer, then, subject to Supplier's Lender's rights to cure Supplier's Event of Default and exercise its rights and remedies, including foreclosure, under any Lender's Consent with Buyer having expired, and without limiting its other rights and remedies hereunder, Buyer shall have the right to enter the Project Site and take possession of the Facility and to take or cause to be taken all such actions and do or cause to be done all such things as Buyer may consider necessary or desirable to complete the Facility and cause Commercial Operation to occur. Following the cure of the Event of Default, Buyer shall: (a) return possession of the Facility to Supplier upon execution by Supplier of an indemnity and release agreement, in form and substance reasonably acceptable to Buyer, pursuant to which Supplier shall indemnify and release Buyer from all claims arising out of Buyer's exercise of its rights pursuant to this Section 24.6 and reimburse Buyer for reasonably incurred costs and expenses incurred in the exercise of Buyer's step-in rights, except to the extent such costs are Buyer's responsibility hereunder; or (b) if and for so long as Supplier refuses to execute such indemnity and release agreement or reimburse Buyer: (i) operate the Facility for all or such portion of the remaining Term as Buyer may elect, in its sole discretion, pursuant to the license granted in Section 24.6.2 until Supplier provides the indemnity and release to Buyer as provided above; and/or (ii) exercise its other rights and remedies under this Agreement, including the right to terminate this Agreement without the

payment of any damages by Buyer as a result of Supplier's Event of Default, if Buyer exercises its right under Section 24.6.4 to terminate its exercise of its rights under this Section 24.6 and returns the Facility to Supplier.

24.6.2 License to Operate Facility. Supplier hereby irrevocably grants to Buyer the right, license and authority to enter the Project Site, to construct, operate and maintain the Facility for the Term during the continuance of and following any Event of Default by Supplier, if Supplier's Lenders have not elected to cure Supplier's Event of Default. During any period in which Buyer constructs, operates or maintains the Facility pursuant to the license granted in this Section 24.6.2, Supplier shall, upon request from Buyer, reimburse Buyer for all reasonable costs and expenses incurred by Buyer to construct, operate and maintain the Facility. Buyer shall pay for all Storage Product in accordance with this Agreement during such period, net of Buyer's reasonable costs of exercising its rights under Section 24.6 and constructing and operating the Facility to the extent not reimbursed by Supplier, and shall construct, operate and maintain the Facility in accordance with Good Utility Practice and applicable Law. Buyer shall not be required to return control of the Facility to Supplier unless Supplier reimburses Buyer for all reasonable costs and expenses incurred by Buyer to construct, operate and maintain the Facility. Absent such repayment, Buyer may continue to operate the Facility as provided above and begin to or continue to offset all such costs and expenses against payments of the Storage Rate otherwise due to Supplier until they have been paid in full, at which time Supplier may require return of possession of the Facility to Supplier. Upon the return of possession of the Facility to Supplier, Supplier shall reimburse Buyer for all reasonable costs and expenses incurred by Buyer to construct, operate and maintain the Facility not previously reimbursed in full.

24.6.3 Records and Access. Supplier shall collect and have available at a convenient, central location at the Project Site all documents, contracts, books, manuals, reports, and records required to construct, operate and maintain the Facility in accordance with Good Utility Practice. Upon Buyer's notice of intent to exercise its rights under this Section 24.6, Buyer, its employees, contractors, or designated third parties shall have the right to enter the Project Site and the Facility for the purpose of constructing, operating or maintaining the Facility. Upon the exercise by Buyer of its rights under this Section 24.6, Supplier shall cause the Facility contractor or operator (and any Person within the control of Supplier) to give Buyer access to and control of the construction, operation and maintenance of the Facility, as applicable, to the extent reasonably necessary to enable Buyer to exercise its rights under this Section 24.6, and shall provide reasonable assistance and cooperation to Buyer to effect safely the transfer of responsibility for construction, operation and maintenance as may be requested by Buyer. Supplier shall execute such documents and take such

other action as may be necessary for Buyer to effectuate its rights under this Section 24.6.

- 24.6.4 Return. Buyer may, at any time and in its sole discretion, terminate its exercise of its rights under this Section 24.6 whether or not the applicable Event of Default has been cured. If at any time after exercising its rights under this Agreement, Buyer elects to return possession of the Facility to Supplier, Buyer shall provide Supplier with at least ten (10) days advance notice of the date Buyer intends to return such possession, and upon receipt of such notice Supplier shall take all actions necessary to resume possession of the Facility on such date.
- 24.6.5 No Assumption. Buyer's exercise of its rights under this Section 24.6 shall not be deemed an assumption by Buyer of any liability of Supplier due and owing prior to the exercise of such rights. Buyer shall not assume any liability of Supplier for the period during which Buyer exercises its rights under this Section 24.6. During any period that Buyer is exercising its rights, Supplier shall retain legal title to and ownership of the Facility and all of its other property and its revenues. When exercising its rights under this Section 24.6, Buyer shall assume possession, operation, and control of the Facility solely as agent for Supplier. In no event shall Buyer's election to exercise its rights under this Section 24.6 be deemed to constitute a transfer of ownership of or title to the Facility, the Project Site or any assets of Supplier.
- 24.6.6 Costs and Expenses. Supplier shall indemnify and hold harmless Buyer from and against all Losses incurred by Buyer in connection with exercise of its rights under this Section 24.6 other than due to the gross negligence or willful misconduct of Buyer. In connection with its exercise of its rights under this Section 24.6, Buyer shall have the right to recoup and set off all such Losses against amounts otherwise owed by Buyer hereunder. Buyer's exercise of such recoupment and set off rights shall not limit the other rights and remedies available to Buyer hereunder or otherwise.

## **25. REPRESENTATIONS AND WARRANTIES OF SUPPLIER**

Supplier represents and warrants to Buyer as of the Effective Date and the Commercial Operation Date as set forth in Sections 25.1 through 25.12, Section 25.15.1, and Section 25.16, and covenants to Buyer as set for in Section 25.5, Sections 25.8 through 25.10, Section 25.12, Section 25.13, Section 25.15.2, and Sections 25.16 through 25.19:

- 25.1 Organization. Supplier is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite entity power and authority to own or lease and operate its properties and to carry on its business as is now being conducted. Supplier is duly qualified or licensed to do business and is in good standing in the State of Nevada and in each other jurisdiction in which the property owned, leased or operated by it or the nature

of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not reasonably be expected to have a Material Adverse Effect on Supplier.

- 25.2 Authority. Supplier has full limited liability company authority, and has taken all limited liability company actions necessary, to execute and deliver this Agreement and to consummate the transactions contemplated herein. No other proceedings or approvals on the part of Supplier are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Supplier enforceable in accordance with its terms except as the enforcement thereof may be limited by (a) applicable bankruptcy, insolvency or similar Laws affecting the enforcement of creditors' rights generally and (b) general principles of equity, whether considered in a proceeding in equity or at law.
- 25.3 Governmental Approvals; No Violation. Other than obtaining the Supplier's Required Regulatory Approvals as set out in Exhibit 10, the execution, delivery and performance of this Agreement by Supplier shall not: (a) conflict with or result in any breach of any provision of the articles of organization (and/or other governing documents) of Supplier; (b) require any Governmental Approval, except where the failure to obtain such Governmental Approval would not reasonably be expected to have a Material Adverse Effect on Supplier; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Supplier or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.
- 25.4 Regulation as a Utility. Except for its anticipated future status as a "public utility" as defined in the Federal Power Act, and as set forth in Exhibit 10, Supplier is not subject to regulation as a public utility or public service company (or similar designation) by any Governmental Authority.
- 25.5 Availability of Funds. Supplier has, or will have, and shall maintain sufficient funds available to it to perform all of its obligations under this Agreement and to consummate the transactions contemplated pursuant hereto.
- 25.6 Interconnection Process; Transmission. Supplier has initiated with the Transmission Provider the process of obtaining the rights to interconnect the Facility to the Transmission System in order to provide for the delivery of Charging Energy and Discharging Energy to and at the Delivery Point.
- 25.7 Interconnection Cost Due Diligence. Supplier has conducted due diligence regarding the costs of all facilities and equipment necessary to interconnect the Facility to and at the Delivery Point and all such costs are covered by payments for Storage Product provided for in this Agreement.

- 25.8 Required Facility Documents. All Required Facility Documents reasonably known as of the date hereof by Supplier are listed on Exhibit 12. Pursuant to the Required Facility Documents, Supplier or its Affiliate holds as of the Effective Date, or will hold by the Commercial Operation Date (or such other later date as may be specified under requirements of Law), and will maintain for the Term all Required Facility Documents (including all material authorizations, rights and entitlements) necessary to construct, own, operate and maintain the Facility and to perform its obligations under this Agreement, including the sale and delivery of Product to Buyer in accordance with this Agreement. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the Facility or the Project Site.
- 25.9 Governmental Approvals. Supplier or its Affiliate has applied or will apply for or has received the Governmental Approvals listed in Exhibits 10 and 12, and no other Governmental Approvals are required by Supplier or its Affiliate to construct, own, operate and maintain the Facility or perform its obligations under this Agreement. Following the Commercial Operation Date, Supplier shall notify Buyer of any additional material Governmental Approvals that are required for the ownership, operation and maintenance of the Facility or the performance by Supplier of its obligations under this Agreement, in each case, promptly after Supplier makes any such determination.
- 25.10 Related Agreements. Supplier has entered into or will enter into all material agreements as listed in Exhibit 12 necessary for the construction, ownership, operation and maintenance of the Facility and the performance of its obligations under this Agreement.
- 25.11 [Reserved.]
- 25.12 Title. Buyer will own all Storage Product attributable to the Facility at all times during the Term. Supplier shall keep all Storage Product free and clear of any liens or other encumbrances or title defects, including any which would affect Buyer's ownership of any portion of such Product or prevent the subsequent transfer of any portion of such Storage Product by Buyer to a third party.
- 25.13 Project Execution Plan. Supplier will execute the development and construction of the Facility in accordance with the project execution plan submitted by Supplier to Buyer pursuant to the request for proposals dated November 25, 2024. Supplier shall construct the Facility using only such equipment that satisfies the Equipment Specifications. For the avoidance of doubt, the Parties acknowledge and agree that the approved Construction Contractors listed on Exhibit 23 shall be approved for the purposes of this Agreement only, and such listing on Exhibit 23 shall not give rise to a presumption that the use of such Construction Contractor is approved for any other storage facility other than the Storage Facility.
- 25.14 Work Site Agreement. Supplier, or its Construction Contractor primarily responsible for the engineering, construction and procurement of the Facility, shall

enter into a work site agreement, memorandum of understanding, or similar document in the form attached hereto as Exhibit 21 (the "Work Site Agreement") by the applicable Project Milestone set forth in Exhibit 6.

#### 25.15 OFAC Sanctions Lists.

25.15.1 Neither Supplier, any Affiliate of Supplier, nor any partner, joint venturer, or strategic alliance participant of Supplier or any Affiliate of Supplier, nor any officer, director, employee, agent, lobbyist or representative of Supplier or any Affiliate of Supplier is (a) on, or has any ownership interest in any entity on, any sanction list maintained and published by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), including the Specially Designated Nationals and Blocked Persons List and Consolidated Sanctions List maintained and published by OFAC and available at <https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx> (collectively, the "OFAC Sanctions Lists"), (b) does business in violation of any OFAC sanctions program set forth at <https://home.treasury.gov/policy-issues/financial-sanctions/sanctions-programs-and-country-information>, (c) does business in violation of any Law regarding sanctioned individuals, or (d) operating or acting under any alias or pseudonym to avoid detection as a person or entity on any OFAC Sanctions Lists or Uyghur Forced Labor Prevention Act ("UFLPA") sanctions list.

25.15.2 Supplier is prohibited from and shall not, either directly or indirectly, involve or engage in any manner any person or entity that is on any of the OFAC Sanctions Lists or UFLPA Sanctions List in the performance of this Agreement, whether as a partner, joint venturer, strategic alliance participant, officer, director, employee, agent, lobbyist, representative, contractor, subcontractor, vendor, consultant, supplier, materialman or any other role or relationship of any kind. Supplier shall remain up-to-date with recent actions and updates by OFAC and Uyghur Forced Labor Prevention Action Operational Guidance for Importers and shall immediately notify Buyer at any time it learns that a representation or warranty made in Section 25.15.1 is no longer accurate or that it is in breach of its covenants in this Section 25.15.2. Supplier will fully comply and cooperate with Buyer in any inquiry, request or investigation initiated by OFAC arising from or related to Supplier's performance under this Agreement, and will defend, indemnify, and hold harmless Buyer and its Affiliates, and each of their officers, directors, employees, attorneys, agents, successors and assigns from and against any and all Losses arising from or related to any failure or violation of Supplier's warranties, representations, or obligations under Section 25.15.1 or 25.15.2. For the avoidance of doubt, Supplier shall not be in breach of this Section 25.15 if any such person or entity that Supplier involves or engages in the performance of this Agreement is subsequently placed on the OFAC Sanctions List or UFLPA Sanctions List so long as Supplier takes all actions required by applicable Law promptly upon

learning that such person or entity has been placed on the OFAC Sanctions List or UFLPA Sanctions List.

- 25.16 State- or Government-Owned Enterprises or Companies. To Supplier's knowledge, neither Supplier nor any Affiliate of Supplier has any of its ownership interest owned by entity owned or controlled by the countries of Afghanistan, Angola, Yemen, Sudan, Syria, Uganda, Crimea Region of Ukraine, Russia, Iran, Chad, China, Congo, Venezuela, Somalia, Iraq, Libya or North Korea or any other country that Buyer may identify by written notice to Supplier from time to time based on reasonable concerns of doing business, directly or indirectly, with an entity having any of its ownership interest owned or controlled by such other country (each, a "Prohibited Country" and in the case of more than one Prohibited Country, the "Prohibited Countries"). Supplier shall immediately notify Buyer at any time it learns that any ownership interests of Supplier or any Affiliate of Supplier is owned by an entity owned or controlled by any Prohibited Country. Notwithstanding anything to the contrary, the provisions of this Section 25.16 shall not apply to any publicly traded ownership interests or joint ventures of Supplier or any Affiliate of Supplier. For the avoidance of doubt, Supplier shall not be in breach of this Section 25.16 if Buyer subsequently identifies a country as a Prohibited Country and at that time Supplier or an Affiliate of Supplier shall have any of its ownership interest owned by an entity owned or controlled by such country so long as Supplier takes all actions, if any, required by applicable Law promptly upon learning of the same.
- 25.17 Prohibited Regions. Supplier will use commercially reasonable efforts to not use in its provision of the procurement for or construction of any Facility contemplated within this Agreement, whether directly or indirectly using subcontractors, subsidiaries, parents, or affiliates, any labor performed or product that was mined, produced or manufactured wholly or in part in the vendor regions or labor performed by citizens of the vendor regions reasonably identified by Buyer or identified by the U.S. Government and/or regulatory authorities as a prohibited region (collectively, the "Prohibited Regions"), including without limitation the regions controlled by foreign adversaries identified in 15 CFR 791.4 - Determination of Foreign Adversaries. Supplier is responsible for being familiar with the Prohibited Regions, and that the U.S. Government may identify from time to time during the Term. If Supplier fails to abide by the requirements of this Section, Buyer will provide Supplier with Notice and a thirty (30) day opportunity to cure. Continued failure to abide by this requirement will be considered a material breach of this Agreement. The foregoing provision does not apply to Supplier's provision of work or services that involves transportation and logistics (e.g. motor vehicles, packaging, etc.), office supplies (e.g. furniture, pens, pencils, staples, uniforms, etc.), medical equipment or services (e.g., drugs and pharmaceutical products, personal protective equipment, etc.), or hardware and hand-held tools (e.g., screws, bolts, nails, hammers, screwdrivers, etc.).
- 25.18 Supply Chain Audit. If requested by Buyer in writing within thirty (30) days of satisfying the Project Milestones in Section G of Exhibit 6, then Supplier shall use commercially reasonable efforts to undergo and deliver a supply chain audit in

respect of the Facility consistent with the definition of Supply Chain Audit, conducted by a third-party consulting firm of national repute selected by Buyer and identified in its written request. Supplier shall use commercially reasonable efforts to complete such Supply Chain Audit and cause the findings of the same to be delivered to Buyer within sixty (60) days of Buyer's written request. The findings of the Supply Chain Audit shall assess the compliance of Supplier with the requirements of Section 25.17 and shall otherwise be in form and substance reasonably acceptable to Buyer. Such Supply Chain Audit shall be at the sole cost and expense of Buyer; provided, that if such Supply Chain Audit demonstrates that Supplier is not in compliance with the requirements of Section 25.17, then Supplier shall be responsible for the full cost and expense of such Supply Chain Audit.

- 25.19 Cybersecurity. Supplier shall comply in all respects with the requirements in Exhibit 27.
- 25.20 Battery Recycling and Fire Protection Plans. Prior to the Commercial Operation Date, Supplier shall deliver to Buyer written copies of its plans for (a) recycling all battery energy storage equipment and (b) fire protection with respect to the Storage Facility, which plans shall be in compliance with all applicable requirements of Law and otherwise in accordance with Good Utility Practice. Without limit its other obligations under this Agreement in any respect, Supplier shall operate and maintain the Storage Facility in accordance with such plans and decommission the Storage Facility in accordance with all applicable requirements of Law and Good Utility Practice and be responsible and liable for all costs associated therewith. For the avoidance of doubt, Supplier acknowledges and agrees that in no event shall Buyer have any responsibility or liability for any or all costs associated with decommissioning the Storage Facility or recycling any battery energy storage equipment associated with the Storage Facility, or for fire protection with respect to the Storage Facility.
- 25.21 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this Article 25 are made as of the Effective Date and shall be deemed repeated as of the Commercial Operation Date and during the Term. If at any time during the Term, Supplier obtains actual knowledge of any fact, circumstance, event or information that would have caused or cause any of the representations and warranties in this Article 25 to be materially untrue or misleading at the time given or deemed given or at any time thereafter for so long as this Agreement is in force and effect, then Supplier shall provide Buyer with written notice of the fact, circumstance, event or information, the representations and warranties affected, and the action, if any, which Supplier intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section 25.21 shall be given as soon as practicable after Supplier obtains actual knowledge of any such fact, circumstance, event or information.

## 26. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Supplier as set forth in Sections 26.1 through 26.3 as follows:

- 26.1 Organization; Qualification. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of Nevada and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted. Buyer is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification necessary, except where the failure to be so duly qualified or licensed and in good standing would not reasonably be expected to have a Material Adverse Effect on Buyer.
- 26.2 Authority. Buyer has full corporate authority to execute, deliver and perform its obligations under this Agreement and to consummate the transactions contemplated herein and has taken all corporate actions necessary to authorize the execution, delivery and performance of its obligations under this Agreement. No other proceedings or approvals on the part of Buyer are necessary to authorize this Agreement. This Agreement constitutes a legal, valid and binding obligation of Buyer enforceable in accordance with its terms except as the enforcement thereof may be limited by (a) applicable bankruptcy, insolvency or similar Laws affecting the enforcement of creditors' rights generally and (b) general principles of equity, whether considered in a proceeding in equity or at law.
- 26.3 Governmental Approvals; No Violation. Other than obtaining Buyer's Required Regulatory Approvals as set out in Exhibit 9, the execution, delivery and performance of its obligations under this Agreement by Buyer shall not: (a) conflict with or result in any breach of any provision of the articles of organization (or other similar governing documents) of Buyer; (b) require any Governmental Approval, except: (i) where the failure to obtain such Governmental Approval would not reasonably be expected to have a Material Adverse Effect on Buyer; or (ii) for Governmental Approvals which become applicable to Buyer as a result of specific regulatory status of Buyer or as a result of any other facts that specifically relate to the business or activities in which Buyer is or proposes to be engaged, which Governmental Approvals have been obtained or made by Buyer; or (c) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, agreement, lease or other instrument or obligation to which Buyer or any of its subsidiaries is a party or by which any of their respective assets may be bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained.
- 26.4 Continuing Nature of Representations and Warranties; Notice. The representations and warranties set forth in this Article 26 are made as of the Effective Date and shall be deemed repeated during the Term. If at any time during the Term, Buyer

obtains actual knowledge of any fact, circumstance, event or information that would have caused or cause any of the representations and warranties in this Article 26 to be materially untrue or misleading at the time given or at any time thereafter for so long as this Agreement is in force and effect, Buyer shall provide Supplier with prompt written notice of the fact, circumstance, event or information, the representations and warranties affected, and the action, if any, which Buyer intends to take to make the representations and warranties true and correct.

## 27. INSURANCE

- 27.1 General Requirements. From and after the Effective Date, Supplier shall maintain at all times, at its own expense, general/commercial liability, worker's compensation, and other forms of insurance relating to its property, operations and facilities in the manner and amounts set forth in this Article 27. Supplier shall maintain coverage on all policies written on a "claims made" or "occurrence" basis. If any policy is maintained on a "claims made" form and is converted to an "occurrence form," the new policy shall be endorsed to provide coverage back to a retroactive date acceptable to Buyer.
- 27.2 Qualified Insurers. Every contract of insurance providing the coverage required herein shall be with an insurer or eligible surplus lines insurer qualified to do business in the State of Nevada and with the equivalent, on a continuous basis, of an "A.M. Best Company Rating" of "A" or better and shall include provisions or endorsements:
- 27.2.1 Stating that such insurance is primary insurance with respect to the interest of Buyer and that any insurance maintained by Buyer is excess and not contributory insurance required hereunder;
- 27.2.2 Stating that cancellation or non-renewal of the policy shall not be effective until thirty (30) days (ten (10) days for non-payment of premiums) from the date notice thereof is actually received by Buyer; provided that upon Supplier's receipt of any notice of cancellation or non-renewal, Supplier shall immediately provide notice thereof to Buyer;
- 27.2.3 Providing Buyer with subrogation waivers on all coverage;
- 27.2.4 Providing for Separation of Insured coverage in the general liability and auto liability insurance policies; and
- 27.2.5 Naming Buyer as an additional insured on the general liability and auto liability insurance policies of Supplier as its interests may appear with respect to this Agreement.
- 27.3 Certificates of Insurance. Prior to the Effective Date and each anniversary thereafter during the Term, and upon any change in coverage or at the request of Buyer (not to exceed once each year), Supplier shall provide to Buyer properly executed and

current certificates of insurance with respect to all insurance policies required to be maintained by Supplier under this Agreement. Certificates of insurance shall provide the following information:

27.3.1 The name of insurance company, policy number and expiration date;

27.3.2 The coverage required and the limits on each, including the amount of deductibles or self-insured retentions, which shall be for the account of Supplier; and

27.3.3 A statement indicating that Buyer shall receive at least thirty (30) days prior notice of cancellation or non-renewal of a policy or of a reduction of liability limits with respect to a policy.

27.4 Inspection of Insurance Policies. Buyer shall have the right to inspect the original policies or the certificates of insurance applicable to this Agreement at Supplier's headquarters office located in Juno Beach, FL during regular business hours.

27.5 Supplier's Minimum Insurance Requirements.

27.5.1 Worker's Compensation. Workers' compensation insurance in the form and manner required by statutory requirements and endorsement providing insurance for obligations under the U.S. Longshoremen's and Harbor Worker's Compensation Act and the Jones Act where applicable. Employer's liability insurance with the following limits: (a) One Million Dollars (\$1,000,000) per each bodily injury by accident; (b) One Million Dollars (\$1,000,000) per each employee bodily injury by occupational disease; and (c) One Million Dollars (\$1,000,000) in the annual aggregate per each bodily injury by occupational disease.

27.5.2 General Liability. General liability insurance including bodily injury, property damage, products/completed operations, contractual and personal injury liability with a combined single limit of at least Five Million Dollars (\$5,000,000) per occurrence and at least Five Million Dollars (\$5,000,000) annual aggregate.

27.5.3 Automobile Liability. Automobile liability insurance including owned, non-owned and hired automobiles with combined bodily injury and property damage with a combined single limit of at Two Million Dollars (\$2,000,000). The minimum insurance limits set forth in Sections 27.6.1, 27.6.2, and 27.6.3 can be met by Supplier's underlying workers' compensation/employer's liability, general liability, and automobile liability policies in combination with an excess/umbrella insurance policy.

27.5.4 Excess Liability. Excess liability insurance with a minimum limit of Ten Million Dollars (\$10,000,000) ("Excess Minimum") for each occurrence and in the aggregate where applicable on a following form basis to be

excess of the insurance coverage and limits required in Supplier's general liability insurance and automobile liability insurance. Supplier shall promptly notify Buyer if the Excess Minimum is not available and Supplier shall purchase additional insurance coverage up to the Excess Minimum if required by Buyer.

27.5.5 Failure to Comply. If Supplier fails to comply with the provisions of this Article 27, Supplier shall save harmless and indemnify Buyer from any direct or indirect Loss, including attorneys' fees and other costs of litigation, resulting from the injury or death of any person or damage to any property if Buyer would have been protected had Supplier complied with the requirements of this Article 27, in accordance with the indemnification provisions of Article 18.

## **28. NO EXPECTATION OF CONFIDENTIALITY; PUBLIC STATEMENTS**

- 28.1 No Expectation of Confidentiality. Supplier has no expectation that any of the terms of this Agreement will be treated as confidential by Buyer, and Buyer has no obligation to seek confidential treatment of this Agreement in connection with Buyer's Required Regulatory Approvals or otherwise.
- 28.2 Public Statements. The Parties shall consult with each other prior to issuing any public announcement, statement or other disclosure with respect to this Agreement and neither Party shall issue any such public announcement, statement or other disclosure without having first received the written consent of the other Party, except as may be required by Law. Notwithstanding the foregoing, Supplier acknowledges and agrees that Buyer may advertise, issue brochures or make other announcements, publications or releases regarding this Agreement and the Facility for educational, promotional or informational purposes, or for the purposes of Section 29.16, so long as such advertisements, brochures and announcements do not include pricing or other proprietary or confidential information, and subject to Supplier's prior review and approval of such documents. Supplier may disclose this Agreement and information regarding the Facility to its Affiliates and to its Affiliates' members, officers, directors, employees, attorneys, agents, representatives current or potential lenders and investors in connection with the execution, delivery and performance of its obligations under this Agreement. Supplier shall reasonably cooperate with Buyer regarding such activities, including providing Buyer with reasonable access to the Facility and authorizing the use of pictures of the Facility for such activities, upon reasonable prior notice, during regular business hours, and subject to Buyer's compliance with Supplier's safety requirements regarding the Project Site. It shall not be deemed a violation of this Section 28.2 to file this Agreement with the PUCN or FERC or any other Governmental Authority in connection with Buyer's Required Regulatory Approvals, Supplier's Required Regulatory Approvals or otherwise.

## 29. MISCELLANEOUS

### 29.1 Notices.

29.1.1 All notices, requests, demands, submittals, waivers and other communications required or permitted to be given under this Agreement (each, a “Notice”) shall, unless expressly specified otherwise, be in writing and shall be addressed, except as otherwise stated herein, to the Parties’ Contract Representatives as set forth in Exhibit 4, as the same may be modified from time to time by Notice from the respective Party to the other Party.

29.1.2 All Notices required by this Agreement shall be sent by regular first class U.S. mail, registered or certified U.S. mail (postage paid return receipt requested), next Business Day courier delivery, or electronic mail. Such Notices will be effective upon receipt by the addressee, except that Notices transmitted by electronic mail shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 16:00 PPT, and if transmitted after that time, on the following Business Day. If any Notice sent by regular first class U.S. mail, registered or certified U.S. mail postage paid return receipt requested, or overnight courier delivery is tendered to an addressee and the delivery thereof is refused by such addressee, then such Notice shall be deemed validly and effectively given upon such tender. All oral notifications required under this Agreement shall be made to the receiving Party’s Contract Representative or Operating Representative (as applicable) and shall promptly be followed by Notice as provided in this Section 29.1.

29.1.3 Notices of Force Majeure or an Event of Default pursuant to Article 20 or Article 24, respectively, and Notices of a change to Exhibit 4 shall be sent either by registered or certified U.S. mail (postage paid return receipt requested), next Business Day courier delivery or electronic mail. If any such Notice is sent via electronic mail, then a copy of such Notice shall also be sent either by registered or certified U.S. mail (postage paid return receipt requested), or next Business Day courier delivery. Such Notices will be effective as provided in Section 29.1.2.

29.1.4 Any payments required to be made to a Party under this Agreement shall be made pursuant to the payment instructions in Exhibit 4, as such payment instructions may be amended by such Party from time to time by Notice to the other Party.

29.2 Merger. This Agreement contains the entire agreement and understanding between the Parties with respect to all of the subject matter contained herein, thereby merging and superseding all prior agreements and representations by the Parties with respect to such subject matter contained herein whether written or oral.

- 29.3 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.
- 29.4 Rules of Construction; Interpretation. Unless otherwise required by the context in which any term appears: (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” or “Exhibits” are to articles, sections, schedules, or exhibits hereof; (c) all references to a particular Person include a reference to such Person’s permitted successors and assigns; (d) “herein,” “hereof” and “hereunder” refer to this Agreement as a whole; (e) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles, consistently applied; (f) the masculine includes the feminine and neuter and vice versa; (g) “including” (and the correlative terms “include”, “includes” and “included”) means “including, without limitation” or “including, but not limited to”; (h) all references to a particular Law means that Law as amended, supplemented or otherwise modified from time to time; (i) all references to energy or capacity are to be interpreted as utilizing alternating current, unless expressly stated otherwise; and (j) the word “or” is not necessarily exclusive. Reference to “days”, “months”, “quarters” and “years” shall be to calendar days, months, quarters and years, unless expressly stated otherwise herein. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement. Any reference to any Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise.
- 29.5 Headings and Titles. The headings and section titles in this Agreement are for convenience of the Parties only and shall not be used to construe this Agreement.
- 29.6 Discontinued or Modified Index. If any index publisher discontinues publishing or substantially modifies any index utilized herein, then the index used herein will be modified to the most appropriate available index, with appropriate adjustments to take into account any changes in the location of measurement.
- 29.7 Severability. If any term, provision or condition of this Agreement is held to be invalid, void or unenforceable by a Governmental Authority and such holding is subject to no further appeal or judicial review, then such invalid, void, or unenforceable term, provision or condition shall be deemed severed from this Agreement and all remaining terms, provisions and conditions of this Agreement shall continue in full force and effect. The Parties shall endeavor in good faith to replace such invalid, void or unenforceable terms, provisions or conditions with valid and enforceable provisions which achieve the purpose intended by the Parties to the greatest extent permitted by Law.
- 29.8 Waivers; Remedies Cumulative. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict

performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing, usage of trade or course of performance between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by Law or in equity. Notwithstanding the foregoing or any other provision hereof, for breach of any provision hereof for which an express remedy or measure of damages is provided (including Sections 8.4 (Failure to Achieve Commercial Operation), 8.5 (Delay Damages), and 8.7 (Modification)), such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived, unless the provision in question provides that the express remedies are in addition to other remedies that may be available. Notwithstanding the above, nothing in this section shall prohibit Buyer from exercising Buyer's right to exercise specific performance under Section 29.15.

- 29.9 Amendments. Amendments or modifications to this Agreement must be in writing and executed by an authorized representative of each Party. Buyer may determine that submitting an amendment or modification to this Agreement to the PUCN and FERC, as applicable, for filing, acceptance or approval shall be a condition precedent to the effectiveness of any such amendment.
- 29.10 Time is of the Essence. Time is of the essence to this Agreement and in the performance of all of the covenants, agreements, obligations and conditions hereof.
- 29.11 Choice of Law. This Agreement and the rights and obligations of the Parties hereunder shall be construed and governed by the Laws of the State of Nevada, except for such Laws that would require the application of the Laws of another jurisdiction.
- 29.12 Further Assurances. The Parties agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information which a Party may request and which are reasonably necessary or appropriate to give full force and effect to the terms and intent of this Agreement. Without limiting the foregoing, whenever revised or updated exhibits are delivered or generated hereunder for attachment to this Agreement, the Parties will memorialize the same in a reasonable written instrument, to be executed and delivered by both Parties.
- 29.13 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder constitute a "forward contract" within the meaning of the United States Bankruptcy Code.
- 29.14 No Third-Party Beneficiaries. Nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any

third party, no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided hereunder, and this Agreement is intended solely for the benefit of the Parties, and the Parties expressly disclaim any intent to create any rights in any third party as a third-party beneficiary to this Agreement or the services to be provided hereunder.

29.15 Specific Performance. Subject to applicable rules of law and equity, Buyer shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, to enjoin any actual or threatened breach of any material obligation of Supplier hereunder. The Parties agree that specific performance (including temporary and preliminary relief) and injunctive relief are proper in the event of any actual or threatened breach of any material obligation of Supplier hereunder, and that, except as otherwise provided in Sections 8.4.1, 19.3 and 29.8, any liability limits contained herein shall not operate to limit the exercise of Buyer's remedies in equity to cause Supplier to perform its obligations hereunder. Supplier agrees that, except where this Agreement provides for the payment of liquidated damages or other specific amounts in Sections 3.4, 8.4, 8.5, and 8.7, it will not assert as a defense to Buyer's action for specific performance of, or injunctive relief relating to, Buyer's rights and Supplier's obligations hereunder that the amounts payable or paid by Supplier in respect of money damages constitute an adequate remedy for the breach of such obligation, and Supplier hereby conclusively waives such defense. Supplier shall at all times during the Term, own, lease, control, hold in its own name or be signatory to (as the case may be) all assets relating to the Facility to the extent necessary to prevent a material adverse effect on Buyer's right to specific performance or injunctive relief.

29.16 Naming Rights.

29.16.1 Supplier grants to Buyer for the Term an irrevocable right to designate the name by which the Facility will be known. The name of the Facility may include the name of a Buyer commercial customer. Supplier shall have the right to pre-approve such name, which approval shall not be unreasonably conditioned, delayed or denied. Buyer may modify the name during the Term, in each case subject to Supplier's right to pre-approve such modified name, which approval shall not be unreasonably conditioned, delayed or denied.

29.16.2 Supplier further grants to Buyer for the Term an irrevocable, right and license: (a) to install signage in a number, or a size and design and at a location and time (not earlier than sixty (60) days prior to the Commercial Operation Date) determined by Buyer, including the right to include commercial customers' names, corporate logos and other identifying information on such signage; provided, that all signage shall be subject to pre-approval by Supplier, which approval shall not be unreasonably conditioned, delayed or denied, and (b) to use images of the Facility in its communications with the public, including but not limited to written and

electronic media such as pamphlets, websites and social media, including the right to license and to determine the associating of images of the Facility with Buyer's designated corporate logo, and to permit commercial customers designated by Buyer these same image rights contained in this subsection (b); provided, that all uses of images of the Facility shall be subject to Supplier's prior approval, including with respect to issues of confidentiality and proprietary rights, which approval shall not be unreasonably conditioned, delayed or denied.

29.16.3 Buyer shall be responsible for all costs and expenses associated with (a) the selection and maintenance of the name, and modifications to the name; (b) creation, installation, maintenance and removal of signs; and (c) obtaining and using images of the Facility, including licensing corporate customers to do the same.

29.17 Mobile-Sierra. Absent written agreement of all Parties to a proposed modification of this Agreement, the standard of review the FERC shall apply when acting on proposed modifications to this Agreement, either on FERC's own motion or on behalf of a signatory or a non-signatory, shall be the "public interest" application of the "just and reasonable" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527, 128 S.Ct. 2733, 171 L.Ed.2d. 607 (2008) and *NRG Power Marketing, LLC v. Maine Pub. Util. Comm'n*, 558 U.S. 165 (2010).

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized representative as of the Effective Date.


**BUYER:**

**NEVADA POWER COMPANY**

By:   
Name: Brandon Barkhuff  
Title: President and CEO

**SUPPLIER:**

**DRY LAKE EAST ENERGY STORAGE II,  
LLC**

By:   
Name: Michael DeBock  
Title: Vice President



**EXHIBIT 1**

**DESCRIPTION OF FACILITY**

1. Name of Facility: Dry Lake East Energy Storage II

(a) Location: Clark County, NV

(b) Delivery Point: Nevada Power Company Harry Allen 230 kV substation

2. Supplier: Dry Lake East Energy Storage II, LLC

3. Parent: ESI Energy, LLC

4. Operator: Dry Lake East Energy Storage II, LLC

5. Equipment:

(a) Installed Nameplate Capacity:

(i) Total capacity: 158 MVA

(ii) Expected Storage Facility Nameplate Capacity Rating: 150 MW AC @ +/-  
0.95

(iii) Total gross output capacity: 150 MW AC

(iv) Total capacity net of Station Usage: 150 MW

(b) Additional Technology Specific Information, if any: none.

6. Operating Characteristics of Storage Facility:

(a) VAR, leading: 49.3 MVAR

(b) VAR, lagging (-): 49.3 MVAR

(c) Controlled Ramp Rate (MW/minute): 300 MW/min

(d) Minimum Operating Capacity (MW): 0 MW

(e) Power Factor: +/- 0.95, subject to the provisions of Section 3.4.5.

7. Operating Characteristics of Storage Facility: Power at the Delivery Point is limited to 150 MW AC regardless of power generation (from inverters or batteries). Battery storage system will be 150 MW AC with 4-hour duration and allow for three hundred and sixty-five (365) Equivalent Cycles per Contract Year and no more than two (2) Equivalent Cycles per day. Batteries used to maintain generation output to the maximum levels as long as possible throughout the day.

**EXHIBIT 2A**

**PRODUCT RATES**

**STORAGE RATE**

The Storage Rate during the Stub Period (or, if there is no Stub Period because the Commercial Operation Date is January 1<sup>st</sup>, during the first Contract Year) and each subsequent Contract Year during the Term shall be equal to the product of (a) \$13,930 per MW-month and (b) the applicable Storage Contract Capacity (the "Storage Rate").

**EXHIBIT 2B**

**FORM OF MONTHLY ENERGY INVOICE**

**Supplier Letterhead**

**Facility:** \_\_\_\_\_

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

**Facility ID:** \_\_\_\_\_

**Billing Period:** \_\_\_\_\_

**Invoice Number:** \_\_\_\_\_

**CURRENT MONTHLY BILLING DATA INPUT**

**Storage Pricing**                      **\$/MW-month**  
Storage Rate                              \_\_\_\_\_

**CURRENT MONTHLY INVOICE CALCULATION**

	<b>Storage Contract Capacity</b>	<b>Rate/kWh</b>	<b>=</b>	<b>Amount</b>
a. Storage Product	_____ x	_____	=	\$ _____
b. Storage Rate	_____			
<b>g. Total Product Payment</b>				\$ _____
h. Adjustments (+/-)				\$ _____
<b>TOTAL AMOUNT DUE (g + h)</b>				\$ _____

**PAYMENT DUE DATE NO LATER THAN:** \_\_\_\_\_



**EXHIBIT 2C**

**RESERVED**

**EXHIBIT 3A**

**DESCRIPTION OF PROJECT SITE**

The following lands situated in a portion of Township: 18S, Range: 64E, sec 7; lots 12 thru 14  
W1/2NE1/4NE1/4, NE1/4SW1/4NE1/4, N1/2SE1/4NE1/4, SE1/4SE1/4NE1/4,  
NE1/4NE1/4SE1/4, and S1/2NE1/4SE1/4  
A portion of APN: 104-07-000-004

**EXHIBIT 3B**

**MAP DEPICTING PROJECT SITE**



**EXHIBIT 4**

**NOTICES, BILLING AND PAYMENT INSTRUCTIONS**

**SUPPLIER: Dry Lake East Energy Storage II**

<b>Contact</b>	<b>Mailing Address</b>	<b>Phone</b>	<b>Email</b>
<b><u>CONTRACT REPRESENTATIVE:</u></b>			
Prior to Commercial Operation Date:			
Brendan Hickey	C/o NextEra Energy Resources, LLC 700 Universe Blvd Juno Beach, FL 33408	561-529-0493	Brendan.hickey@nexteraenergy.com
From and after Commercial Operation Date:			
Charlie Cook	C/o NextEra Energy Resources, LLC 700 Universe Blvd Juno Beach, FL 33408	203-430-2333	Charlie.Cook@nexteraenergy.com
Copy to: Business Management - West			dl-nextera-west-international-region@nexteraenergy.com
<b><u>OPERATING REPRESENTATIVE:</u></b>			
Prior to Commercial Operation Date:			
Dry Lake East Energy Storage II, LLC	C/o NextEra Energy Resources, LLC 700 Universe Blvd Juno Beach, FL 33408		DL-NextEra-BMF-Asset-OnBoarding@nexteraenergy.com
From and after Commercial Operation Date	Supplier to provide at least 90 days prior to Commercial Operation		
	C/o NextEra Energy Resources, LLC 700 Universe Blvd Juno Beach, FL 33408		
	Supplier to provide at least 90 days prior to Commercial Operation.		

**CHARGING AND DISCHARGING NOTICE COMMUNICATIONS:**

**EXHIBIT 4**

**NOTICES, BILLING AND PAYMENT INSTRUCTIONS**

**OPERATING NOTIFICATIONS:**

Supplier to provide at least 90 days prior to Commercial Operation

Prescheduling

Real-Time

Monthly Checkout

**INVOICES:**

Dry Lake East Energy Storage II, LLC

C/o NextEra Energy Resources, LLC  
700 Universe Blvd  
Juno Beach, FL 33408

neer-revenue-team.sharedmailbox@nexteraenergy.com

**PAYMENT INSTRUCTIONS:**

Payments will be in the form of ACH or Wire,  
with instructions to be provided on or before

[ ]

**Any notice of Dispute or Event of Default: copy to**

NextEra Energy Resources, LLC  
Attention: General Counsel  
generalcounsel@nexteraenergy.com

**EXHIBIT 4**

**NOTICES, BILLING AND PAYMENT INSTRUCTIONS**

**BUYER: NV ENERGY**

<b>Contact</b>	<b>Phone</b>	<b>E-mail</b>
<b>CONTRACT REPRESENTATIVE:</b>		
Director, Contract Management & Spec Programs 7155 S. Lindell Road, MS B13RE Las Vegas, NV 89118	702/402-5747	ContractManagement@nvenergy.com
<b><u>OPERATING REPRESENTATIVES</u></b>		
<b><u>Scheduling</u></b>		
- Portfolio Analytics	702/402-1980	<a href="mailto:PortfolioAnalytics@nvenergy.com">PortfolioAnalytics@nvenergy.com</a>
- Generation Dispatch (Control Area Operations)	702/402-7111	<a href="mailto:sysopr@nvenergy.com">sysopr@nvenergy.com</a>
- Seven Day Ahead Schedules	N/A	<a href="mailto:nveopr@nvenergy.com">nveopr@nvenergy.com</a>
- Daily Availability Notice- (Spreadsheet)	702/402-1980	<a href="mailto:PortfolioAnalytics@nvenergy.com">PortfolioAnalytics@nvenergy.com</a>
<b><u>Emergencies (including Force Majeure)</u></b>		
- Grid Reliability (NPC)	702/402-6671	<a href="mailto:TransmissionOperationsNVES@nvenergy.com">TransmissionOperationsNVES@nvenergy.com</a>
- Grid Reliability (SPPC)	775/834-4216	<a href="mailto:TransmissionOperationsNVEN@nvenergy.com">TransmissionOperationsNVEN@nvenergy.com</a>
- Portfolio Analytics	702/402-1980	<a href="mailto:PortfolioAnalytics@nvenergy.com">PortfolioAnalytics@nvenergy.com</a>
<b><u>Planned Outages-NPC</u></b>	702/402-6602	<a href="mailto:escoc@nvenergy.com">escoc@nvenergy.com</a>
<b><u>Planned Outages-SPPC</u></b>	775/834-4716	<a href="mailto:escoc@nvenergy.com">escoc@nvenergy.com</a>
<b><u>Metering-NPC</u></b>	702/402-6163	<a href="mailto:EMOSouth@nvenergy.com">EMOSouth@nvenergy.com</a>
<b><u>Metering-SPPC</u></b>	775/834-7527	<a href="mailto:EMONorth@nvenergy.com">EMONorth@nvenergy.com</a>
<b><u>INVOICES</u></b>		
Energy Supply Contract Management 7155 S. Lindell Road, MS B13RE Las Vegas, NV 89118	702/402-5747	<a href="mailto:ContractManagement@nvenergy.com">ContractManagement@nvenergy.com</a>
<b><u>CC all invoices to:</u></b> Fuel & Purchased Power Accounting 6100 Neil Road, M/S S2A20 Reno, NV 89511	775/834-6281	<a href="mailto:curtis.mcelwee@nvenergy.com">curtis.mcelwee@nvenergy.com</a>

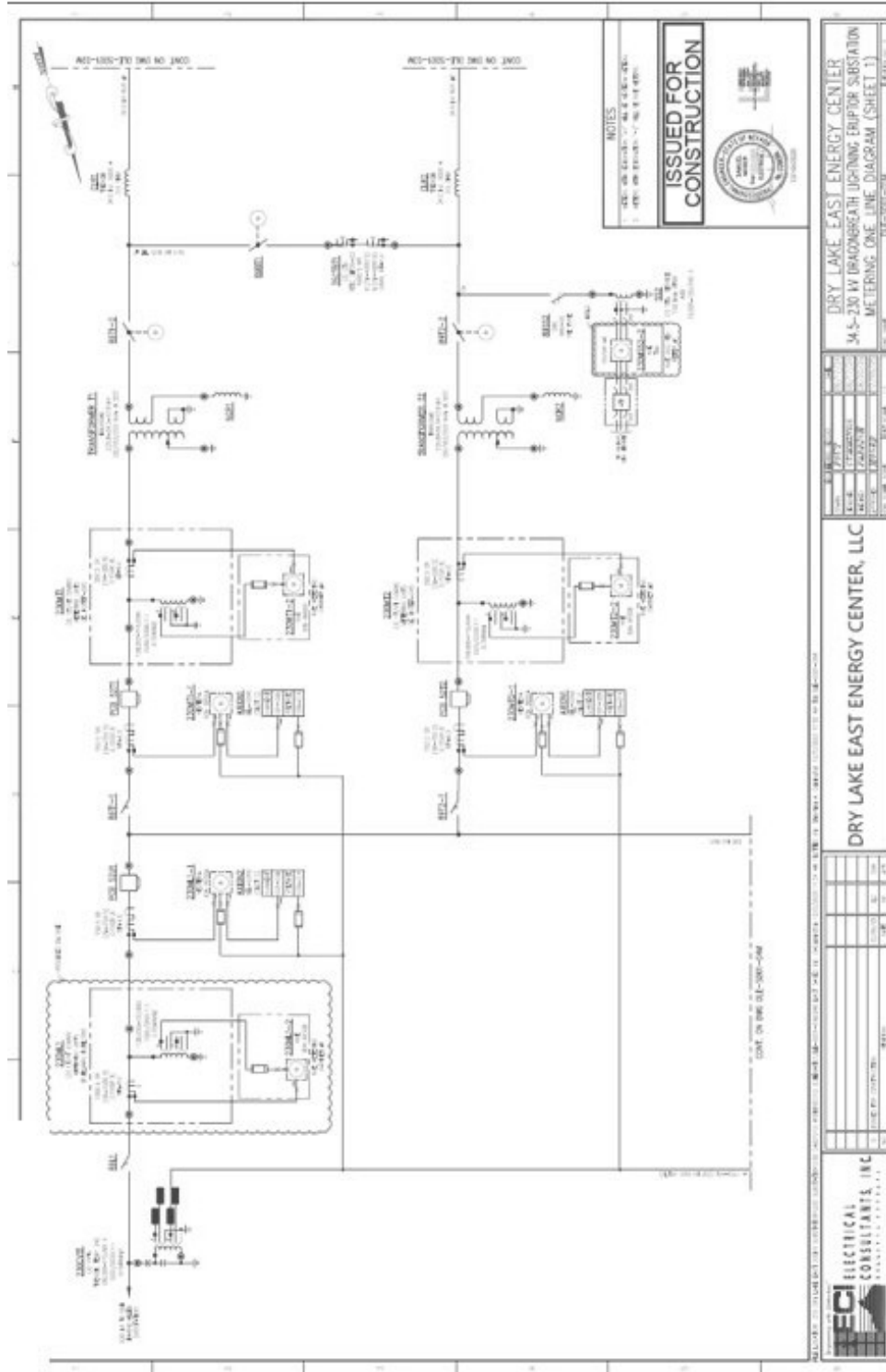
**“EVENT OF DEFAULT”, “COMMERCIAL OPERATION DATE” AND “FORCE MAJEURE”**

**CC all notices to:**  
Office of General Counsel  
6226 W. Sahara Ave, M/S 3A  
Las Vegas, NV 89146

**EXHIBIT 5**

**ONE-LINE DIAGRAM OF FACILITY AND DELIVERY POINT**

Attached is a one-line diagram of the Facility, which indicates the Delivery Point and the ownership and the location of Meters. A final one-line diagram of the Facility will be provided by Supplier prior to the Commercial Operation Date.



**EXHIBIT 6****PROJECT MILESTONE SCHEDULE**

1. All time periods are in months after the PUCN Approval Date (designated as “AA” below). Any other timing is as otherwise described in specific items below. Buyer will update this Exhibit 6 with actual dates after the PUCN Approval is received.
2. All milestones may be completed earlier than stated times, at the sole option of Supplier.

- A) Project Milestone: Supplier or its Affiliate shall obtain all Required Facility Documents to construct the Facility.

Completion Date: Three (3) months AA.

Documentation: Supplier shall provide Buyer with an officer’s certificate from an authorized representative of Supplier certifying that the Required Facility Documents required to construct the Facility pursuant to Exhibit 12 and which are otherwise required in accordance with applicable Law and Good Utility Practice have been obtained and enclosing true, correct and complete copies of the same (except for Construction Contracts and Major Equipment Contracts, for which the officer’s certificate will include a listing of Construction Contractors and Major Equipment Contract suppliers, contract execution dates, quantities, and delivery schedules) sufficient to complete the Facility together with the metering system design for the Facility (submitted for Buyer’s approval in accordance with Section 7.1) and a completed version of Exhibits 11 and 14.

- B) Project Milestone: Supplier’s major equipment shall be delivered to the Project Site

Completion Date: Six (6) months AA.

Documentation: Supplier shall provide Buyer with an officer’s certificate from an authorized representative of Supplier certifying that the major equipment (including step-up and medium voltage transformers and batteries) has been delivered to the Project Site, and enclosing reasonable documentation of the same.

- C) Project Milestone: Supplier or its Affiliate shall obtain all Required Facility Documents to operate the Facility.

Completion Date: Eleven (11) months AA.

Documentation: Supplier shall provide Buyer with an officer’s certificate from an authorized representative of Supplier certifying that the Required Facility Documents to operate the Facility pursuant to Exhibit 12 and which are otherwise required in accordance with applicable Law and Good Utility Practice have been obtained and enclosing true, correct and complete copies of the same (except for Construction Contracts and Major Equipment Contracts, for which the officer’s certificate will include a listing of Construction Contractors and Major Equipment Contract suppliers, contract execution dates, quantities, and delivery schedules).

**EXHIBIT 6**

**PROJECT MILESTONE SCHEDULE**

- D) Project Milestone: The Facility achieves the Operation Date.

Completion Date: Thirteen (13) months AA.

Documentation: Buyer's Meters shall record energy being delivered from the Buyer to the Storage Facility at the Delivery Point and Discharging Energy being delivered from the Storage Facility to Buyer at the Delivery Point, and Supplier provides Buyer with an officer's certificate from an authorized representative of Supplier certifying that the Facility satisfies the definition of Operation Date.

**CRITICAL PROJECT MILESTONES**

- E) Project Milestone: Supplier or its Affiliate shall execute all Construction Contracts and Major Equipment Contracts for the Facility.

Completion Date: Three (3) months AA.

Documentation: Supplier shall provide Buyer with an officer's certificate from an authorized representative of Supplier certifying that all Construction Contracts and Major Equipment Contracts have been executed and are in full force and effect. The officer's certificate shall include a listing of Construction Contractors and Major Equipment Contract suppliers, contract execution dates, quantities, and delivery schedules sufficient to complete the Facility.

- F) Project Milestone: Supplier shall obtain all site control documentation for the Facility.

Completion Date: Three (3) months AA.

Documentation: Supplier shall provide Buyer with an officer's certificate from an authorized representative of Supplier certifying that Supplier has obtained the site control documentation demonstrating ownership of, a leasehold interest in, or a right of way grant to develop a site for the purpose of constructing the Facility and enclosing true, correct and complete copies of the same.

- G) Project Milestone: Supplier shall demonstrate to Buyer that it has complete financing for construction of the Facility.

Completion Date: Zero (0) months AA.

Documentation: Supplier shall provide Buyer with an officer's certificate from an authorized representative of Supplier certifying either that adequate funds have been allocated from Supplier's upstream owners to fund the construction of the Facility or that debt and equity financing arrangements have been executed and are

**EXHIBIT 6**

**PROJECT MILESTONE SCHEDULE**

effective for funding of one hundred percent (100%) of the construction financing of the Facility.

- H) Project Milestone: Notice to Proceed has been issued to the Construction Contractor under the Construction Contract and construction of the Facility has commenced.

Completion Date: Six (6) months AA.

Documentation: Supplier shall provide Buyer with an officer's certificate from an authorized Representative of Supplier certifying that attached are true, correct and complete copies of (i) the executed Notice to Proceed acknowledged by the Construction Contractor and documentation from qualified professionals which indicates that physical work has begun at the Project Site regarding the construction of the Facility, and (ii) an ALTA Survey for the Project Site.

- I) Project Milestone: Supplier or its Construction Contractor primarily responsible for the engineering, construction and procurement of the Facility shall execute the Work Site Agreement.

Completion Date: Three (3) months AA.

Documentation: Supplier shall provide Buyer with an officer's certificate from an authorized representative of Supplier certifying that the Work Site Agreement is in full force and effect and enclosing a true, correct and complete copy of the same.

**COMMERCIAL OPERATION DATE MILESTONE**

- J) Project Milestone: The Facility achieves the Commercial Operation Date.

Completion Date: December 31, 2027 ("Commercial Operation Deadline").

Documentation: Supplier shall provide Buyer with certifications required by Section 8.3.2.

**EXHIBIT 7**

**PERFORMANCE TESTS**

1. Performance tests required by the Construction Contract and the Major Equipment Contracts. Supplier shall provide evidence of satisfactory completion of all equipment testing contemplated or required under the Construction Contract and the Major Equipment Contracts.
2. Such other tests as may be required by Law or by Buyer to document resource supply, including the performance testing provided for in Exhibit 7A and specific tests such as storage capacity testing, self-discharge testing, auxiliary load testing, roundtrip efficiency testing and integrated facility testing unless they have already been tested as part of Construction Contract requirements.

**EXHIBIT 7A**

**PERFORMANCE TESTING**

**Required Tests:**

1. Full Nameplate Output Testing
2. Lagging Reactive Power Capability Testing
3. Leading Reactive Power Capability Testing
4. NERC Required Testing

**EXHIBIT 7A**

**PERFORMANCE TESTING**

**PRE-TESTING REQUIREMENTS**

Supplier shall provide Buyer (in coordination with the Transmission Provider) a test plan including but not limited to testing dates and voltage, real power, and reactive power scheduling for approval thirty (30) days prior to the test start date. Subject to any applicable Transmission Provider Instructions or other requirements, Buyer (in coordination with the Transmission Provider) shall provide a response no later than ten (10) days after submission approving the plan or providing date modifications and Voltage, Real Power, and Reactive Power curtailments per Transmission System constraints. If necessary, Supplier shall provide an updated test plan for approval. Testing data for tests 1 through 3 must be certified by the Licensed Professional Engineer pursuant to Section 8.3.2.2 of the Agreement.

**1 FULL NAMEPLATE OUTPUT TESTING**

**1.1** Supplier shall demonstrate full nameplate output capacity of the Storage Facility at +0.95PF (leading) and -0.95PF (lagging) for one (1) hour for each test per table below.

Reactive Power Target (MVAR)	Reactive Power Response (MVAR)	Real Power Target (MW)	Real Power Response (MW)	Power Factor Target	Power Factor Response
		100%(Storage Facility)**		-0.95	
		100%(Storage Facility)**		+0.95	

*\*\*100% of expected power output based on the designed energy model.*

Pass/Fail Criteria		
Storage Facility measured response level shall be within the greater of $\pm 1\%$ of the expected response level.		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:

**EXHIBIT 7A**

**PERFORMANCE TESTING**

**2 LAGGING REACTIVE POWER CAPABILITY TESTING**

**2.1** Supplier shall demonstrate the maximum lagging reactive power capability of the Storage Facility for one hour for each test per the table below.

Reactive Power Target (MVAR)	Reactive Power Response (MVAR)	Real Power Target (MW)	Real Power Response (MW)	Power Factor Target	Power Factor Response
		0*		-0.90	
		0*		-0.95	
		100 %(Storage Facility)**		-0.90	
		100 %(Storage Facility)**		-0.95	

*\*The tests do not need to be performed at night; however, they need to simulate nighttime conditions. This means no DC input to the inverters from the Storage Facility. Typically, inverter should not require DC voltage to manage VAR. Although the system voltage during the day will likely be lower, the reactive power test varying the voltage-hold point will show Storage Facility response. The tests may not be performed unless grid conditions allow Storage Facility to demonstrate full reactive support (leading and lagging).*

*\*\*100% of expected power output based on the designed energy model.*

Pass/Fail Criteria		
Storage Facility measured response level shall be within the greater of $\pm 5\%$ of the expected response level.		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:

**EXHIBIT 7A**

**PERFORMANCE TESTING**

**3 LEADING REACTIVE POWER CAPABILITY TESTING**

**3.1** Supplier shall demonstrate the maximum leading reactive power capability of the Storage Facility for one hour for each test per the table below.

Reactive Power Target (MVAR)	Reactive Power Response (MVAR)	Real Power Target (MW)	Real Power Response (MW)	Power Factor Target	Power Factor Response
		0*		+0.90	
		0*		+0.95	
		100%(Storage Facility)**		+0.90	
		100%(Storage Facility)**		+0.95	

*\* The tests do not need to be performed at night; however, they need to simulate nighttime conditions. This means no DC input to the inverters from the Storage Facility. Typically, inverter should not require DC voltage to manage VAR. Although the system voltage during the day will likely be lower, the reactive power test varying the voltage-hold point will show Storage Facility response.*

*\*\*100% of expected power output based on the designed energy model.*

<b>Pass/Fail Criteria</b>		
Storage Facility measured response level shall be within the greater of $\pm 5\%$ of the expected response level.		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:

**EXHIBIT 7A**

**PERFORMANCE TESTING**

**4 NERC REQUIRED TESTING\*\*\***

- 4.1** The Supplier shall be responsible for conducting testing as mandated by NERC in the most recent versions of standards MOD-025-2, MOD-026-1, MOD-027-1, and providing all necessary modeling data as required by MOD-032-1.
- 4.2** These tests must be performed under each relevant configuration of the Storage Facility:
  - If the Facility is solely a storage facility, testing is required for the storage facility at 100% power output.

*\*\*\* These tests are not part of Performance Tests that are required to be completed prior to Commercial Operation and will be excluded from the certifications required by Sections 8.3.2.1 and 8.3.2.2 of the Agreement. These tests will be completed and submitted for approval within ninety (90) days of Commercial Operation, notwithstanding that the NERC requirement allows for these tests to be completed up to one (1) year after Commercial Operation. After submission, Buyer has ten (10) Business Days to review and approve the testing results.*

Pass/Fail Criteria		
Storage Facility successfully completed all testing mentioned above and all modeling data meets NV Energy's requirements		
Passed	Failed	Date:
Test Performed by:		
Test Witnessed by:		

Notes/Test Conditions:



**EXHIBIT 8**

**FORM OF AVAILABILITY NOTICE**

Date For Notice: \_\_\_\_\_

Supplier: \_\_\_\_\_

Name of Suppliers Representative: \_\_\_\_\_

Buyer: Nevada Power Company d/b/a NV Energy

Contact Info: Supplier Address here  
City, State, Zip here  
123-456-7890

Hour	Net Availability From Plant MWh	Total Derating MWh	Plant Total MWh	Cause and Time of Derating
1:00	0	0	0	
2:00	0	0	0	
3:00	0	0	0	
4:00	0	0	0	
5:00	0	0	0	
6:00	0	0	0	
7:00	0	0	0	
8:00	0	0	0	
9:00	0	0	0	
10:00	0	0	0	
11:00	0	0	0	
12:00	0	0	0	
13:00	0	0	0	
14:00	0	0	0	
15:00	0	0	0	
16:00	0	0	0	
17:00	0	0	0	
18:00	0	0	0	
19:00	0	0	0	
20:00	0	0	0	
21:00	0	0	0	
22:00	0	0	0	
23:00	0	0	0	
0:00	0	0	0	
Total	0	0	0	

Note: Supplier to submit Form of Availability Notice in Excel format to Balancing Authority Area Operator as identified in Exhibit 4 Notices. Form requires 7 days of availability.

**EXHIBIT 9**

**BUYER'S REQUIRED REGULATORY APPROVALS**

1. PUCN Approval of this Agreement.
2. Other Buyer Required Regulatory Approvals as may be required.

**EXHIBIT 10**

**SUPPLIER'S REQUIRED REGULATORY APPROVALS**

1. Although obtaining EWG status is not a Supplier Required Regulatory Approval, if Supplier elects to obtain EWG status for the Facility, Supplier shall obtain: (a) a Notice of Self Certification as an EWG, or (b) an order from FERC granting the Facility EWG status.
2. Market-Based-Rate Authority based on Supplier's status as a "public utility" under the Federal Power Act, FERC authorization under section 205 of the Federal Power Act to make sales of electric energy, capacity, and Ancillary Services from the Facility.
3. Other Supplier Required Regulatory Approvals as may be required.

**EXHIBIT 11**

**TECHNICAL SPECIFICATIONS**

In accordance with Section 8.1, Supplier shall provide, not later than Supplier's completion of the Project Milestone in Section 2(A) of Exhibit 6 relating to obtaining Required Facility Documentation for construction of the Facility, a completed version of Exhibit 11.

**EXHIBIT 12**

**REQUIRED FACILITY DOCUMENTS**

1. Supplier to provide *prior to Commercial Operation Date*:
  - a. U.S. Energy Information Administration, filing of Form 860.
  - b. This Agreement.
  - c. Construction Contract.
  - d. Major Equipment Contracts.
  - e. Operating and maintenance agreement.
  - f. IA (as amended to include Supplier and the Facility).
  - g. Utilities' permission to operate.
  - h. Site control documentation demonstrating ownership of, a leasehold interest in, or a right of way grant to develop a site for the purpose of constructing the Facility.
  - i. Supplier to list all other Required Facility Documents.
  - j. Shared Facilities Agreement or Other Shared Facilities Agreement, if applicable.
  - k. Work Site Agreement
  
2. Supplier to provide *after Commercial Operation Date*:
  - a. U.S. Energy Information Administration, filing of Form 923.

**RESERVED**

**EXHIBIT 14**

**DIAGRAM OF FACILITY**

In accordance with Section 8.1, Supplier shall provide: (a) not later than Supplier's completion of the Project Milestone relating to obtaining Required Facility Documentation (Section 2(a) of Exhibit 6), a completed version of Exhibit 14; and (b) within thirty (30) Business Days after the Commercial Operation Date, a revised version of Exhibit 14 reflecting the Facility as built.

The diagram of the Facility to be attached as Exhibit 14 will include a detailed layout of the Facility, including size, type, location and electrical infrastructure.

**OPERATION AND MAINTENANCE AGREEMENT;  
OPERATOR GOOD STANDING CERTIFICATE**

In accordance with Section 8.9, Supplier shall provide Exhibit 15 no later than ninety (90) days prior to the Commercial Operation Date.

**EXHIBIT 16**

**PRIMARY FREQUENCY RESPONSE**

**Primary Frequency Response Requirements for Energy Storage Systems in Solar plus Storage and Standalone Storage Projects**

This Exhibit 16 sets forth the requirements for primary frequency response (“PFR” or “Primary Frequency Response”) applicable to the Storage Facility. This Exhibit shall govern the design, implementation, testing, and operational obligations of the Storage Facility in providing Primary Frequency Response in accordance with the terms of the Agreement.

**1. Applicability**

The requirements in this Exhibit apply exclusively to the Storage Facility. The photovoltaic (“PV”) component (as applicable) of the Facility is not subject to Primary Frequency Response obligations.

**2. Definition and Purpose of PFR**

PFR is defined as the first automatic and autonomous action taken by inverter-based resources to stabilize grid frequency in response to a system disturbance, without receiving any external communication or dispatch signals. This response is triggered when the system frequency deviates beyond a specified deadband range.

**3. Droop and Deadband Setting Requirements**

The Storage Facility shall be configured with the following droop and deadband parameters for PFR:

Parameter	Value
Droop	5%
Deadband	±0.036 Hz
Nominal Frequency	60 Hz

The droop setting for PFR represents a proportional relationship between frequency deviation and change in real power output:

$$\text{Droop}(\%) = \left( \frac{\Delta f}{f_{\text{nominal}}} / \frac{\Delta P}{P_{\text{rated}}} \right) \times 100$$

- A 5% droop setting means that a 5% drop in frequency from nominal (i.e., from 60 Hz to 57 Hz) will result in the unit increasing its output from 0% to 100% of its rated capacity.
- Under typical system conditions, frequency deviations are much smaller (e.g., 0.1 Hz), which results in a proportionally smaller adjustment in power output.

**Example:** For a 100 MW Storage Facility at 5% droop:

- Nominal frequency: 60 Hz
- Frequency drops to 59.7 Hz ( $\Delta f = -0.3$  Hz)

**EXHIBIT 16**

**PRIMARY FREQUENCY RESPONSE**

- Droop = 5% or full output over 3 Hz
- Output change =  $(0.3/3.0) \times 100 \text{ MW} = +10 \text{ MW}$
- Result: The Storage Facility increases output by 10 MW

The required deadband parameters, aligned with NERC BAL-003-2, are as follows:

System	Nominal Frequency	Deadband ( $\pm$ Hz)	Total Width (Hz)
NERC (BAL-003-2)	60 Hz	$\pm 0.036$ Hz	0.072

**Example:** Assume Droop = 5%, Deadband =  $\pm 0.036$  Hz, Nominal = 60 Hz  
Then:

- If frequency drops to 59.975 Hz — no response
- If it drops to 59.964 Hz — still no response
- If it drops below 59.964 Hz — droop response begins

**4. Power Adjustment Based on Droop**

The Storage Facility shall adjust its real power output according to the following droop curve:

$$\Delta P = - \left( \frac{\Delta f}{f_{\text{nominal}}} \right) \times \frac{1}{R} \times P_{\text{rated}}$$

Where:

- $\Delta P$  : change in real power (MW)
- $\Delta f$ : frequency deviation from nominal (Hz)
- $f_{\text{nominal}}$ : nominal frequency (60 Hz)
- $R$  : droop setting (e.g., 0.05 for 5%)
- $P_{\text{rated}}$  : rated power capacity of the Storage Facility (MW)

$\Delta f$	Frequency Deviation	Required Adjustment	Sign of $\Delta P$	Net Effect
< 0	Under-frequency	Increase power injection (discharge more or charge less)	Positive	Move toward discharging
> 0	Over-frequency	Increase power absorption (charge more or discharge less)	Negative	Move toward charging

**5. SoC-Based Response Availability**

The Storage Facility shall provide PFR across its full state of charge (“SoC” or “State of

**EXHIBIT 16**

**PRIMARY FREQUENCY RESPONSE**

Charge”) range, using bidirectional or unidirectional logic as appropriate. This enables grid support while respecting technical limits at high or low SoC levels.

SoC Range	PFR Availability	Permitted Action
[0.5-99.5]%	Full bidirectional	Charge or discharge in response to frequency deviations
<[0.5]%	One-way (charge only)	Respond to over-frequency events by absorbing power (charging)
>[99.5]%	One-way (discharge)	Respond to under-frequency events by injecting power (discharging)
Offline	Not applicable	No response required when unit is not grid-connected

**6. Power Adjustment Limits Based on SoC**

PFR must respect the Storage Facility’s SoC and be capable of sustaining the response for a minimum duration of [15] minutes. The allowable response is defined as follows:

$$P_{\text{charge, max}} = \min \left( \frac{E_{\text{max}} - E_{\text{current}}}{t_{\text{min}}}, P_{\text{rated}} \right)$$

$$P_{\text{discharge, max}} = \min \left( \frac{E_{\text{current}}}{t_{\text{min}}}, P_{\text{rated}} \right)$$

**Where:**

- $E_{\text{max}}$  : maximum energy capacity (MWh)
- $E_{\text{current}}$  : current stored energy (MWh)
- $P_{\text{rated}}$  : inverter power rating (MW)
- $t_{\text{min}}$ : minimum required sustain time = 15 minutes (0.25 hours)

The actual PFR delivered by the Storage Facility shall be constrained to operate within the allowable charging and discharging limits, as defined below:

$$\Delta P_{\text{actual}} = \begin{cases} \min(\Delta P, P_{\text{charge,max}}), & \text{if } \Delta P < 0 \text{ (charging)} \\ \min(\Delta P, P_{\text{discharge,max}}), & \text{if } \Delta P > 0 \text{ (discharging)} \\ 0, & \text{if } |\Delta f| \leq \text{deadband} \end{cases}$$

**Where:**

- $\Delta P_{\text{actual}}$  : power the Storage Facility is actually allowed to inject or absorb (MW)
- $P_{\text{charge,max}}$  : maximum available charging power based on SOC
- $P_{\text{discharge,max}}$  : maximum available discharging power based on SOC
- $\Delta f$  : frequency deviation from nominal (Hz)
- $Deadband$  :  $\pm 0.036$  Hz — range within which no PFR response is triggered

**EXHIBIT 16**

**PRIMARY FREQUENCY RESPONSE**

**7. Illustrative Examples**

**Example 1: High SoC (90%) — Over-frequency Event (Absorb Power)**

Assume:

- Nominal frequency = 60 Hz
- Frequency rises to 60.2 Hz →  $\Delta f = +0.2$  Hz
- Droop = 5% →  $R = 0.05$
- $P_{rated} = 100$  MW
- $E_{current} = 360$  MWh (90% of 400 MWh)
- $t_{min} = 15$  minutes = 0.25 hr

**Step 1:** Calculate raw droop response

$$\Delta P = - \left( \frac{0.2}{60} \right) \times \frac{1}{0.05} \times 100 = -6.67 \text{ MW}$$

**(Storage Facility must absorb 6.67 MW)**

**Step 2:** Calculate available charging power

$$P_{charge,max} = \min \left( \frac{400 - 360}{0.25}, 100 \right) = \min(160, 100) = 100 \text{ MW}$$

**Step 3:** Apply limit

$$\Delta P_{actual} = \min(-6.67, 100) = -6.67 \text{ MW}$$

**Result:** Storage Facility can absorb the full 6.67 MW as requested.

**Example 2: Low SoC (5%) — Under-frequency Event (Deliver Power)**

- Nominal frequency = 60 Hz
- Frequency drops to 59.7 Hz →  $\Delta f = -0.3$  Hz
- Droop = 5% →  $R = 0.05$
- $P_{rated} = 100$  MW
- $E_{current} = 20$  MWh (5% of 400 MWh)
- $t_{min} = 15$  minutes = 0.25 hr

**Step 1:** Calculate raw droop response

$$\Delta P = - \left( \frac{-0.3}{60} \right) \times \frac{1}{0.05} \times 100 = +10 \text{ MW}$$

**EXHIBIT 16**

**PRIMARY FREQUENCY RESPONSE**

**(Storage Facility must inject 10 MW)**

**Step 2: Calculate available discharging power**

$$P_{\text{discharge,max}} = \min\left(\frac{20}{0.25}, 100\right) = \min(80, 100) = 80 \text{ MW}$$

**Step 3: Apply limit**

$$\Delta P_{\text{actual}} = \min(10, 80) = 10 \text{ MW}$$

**Result:** Storage Facility can inject the full 10 MW as requested.

**8. Implementation Requirements**

- PFR shall be implemented at the plant power controller or battery management system level
- The response must activate autonomously within [1–2] seconds of a frequency deviation outside the deadband.
- Total response time shall comply with all applicable NERC reliability standards.
- No coordination with energy management system or automatic generator control is required for PFR activation.
- The Storage Facility shall provide PFR continuously, 24/7, including periods when it is in an idle state (i.e., not actively charging or discharging), as long as it is connected to the grid and technically capable of responding.

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

**[ISSUING BANK] IRREVOCABLE STANDBY LETTER OF CREDIT**

**DATE OF ISSUANCE:**  
**[Date of issuance]**

[BENEFICIARY] (“Beneficiary”)  
[Address]  
Attention: [Contact Person]

Re: [ISSUING BANK] Irrevocable Standby Letter of Credit No. \_\_\_\_\_

Sirs/Mesdames:

We hereby establish in favor of Beneficiary (sometimes alternatively referred to herein as “you”) this Irrevocable Standby Letter of Credit No. \_\_\_\_\_ (the “Letter of Credit”) for the account of [NextEra Energy Capital Holdings, Inc.] on behalf of [NextEra project entity], located at 700 Universe Boulevard, Juno Beach, Florida 33408 (“Account Parties”), effective immediately and expiring on the date determined as specified in numbered paragraph 5 below.

We have been informed that this Letter of Credit is issued pursuant to the terms of that certain Long-Term Energy Storage Agreement, dated as of [\_\_\_\_\_], [202\_], between [Supplier] and Beneficiary (the “Power Purchase Agreement”).

**1. Stated Amount.** The maximum amount available for drawing by you under this Letter of Credit shall be [written dollar amount] United States Dollars (US\$[dollar amount]) (such maximum amount referred to as the “Stated Amount”).

**2. Drawings.** A drawing hereunder may be made by you on any Business Day on or prior to the date this Letter of Credit expires by delivering to [ISSUING BANK], at any time during its business hours on such Business Day, at [bank address] (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 8 hereof), a copy of this Letter of Credit together with (i) a Draw Certificate executed by an authorized person substantially in the form of Attachment A hereto (the “Draw Certificate”), appropriately completed and signed by your authorized officer (signing as such) and (ii) your draft substantially in the form of Attachment B hereto (the “Draft”), appropriately completed and signed by your authorized officer (signed as such). Partial drawings and multiple presentations may be made under this Letter of Credit. Draw Certificates and Drafts under this Letter of Credit may be presented by Beneficiary by means of facsimile to our fax no. [insert fax number] or original documents sent by overnight delivery or courier to [ISSUING BANK] at our address set forth above, Attention: \_\_\_\_\_ (or at such other address as may be designated by written notice delivered to you as contemplated by numbered paragraph 8 below). If presentation is made by facsimile transmission, you must contact us at [insert phone number] to confirm our receipt of the transmission. In the event of a presentation by facsimile transmission, the original of such documents need not be sent to us.

**3. Time and Method for Payment.** We hereby agree to honor a drawing hereunder made in compliance with this Letter of Credit by transferring in immediately available funds the amount specified in the Draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your Draw Certificate. If the Draw Certificate is presented to us at such address by 12:00 noon, (Eastern Standard Time) time on any Business Day, payment will be made not later than our close of business on third succeeding business day and if such Draw Certificate is so presented to

**EXHIBIT 17****FORM OF LETTER OF CREDIT**

us after 12:00 noon, (Eastern Standard Time) time on any Business Day, payment will be made on the fourth succeeding Business Day. In clarification, we agree to honor the Draw Certificate as specified in the preceding sentences, without regard to the truth or falsity of the assertions made therein.

**4. Non-Conforming Demands.** If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice not later than two (2) Business Days that the demand for payment was not effectuated in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefor and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effectuated in conformity with this Letter of Credit, you may correct any such non-conforming demand and re-submit on or before the then current expiry date.

**5. Expiration, Initial Period and Automatic Extension.** The initial period of this Letter of Credit shall terminate on [*one year from the issuance date*] (the “**Initial Expiration Date**”). The Letter of Credit shall be automatically extended without amendment for one (1) year periods from the Initial Expiration Date or any future expiration date, unless at least sixty (60) days prior to any such expiration date we send you notice by registered mail or courier at your address first shown (or such other address as may be designated by you as contemplated by numbered *paragraph 8*) that we elect not to consider this Letter of Credit extended for any such additional one year period. Notwithstanding the foregoing extension provision, this Letter of Credit shall automatically expire at the close of business on the date on which we receive a Cancellation Certificate in the form of *Attachment C* hereto executed by your authorized officer and sent along with the original of this Letter of Credit and all amendments (if any). Upon receipt by you of such notice of non-extension, you may draw hereunder up to the available amount, on or before the then current expiry date, against presentation to us of your draft substantially in the form of *Attachment B* hereto (the “**Draft**”), appropriately completed and signed by your authorized officer (signed as such).

**6. Business Day.** As used herein, “**Business Day**” shall mean any day on which commercial banks are not authorized or required to close in the State of New York, and inter-bank payments can be effected on the Fedwire system.

**7. Governing Law.** THIS LETTER OF CREDIT IS GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE INTERNATIONAL STANDBY PRACTICES, ICC PUBLICATION NO. 590 (THE “ISP98”), AND AS TO MATTERS NOT ADDRESSED IN ISP98, BY THE LAWS OF THE STATE OF NEW YORK.

**8. Notices.** All communications to you in respect of this Letter of Credit shall be in writing and shall be delivered to the address first shown for you above or such other address as may from time to time be designated by you in a written notice to us. All documents to be presented to us hereunder and all other communications to us in respect of this Letter of Credit, which other communications shall be in writing, shall be delivered to the address for us indicated above, or such other address as may from time to time be designated by us in a written notice to you.

**9. Irrevocability.** This Letter of Credit is irrevocable.

**10. Complete Agreement.** This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except for the ISP98 and *Attachment A*, *Attachment B* and *Attachment C* hereto and the notices referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

\*

\*

\*

Sincerely,  
[ISSUING BANK]

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address:

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

**ATTACHMENT A**

**FORM OF DRAW CERTIFICATE**

TO: [ISSUING BANK]  
[Address]

The undersigned hereby certifies to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. \_\_\_\_\_ (the “**Letter of Credit**”) issued by Issuer in favor of the undersigned (“**Beneficiary**”), as follows (capitalized terms used herein and not defined herein shall have their respective meaning as set forth in the Letter of Credit):

- (1) The undersigned is the \_\_\_\_\_ of Beneficiary and is duly authorized by Beneficiary to execute and deliver this Certificate on behalf of Beneficiary.
- (2) Beneficiary hereby makes demand against the Letter of Credit by Beneficiary’s presentation of the draft accompanying this Certificate, for payment of \_\_\_\_\_ U.S. dollars (US\$\_\_\_\_\_).
- (3) Beneficiary is authorized to make a drawing under the Letter of Credit in accordance with the terms of the Power Purchase Agreement.
- (4) You are hereby directed to make payment of the requested drawing to: (insert wire instructions)

Beneficiary Name and Address:

By: \_\_\_\_\_

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

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

- (5) Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[BENEFICIARY]

By: \_\_\_\_\_

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

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

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

**ATTACHMENT B**

**DRAWING UNDER IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_**

TO: [ISSUING BANK]  
[Address]

Date:

PAY TO: [BENEFICIARY]

U.S.\$ \_\_\_\_\_

FOR VALUE RECEIVED AND CHARGE TO THE ACCOUNT OF LETTER OF CREDIT NO.  
\_\_\_\_\_.

[BENEFICIARY]

By: \_\_\_\_\_

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

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

**EXHIBIT 17**

**FORM OF LETTER OF CREDIT**

**ATTACHMENT C**

**CANCELLATION CERTIFICATE**

TO: [ISSUING BANK]  
[Address]

Irrevocable Letter of Credit No. \_\_\_\_\_

The undersigned, being authorized by the undersigned (“**Beneficiary**”), hereby certifies on behalf of Beneficiary to [ISSUING BANK] (“**Issuer**”), with reference to Irrevocable Letter of Credit No. \_\_\_\_\_ issued by Issuer to Beneficiary (the “**Letter of Credit**”), that all obligations of [PROJECT ENTITY], under the [*describe the underlying agreement which requires this LC*] have been fulfilled.

Pursuant to Section 5 thereof, the Letter of Credit shall expire upon Issuer’s receipt of this certificate.

Capitalized terms used herein and not otherwise defined herein shall have the respective meanings set forth in the Letter of Credit.

[*BENEFICIARY*]

By: \_\_\_\_\_

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

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

**RESERVED**

**FORM OF LENDERS CONSENT**

This CONSENT AND AGREEMENT (this “Consent”), dated as of \_\_\_\_\_, 20\_\_\_, is entered into by and among Nevada Power Company, a Nevada corporation, d/b/a NV Energy, acting in its merchant function capacity (together with its permitted successors and assigns, “NVE”), \_\_\_\_\_, in its capacity as [**Administrative Agent**] for the Lenders referred to below (together with its successors, designees and assigns in such capacity, “Administrative Agent”), and \_\_\_\_\_, a \_\_\_\_\_ formed and existing under the Laws of the State of \_\_\_\_\_ (together with its permitted successors and assigns, “Borrower”). Unless otherwise defined, all capitalized terms have the meaning given in the Contract (as hereinafter defined).

WHEREAS, Borrower intends to develop, construct, install, test, own, operate and use an approximately \_\_\_ MW storage facility located \_\_\_\_\_, known as the \_\_\_\_\_ (the “Project”).

WHEREAS, In order to partially finance the development, construction, installation, testing, operation and use of the Project, Borrower has entered into that certain [**Financing Agreement,**] dated as of \_\_\_\_\_ (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Financing Agreement”), among Borrower, the financial institutions from time to time parties thereto (collectively, the “Lenders”), and Administrative Agent for the Lenders, pursuant to which, among other things, Lenders have extended commitments to make loans and other financial accommodations to, and for the benefit of, Borrower.

[WHEREAS, Borrower anticipates that, prior to the completion of construction of the Project, it will seek an additional investor (the “Tax Investor”) to make an investment in Borrower to provide additional funds to finance the operation and use of the Project.]

WHEREAS, Buyer and Borrower have entered into that certain Long-Term Energy Storage Agreement, dated as of \_\_\_\_\_ (collectively with all documents entered into in connection therewith that are listed on [Schedule A] attached hereto and incorporated herein by reference, as all are amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “PPA”).

WHEREAS, pursuant to a security agreement executed by Borrower and Administrative Agent for the Lenders (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), Borrower has agreed, among other things, to assign, as collateral security for its obligations under the Financing Agreement and related documents (collectively, the “Financing Documents”), all of its right, title and interest in, to and under the PPA to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

**FORM OF LENDERS CONSENT****SECTION 1. CONSENT TO ASSIGNMENT**

NVE acknowledges the collateral assignment by Borrower of, among other things all of its right, title and interest in, to and under the PPA to Administrative Agent for the benefit of itself, the Lenders and each other entity or person providing collateral security under the Financing Documents, consents to an assignment of the PPA pursuant thereto, and agrees with Administrative Agent as follows:

(A) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Borrower under the PPA, subject to applicable notice and cure periods provided in the PPA. Upon receipt of notice from Administrative Agent, NVE agrees to accept such exercise and cure by Administrative Agent if timely made by Administrative Agent under the PPA and this Consent. Upon receipt of Administrative Agent's written instructions, NVE agrees to make directly to Administrative Agent all payments to be made by NVE to Borrower under the PPA from and after NVE's receipt of such instructions, and Borrower consents to any such action.

(B) NVE will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the PPA, or consent to or accept any cancellation, termination or suspension thereof by Borrower, except as provided in the PPA and in accordance with subparagraph 1(C) hereof, (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the PPA, except as provided in the PPA, or (iii) amend or modify the PPA in any manner without providing prior written notice to the Administrative Agent.

(C) NVE agrees to deliver duplicates or copies of all notices of default delivered by NVE under or pursuant to the PPA to Administrative Agent in accordance with the notice provisions of this Consent. NVE may deliver any such notices concurrently with delivery of the notice to Borrower under the PPA. Administrative Agent shall have: (a) the same period of time plus an additional twenty (20) days to cure the breach or default that Borrower is entitled to under the PPA if such default is the failure to pay amounts to NVE which are due and payable by Borrower under the PPA, except that if NVE does not deliver the default notice to Administrative Agent concurrently with delivery of the notice to Borrower under the PPA, then as to Administrative Agent, the applicable cure period under the PPA shall begin on the date on which the notice is given to Administrative Agent, or (b) the later of the applicable cure period under the PPA or ninety (90) days from the date notice of default or breach is delivered to Administrative Agent to cure such default if such breach or default cannot be cured by the payment of money to NVE, so long as Administrative Agent continues to perform any monetary obligations under the PPA and all other obligations under the PPA are performed by Borrower or Administrative Agent or its designees or assignees. If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designees or assignees declare Borrower in default and commence foreclosure proceedings, Administrative Agent or its designees or assignees will be allowed a reasonable period to complete such proceedings. NVE consents to the transfer of Borrower's interest under the PPA to a Qualified Transferee upon enforcement of such security at a foreclosure sale by judicial or non-judicial foreclosure and sale or by a conveyance by Borrower in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, NVE shall recognize such Qualified Transferee as the applicable party under the PPA (provided that such Qualified Transferee assumes the obligations of Borrower under the PPA). "Qualified Transferee"

**FORM OF LENDERS CONSENT**

means a Person that is at least as financially and operationally qualified as Borrower and, at a minimum, has a tangible net worth of at least Thirty Million Dollars (\$30,000,000) or provides adequate assurance in an amount and form reasonably acceptable to Buyer and has (or agrees to contract with an operator who has) at least three (3) years of experience operating a generating plant of similar technology and similar size to the Project.

(D) Notwithstanding subparagraph 1(C) above, in the event that the PPA is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the PPA is terminated for any reason other than a default which could have been but was not cured by Administrative Agent or its designees or assignees as provided in subparagraph 1(C) above, and if, within forty-five (45) days after such rejection or termination, the Lenders or their successors or assigns shall so request, to the extent permitted by applicable law, NVE will enter into a new contract with a Qualified Transferee. Such new contract shall be on substantially and in all material respects on the same terms and conditions as the original PPA for the remaining term of the original PPA before giving effect to such termination, provided, however that such terms shall be modified to the extent NVE reasonably determines such modifications are necessary to comply with any laws, rules or regulations applicable to Borrower, NVE or Lender, including any state, and federal constitutions, statutes, rules, regulations, published rates, and orders of governmental bodies and all judicial orders, judgments and decrees (hereinafter “Applicable Law”) in effect at such time. Lenders or Administrative Agent shall cure or cause the cure of any payment defaults then existing under the original PPA prior to NVE entering into a new contract.

(E) In the event Administrative Agent, the Lenders or their designees or assignees elect to perform Borrower’s obligations under the PPA as provided in subparagraph 1(C) above or enter into a new contract as provided in subparagraph 1(D) above, the recourse of NVE against Administrative Agent, Lenders or their designees and assignees shall be limited to such parties’ interests in the Project, [the Development Security]<sup>2</sup> and [Operating Security]<sup>3</sup> required under the PPA, and recourse against the assets of any party or entity that assumes the PPA or that enters into such new contract. Nothing herein abrogates, and any Qualifying Assignee shall be subject to, NVE’s rights under Article 6 of the PPA.

(F) In the event a Qualified Transferee succeeds to Borrower’s interest under the PPA, Administrative Agent, the Lenders or their designees or assignees shall cure any then-existing payment and performance defaults under the PPA, except any performance defaults of Borrower itself which by their nature are not capable of being cured and do not impair NVE’s rights under the PPA. Administrative Agent, the Lenders and their designees or assignees shall have the right to assign the PPA or the new contract entered into pursuant to subparagraph 1(d) above to any Qualified Transferee to whom Borrower’s interest in the Project is transferred, provided that such transferee assumes the obligations of Borrower under the PPA. Upon such assignment, Administrative Agent and the Lenders and their designees or assignees (including their agents and employees, but excluding Supplier) shall be released from any further liability thereunder accruing from and after the date of such assignment.

---

<sup>2</sup> NTD: inclusion of this item will depend upon whether financing is made before or after the Commercial Operation Date.

<sup>3</sup> NTD: inclusion of this item will depend upon whether financing is made before or after the Commercial Operation Date.

**FORM OF LENDERS CONSENT**

**SECTION 2. REPRESENTATIONS AND WARRANTIES**

NVE, acting in its merchant function capacity (and therefore specifically excluding the knowledge of NVE, acting in its transmission function capacity (“NVE Transmission”), as to any of the matters stated below, and without imputation to NVE of any knowledge whatsoever relating to the NVE Transmission, whether as a result of information publicly posted to the open access same-time information system or otherwise), hereby represents and warrants that as of the date of this Consent:

(A) It (i) is a corporation duly formed and validly existing under the laws of the state of its organization, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under this Consent, and (iii) has all requisite corporate power and authority to enter into and to perform its obligations hereunder and under the PPA, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(B) the execution, delivery and performance of this Consent and the PPA have been duly authorized by all necessary corporate action on its part and do not require any approvals, material filings with, or consents of any entity or person which have not previously been obtained or made;

(C) each of this Consent and the PPA is in full force and effect;

(D) each of this Consent and the PPA has been duly executed and delivered on its behalf and constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms;

(E) the execution, delivery and performance by it of this Consent and the PPA, and the consummation of the transactions contemplated hereby, will not result in any violation of, breach of or default under any term of (i) its formation or governance documents, or (ii) any material contract or material agreement to which it is a party or by which it or its property is bound, or of any material Requirements of Law presently in effect having applicability to it, the violation, breach or default of which could have a material adverse effect on its ability to perform its obligations under this Consent;

(F) neither NVE nor, to NVE’s actual knowledge, any other party to the PPA, is in default of any of its obligations thereunder; and

(G) to the best of NVE’s actual knowledge, (i) no event of Force Majeure exists under, and as defined in, the PPA and (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either NVE or Borrower to terminate or suspend its obligations under the PPA.

**SECTION 3. NOTICES**

All notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon telephonic verification of receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or three (3) Business Days after being sent

**FORM OF LENDERS CONSENT**

registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

If to NVE:

[ \_\_\_\_\_ ]  
 [ \_\_\_\_\_ ]  
 [ \_\_\_\_\_ ]  
 Telephone No.: [ \_\_\_\_\_ ]  
 Telecopy No.: [ \_\_\_\_\_ ]  
 Attn: [ \_\_\_\_\_ ]

If to Administrative Agent:

[ \_\_\_\_\_ ]  
 [ \_\_\_\_\_ ]  
 [ \_\_\_\_\_ ]  
 Telephone No.: [ \_\_\_\_\_ ]  
 Telecopy No.: [ \_\_\_\_\_ ]  
 Attn: [ \_\_\_\_\_ ]

If to Borrower:

[ \_\_\_\_\_ ]  
 [ \_\_\_\_\_ ]  
 [ \_\_\_\_\_ ]  
 Telephone No.: [ \_\_\_\_\_ ]  
 Telecopy No.: [ \_\_\_\_\_ ]  
 Attn: [ \_\_\_\_\_ ]

Any party shall have the right to change its address for notice hereunder to any other location within the United States by giving thirty (30) days written notice to the other parties in the manner set forth above. Further, the Tax Investor shall be entitled to receive notices from NVE by providing written notice to NVE of Tax Investor’s address for notices. NVE’s failure to provide any notice to the Tax Investor shall not be a breach of this Consent.

**SECTION 4. ASSIGNMENT, CONFIRMATION, TERMINATION, AMENDMENT AND GOVERNING LAW**

NVE agrees (a) to confirm its continuing obligation hereunder in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders or any of their respective successors, transferees or assigns, and (b) to cause any successor-in-interest to NVE with respect to its interest in the PPA to assume, in writing in form and substance reasonably satisfactory to Administrative Agent, the obligations of NVE hereunder. Any purported assignment or transfer of the PPA not in conjunction with the written instrument of assumption contemplated by the foregoing clause (b) shall be null and void. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and executed by the parties hereto. This Consent shall be governed by the laws of the State of New

**FORM OF LENDERS CONSENT**

York (without giving effect to the principles thereof relating to conflicts of law except Section 5-1401 and 5-1402 of the New York General Obligations Law).

**SECTION 5. COUNTERPARTS**

This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

**SECTION 6. SEVERABILITY**

In case any provision of this Consent, or the obligations of any of the parties hereto, shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions, or the obligations of the other parties hereto, shall not in any way be affected or impaired thereby.

**SECTION 7. ACKNOWLEDGMENTS BY BORROWER.**

Borrower, by its execution hereof, acknowledges and agrees that notwithstanding any term to the contrary in the PPA, NVE may perform as set forth herein and that neither the execution of this Consent, the performance by NVE of any of the obligations of NVE hereunder, the exercise of any of the rights of NVE hereunder, or the acceptance by NVE of performance of the PPA by any party other than Borrower shall (1) release Borrower from any obligation of Borrower under the PPA, (2) constitute a consent by NVE to, or impute knowledge to NVE of, any specific terms or conditions of the Financing Agreement, the Security Agreement or any of the other Financing Documents, or (3) constitute a waiver by NVE of any of its rights under the PPA. Borrower and Administrative Agent acknowledge hereby for the benefit of NVE that none of the Financing Agreement, the Security Agreement, the Financing Documents or any other documents executed in connection therewith alter, amend, modify or impair (or purport to alter, amend, modify or impair) any provisions of the PPA. Borrower shall have no rights against NVE on account of this Consent.

**SECTION 8. JURY TRIAL WAIVER**

THE PARTIES EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

IN WITNESS WHEREOF, the parties by their officers duly authorized, have duly executed this Consent as of the date first set forth above.

Nevada Power Company

By: \_\_\_\_\_

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

**FORM OF LENDERS CONSENT**

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

\_\_\_\_\_’

a \_\_\_\_\_

By: \_\_\_\_\_

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

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

\_\_\_\_\_’

as Administrative Agent for the Lenders

[Borrower]

By: \_\_\_\_\_

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

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

**FORM OF GUARANTEE**

This GUARANTEE (this “Guarantee”), dated as of \_\_\_\_\_, 20\_\_, is issued by [\_\_\_\_\_] a [\_\_\_\_\_] organized and existing under the laws of [\_\_\_\_\_] (“Guarantor”) in favor of Nevada Power Company, a Nevada corporation doing business as NV Energy (“Company”).

Pursuant to that certain Long-Term Energy Storage Agreement, dated as of \_\_\_\_\_, 20\_\_ (as the same may be amended, modified or supplemented from time to time, the “Agreement”), by and between Company and [\_\_\_\_\_] a [\_\_\_\_\_] [\_\_\_\_\_] of which Guarantor is the [direct][indirect] parent (“Subsidiary”), and pursuant to which Guarantor will indirectly benefit from the terms and conditions thereof, and the performance by Subsidiary of its obligations thereunder, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor hereby covenants, undertakes and agrees with Company as follows:

**Section 1. Definitions.** Capitalized terms used herein and not otherwise defined shall have their respective meanings as set forth in the Agreement.

**Section 2. Guarantee.**

**(a) Guarantee.** Guarantor hereby irrevocably and unconditionally guarantees to and for the benefit of Company, the full and prompt payment by Subsidiary of each and every obligation of Subsidiary arising under the Agreement up to the limitations set forth in the Agreement, including, without limitation, the payment when due of all indemnities, refunds and liquidated damages payable at any time under the Agreement (the “Guaranteed Obligations”). The Guaranteed Obligations shall further include, without limitation, (i) interest accruing as part of the Guaranteed Obligations according to the terms thereof following the commencement by or against the Subsidiary of any case or proceeding under any Applicable Law relating to bankruptcy, insolvency, reorganization, winding-up, liquidation, dissolution or composition or adjustment of debt and (ii) all reasonable costs and expenses (including reasonable attorneys’ fees), if any, incurred in successfully enforcing Company’s rights under this Guarantee. Guarantor further agrees that if Subsidiary shall fail to pay or perform in full when due all or any part of the Guaranteed Obligations, Guarantor will promptly pay (or promptly procure the payment of) the same in accordance with, and up to the limitations set forth in the Agreement.

**(b) Nature of Guarantee.** The Guarantee and the obligations of Guarantor hereunder shall continue to be effective or be automatically reinstated, as the case may be, even if at any time payment of any of the Guaranteed Obligations is rendered unenforceable or is rescinded or must otherwise be returned by Company upon the occurrence of any action or event including, without limitation, the bankruptcy, reorganization, winding-up, liquidation, dissolution or insolvency of the Subsidiary, Guarantor, any other Person or otherwise, all as though the payment had not been made.

**(c) Absolute Guarantee.** Guarantor agrees that its obligations under this Guarantee are irrevocable, absolute, independent, unconditional and continuing 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 Guaranteed Obligations. In furtherance of the foregoing and without limiting

**FORM OF GUARANTY**

the generality thereof, Guarantor agrees, subject to the other terms and conditions hereof, as follows:

(i) this Guarantee is a guarantee of payment when due and not of collectability;

(ii) Company may from time to time in accordance with the terms of the Agreement, without notice or demand and without affecting the validity or enforceability of this Guarantee or giving rise to any limitation, impairment or discharge of Guarantor's liability hereunder, (A) renew, extend, accelerate or otherwise change the time, place, manner or terms of payment or performance of the Guaranteed Obligations, (B) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment or performance of the same to the payment or performance of any other obligations, (C) request and accept other guaranties of or security for the Guaranteed Obligations and take and hold security for the payment or performance of this Guarantee or the Guaranteed Obligations, (D) release, exchange, compromise, subordinate or modify, with or without consideration, any security for payment or performance of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any person with respect to the Guaranteed Obligations, (E) enforce and apply any security now or hereafter held by or for the benefit of Company in respect of this Guarantee or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that Company may have against any such security, as Company in its discretion may determine consistent with the Agreement and any applicable security agreement, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or any other right or remedy of Guarantor against Subsidiary or any other guarantor of the Guaranteed Obligations or any other guarantee of or security for the Guaranteed Obligations, and (F) exercise any other rights available to Company under the Agreement, at law or in equity; and

(iii) this Guarantee and the obligations of Guarantor hereunder shall be valid and enforceable and shall not be subject to any limitation, impairment or discharge for any reason (other than payment in full of the Guaranteed Obligations and otherwise as set forth in this Guarantee), including, without limitation, the occurrence of any of the following, whether or not Guarantor shall have had notice or knowledge of any of them: (A) any failure to assert or enforce, or agreement not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, or the exercise or enforcement of, any claim or demand or any right, power or remedy with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guarantee of or security for the payment or performance of the Guaranteed Obligations; (B) any waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions of the Agreement or any agreement or instrument executed pursuant thereto or of any other guarantee or security for the Guaranteed Obligations; (C) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (D) the personal or corporate incapacity of any person; (E) any change in the financial condition, or the bankruptcy, administration, receivership or insolvency of Subsidiary or any other person, or any rejection, release, stay or discharge of Subsidiary's or any other person's obligations in connection with any bankruptcy, administration, receivership or similar proceeding or otherwise or any disallowance of all or any portion of any claim by Company, its successors or permitted assigns in connection with any such proceeding; (F) any change in the corporate existence of, or cessation of existence of, Guarantor or the Subsidiary

**FORM OF GUARANTY**

(whether by way of merger, amalgamation, transfer, sale, lease or otherwise); (G) the failure to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, any person; (H) any substitution, modification, exchange, release, settlement or compromise of any security or collateral for or guaranty of any of the Guaranteed Obligations or failure to apply such security or collateral or failure to enforce such guaranty; (I) the existence of any claim, set-off, or other rights which Guarantor or any affiliate thereof may have at any time against Company or any affiliate thereof in connection with any matter unrelated to the Agreement; and (J) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of Guarantor as an obligor in respect of the Guaranteed Obligations.

(d) **Currency.** All payments made by Guarantor hereunder shall be made in U.S. dollars in immediately available funds.

(e) **Defenses.** Notwithstanding anything herein to the contrary, Guarantor specifically reserves to itself all rights, counterclaims and other defenses that the Subsidiary is or may be entitled to arising from or out of the Agreement, except for any defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of the Subsidiary, the lack of power or authority of the Subsidiary to enter into the Agreement and to perform its obligations thereunder, or the lack of validity or enforceability of the Subsidiary's obligations under the Agreement or any transaction thereunder.

**Section 3. Other Provisions of the Guarantee.**

(a) **Waivers by Guarantor.** Guarantor hereby waives for the benefit of Company, to the maximum extent permitted by Applicable Law:

(i) notice of acceptance hereof;

(ii) notice of any action taken or omitted to be taken by Company in reliance hereon;

(iii) any right to require Company, as a condition of payment by Guarantor, to (A) proceed against or exhaust its remedies against Subsidiary or any person, including any other guarantor of the Guaranteed Obligations, or (B) proceed against or exhaust any security held from Subsidiary or any person, including any other guarantor of the Guaranteed Obligations;

(iv) subject to Clause 2(e), any defense arising by reason of the incapacity, lack of authority or any disability of Subsidiary including, without limitation, any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of Subsidiary from any cause other than payment in full of the Guaranteed Obligations or termination of this Guarantee in accordance with its terms;

(v) any requirement that Company protect, secure, perfect or insure any security interest or lien or any property subject thereto;

(vi) any requirement that Company be diligent or prompt in making demands hereunder or give notices of default under the Agreement, notices of any renewal, extension or

**FORM OF GUARANTY**

modification of the Guaranteed Obligations or any agreement related thereto, and any right to consent to any thereof; and

(vii) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety, including promptness, diligence, notice of acceptance and notice of any default under the Agreement, notice of presentment, demand, protest, and notice of dishonor or nonpayment, notice of acceleration or other demand and any other notice with respect to this Guarantee.

**(b) Deferral of Subrogation.** Until such time as the Guaranteed Obligations have been paid or performed in full, notwithstanding any payment made by Guarantor hereunder or the receipt of any amounts by Company with respect to the Guaranteed Obligations, (i) Guarantor (on behalf of itself, its successors and assigns, including any surety) hereby expressly agrees not to exercise any right, nor assert the impairment of such rights, it may have to be subrogated to any of the rights of Company against Subsidiary or against any other collateral security held by Company for the payment or performance of the Guaranteed Obligations, (ii) Guarantor agrees that it will not seek any reimbursement from Company in respect of payments or performance made by Guarantor in connection with the Guaranteed Obligations, or amounts realized by Company in connection with the Guaranteed Obligations and (iii) Guarantor shall not claim or prove in a liquidation or other insolvency proceeding of the Subsidiary in competition with the Company. If any amount shall be paid to Guarantor on account of such subrogation rights at any time when all of the Guaranteed Obligations shall not have been paid in full or otherwise fully satisfied, such amount shall be held in trust by Guarantor for the benefit of Company and shall forthwith be paid to Company, to be credited and applied to the Guaranteed Obligations.

**Section 4. Representations and Warranties of Guarantor.** Guarantor hereby represents, warrants, and undertakes to Company as follows:

**(a)** Guarantor is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and has the corporate power, authority and legal right to own its property and assets and to transact the business in which it is engaged.

**(b)** Guarantor has full power, authority and legal right to execute and deliver this Guarantee and all other instruments, documents and agreements required by the provisions of this Guarantee to be executed, delivered and performed by Guarantor, and to perform its obligations hereunder and thereunder.

**(c)** The execution, delivery and performance of this Guarantee and all other instruments, documents and agreements required by the provisions of this Guarantee to be executed, delivered and performed by Guarantor have been duly authorized by all necessary company action on the part of Guarantor and do not contravene or conflict with Guarantor's memorandum and articles of association.

**(d)** This Guarantee and all other instruments, documents and agreements required by the provisions of this Guarantee to be executed, delivered and performed by Guarantor have been duly executed and delivered by Guarantor and constitute the legal, valid and binding obligations of Guarantor, enforceable against it in accordance with their respective terms.

**FORM OF GUARANTY**

(e) Neither the execution and delivery of this Guarantee nor the performance of the terms and conditions hereof by Guarantor shall result in (i) a violation or breach of, or a default under, or a right to accelerate, terminate or amend, any contract, commitment or other obligation to which Guarantor is a party or is subject or by which any of its assets are bound, or (ii) a violation by Guarantor of any Applicable Law.

(f) There are no actions, suits, investigations, proceedings, condemnations, or audits by or before any court or other governmental or regulatory authority or any arbitration proceeding pending or, to its actual knowledge after due inquiry, threatened against or affecting Guarantor, its properties, or its assets.

(g) All necessary action has been taken under Applicable Laws to authorize the execution, delivery and performance of this Guarantee. No governmental approvals or other consents, approvals, or notices of or to any person are required in connection with the execution, delivery, performance by Guarantor, or the validity or enforceability, of this Guarantee.

**Section 5. Notices.** All notices, demands, instructions, waivers, consents, or other communications required or permitted hereunder shall be in writing in the English language and shall be sent by personal delivery, courier, certified mail or facsimile, to the following addresses:

(a) If to Guarantor:

[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
[ \_\_\_\_\_ ]  
Attention: [ \_\_\_\_\_ ]  
Facsimile: [ \_\_\_\_\_ ]

(b) If to Company:

Nevada Power Company  
6226 W. Sahara Avenue  
Las Vegas, Nevada 89146  
Facsimile No.: 702-402-2455  
Email: ContractManagement@nvenergy.com  
Attn: [ \_\_\_\_\_ ]

With a copy to (which shall not constitute notice):

Nevada Power Company  
6226 W. Sahara Avenue  
Las Vegas, Nevada 89146  
Facsimile: (702) 402-2069  
Attn: [ \_\_\_\_\_ ]

The addresses and facsimile numbers of either party for notices given pursuant to this Guarantee may be changed by means of a written notice given to the other party at least three (3) Business

**FORM OF GUARANTY**

Days (being a day on which clearing banks are generally open for business in the jurisdiction of the party to whom a notice is sent) prior to the effective date of such change. Any notice required or authorized to be given hereunder shall be in writing (unless otherwise provided) and shall be served (i) personally, (ii) by courier service or (iii) by facsimile transmission addressed to the relevant Person at the address stated below or at any other address notified by that Person as its address for service. Any notice so given personally shall be deemed to have been served on delivery, any notice so given by express courier service shall be deemed to have been served the next Business Day after the same shall have been delivered to the intended Person, and any notice so given by facsimile transmission shall be deemed to have been served on dispatch unless dispatched after the recipient's normal business hours on a Business Day or dispatched on any day other than a Business Day, in which case such notice shall be deemed to have been delivered on the next Business Day. As proof of such service it shall be sufficient to produce a receipt showing personal service, the receipt of a courier company showing the correct address of the addressee or an activity report of the sender's facsimile machine showing the correct facsimile number of the Person on whom notice is served and the correct number of pages transmitted.

**Section 6. Miscellaneous Provisions.**

(a) **Waiver; Remedies Cumulative.** No failure on the part of Company to exercise, and no delay on the part of Company in exercising, any right or remedy, in whole or in part hereunder shall operate as a waiver thereof. No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver by Company shall be effective unless it is in writing and such writing expressly states that it is intended to constitute such waiver. Any waiver given by Company of any right, power or remedy in any one instance shall be effective only in that specific instance and only for the purpose for which given, and will not be construed as a waiver of any right, power or remedy on any future occasion. The rights and remedies of Company herein provided are cumulative and not exclusive of any rights or remedies provided by Applicable Law.

(b) **Successors and Assigns.** This Guarantee shall be binding upon the successors of Guarantor and shall inure to the benefit of Company and its successors and permitted assigns. Guarantor shall not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of Company. Any purported assignment or delegation without such written consent shall be null and void. Company may assign its rights and obligations hereunder to any assignee of its rights under the Agreement permitted in accordance with the Agreement.

(c) **Amendment.** This Guarantee may not be modified, amended, terminated or revoked, in whole or in part, except by an agreement in writing signed by Company and Guarantor.

(d) **Termination, Limits and Release.** This Guarantee is irrevocable, unconditional and continuing in nature and is made with respect to all Guaranteed Obligations now existing or hereafter arising and shall remain in full force and effect until the earlier of (i) the time when in accordance with the terms of the Agreement all of the Guaranteed Obligations are fully satisfied and discharged, and (ii) then, and only then, this Guarantee shall automatically be released and shall be of no further force and effect; otherwise, it shall remain in full force and effect. Other than as set forth in the previous sentence, no release of this Guarantee shall be valid unless executed by Company and delivered to Guarantor. Except with respect to (x) claims made by, damages incurred by, or amounts payable to third parties pursuant to an indemnity given under the

**FORM OF GUARANTY**

Agreement and (y) claims arising out of Subsidiary's fraud or willful misconduct, under no circumstances will Guarantor's aggregate liability hereunder exceed the amount of Operating Security required in the Agreement.

**(e) Law and Jurisdiction.**

(i) THIS GUARANTEE IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEVADA, WITHOUT REGARD FOR ANY PRINCIPLES OF CONFLICTS OF LAW THAT WOULD DIRECT OR PERMIT THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

(ii) GUARANTOR AND COMPANY IRREVOCABLY AGREE THAT THE STATE AND FEDERAL COURTS LOCATED IN WASHOE COUNTY, NEVADA, SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY SUIT, ACTION OR PROCEEDING, AND TO SETTLE ANY DISPUTE, WHICH MAY ARISE OUT OF OR IN CONNECTION WITH THIS GUARANTEE, AND FOR SUCH PURPOSES HEREBY IRREVOCABLY SUBMIT TO THE JURISDICTION OF SUCH COURTS, AND GUARANTOR CONSENTS TO THE JURISDICTION OF, AND TO THE LAYING OF VENUE IN, SUCH COURTS FOR SUCH PURPOSES AND HEREBY WAIVES ANY DEFENSE BASED ON LACK OF VENUE OR PERSONAL JURISDICTION OR OF INCONVENIENT FORUM.

**(f) Survival.** All representations and warranties made in this Guarantee and by Guarantor in any other instrument, document, or agreement delivered pursuant hereto or in connection herewith shall survive the execution and delivery of this Guarantee.

**(g) Severability.** Any provision of this Guarantee that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Where provisions of law or regulation resulting in such prohibition or unenforceability may be waived they are hereby waived by Guarantor and Company to the full extent permitted by law so that this Guarantee shall be deemed a valid binding agreement in each case enforceable in accordance with its terms.

**(h) Third Party Rights.** The terms and provisions of this Guarantee are intended solely for the benefit of Company and Guarantor and their respective successors and permitted assigns, and it is not the intention of Company or Guarantor to confer upon any other persons any rights by reason of this Guarantee.

**(i) No Set-off, Deduction or Withholding.** Guarantor hereby guarantees that payments hereunder shall be made without set-off or counterclaim and free and clear of and without deduction or withholding for any taxes; provided, that if the Guarantor shall be required under Applicable Law to deduct or withhold any taxes from such payments, then (i) the sum payable by Guarantor shall be increased as necessary so that after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable pursuant to this sentence) the Company receives an amount equal to the sum it would have received had no such deduction or withholding been required, (ii) Guarantor shall make such deduction or

**FORM OF GUARANTY**

withholding, and (iii) Guarantor shall timely pay the full amount deducted or withheld to the relevant governmental authority in accordance with Applicable Law.

**(j) Waiver of Right to Trial by Jury.** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF GUARANTOR AND COMPANY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTEE. EACH OF GUARANTOR AND COMPANY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

**(k) Counterparts; Facsimile Signatures.** This Guarantee may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures delivered by facsimile shall be deemed to be original signatures.

[Signature page follows.]

**FORM OF GUARANTY**

IN WITNESS WHEREOF, Guarantor has duly executed this Guarantee on the day and year first before written.

**[GUARANTOR]**

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

Acknowledged and Accepted:

**NEVADA POWER COMPANY D/B/A  
NV ENERGY, A NEVADA CORPORATION**

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

**FORM OF WORK SITE AGREEMENT**

**WORK SITE AGREEMENT  
[PROJECT NAME]<sup>4</sup>**

1. **INITIAL PROVISIONS**

- 1.1. This Work Site Agreement (“Agreement”) is entered into by [Owner/Developer] (referred to as “Supplier” in the Long-Term Energy Storage Agreement (“PPA”) and referred to herein as “Owner”), [IBEW Local Unions 1245, 401, 357 and 396], (“the Unions”)
- 1.2. The NV Energy [Project Name] (the "Project") will provide [megawatts] MW as a [resource type] renewable power plant located in [Southern/Northern] Nevada. This location is known as the “Project Site”. The Project is owned by [owner]. Owner and NV Energy are parties to that certain [PPA/BTA], and this Agreement has been attached to the [PPA/BTA] as Exhibit [ ]. Owner will enter into a Contract with an EPC Contractor for the construction of the Project (“EPC Contractor”). It is understood and agreed that all Covered Work on this Project will be performed pursuant to, and will be subject to, this Work Site Agreement. It is understood and agreed by and between the Parties to this Agreement that the final plans for the Project may be subject to modifications and approval by those public agencies possessing lawful approval authority over the Project pursuant to the [ ] Request for Proposals issued by NV Energy on or about [ ] and that this Agreement applies to the Project as it is finally approved by such entities and agencies. Once a final physical address is secured for this Project Site, they will be incorporated into this Agreement.
- 1.3. Owner is responsible for the completion of the Project, which will be constructed by Owner’s EPC Contractor. It is understood and agreed that Owner’s EPC Contractor shall be bound by this Work Site Agreement.
- 1.4. As provided below, all persons or entities assigning, awarding or subcontracting Covered Work (as defined in Article 2), or authorizing another party to assign, award or subcontract Covered Work, or performing Covered Work including, but not limited to, Owner’s EPC Contractor and its subcontractors and vendors, (and all of whom are individually and collectively referred to as “Employer” or “Employers”) will become subject to this Agreement by executing Attachment A (the “Agreement To Be Bound”). Notwithstanding the foregoing, Owner shall only be deemed an Employer for purposes of this agreement to the extent that Owner’s employees perform Covered Work.
- 1.5. The Unions are labor organizations whose members are construction industry

---

<sup>4</sup>**Note for Completion:** If the Construction Contractor primarily responsible for the engineering, construction and procurement of the Facility under the ESA enters this Agreement with the Unions (as is allowed under Section 25.14 of the Agreement), then this Work Site Agreement shall be modified to remove all references to Owner except those in Section 1.1, 1.2, and 1.3 above, and any remaining references to obligations of ‘Owner’ shall refer to and be obligations of EPC Contractor.

**FORM OF WORK SITE AGREEMENT**

- employees. The Unions are party to a multi-employer collective bargaining agreement (“Master Agreement”) that covers the geographic area of the Project. Where the term Master Agreement is used, it means the existing Master Agreement in effect on the date hereof.
- 1.6. A large labor pool represented by the Unions will be required to execute the work involved in the Project. Owner and Employers wish, and it is the purpose of this Agreement to ensure, that a sufficient supply of skilled craft workers are available at the Project, that all construction work and related work performed by the members of the Unions on this Project proceed continuously, without interruption, in a safe and efficient manner, economically with due consideration for the protection of labor standards, wages and working conditions. The parties also expressly recognize that the Project may be located in extreme weather conditions subject to high or low temperatures. Employers will provide a safe work site and comply with all state and federal requirements related to protection from heat. The Unions will not seek to restrict productivity based on these conditions. In furtherance of these purposes and to secure optimum productivity, harmonious relations between the parties and the orderly performance of the work, the parties to this Agreement agree to establish adequate and fair wage levels and working conditions.
  - 1.7. A central purpose of the parties in executing this Agreement is to guarantee labor peace on the Project by minimizing the jobsite friction that could arise at a common-situs jobsite when union employees are required to work alongside non-union employees in those other crafts with which they generally work in close proximity performing work that is closely related and coordinated, and by ensuring there will be no disruption of the work should any non-union workers be present to perform work outside the scope of the Agreement. This Agreement accomplishes these objectives by requiring that all Covered Work be performed by workers who are members of the Unions. For work that falls outside the scope of this Agreement or that is excluded from Covered Work, the Primary Employer further protects itself from the potential effects of jobsite friction by prohibiting all strikes, picketing or other concerted activity for any reason whatsoever, including payment of liquidated damages for any violation of such prohibition.
  - 1.8. In the interest of the future of the construction industry in the local area, of which the Unions are a vital part, and to maintain the most efficient and competitive posture possible, the Unions pledge to work and cooperate with Owner and the Employers to produce the most efficient utilization of labor and equipment in accordance with this Agreement. In particular, the Unions shall make all efforts to first source labor local to the Project Site and to minimize per diem expenses. In addition, the Unions shall not afford preferential status to other jobs in the jurisdiction; to the extent such preference will inhibit the availability of qualified workers for the Project.
  - 1.9. The parties’ obligations under this Agreement are subject to and only enforceable should the Owner obtain the PUCN Approval for the Project described in the [PPA/BTA]. If PUCN Approval for the Project is not obtained as outlined in the

**FORM OF WORK SITE AGREEMENT**

[PPA/BTA], this Agreement will terminate and the parties will have no liability towards one another.

**2. SCOPE OF AGREEMENT**

2.1. All work to construct Project covered by this Agreement is referred to as “Covered Work.” This Agreement also covers work done in temporary yards or facilities adjacent to or near the Project that is otherwise Covered Work described below. The scope of Covered Work set forth in this Agreement for this Project shall not be considered precedential.

2.2. IBEW Inside Work Includes:

2.2.1. This Agreement covers the following on-site electrical construction work within the scope of the Union's Master Agreement: handling and installation of electrical and electronic equipment, installation and connection of any electrical wires and cables, connections to power conversion stations, electrical fixtures, electrical appliances, electrical apparatus, electrical raceways or trays, electrical conduits, electrical instrumentation and controls. All of the foregoing work within the scope of this Agreement is referred to as “Covered Work.”

2.2.2. IBEW Inside Wire Covered Work also includes all work performed by electrical craft labor that is part of startup and commissioning, including, but not limited to, loop checks and rework and modifications during start-up and commissioning. The Primary Employer, manufacturer's representatives, vendor's representatives, and plant operating personnel may supervise and direct employees performing startup and commissioning, including loop checks and rework and modifications during start-up and commissioning. This related craft work is typically performed as part of a joint effort with these representatives and personnel. After a system or subsystem becomes operational and upon acceptance by the Primary Employer, Covered Work on that system or subsystem is completed. However, rework and modifications normally provided as a function of the initial construction effort, and other related initial construction work normally performed by members of the Unions, will be performed by members of the Unions. Nothing set forth in this Section 2.1.2 shall be construed as prohibiting or limiting permanent operating personnel, who are not members of the Unions, from operating systems prior to Covered Work being completed, or industry standard work performed by a manufacturer or vendor or its representatives to satisfy its guarantee or warranty prior to startup of a piece of equipment.

2.2.3. The handling following delivery to the Project Site and installation at the Project Site of any and all components of any electrical energy storage systems including but not limited to: battery Packs, racks, equipment and associated wiring, off loading of containerized or individual batteries, including but not limited to hoisting, handling, placement, installation, stacking, rack assembly, setting,

**FORM OF WORK SITE AGREEMENT**

welding, connections of all Megapacks, transformers, inverters including power cables, grounding and bonding, installation and testing of all monitoring and maintaining equipment, electrical safety components, electrically activated fire and smoke detection and protection devices, power and data cables, conduit below and above ground, AC and DC connections, start up and commissioning of all equipment, and clean up of electrical materials.

- 2.3. IBEW Outside Line Work includes all construction of transmission and distribution lines, outside substations, switchyards, and sub-station or switchyard related ground grids. To the extent there is additional work needed by Employer on the Project that is outside of the above language, but covered within the scope of work for the IBEW Outside Line Construction Agreement, [IBEW Local 357/396/401/1245 and the Employer agree to meet and confer to determine if that work can be covered by IBEW Local 357/396/401/1245].
- 2.4. Covered Work shall not include any work performed by federal, state, county, city or other governmental bodies and/or agencies or their contractors, or work performed by employees of NV Energy.
- 2.5. Purchase of any manufactured item produced in a genuine manufacturing facility for the supply of products is not Covered Work and shall not be considered subcontracting under Article 3 below. Any offsite fabrication, kitting, preparation or other assembly of components for the Project is Covered Work and shall be performed on site. For the convenience of the Employer, such work may be performed offsite if performed in accordance with the union standards for the applicable Union established by this Agreement. Covered Work does not include creating inverter skids, if they are created, built, or assembled in a genuine manufacturing facility.
- 2.6. The initial delivery of materials to the Project site, to a drop off location within the site, or to a temporary yard at/or area near the Project is not Covered Work. The loading, unloading and distributing of electrical materials within the site after the initial delivery are Covered Work.
- 2.7. This Agreement applies to employees performing Covered Work. It does not apply to supervisors not covered by a collective bargaining agreement, assistant supervisors, technical or non-manual employees including, but not limited to executives, office and clerical personnel, drafters, engineers, timekeepers, messengers, or any other employees above the classification of general foreman who perform administrative/clerical functions.
- 2.8. Notwithstanding anything to the contrary, Covered Work does not include operations or maintenance work. Further, Covered Work does not include:
  - 2.8.1. Any engineering, design or procurement for the Project;
  - 2.8.2. Any non-construction specialty services, such as technical representatives from equipment or design suppliers and project management personnel;

**FORM OF WORK SITE AGREEMENT**

- 2.8.3. Any installation of highly technical equipment, such as Supervisory Control and Data Acquisition (“SCADA”) components and housing of SCADA systems, control devices, computers or servers, provided that all raceways and wire trays, and all electrical cabling and termination, including fiber optic cabling for such systems, is Covered Work and not subject to this exception;
- 2.8.4. All work of non-manual employees, including, but not limited to, superintendents, supervisors and assistant supervisors, staff engineers or designers, inspectors, quality control and quality assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, security and safety personnel, emergency medical and first aid technicians, and other professional, engineering, administrative, supervisory, environmental compliance, executive and management employees or other employees not covered by the Master Agreement of one of the Unions;
- 2.8.5. Work done by a manufacturer or its representatives to satisfy its guarantee or warranty obligations after temporary certificate of occupancy or functioning turnover.

**3. SUBCONTRACTING**

- 3.1. Owner and each Employer agree that they will contract for the assignment, awarding or subcontracting of Covered Work, or authorize another party to assign, award or subcontract Covered Work, only to a person, firm, corporation or other entity that, at the time the contract is executed, has become a party to this Agreement by executing the Agreement to Be Bound.
- 3.2. Owner and each Employer agree that they will subcontract Covered Work only to a person, firm, or corporation who is or becomes signatory to this Work Site Agreement and who is or becomes signatory to the Union's Master Agreement. The subcontractor agrees to become a signatory of the Master Agreement under this provision only for the life of the current Master Agreement. Any Employer performing Covered Work on the Project shall, as a condition to working on the Project, become signatory to and perform all work under the terms of this Agreement and the Master Agreement. Before being authorized to perform any Covered Work, Employers (other than Primary Employer) shall become a party to this Agreement by signing an Agreement To Be Bound, which is provided as Attachment A to this Agreement. Every Employer shall notify the Unions in writing within three business days after it has subcontracted work, and shall at the same time provide to the Unions a copy of an Agreement To Be Bound executed by the Employer.
- 3.3. Nothing in this Agreement shall in any manner whatsoever limit the rights of Owner, or any other Employer, to subcontract work or to select its contractors or subcontractors, provided, however, that all Employers, at all tiers, performing Covered Work shall be required to comply with the provisions of this Agreement. Owner and every other Employer shall notify each of its contractors and subcontractors of the provisions of this Agreement and require as a condition precedent to the award of any construction contract or subcontract for Covered Work or allowing any subcontracted

**FORM OF WORK SITE AGREEMENT**

Covered Work to be performed, that all such contractors and subcontractors at all tiers become signatory to this Agreement and the Master Agreement. If any Employer fails to provide the Union with the Agreement To Be Bound executed by its subcontractor, that Employer shall be liable for any contributions to any trust funds that the subcontractor, or any subcontractor to that subcontractor, fails to make.

**4. WAGES. BENEFITS. HOURS OF WORK. SHIFT WORK. HOLIDAYS**

- 4.1. All employees covered by this Agreement (including foremen and general foremen if they are covered by a Master Agreement) shall be classified and paid wages, and contributions made on their behalf to multi-employer trust funds, all in accordance with the appropriate Master Agreement.
- 4.2. The standard work day shall consist of eight (8) hours of work between 6:00 a.m. and 5:30 p.m. with one-half hour designated as an unpaid period for lunch. Breaks will be allowed in accordance with Federal/State Law. The standard work week shall be five (5) consecutive days starting on Monday. Nothing herein shall be construed as guaranteeing any employee eight (8) hours of work per day or forty (40) hours of work per week.
- 4.3. It is recognized by the parties to this Agreement that the standard work week may not be desirable or cost effective for the Project, and other arrangements for hours of work may be considered. Such proposed modifications to the standard work week will be established with the consent of the Employer and the Union.
- 4.4. Shifts may be established when considered necessary by the Employer. Shift hours will be as follows: First shift will be eight (8) hours pay for eight (8) hours worked, plus one-half hour unpaid lunch period, Second shift will be eight (8) hours pay for eight (8) hours worked, plus the shift differential set forth in the Master Agreement.
- 4.5. A four (4) day ten (10) hour per day work week may be established. Forty (40) hours per week constitutes the work week Monday through Thursday. Hours beyond ten (10) will be paid at the double time rate. Overtime on Friday will be paid at time and one-half for the first eight (8) hours; hours beyond eight (8) will be paid at the rate established in the Master Agreement, not to exceed double time. There shall be no make-up days.
- 4.6. The Employer may establish two four (4) day ten (10) hour per day shifts at the straight time rate of pay Monday through Thursday. The first shift shall be ten (10) hours pay for ten (10) hours worked at the regular straight time hourly rate, exclusive of thirty (30) minute unpaid meal period. The second shift shall be ten (10) hours pay for ten (10) hours worked plus the shift differential set forth in the Master Agreement.
- 4.7. There will be no pyramiding of overtime rates.
- 4.8. Recognized holidays shall be as follows: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Fourth of July, Labor Day, Veterans Day,

**FORM OF WORK SITE AGREEMENT**

Thanksgiving Day, Day after Thanksgiving, and Christmas Day. Under no circumstances shall any work be performed on Labor Day except in cases of emergency involving life or property. In the event a holiday falls on Saturday, the previous day, Friday, shall be observed as such holiday. In the event a holiday falls on Sunday, the following day, Monday, shall be observed as such holiday. There shall be no paid holidays. If employees are required to work on a holiday, they shall receive the appropriate rate as provided in the Master Agreement not to exceed double the straight time rate of pay, Work on Labor Day requires the prior approval of the Business Manager of the applicable Union. The listed holidays may be modified by mutual agreement of the Primary Employer and the Unions.

- 4.9. Employees performing IBEW Covered Work dispatched off the Helper Book shall, at a minimum, receive wages and benefits as specified in Attachment C.

**5. UNION RECOGNITION AND REFERRAL**

- 5.1. The Employers recognize the Unions signatory to this Agreement as the sole and exclusive collective bargaining agents for its construction craft employees performing Covered Work for the Project, and further recognize the traditional and customary craft jurisdiction of the Unions.
- 5.2. All employees performing Covered Work shall be or shall become and then remain members in good standing of the Union as a condition of employment on or before the eighth (8th) day of employment, or the eighth (8th) day following the execution of this Agreement, whichever is later.
- 5.3. The Unions shall be the source of all craft employees for Covered Work for the Project. Employers agree to be bound by the hiring and layoff practices of the Unions, including hiring of apprentices, and to utilize its registration facilities and referral systems. Notwithstanding this provision, Owner and the Employers shall have the right to determine the competency of all referrals; determine the number of employees required determine the selection of employees to be laid-off and reject any applicant referred by the Unions.
- 5.4. The Unions will exert their utmost efforts to recruit sufficient numbers of skilled and qualified craft employees to fulfill the requirements of each Employer. The Unions and the Employers agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, disability, age, pregnancy, any genetic information or any other protected classification protected by law or regulation. Each Employer, Owner and the Unions agree that they will not require any employee or applicant to submit to genetic testing or non-job related medical inquiries.
- 5.5. NV Energy has always stressed the importance of local hiring on any construction project. Local hiring brings a sense of community to the initiative and supports the local economy in which it is doing business. In continuance of that initiative, the parties agree that hiring will be from the Unions books for the geographic area.

**FORM OF WORK SITE AGREEMENT**

- 5.6. In the event the referral facilities maintained by the Unions do not refer the employees as requested by the Employer within a forty-eight (48) hour period after such requisition is made by the Employer (Saturdays, Sundays and Holidays excepted), the Employer may employ applicants from any source.
- 5.7. Employers performing work under Section 2.2 (IBEW Inside Work) may utilize the workmen dispatched from the Helper Books described in Attachment C. These workmen may be used for all work involving installation of Generating Panels including material distribution and removal of waste from within the arrays. Installation Crews shall be setup in teams of 1 Foreman, 3 Apprentices, and 3 Helpers. Material Distribution Crews shall have at least 1 (JW) foreman and any combination of Apprentices, Helpers, and Material Expeditors not exceeding a crew size of 16 workmen. Once the Generating Panels are installed, any further work downstream of this identified work will be performed by either Apprentices or Journeymen as per the Master Agreement. In accordance with Section 4.28 of the Master Agreement, a foreman is required on any job with (3) or more workmen and may supervise up to (15) workmen including himself/herself.
- 5.7.1. If there are insufficient apprentices available, an Employer performing work under Section 2.2 (IBEW Inside Work) may utilize the workmen dispatched from the Helper Books with the consent of the IBEW.

**6. STRIKES AND LOCKOUTS**

- 6.1. During the term of this Agreement, the Unions, agree that they shall not (and that it shall not cause its agents, representatives and employees) to incite, encourage, condone or participate in any strike, walkout, slowdown, sit-down, stay in, boycott, sympathy strike, picketing or other work stoppage for any cause whatsoever with respect to this Project; and it is expressly agreed that any such action is in violation of this Agreement. In the event of a violation of this provision, any Employer shall be entitled to seek relief in court, specifically including injunctive relief, to restrain any such action on the part of the Unions, and/or any of their agents, representatives or employees, in addition to the Liquidated Damages for violation of Section 1.5 and/or 6.1 of this Agreement.
- 6.2. Upon written notice of a violation to the Union and its' officers, and their agents, representatives, employees and persons acting in concert with it, the Union shall take immediate action and will use its best efforts to prevent, end or avert any such activity or the threat thereof by any of its officers, members, representatives or employees, either individually or collectively, including but not limited to, publicly disavowing any such action and ordering all such officers, representatives, employees or members who participate in such unauthorized activity to cease and desist from same immediately and to return to work and comply with its orders. Nothing in this Agreement shall be construed to limit or restrict the right of any of the parties to this Agreement to pursue fully any and all remedies available under law in the event of a violation of this Article 6.

**FORM OF WORK SITE AGREEMENT**

- 6.3. The parties agree that to the extent the Master Agreement provisions of the Unions current labor agreement apply to this Project, they shall continue to apply throughout the duration of this Project notwithstanding the expiration of that agreement for all affected Employers on this Project.
- 6.4. Neither Owner nor any other Employer shall incite, encourage or participate in any lockout or cause to be locked out any employee covered under the provisions of this Agreement. The term “lockout” does not refer to the discharge, termination or layoff of employees by any Employer for any reasons in the exercise of its rights as set forth in any provision of this Agreement, nor does “lockout” include a decision by Owner or any Employer to terminate or suspend work on the Project Site or any portion thereof for any reason other than a labor dispute.
- 6.5. Notwithstanding the provisions of Section 6.1, it is agreed that the Unions retain the right to withhold the services of its members from a particular Employer who fails to make timely payments to the Unions benefit plans, or fails to timely pay its weekly payroll, in accordance with the Master Agreement; provided, in the event the Unions or any of its members withholds their services from such Employer, Owner or the applicable Employer shall have the right to replace such Employer with any other Employer who executes the Agreement To Be Bound. The Unions shall not withhold the services of its members under this provision without first giving Owner and the individual Employer alleged to be delinquent in its payments at least five (5) business days' notice, in the case of payroll delinquencies, and ten (10) business days' notice, in the case of benefit fund delinquencies, and an opportunity to cure the delinquency by tendering payment to the relevant employees or trust funds.

**7. GRIEVANCE PROCEDURE**

- 7.1. It is mutually agreed that any question arising out of and during the term of this Agreement involving interpretation and application of this Agreement shall be considered a grievance. Any grievances involving interpretation and application of this Agreement will be governed by this Agreement's grievance procedure as set forth below. Any grievances involving interpretation and application of the Master Agreement will be governed by the Master Agreement's grievance procedure.
- 7.2. Owner and any Employer, as well as the Unions, may bring forth grievances under this Article.
- 7.3. A grievance shall be considered null and void if not brought to the attention of the Employer(s) within five (5) working days after the incident that initiated the alleged grievance occurred or was discovered, whichever is later. The term “working days” as used in this Article shall exclude Saturdays, Sundays or holidays regardless of whether any work is actually performed on such days.
- 7.4. Grievances shall be settled according to the following procedure, except that grievances that do not involve an individual grievant shall be discussed by Owner (or the applicable Employer) and the Union, and then, if not resolved within five (5) working

**FORM OF WORK SITE AGREEMENT**

days of written notice unless extended by mutual consent, commence at Step 4.

- 7.5. Step 1. The steward and the grievant shall attempt to resolve the grievance with the Employer's supervisor within five (5) working days after the grievance has been brought to the attention of the Employer.
- 7.6. Step 2. In the event the matter remains unresolved in Step 1 above after five (5) working days, within five (5) working days after notice to the Union, the alleged grievance, in writing, may then be referred to the Business Manager of the Union and the Labor Relations representative of the Employer for discussion and resolution. A copy of the written grievance shall also be mailed/e-mailed to Owner and the applicable Employer.
- 7.7. Step 3. In the event the matter remains unresolved in Step 2 above after five (5) working days, within five (5) working days, the alleged grievance, in writing, may then be referred to the Business Manager of the Union and the Manager of Labor Relations of the Contractor or the Manager's designated representative and Owner (or the applicable Employer) as for discussion and resolution.
- 7.8. Step 4. If the grievance is not settled in Step 3 within five (5) working days, within five (5) days thereafter, either party may request the dispute be submitted to arbitration or the time may be extended by mutual consent of both parties. The request for arbitration and/or the request for an extension of time must be in writing with a copy to Owner and the applicable Employer. Should the parties be unable to mutually agree on the selection of an arbitrator, selection for that given arbitration shall be made by seeking a list of seven (7) labor arbitrators with construction experience from the Federal Mediation and Conciliation Service and alternately striking names from the list of names on the list until the parties agree on an Arbitrator or until one name remains. The first party to strike a name from the list shall alternate between the party bringing forth the grievance and the party defending the grievance. Owner (or the applicable Employer) shall keep a record of the sequence and shall notify the parties to the grievance as to which party has the right to strike a name first.
- 7.9. The selected arbitrator ("Arbitrator") shall conduct a hearing at which the parties to the grievance shall be entitled to present testimonial and documentary evidence. Hearings will be transcribed by a certified court reporter. The parties shall be entitled to file written briefs after the close of the hearing and receipt of the transcript.
- 7.10. Upon expiration of the time for the parties to file briefs, the Arbitrator shall issue a written decision that will be served on all parties and on Owner and the applicable Employer. The Arbitrator shall have the authority to utilize any equitable or legal remedy to prevent and/or cure any breach or threatened breach of this Agreement. The Arbitrator's decision shall be final and binding as to all parties signatory to this Agreement. No arbitration decision or award under this Article may provide retroactive relief of any kind exceeding fifteen (15) calendar days prior to the date the grievance was first initiated at Step 1.

**FORM OF WORK SITE AGREEMENT**

- 7.11. The cost of the Arbitrator and the court reporter, and any cost to pay for facilities for the hearing, shall be borne equally by the parties to the grievance. All other costs and expenses in connection with the grievance hearing shall be borne by the party who incurs them.
- 7.12. The Arbitrator's decision shall be confined to the issue(s) posed by the grievance and the Arbitrator shall not have the authority to modify, amend, alter, add to or subtract from any provision of this Agreement.
- 7.13. Any party to a grievance may invite Owner to participate in resolution of a grievance. Owner may, at its own initiative, participate in Steps 1 through 3 of the grievance procedure.
- 7.14. In determining whether the time limits of Steps 2 through 4 of the grievance procedure have been met, a written referral or request shall be considered timely if it is personally delivered, sent by overnight mail or e-mailed within the five (5) working day period. Any of the time periods set forth in this Article may be extended in writing by mutual consent of the parties to the grievance, and any written referral or request shall be considered timely if it is personally delivered, sent by overnight mail or e-mailed during the extended time period.
- 7.15. For purposes of e-mailed copies of grievances to Owner, they can be sent to the following e-mail address: [ \_\_\_\_\_@\_\_\_\_\_ ]

**8. MANAGEMENT RIGHTS**

- 8.1. Except as expressly limited by the specific provisions of this Agreement, the Employers retain full and exclusive authority for the management of their Project operations including, but not limited to: the right to direct the work force, including determination as to the number to be hired and the qualifications therefore; the number assigned to any specific work, the promotion, transfer, layoff of employees; the discipline or discharge of employees; the type of equipment to be used, the assignment and schedule of work; the promulgation of reasonable Project work rules; safety rules, drug and alcohol policies pursuant to Section 10.9 and the requirement, timing and number of employees to be utilized for Covered Work. Except as provided in the Master Agreement, no rules, customs, or practices which limit or restrict productivity or efficiency of the individual, and/or joint working efforts with other employees shall be permitted or observed. The foregoing enumeration of management rights shall not be deemed to exclude other functions not specifically covered by this Agreement.
- 8.2. There shall be no limitations or restriction upon Owner's choice of materials, techniques, methods, technology or design, or, regardless of source (including but not limited to country source of origin) or location, upon the use and installation of equipment, machinery, package units, pre-cast, prefabricated, prefinished, or preassembled materials of any kind, tools, or other labor-saving devices. The Union agrees that such material and equipment is to be installed without incident.

**FORM OF WORK SITE AGREEMENT**

- 8.3. In recognition of the dynamic nature of the power industry, the parties agree that Owner may apply new technologies to the Project as they are developed, (including technological advances in the construction of power plants) even if such application results in a reduction of the amount of labor on the Project.
- 8.4. All construction equipment assigned by an Employer to the Project shall be under the control of Owner. Owner shall have the right to determine how many pieces of construction equipment an individual shall operate.
- 8.5. Owner retains the right to deny access to the Project to any employee on the basis of violating Owner's safety processes and procedures.

**9. SUCCESSORSHIP AND SURVIVABILITY**

- 9.1. The subcontracting obligations described in Article 3 are independent obligations of Owner and all Employers which shall survive any full or partial termination of Owner's involvement in the Project for any reason, including, without limitation: (i) any full or partial termination or transfer of Owner's right to control and coordinate construction work on the Project (ii) any full or partial termination or transfer of a contract, if any, of Owner for any Covered Work; (iii) the transfer of all or any portion of the Project or any interest in the Project by any Owner; or (iv) any other event that results in the replacement of Owner with another Owner.
- 9.2. The parties agree that: (i) if Owner's involvement in the Project is terminated and (ii) Covered Work is performed by a contractor or subcontractor that is not in compliance with the provisions of Article 3, then Owner shall pay liquidated damages, as set forth on Attachment B.
- 9.3. Upon execution and delivery of an agreement assuming all the obligations of this Agreement and determination by the Unions that the successor is financially responsible, Owner shall be released from liability for the payment of liquidated damages under this Article 9 and shall have no liability for any breach of this Agreement by a successor employer or contractor. A successor shall be considered financially responsible if the Unions, in the exercise of its' reasonable judgment, determine that the successor is financially capable of completing the Project and complying with the obligations and undertakings of Owner under this Agreement, including any obligation to pay liquidated damages under this Article 9.
- 9.4. This Article shall be enforceable in any court of competent jurisdiction, and shall not be subject to the grievance procedure.

**10. GENERAL PROVISIONS**

- 10.1. If any article or provision of this Agreement shall be declared invalid, inoperative, or unenforceable by any competent authority of the executive legislative, judicial or administrative branch of the federal or state government, the Employers and the Union shall suspend the operation of such article or provisions during the period of its

**FORM OF WORK SITE AGREEMENT**

- invalidity and shall substitute by mutual consent, in its place and stead, an article or provision which will satisfy the objections to its validity and which, to the greatest extent possible, will be in accord with the intent and purpose of the article or provision in question.
- 10.2. If any article or provision of this Agreement shall be held invalid, inoperative or unenforceable by operation of law, or by any of the above mentioned tribunals of competent jurisdiction, the remainder of the Agreement or application of such article or provision to persons or circumstances other than to which it has been held invalid, inoperative or unenforceable shall not be affected thereby.
  - 10.3. Except as enumerated in this Agreement, all other terms and conditions of employment described in the Master Agreements that are in effect shall apply.
  - 10.4. The provisions of this Agreement shall take precedence over conflicting provisions of the Master Agreement of the Unions.
  - 10.5. The parties agree that all covered employees will be required to be at his or her work station and ready to begin work at the designated starting times. The parties support a pay arrangement that provides for the covered employee to be at his or her work station and ready to work at the start of this shift without compensation for the time traveled to his or her workstation however the parties further agree that employees will be compensated at the appropriate hourly rate of pay for travel time back to their vehicles from the workstation.
  - 10.6. Each person executing this Agreement represents and warrants that he or she is authorized to execute this Agreement on behalf of the party or parties indicated.
  - 10.7. Rights of Owner. Nothing in this Agreement shall be construed as limiting the Owner, in its sole discretion at any time to terminate, delay, cease, or suspend construction activities, in whole or part, on this Project and/or shut down the Project Site or any part thereof for reason other than a labor dispute without any liability whatsoever, except for liability incurred prior to such action.
  - 10.8. This Agreement may be executed in counterparts.
  - 10.9. The parties recognize that Owner strongly supports a drug free work environment on each of its projects. To that end, the parties agree that Owner's drug testing policies shall be applied to the Project by each Employer on the site. Specifically, that policy includes pre-employment drug testing prior to starting work on the site, random drug testing on the worksite once employed and drug testing following any industrial accident resulting in an injury or any damage to Employer or Owner property. Should Owner require a pre-employment drug test of the employee(s) of the signatory Employer as noted above, and the employee(s) (through the signatory Employer) will be paid (1) hour show up pay if he successfully passes the pre-employment drug test. Should an employee(s) initial test be deemed inconclusive and require further testing that employee(s) shall be paid (2) hour waiting time per day upon successfully passing

**FORM OF WORK SITE AGREEMENT**

the pre-employment drug testing. This pay provision shall only apply to pre-employment drug tests.

10.10. Zone Pay -- the parties reiterate their agreement that the provisions of the Inside Construction Master Agreement, Section 4.38 and 4.39 shall not apply throughout the term of the Project and that no zone pay shall be payable when workers are ordered to report directly to a jobsite. Any other references to Zone Pay in the Inside Construction Master Agreement shall not apply.

10.11. Any notices required under this Agreement shall be given as follows. Either party may notify the other in writing if its person designated to receive notice is changed.

To Owner:

[Name]

[Title]

[Company]

[Address]

[City, State, Zip]

[Email]

[Phone]

To the Unions:

[Name]

[Title]

[Company]

[Address]

[City, State, Zip]

[Email]

[Phone]

With a copy to:

[Name]

[Title]

NV Energy

[Address]

[City, State, Zip]

[Email]

[Phone]

[Name]

[Title]

[IBEW Local 357/396/401/1245]

[Address]

[City, State, Zip]

[Email]

[Phone]

11. **TERM OF AGREEMENT**

11.1. The term of this Agreement shall commence on the date an agreement is executed between NV Energy and Owner for the Project regarding this Project as identified in Section 1.2, and shall continue in effect until completion of all Covered Work pursuant to Article 2.

SIGNATURE PAGE FOLLOWS

**EXHIBIT 21**

**FORM OF WORK SITE AGREEMENT**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of [insert date].

[Owner **OR** EPC Contractor, as applicable]<sup>5</sup> [IBEW LOCAL 357]

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

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

[IBEW LOCAL 396]

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

[IBEW LOCAL 401]

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

[IBEW LOCAL 1245]

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

<sup>5</sup>**Note for Completion:** if EPC Contractor enters this Agreement with the Unions (as is allowed under Section 25.14 of the Agreement), then Owner shall have no obligation to sign this Agreement.

**EXHIBIT 21**

**FORM OF WORK SITE AGREEMENT**

**ATTACHMENT A**

**AGREEMENT TO BE BOUND  
[PROJECT NAME]**

The undersigned hereby certifies and agrees that:

1.) It is an Employer as that term is defined in Section 1.4 of the NV ENERGY RENEWABLE ENERGY PROJECT Work Site Agreement (“Agreement”) because it has been, or will be, awarded a contract or subcontract to assign, award or subcontract Covered Work on the Project (as defined in Sections 1.2 and Article 2 of the Agreement), or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

2.) In consideration of the award of such contract or subcontract, and in further consideration of the promises made in the Agreement and all attachments thereto (a copy of which was received and is hereby acknowledged), it accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made thereto.

3.) If it performs Covered Work, it will be bound by the legally established trust agreements designated in local master collective bargaining agreements, and hereby authorize the parties to such local trust agreements to appoint trustees and successor trustee to administer the trust funds, and hereby ratifies and accepts the trustees so appointed as if made by the undersigned.

4.) It has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of the Agreement.

5.) It will secure a duly executed Agreement ToBe Bound, in form identical to this document, from any Employer(s) at any tier or tiers with which it contracts to assign, award, or subcontract Covered Work, or to authorize another party to assign, award or subcontract Covered Work, or to perform Covered Work.

DATED: \_\_\_\_\_ Name of Employer \_\_\_\_\_

\_\_\_\_\_  
(Authorized Officer & Title)

\_\_\_\_\_  
(Address)

**EXHIBIT 21**

**FORM OF WORK SITE AGREEMENT**

**ATTACHMENT B  
SCHEDULE OF LIQUIDATED DAMAGES FOR BOTH PARTIES**

**WORK SITE AGREEMENT  
[PROJECT NAME]**

1. Strikes: In the event the Union violates the terms of Section 6.1 of the Work Site Agreement, including without limitation, by interfering with the Project or by supporting a strike at the work site, then the Union shall be jointly and severally liable for an amount equal to twenty thousand dollars (\$20,000) for each day in which the Union is in violation of the terms of Sections 1.5 and/or 6.1.
2. Failure of Successor to Assume. In the event Owner fails to cause its successor to assume the Work Site Agreement,

Owner shall pay an amount equal to the journeyman electrician's or journeyman lineman's total compensation, as applicable, for each hour that work was performed on the Project within the scope of this Agreement by employees of contractors or subcontractors who are not signatory to this Agreement as follows:

Fifty Percent (50%) per hour to the qualified pension plan and  
Fifty Percent (50%) per hour to the qualified health and welfare plan

of the Union(s) performed by the contractor(s) or subcontractor(s) not signatory to this Agreement. The parties agree that the Union shall enforce, collect and receive the liquidated damages described herein on behalf of its qualified pension plan and its qualified health and welfare plan. The qualified pension plans and the qualified health and welfare plans shall have no right to independently enforce the provisions of this Agreement.

3. The liability of the Owner, any Employer and/or the Union under this Agreement shall be several and not joint. Neither the Owner, nor any Contractor shall be liable for any violations of this Agreement by any other Contractor or party; and the Union shall not be liable for any violations of this Agreement by any other Union or party.
4. In no event shall Owner or Unions' liability for violation of this Agreement exceed \$1,000,000 (one million dollars).

**EXHIBIT 21**

**WORK SITE AGREEMENT**

**ATTACHMENT C**

**IBEW 357 NV Energy [Project Name] Project Helper Rates**

	<b>CCheck</b>	<b>HH&amp;W</b>	<b>DDFW</b>	<b>BB-Plan</b>	<b>JJATC</b>	<b>LLMCC *</b>	<b>NNLMCC</b>	<b>NNEBF 3%</b>	<b>CCAF 0.2%</b>	<b>TTotal</b>
HHelper	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$

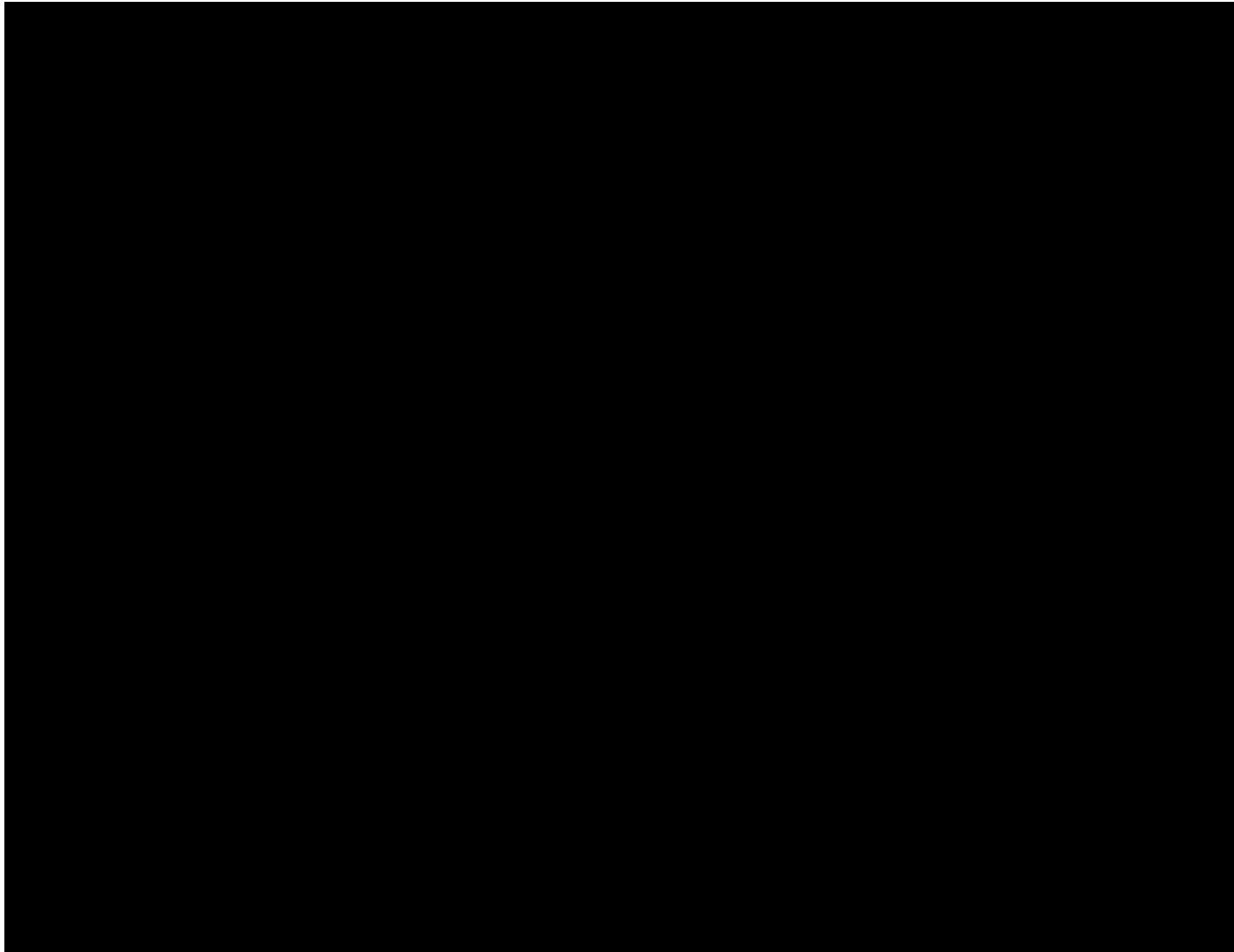
\* LMCC is a total of [\$ ]: [\$ ] contribution from the contractor and [\$ ] deduction from the employees' wages.

Wages and Benefits are for workers dispatched from the Helper Books for the NV Energy [Project Name].

**EXHIBIT 22**

**RESERVED**


**APPROVED CONTRACTORS  
REDACTED PUBLIC VERSION**



**EXHIBIT 23A**

**EQUIPMENT SPECIFICATIONS (BESS)**

[Attached]

	<b>EQUIPMENT SPECIFICATIONS</b>	
	Subject: <b>Renewable Energy &amp; Origination</b> <b>Energy Storage Facility</b>	
Number: <b>NVE-PPA02</b>	Current Issue: <b>REV 2</b>	Issue Date: <b>02/05/2025</b>
	<b>Revised by: Director, Engineering &amp; Project Management</b> Shane Pritchard: _____	
	<b>Approved by: VP, Renewable Energy &amp; Origination</b> Jimmy Daghljan: _____	

Revision No.	Date	Revision Notes	Reviewed By	Approved By
0	11/20/2024			
1	01/29/2025	See markup revisions below		
2	02/05/2025	See markup revisions below		

**EQUIPMENT SPECIFICATIONS  
STORAGE FACILITY**

---

**TABLE OF CONTENTS**

**1.0 DEFINITIONS ..... 1**

**2.0 CODES AND STANDARDS ..... 1**

**3.0 OVERVIEW AND BENEFITS OF EQUIPMENT SPECIFICATIONS..... 1**

**4.0 BESS COMPONENTS ..... 2**

**4.1. Battery Packs..... 2**

**4.2. Battery Management System (BMS)..... 3**

**4.3. Power Conversion System (PCS)..... 3**

**4.4. RESERVED..... 3**

**4.5. BESS overall AC to AC Efficiency (Round-Trip Efficiency):..... 3**

**5.0 TELEMETRY INTEGRATION:..... 4**

**6.0 BESS PACK MANUFACTURER QUALIFICATION..... 4**

**6.1. Experience Level ..... 4**

**6.2. Track Record ..... 4**

**6.3. Annual Production Capacity..... 4**

**6.4. Certifications ..... 5**

**6.5. Client References..... 5**

**6.6. Financial Stability ..... 5**

**6.7. Project Examples..... 5**

**6.8. Technical Support and Warranty ..... 5**

**6.9. Sustainability Practices..... 5**

**7.0 TESTING REQUIREMENTS (QUALITY CONTROL)..... 6**

**7.1. FAT Testing Requirements: ..... 6**

**EQUIPMENT SPECIFICATIONS  
STORAGE FACILITY**

---

**1.0 DEFINITIONS**

<b>Term</b>	<b>Definition</b>
AC	Alternating Current
BESS	Battery Energy Storage Systems
BMS	Battery Management Systems
DoD	Depth of Discharge
DC	Direct Current
EMS	Energy Management System
FAT	Factory Acceptance Test
IEC	International Electrotechnical Commission
IEEE	Institute of Electrical and Electronics Engineers
MTBF	Mean time between failures
PCS	Power Conversion System
SCADA	Supervisory Control and Data Acquisition systems
SOC	State of Charge (Battery)
SOH	State of Health (Battery)
UL	Underwriters Laboratories

**2.0 CODES AND STANDARDS**

1. UL 1973: Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail (LER) Applications
2. UL9540 and UL9540A: Energy Storage Systems and Equipment
3. IEC 62619 Safety requirements for secondary lithium cells and batteries, for use in industrial applications
4. UL 1741: Standard for Inverters, Converters, Controllers and Interconnection System Equipment for Use with Distributed Energy Resources
5. IEEE 1547: Standard for Interconnection and Interoperability of Distributed Energy Resources with Associated Electric Power Systems Interfaces
6. IEEE 1547.1: Standard Conformance Test Procedures for Equipment Interconnecting Distributed Energy Resources with Electric Power Systems and Associated Interfaces
7. NFPA 855: Standard for the installation of Stationary Energy Storage Systems
8. NFPA 2001: Clean Agent Fire Extinguishing Systems
9. NFPA 2010: Fixed Aerosol Fire Extinguishing Systems

**3.0 OVERVIEW AND BENEFITS OF EQUIPMENT SPECIFICATIONS**

The equipment specifications outlined in this Exhibit 23A (these “Specifications”) are designed to ensure the safe, reliable, and efficient operation of the Storage Facility over the Term applicable to the Storage Facility. These Specifications have been carefully developed to maintain high standards of performance, availability, and reliability, which are essential for meeting contractual energy delivery obligations and ensuring the long-term viability of the Storage Facility.

## EQUIPMENT SPECIFICATIONS STORAGE FACILITY

---

The primary objective of these Specifications is to mitigate risks associated with equipment failure, degradation, and suboptimal performance by establishing rigorous technical and quality requirements for all major components. By doing so, these Specifications help to safeguard the Storage Facility's operational efficiency, ensure compliance with applicable industry codes and standards, and provide a framework that supports grid stability and integration.

Key benefits include:

- **Performance Assurance:** These Specifications are tailored to maintain optimal performance over the Term applicable to the Storage Facility, minimizing the risk of Product shortfalls and maximizing the return on investment.
- **Reliability and Availability:** These Specifications promote the use of high-quality, proven equipment with warranties and manufacturer experience, reducing downtime and enhancing Storage Facility availability.
- **Safety:** These Specifications enforce strict compliance with safety standards and guidelines to ensure the safety of both personnel and the broader energy system.
- **Risk Mitigation:** Clear technical and performance standards reduce the likelihood of unforeseen issues, ensuring that any risks related to equipment quality, installation, and long-term performance are managed proactively.
- **Long-term Sustainability:** By ensuring that equipment is capable of withstanding the environmental and operational conditions specific to the Storage Facility location, these Specifications contribute to the long-term sustainability of the Storage Facility.

By enforcing these Specifications, Buyer aims to ensure that the Storage Facility not only meets immediate energy delivery goals but also maintains consistent, reliable performance throughout the lifespan of the Storage Facility. This approach provides value to all stakeholders, including developers, investors, and utility customers, through increased efficiency, reduced risks, and enhanced operational certainty.

### 4.0 BESS COMPONENTS

This section specifies the minimum requirements for BESS components, including battery type, operating conditions, and warranties, to ensure reliability and longevity. Key elements such as the BMS, PCS, and efficiency parameters are detailed to optimize performance, safety, and compliance with grid standards.

#### 4.1. Battery Packs

- **Type:** Lithium-ion or other advanced chemistries, suitable for modular utility-scale units (e.g., 2-5MW per unit)
- **Temperature Range:** The battery pack must operate between -25°C and +50°C, in accordance with individual battery pack specifications. Rated capacity shall be maintained at temperatures up to +50°C, with acceptable derating permitted above +50°C depending on the selected site elevation
- **Capacity:** Total energy capacity specified at the pack level and sized in MWh based on overall Storage Facility storage requirements.
- **Warranty:** Minimum 3-year warranty, for major components of BESS pack including:
  1. **Battery Cells/Modules**
    - Coverage for capacity retention and performance degradation within specified

## EQUIPMENT SPECIFICATIONS STORAGE FACILITY

---

limits

- Protection against manufacturing defects or failures under normal operating conditions.

### 2. Battery Management System (BMS)

- Ensures monitoring, control, and safety of the batteries.
- Coverage for functionality, such as balancing cells and protecting against overcharging, over-discharging, and overheating.

### 3. Power Conversion System (PCS)/Inverter

- Converts direct current (DC) from the batteries to alternating current (AC) and vice versa.
- Warranty covers performance efficiency, power capacity, and defects in design or materials.

### 4. Thermal Management System

- Includes HVAC systems, cooling fans, or liquid cooling units.
- Warranty addresses operational reliability and the ability to maintain optimal temperature ranges.

### 5. Enclosures/Container

- Protects components from environmental factors such as temperature, humidity, and dust.
- Coverage often includes material integrity and resistance to environmental degradation.

### 6. Auxiliary Systems

- Includes fire suppression systems, relays, and cabling.
- Warranties cover proper operation and safety compliance.

### 7. Structural Components

- Mounting racks or support structures for batteries and equipment.
- Coverage often includes material defects and structural integrity.

- **Grid Compliance:** Battery packs must meet UL 1973, UL 9540, UL 9540A, UL 1741 SB, IEC 62619, and IEEE 1547 standards for safe grid integration and operation.

#### 4.2. Battery Management System (BMS)

- **Function:** Monitors and manages battery health, charge/discharge rates, and thermal conditions.
- **Temperature Range:** Same as the battery system.
- **Accuracy:** High precision in voltage and temperature measurements.

#### 4.3. Power Conversion System (PCS)

- **Type:** Inverters specifically designed for BESS.
- **Efficiency:**  $\geq 93\%$  (round-trip efficiency).
- **Temperature Range:** The PCS must operate between  $-25^{\circ}\text{C}$  and  $+50^{\circ}\text{C}$ . Rated capacity shall be maintained at temperatures up to  $+50^{\circ}\text{C}$ , with acceptable derating permitted above  $+50^{\circ}\text{C}$  depending on the selected site elevation.

#### 4.4. [Reserved.]

#### 4.5. BESS overall AC to AC Efficiency (Round-Trip Efficiency):

## EQUIPMENT SPECIFICATIONS STORAGE FACILITY

---

- Requirement: Project will meet the Storage Round Trip Efficiency Guarantee set forth in Section 3.4.9.1, calculated in accordance with Exhibit 28.

### 5.0 TELEMETRY INTEGRATION:

BMS/EMS must monitor and provide key data points at a BESS level, including:

1. **State of Charge (SoC):**
  - aggregated across the entire battery system to give an overall charge level for the Storage Facility.
2. **State of Health (SoH)**
  - as an aggregate value for the entire Storage Facility, based on the performance of all cells and modules.
3. **Total Voltage (Pack Voltage)**
4. **Total Current (Charge/Discharge Current)**
5. **Power (Charge/Discharge Power)**
6. **Cycle Count**
7. **Energy (Cumulative/ total Charging Energy and Discharging Energy for the entire Storage Facility)**
8. **Reactive Power Output (Q)**
9. **Charging Energy/Discharging Energy limits**

Some of these data points may be provided at the EMS/SCADA level, as individual BMS units may not have the capability to record site-level data.

All these data points should be transmitted via telemetry to the Buyer's EMS or SCADA systems for real-time monitoring and control.

### 6.0 BESS PACK MANUFACTURER QUALIFICATION

Equipment manufacturer qualification requirements ensure that only reputable manufacturers provide critical components for utility-scale BESS, supporting the long-term success of this Agreement. These standards specifically apply to manufacturers of battery packs and related systems; if the battery pack manufacturer differs from the cell manufacturer, these requirements are applicable to the pack manufacturer. By assessing experience, capabilities, and adherence to industry standards, these qualifications help mitigate risks and ensure reliable, enduring Storage Facility performance.

#### 6.1. Experience Level

Minimum of 3 years in the manufacturing and supply of BESS packs, specifically for utility-scale applications.

#### 6.2. Track Record

The manufacturer must demonstrate a proven track record with similar projects, having supplied BESS packs to at least 6 projects each exceeding 20 MW/80MWh in capacity, with each project financed by a reputable financial institution.

#### 6.3. Annual Production Capacity

Demonstrated annual production capacity of at least 2 GWh of BESS packs, with scalable production capabilities to meet project demands.

**EQUIPMENT SPECIFICATIONS  
STORAGE FACILITY**

---

**6.4. Certifications**

Must hold relevant certifications, including:

- ISO 9001 (Quality Management Systems)
- UL 9540 (Safety of Energy Storage Systems) or equivalent

**6.5. Client References**

Provide a minimum of 3 client references from completed BESS projects, specifically focused on:

- Module performance
- Reliability
- Customer satisfaction
- Warranty support and responsiveness

**6.6. Financial Stability**

Submission of proof of financial stability, including financial statements demonstrating a minimum annual revenue of \$50 million. The manufacturer must also provide an Altman-Z score of at least 1.8, indicating stable financial health and low risk of bankruptcy.

**6.7. Project Examples**

Present 3 examples of completed BESS projects with a total project cost exceeding \$50 million each within the last 5 years. Each example must include:

- Project name and description: Specify the project location and any unique features of the project.
- Size (MW) and total energy output: Specify the total energy output in MWh annually.
- Project structure: Specify the nature of the project.
- Performance Metrics shall include at least one of the following criteria:
  - Uptime percentage (minimum 95%)
  - Energy yield (expected vs. actual)
  - Performance guarantees met or exceeded (including degradation rates and capacity retention)

**6.8. Technical Support and Warranty**

Provide details of post-installation technical support, including warranty terms (minimum of 5 years for battery performance and 5 years for ancillary components).

**6.9. Sustainability Practices**

Outline sustainability practices related to the production, use, and end-of-life disposal or recycling of the BESS packs, demonstrating a commitment to environmental stewardship.

**EQUIPMENT SPECIFICATIONS  
STORAGE FACILITY**

---

**7.0 TESTING REQUIREMENTS (QUALITY CONTROL)**

FAT is a critical quality assurance process conducted prior to the shipment of BESS packs. The primary purpose of FAT is to verify that the equipment meets specified design criteria, operates as intended, and complies with relevant standards and regulations. FAT provides assurance to stakeholders that the BESS packs are manufactured to the required quality, performance, and safety specifications before deployment in the field.

Supplier is responsible for determining the appropriate scope of Factory Acceptance Testing, following Good Utility Practice to ensure long-term performance of the Facility under the Agreement. Recommended tests may include the following; however, the final FAT scope remains at the Supplier's discretion, allowing alignment with Good Utility Practice and Project-specific requirements.


**7.1. FAT Testing Requirements:**

1. **Visual Inspection:** Conduct a thorough visual check for any physical defects or abnormalities in the BESS packs.
2. **Electrical Testing:** Perform insulation resistance testing and continuity checks on electrical components.
3. **Functional Testing:** Execute operational tests to ensure proper functioning of all components, including the BMS.
4. **Performance Testing:** Assess the charge and discharge cycles, measuring energy output and efficiency against benchmarks.
5. **Safety and Compliance Testing:** Verify adherence to relevant safety standards (e.g., UL 9540, IEC 62619).
6. **Data Logging and Reporting:** Document all test results, anomalies, and corrective actions, generating a comprehensive FAT report.
7. **[Reserved.]**
8. **Acceptable Quality Level:** A minimum of 10% of the packs designated for shipment as part of the project must undergo FAT testing. If all sampled modules pass the tests, the entire batch will be deemed acceptable. However, if any failures occur during this initial testing phase, an additional 20% of the batch will be subjected to FAT. Should further failures be identified during this extended testing, the following actions will be taken:
  - The entire batch may be subject to a comprehensive inspection at the discretion of Supplier.
  - Supplier may reject the batch based on the severity of the defects.
  - Supplier will be required to either replace the defective modules or implement corrective actions as necessary to meet the specified quality standards.

**EXHIBIT 23B**

**EQUIPMENT SPECIFICATIONS (HV/MV)**

[Attached]

	<b>EQUIPMENT SPECIFICATIONS</b>	
	Subject: <p style="text-align: center;"><b>Renewable Energy &amp; Origination</b>  <b>HV / MV Electrical Equipment</b></p>	
Number: <p style="text-align: center;"><b>NVE-PPA04</b></p>	Current Issue: <p style="text-align: center;"><b>REV 1</b></p>	Issue Date: <p style="text-align: center;"><b>01/29/2025</b></p>
	Revised by: Director, Engineering & Project Management Shane Pritchard: _____	
	Approved by: VP, Renewable Energy & Origination Jimmy Daghljan: _____	

Revision No.	Date	Revision Notes	Reviewed By	Approved By
0	10/29/2024			
1	01/29/2025	See markup revisions below		

**TABLE OF CONTENTS**

<b>1.0</b>	<b><u>DEFINITIONS</u></b> .....	<b>I</b>
<b>2.0</b>	<b><u>CODES AND STANDARDS</u></b> .....	<b>1</b>
<b>3.0</b>	<b><u>OVERVIEW AND BENEFITS OF EQUIPMENT SPECIFICATIONS</u></b> .....	<b>1</b>
<b>4.0</b>	<b><u>TRANSFORMERS</u></b> .....	<b>2</b>
4.1	<u>HV Transformers</u> .....	2
4.2	<u>MV Transformers</u> .....	3
<b>5.0</b>	<b><u>CIRCUIT BREAKERS, DISCONNECT SWITCHES, SURGE ARRESTORS</u></b> .....	<b>3</b>
5.1	<u>HV Breakers</u> .....	3
5.2	<u>MV Breakers</u> .....	3
5.3	<u>HV/MV Disconnect Switches</u> .....	3
5.4	<u>HV/MV Surge Arrestors</u> .....	3
5.5	<u>RESERVED:</u> .....	4
<b>6.0</b>	<b><u>EQUIPMENT MANUFACTURER QUALIFICATIONS</u></b> .....	<b>4</b>
6.1	<u>Manufacturer Qualification Requirements for MV and HV Transformers</u> .....	4
6.2	<u>Equipment Manufacturer Qualification Requirements for Circuit Breakers and Disconnect Switches</u> .....	5
<b>7.0</b>	<b><u>TESTING REQUIREMENTS (QUALITY CONTROL)</u></b> .....	<b>6</b>
7.1	<u>FAT Testing Requirements for Transformers</u> .....	6
7.2	<u>FAT Testing Requirements for Circuit Breakers</u> .....	6
7.3	<u>Acceptable Quality Level (AQL)</u> .....	7
7.4	<u>Corrective Actions</u> .....	7

**EQUIPMENT SPECIFICATIONS  
HV/MV ELECTRICAL EQUIPMENT**

**1.0 DEFINITIONS**

<b>Term</b>	<b>Definition</b>
<b>PPA</b>	Power Purchase Agreement
<b>PV</b>	Photovoltaic
<b>BESS</b>	Battery Energy Storage System
<b>TUV</b>	Technischer Überwachungsverein (Technical Inspection Association)
<b>UL</b>	Underwriters Laboratories
<b>IEC</b>	International Electrotechnical Commission
<b>MTBF</b>	Mean Time Between Failures
<b>SCADA</b>	Supervisory Control and Data Acquisition
<b>DCS</b>	Distributed Control Systems
<b>PLC</b>	Programmable Logic Controllers
<b>HMI</b>	Human-Machine Interface
<b>ISO</b>	International Organization for Standardization
<b>ANSI</b>	American National Standards Institute
<b>HV</b>	High voltage
<b>MV</b>	Medium voltage
<b>FAT</b>	Factory Acceptance Tests or Factory Acceptance Testing

**2.0 CODES AND STANDARDS**

1. ANSI/IEEE C57.12 Power Transformers and Reactors
2. ANSI/IEEE C37 Circuit Breakers, Switchgear
3. IEC 60076 Power Transformers
4. IEC 62271 High Voltage Switchgear and Controlgear
5. IEC 61439 Low Voltage and Medium Voltage Switchgear and Controlgear Assemblies
6. IEC 60898 Circuit Breakers for Overcurrent Protection
7. IEC 60947 Low-Voltage Switchgear and Controlgear
8. IEC 60529 Degrees of Protection Provided by Enclosures - IP Code
9. NFPA 70 (NEC) – National Electrical Code
10. UL 1741 Inverters, Converters, Controllers, and Interconnection System Equipment for Use with Distributed Energy Resources
11. FERC standards

**3.0 OVERVIEW AND BENEFITS OF EQUIPMENT SPECIFICATIONS**

These HV and MV equipment specifications (these “Specifications”) outlined in this Exhibit 23B apply to renewable energy facilities, including solar PV, BESS, wind, and other renewable energy generating

## EQUIPMENT SPECIFICATIONS HV/MV ELECTRICAL EQUIPMENT

---

facilities. These Specifications are designed to ensure the safe, reliable, and efficient operation of the Facility throughout the Term. They have been carefully developed to maintain high standards of performance, availability, and reliability, which are essential for meeting contractual energy delivery obligations and ensuring the long-term viability of the Facility.

The primary objective of these Specifications is to mitigate risks associated with equipment failure, degradation, and suboptimal performance by establishing rigorous technical and quality requirements for all major components. By doing so, these Specifications help to safeguard the Facility's operational efficiency, ensure compliance with applicable industry codes and standards, and provide a framework that supports grid stability and integration.

Key benefits include:

- **Performance Assurance:** These Specifications are tailored to maintain optimal performance over the Term, minimizing the risk of energy output shortfalls and maximizing the return on investment.
- **Reliability and Availability:** These Specifications promote the use of high-quality, proven equipment with warranties and manufacturer experience, reducing downtime and enhancing Facility availability.
- **Safety:** These Specifications enforce strict compliance with safety standards and guidelines to ensure the safety of both personnel and the broader energy system.
- **Risk Mitigation:** Clear technical and performance standards reduce the likelihood of unforeseen issues, ensuring that any risks related to equipment quality, installation, and long-term performance are managed proactively.
- **Long-term Sustainability:** By ensuring that equipment is capable of withstanding the environmental and operational conditions specific to the Facility location, these Specifications contribute to the long-term sustainability of the Facility.

By enforcing these Specifications, Buyer aims to ensure that the Facility not only meets immediate energy delivery goals but also maintains consistent, reliable performance throughout the lifespan of the Facility. This approach provides value to all stakeholders, including developers, investors, and utility customers, through increased efficiency, reduced risks, and enhanced operational certainty.

### 4.0 TRANSFORMERS

This section specifies the minimum requirements for HV and MV transformers used in utility-scale renewable energy projects. These transformers are critical for safe and efficient power transfer, designed to meet stringent standards for performance, reliability, and durability in various environmental conditions. The specifications below outline essential parameters such as temperature range, efficiency and reliability to ensure long-term operational stability.

The transformer design must be tailored to the specific use case and duty cycle (e.g., solar, wind, or BESS applications) to meet the unique demands of each system.

#### 4.1 HV Transformers

- **Type:** Oil-immersed transformers.
- **Temperature Range:** -25°C to 50°C (for ambient temperature).
- **Efficiency:**  $\geq 98\%$ .

## EQUIPMENT SPECIFICATIONS

### HV/MV ELECTRICAL EQUIPMENT

---

- The transformer efficiency and operating temperature range shall be based on measured performance data from independent third-party testing and certification (e.g., TUV, UL, or IEC lab testing), field testing results from similar projects or FAT. The data should cover efficiency at various load levels and confirm that the transformer maintains optimal performance across the specified operating temperature range. Performance claims made in datasheets shall be validated with supporting performance documentation.
- **Insulation:** High-quality insulation materials to ensure long-term reliability.

#### 4.2 MV Transformers

- **Type:** Oil-immersed, dry-type or cast-resin transformers.
- **Temperature Range:** -25°C to 50°C (for ambient temperature).
- **Efficiency:**  $\geq 98\%$ .
  - The transformer efficiency and operating temperature range shall be based on measured performance data from independent third-party testing and certification (e.g., TUV, UL, or IEC lab testing), field testing results from similar projects or FAT. The data should cover efficiency at various load levels and confirm that the transformer maintains optimal performance across the specified operating temperature range. Performance claims made in datasheets shall be validated with supporting performance documentation.
- **Insulation:** Enhanced insulation systems to handle environmental conditions.

## 5.0 CIRCUIT BREAKERS, DISCONNECT SWITCHES, SURGE ARRESTORS

This section specifies the minimum requirements for HV and MV circuit breakers, disconnect switches and surge arrestors to ensure safe, reliable operation in utility-scale renewable energy projects. Each component must meet or exceed specified performance standards, including temperature tolerance and fault current handling capacity.

### 5.1 HV Breakers

- **Type:** Air-insulated, SF6-insulated, or vacuum breakers.
- **Temperature Range:** -25°C to 50°C (for ambient temperature).
- **Interrupting Capacity:** Sufficient to handle the maximum fault current in the system.

### 5.2 MV Breakers

- **Type:** Air-insulated, SF6-insulated or vacuum breakers
- **Temperature Range:** -25°C to 50°C (for ambient temperature).
- **Interrupting Capacity:** Adequate for the maximum fault levels in the installation.

### 5.3 HV/MV Disconnect Switches

- **Type:** Air-insulated, SF6-insulated or vacuum breakers
- **Temperature Range:** -25°C to 50°C (for ambient temperature).
- **Withstand Capacity:** Sufficient to withstand the maximum fault current in the system.

### 5.4 HV/MV Surge Arrestors

- **Type:** Station class metal-oxide
- **Temperature Range:** -25°C to 50°C (for ambient temperature).

## 5.5 [Reserved.]

## 6.0 EQUIPMENT MANUFACTURER QUALIFICATIONS

These Specifications are established to ensure that only reputable and experienced manufacturers provide MV and HV transformers, circuit breakers, and disconnect switches that are critical to the reliability and safety of the Facility. This criteria focuses on the manufacturer's experience, production capacity, certifications, financial stability, and proven reliability metrics, all of which help mitigate operational risks and ensure durable, high-performance equipment.

### 6.1 Manufacturer Qualification Requirements for MV and HV Transformers

#### 1. Experience Level:

Manufacturer must have a minimum of 5 years in the design, manufacturing, and supply of MV and HV transformers for utility-scale applications, demonstrating experience with transformers designed to meet grid interconnection and renewable energy standards.

#### 2. Track Record:

Manufacturer must show a proven track record with similar projects, having supplied MV and HV transformers to at least 5 utility-scale projects with each project capacity exceeding 50 MW. Each project should be financed by a reputable financial institution and include renewable energy applications (e.g., wind, solar, or BESS projects).

#### 3. Annual Production Capacity:

Manufacturer must have an annual production capacity adequate to ensure they can meet the scalability demands of large utility-scale projects.

#### 4. Certifications:

The manufacturer must hold relevant certifications to ensure quality, safety, and environmental compliance, including

- ISO 9001: Quality Management Systems
- IEC, IEEE, or ANSI Certifications: Compliance with relevant international standards for transformers, including IEC 60076 (Power transformers) and ANSI C57 standards.

#### 5. Client References:

Manufacturer must provide a minimum of 3 client references from completed utility-scale projects, specifically attesting to:

- Transformer performance under various load conditions
- Reliability and operational uptime
- Customer satisfaction, post-installation support, and responsiveness

#### 6. Financial Stability:

**EQUIPMENT SPECIFICATIONS  
HV/MV ELECTRICAL EQUIPMENT**

---

Manufacturer must demonstrate financial stability with proof of a minimum annual revenue of \$500 million. Additionally, the manufacturer must provide an Altman-Z score of at least 1.8, indicating low risk of financial distress or bankruptcy.

**7. Project Examples:**

Manufacturer must present 3 examples of completed utility-scale projects, each exceeding 50 MW. Each example should include:

- **Project Name and Description:** Including location, unique design requirements, and renewable energy application.
- **Transformer Size and Type:** Details on MV and HV transformers, specifying power ratings, voltage class, and type (e.g., oil-immersed or dry-type).
- **Performance Metrics:** Metrics such as load efficiency, operating temperature range, and compliance with performance guarantees.

**8. Technical Support and Warranty:**

Manufacturer must provide comprehensive post-installation technical support and a minimum warranty period of 3 years for MV and HV transformers. The warranty must cover both performance and material defects, with clear terms on response times and support for any operational issues.

**6.2 Equipment Manufacturer Qualification Requirements for Circuit Breakers and Disconnect Switches****1. Experience Level:**

Minimum of 3 years in the design, manufacturing, and supply of HV and MV circuit breakers and disconnect switches for utility-scale applications.

**2. Annual Production Capacity:**

Manufacturer must have an annual production capacity adequate to ensure scalability to meet project demands.

**3. Certifications:**

The manufacturer must hold the following relevant certifications:

- **ISO 9001:** Quality Management Systems
- **IEC or ANSI Certifications:** Compliance with relevant international standards for HV and MV voltage equipment, such as IEC 62271 (HV switchgear and controlgear) and ANSI C37 (American National Standard for circuit breakers).

**4. Financial Stability:**

The manufacturer must demonstrate financial stability with proof of a minimum annual revenue of at least \$25 million. An Altman-Z score of at least 1.8 is required, indicating low risk of financial distress or bankruptcy.

**5. [Reserved.]**

**6. Technical Support and Warranty:**

The manufacturer must provide comprehensive post-installation technical support, including a minimum warranty of 3 years for both circuit breakers and disconnect switches. Warranty coverage should include both performance issues and material defects.

**7.0 TESTING REQUIREMENTS (QUALITY CONTROL)****FAT Requirements for Transformers, Circuit Breakers, and Disconnect Switches**

FAT is a critical quality assurance process conducted before the shipment of MV and HV transformers, circuit breakers, and disconnect switches. This testing verifies that each component meets specified design, performance, and safety standards necessary for reliable operation in utility-scale renewable energy projects. FAT provides assurance that the equipment will perform as required under field conditions, ensuring operational stability and efficiency. The following FAT requirements outline key tests for each equipment type to validate functionality, reliability, and compliance with industry standards.

Supplier is responsible for determining the appropriate scope of Factory Acceptance Testing, following Good Utility Practice to ensure long-term performance of the Facility under the Agreement. Recommended tests may include the following; however, the final FAT scope remains at Supplier's discretion, allowing alignment with Good Utility Practice and Project-specific requirements.

**7.1 FAT Testing Requirements for Transformers**

- **Visual Inspection:** Verification of physical integrity, including the absence of defects, proper labeling, and complete assembly.
- **Insulation Resistance Test:** Checks insulation quality between windings and ground.
- **Transformer Turns Ratio (TTR) Test:** Ensures correct voltage ratios between primary and secondary windings.
- **Power Factor Test:** Measures insulation quality and identifies potential deterioration.
- **Temperature Rise Test:** Confirms the transformer's capability to operate within specified temperature limits.
- **Leakage Test:** Assesses the tightness of oil-immersed transformers to prevent leaks.
- **Impedance Measurement:** Verifies transformer impedance to ensure it meets design specifications.

**7.2 FAT Testing Requirements for Circuit Breakers**

- **Operational Mechanism Test:** Evaluates the opening and closing operation of the breaker under simulated load conditions.
- **Insulation Resistance Test:** Checks insulation integrity across contacts and to the ground.
- **Contact Resistance Test:** Measures resistance across closed contacts to ensure minimal loss.
- **Timing Test:** Ensures the breaker operates within specified opening and closing time limits.
- **Dielectric Test:** Confirms the breaker's ability to withstand high voltage without breakdown.

- **Pressure and Leak Test** (for SF6-insulated breakers): Ensures no gas leaks and checks internal pressure levels.

### 7.3 Acceptable Quality Level (AQL)

For **HV transformers, circuit breakers, and disconnect switches, 100% of the components** designated for the project must undergo FAT to ensure they meet stringent quality and reliability standards required for utility-scale applications.

For **MV transformers, circuit breakers, and disconnect switches**, a minimum of 10% of the components must undergo FAT. If all sampled MV parts pass, the batch will be deemed acceptable. However, if any failures occur during this initial testing phase, an additional 20% of the batch will be subjected to FAT. Should further failures arise in the extended sample, the following actions will be taken:

- **Comprehensive Inspection:** The entire batch may be subject to a full inspection at Supplier's discretion.
- **Batch Rejection:** Supplier reserves the right to reject the batch if defects are deemed substantial.

### 7.4 Corrective Actions

If defects are identified during FAT, Supplier will be required to either replace the defective parts or implement corrective actions to ensure compliance with specified quality standards. This corrective process ensures that all equipment aligns with the requirements of this Agreement, safeguarding the operational integrity and reliability of the Facility and supporting the long-term success of this Agreement.

**EXHIBIT 24****STORAGE FACILITY OPERATING PROCEDURES**

The initial Operating Procedures of the Storage Facility are as defined and set forth in this Exhibit 24. The final Operating Procedures for the Storage Facility will be mutually developed and agreed to by the Parties no later than ninety (90) days prior to the Commercial Operation Date. The Operating Procedures shall be annually reviewed by the Parties within sixty (60) days after the beginning of each Contract Year to optimize operations of the Storage Facility for both Parties. Any mutually developed and agreed to changes to the Operating Procedures shall be included in an amended and restated Exhibit 24. The Parties shall cooperate to integrate the systems and controls necessary to implement the Operating Procedures and shall, subject to the requirements set forth in the Agreement, adjust the Facility and their respective systems and controls in order to implement the Operating Procedures. If such integration or adjustments are not reasonably practicable or would violate the terms and conditions of the Agreement, the Parties shall meet and confer and use commercially reasonable efforts to make reasonable amendments to the Agreement, including these Operating Procedures, in order to integrate such systems and controls.

**I. Forecasting**

- A. Supplier will provide to Buyer an Availability Notice in accordance with Section 14.2 of the Agreement, and which incorporates the following information:
  - 1) hourly maximum charging rate availability of the Storage Facility;
  - 2) hourly minimum charging rate availability of the Storage Facility; and
  - 3) current status of the Storage Facility, expressed as a percentage of total availability of the Storage Facility for discharge or state of charge.
- B. Planned Outages and forced outages notifications and scheduling shall be via the Availability Notice. Additionally, in the event of a forced outage, Supplier shall notify the Buyer's Operating Representative of such forced outage and expected date and time for return to service.
- C. Supplier shall reasonably cooperate with Buyer and Buyer's Operating Representative to provide data for Buyer's AGC signals for the Storage Facility.
- D. Supplier shall use commercially reasonable efforts to support Buyer's market bidding and dispatch strategy, including adding additional required equipment, generating requested data points, assisting in programming efforts, and making adjustments to the Facility to allow it to better receive and follow AGC signals. Notwithstanding the foregoing and subject to the terms and conditions of the Agreement, Supplier shall strictly adhere to Buyer's Charging Notices and Discharging Notices.

**II. Charging Notices and Discharging Notices**

- A. Buyer's Energy Management System shall provide separate AGC dispatch signals for the Storage Facility. Buyer shall update the AGC signal every five (5) minutes. If Buyer fails to update the AGC signal for the Storage Facility, the Storage Facility shall continue to dispatch in accordance with the latest AGC signal received.

- B. A Discharging Notice will be delivered to Supplier in conjunction with each Charging Notice.
- C. Buyer will provide to Supplier, per the WECC pre-scheduling calendar, a forecasted Charging Notice and Discharging Notice.
- D. For the Charging Notices, Buyer shall provide Supplier with the following information:
  - 1) the hours in which Supplier shall charge the Storage Facility;
  - 2) the energy in each hour Supplier shall charge the Storage Facility;
  - 3) whenever feasible, Buyer will utilize Supplier's provided optimal charging window identified in section I.A.2.
- E. For the Charging Notice, Buyer shall designate the charging source for Charging Energy.
- F. For the Discharging Notices, Buyer shall provide Supplier with the following information:
  - 1) the hours in which Supplier shall discharge the Storage Facility; and
  - 2) the energy to be discharged from the Storage Facility in each hour.
- G. [Reserved.]
- H. For any curtailments pursuant to Section 10.1 of the Agreement, Balancing Authority Area Operator will manually adjust the Delivery Point setpoint to the required curtailment value. Such adjustments from the Balancing Authority Area Operator may also be communicated to Supplier verbally or in writing, particularly in the event of Transmission System issues that require Facility curtailment until such issues are resolved. Delivery Point setpoint will override AGC commands issued to the Storage Facility.
- I. Buyer and Supplier shall review Buyer's dispatch strategy on a quarterly basis.

### III. Modifications to the Charging and Discharging Notices

- A. On the day of operation, to the degree that it is technically feasible, Buyer reserves the right to make adjustments to its Charging Notices and Discharging Notices. To this end, Supplier will provide to Buyer real-time software application(s) which allow(s) Buyer to access the Stored Energy Level status of the Storage Facility.
- B. To make intraday adjustments on the day of operation, Buyer will communicate with Supplier in a manner that is mutually agreeable to both Buyer and Supplier. Such communications may be made telephonically with Supplier to verbally request adjustments to the charge or discharge status of the Storage Facility, including the rate of charge or discharge of the Storage Facility.

- C. Supplier will communicate with Buyer, utilizing the manner of communication mutually agreed upon above, whether Buyer's requested adjustment to the charge or discharge schedule contained in Buyer's Charging Notice and Discharging Notice is feasible, both in terms of the hour(s) requested, as well as the rate of charge or discharge requested. Should Buyer's requested adjustment to the charge or discharge schedule be infeasible, due to the current charged or discharged status of the Storage Facility, Buyer and Supplier shall mutually agree to:
- 1) an alternate adjustment to the charge or discharge schedule, which adjustment is technically feasible given the Stored Energy Level or discharge of the Storage Facility; or
  - 2) reject Buyer's adjustment to the charge or discharge schedule, and resume Buyer's original charge or discharge schedule as specified in Buyer's Charging Notice and Discharging Notice; and
  - 3) any adjustments necessary to future charge or discharge schedules contained in Buyer's Charging Notices and Discharging Notices which will be rendered infeasible due to Buyer's requested adjustment to the charge or discharge schedules on the day of operation.

#### IV. Delivery

Supplier will deliver the Discharging Energy to the Delivery Point in a real-time response to:

- 1) in the primary instance, with a real-time dispatch command per section III above; or
- 2) an automated, scheduled Discharge Notice per section II.E above as a backup.

The total Discharging Energy in real-time will be limited to the Stored Energy Level (less any losses to deliver such stored energy to the Delivery Point) and contractual limits under the Agreement.

#### V. Measurement and Verification

- A. "Equivalent Cycles" or "Equivalent Full Cycles" shall occur at the point at which, during any discrete period of time, the measured aggregate energy throughput (charge and discharge) of the Storage Facility during such period of time equals contracted aggregate throughput (charge and discharge) capacity of the Storage Facility during such time.
- B. Supplier will push real-time Storage Facility data to Buyer's equipment for Buyer to view Supplier's energy management system and data historian that will monitor the Storage Facility's state of health metrics as well as usage metrics such as Equivalent Cycles to date. In accordance to Exhibit 1, Buyer will be allowed to use 365 Equivalent Cycles per Contract Year with a maximum of two Equivalent Cycles per day. Buyer will be able to monitor the number of Equivalent Cycles that have occurred over the life of the Storage Facility on a real-time basis. As soon as the Storage Facility meets the Equivalent Cycle limit, Supplier

will no longer be able to execute Charge Notices or Discharging Notices for that Contract Year.

VI. Scheduling Reports

Supplier will send out a daily report to Buyer so they may transmit to other parties. The report will include, at a minimum, the following day's Charging Notice and Discharging Notice.

VII. Operating Parameters

#	OPERATING PARAMETER	VALUES	NOTES
1	Charging Method	Constant Power (CP)- Constant Voltage (CV)	
2	Discharging Method	Constant Power (CP)	
3	Maximum CP-rate for charging and discharging the Storage Facility	150	Measured at the Delivery Point.
5	Charging Source	Delivery Point	
6	Maximum Annual Average State of Charge (SOC)	45%	
7	Operational State of Charge (SOC) Limits	0%-100% or as per manufacturer recommendation	As defined in the EMS.
8	Maximum Number of Equivalent Full Cycles per Contract Year	365	

9	Delivery Point Maximum Limit	150 MW	
10	Maximum Cumulative Discharging Energy per Contract Year	219,000 MWh	
11	Maximum Cumulative Discharging Energy per day	Storage Contract Capacity (MW) of the Storage Facility for the given Contract Year * 4 * 2	e.g., 200 MW * 4 * 2= 1600 MWh. Allows potential for two Equivalent Cycles in a day yet average one Equivalent Cycle per day per condition #8 above.
12	Specified Charge/Discharge Ramp Rate for Roundtrip Efficiency Test Only	150 MW/min	This is a specific ramp rate that is only used during a Round Trip Efficiency Test. It may or may not be the same ramp rate that AGC uses during normal operation.
13	Specified Rest Period for Storage Facility for Roundtrip Efficiency Test Only	1 hour	This is a specific rest period that is only used during a Round Trip Efficiency Test.
14	Minimum State of Charge for Roundtrip Efficiency Test Only	Per manufacturer recommendation.	This is a specific State of Charge that is only used during a Round Trip Efficiency Test.
15	Primary Frequency Response	Applicable for up to 8 MW	Pursuant to Exhibit 16.

#### VIII. Key Personnel Lists

Supplier shall provide Buyer with a list of key personnel. The key personnel list shall include, but not be limited to, positions such as Plant Manager, Operations Supervisor, Control Room Operators, Safety Officer, and Environmental Compliance Officer. This list should be reviewed and updated annually by Supplier to account for any changes in staffing, and any modifications made must be communicated promptly to Buyer and any other relevant parties.

#### IX. Record Keeping

All operational, maintenance, safety, and environmental records must be diligently documented and stored by Supplier in a secure and easily accessible manner. These records shall include, but not be limited to, daily operation logs, equipment maintenance records, safety inspection reports, environmental compliance documentation, and any incident reports. Records must be retained by Supplier for a minimum of five (5) years, and a systematic record archiving process should be implemented to ensure efficient retrieval when needed.

**EXHIBIT 25**

**STORAGE CAPACITY TESTS**

Upon no less than five (5) Business Days prior notice to Buyer, Supplier shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall adjust the Storage Contract Capacity based on the actual capacity of the Storage Facility for the first Contract Year.

Thereafter, at least once per Contract Year within the first quarter of each Contract Year, upon no less than ten (10) Business Days prior notice to Buyer, Supplier shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon five (5) days prior written notice to Supplier if Buyer reasonably believes that the Storage Capacity has varied materially from the results of the most recent tests. Supplier shall have the right to run a retest of the Storage Capacity Test at any time upon five (5) days prior written notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Good Utility Practice).

No later than five (5) days following any Storage Capacity Test, Supplier shall submit a testing report detailing results and findings of the test. The report shall include Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. The actual capacity determined pursuant to a Storage Capacity Test shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement.

Supplier will perform a Storage Capacity Test generally in the following manner and utilizing the following steps:

- 1) Supplier may conduct any pre-capacity test activities required or recommended by the Storage Facility equipment suppliers, including charging or discharging the Storage Facility, prior to commencing step 2 below;
- 2) Supplier will fully charge the Storage Facility so that it is in a state that it is made commonly and typically available to Buyer as fully charged and dispatchable;
- 3) Supplier will discharge the Storage Facility at full capacity, over a duration of four (4) consecutive hours;
- 4) Supplier will add the quantity of MWh produced by the Storage Facility during the four (4) consecutive hours to produce a sum quantity of MWh for the four (4) hour full discharge of the Storage Facility;
- 5) Supplier will divide the sum quantity of MWh produced over the four (4) hour full discharge of the Storage Facility by a factor of four (4), to produce a value that will become the Storage Contract Capacity for the Contract Year.

Example:

Hour 1 Discharge = 25 MWh  
Hour 2 Discharge = 25 MWh  
Hour 3 Discharge = 25 MWh

Hour 4 Discharge = 25 MWh

$25 + 25 + 25 + 25 = 100 \text{ MWh}$

$100 \text{ MWh} / 4 \text{ hours} = 25 \text{ MWh Storage Contract Capacity} = 25 \text{ MW}$

**EXHIBIT 26**

**AVAILABILITY TESTS AND AVAILABILITY DAMAGES**

Availability Liquidated Damages

The Availability Liquidated Damages in Summer Month (m) in which the Monthly Storage Availability is less than the Guaranteed Storage Availability shall be calculated as follows:

$$\text{Availability Liquidated Damages}_m = \text{Guaranteed Storage Availability} * \text{Undischarged Energy Price}_m * \text{Undischarged Energy}_m$$

Where:

Guaranteed Storage Availability =

Stub Period <sup>6</sup>	95%
Contract Year 1 <sup>7</sup>	96%
Remainder of Term	97%

Undischarged Energy Price<sub>m</sub> = Average On-Peak Mead (in \$/MWh)

Undischarged Energy<sub>m</sub> = The total amount (in MWh) of Discharging Energy in Summer Month m that Buyer was unable to schedule and receive because the Storage Facility was out of service, in whole or in part, or otherwise not performing in accordance with the operational requirements specified in Exhibits 1 and 24. Such amounts of Discharging Energy to be reasonably determined by Supplier (i) during the period the Storage Facility was out of service, in whole or in part, or otherwise not performing in accordance with the operational requirements specified in Exhibit 1 and (ii) consistent with the Operating Procedures and operational requirements specified in Exhibit 1 (in MWh).

Storage Capacity at Delivery Point<sub>m</sub> = The Storage Contract Capacity at Delivery Point as adjusted from time to time in accordance with Section 3.4.7, multiplied by four (4) hours then multiplied by the number of days in Month<sub>m</sub> (in MWh).

Monthly Storage Availability = Percentage calculated as follows:  

$$\frac{(\text{Storage Capacity at Delivery Point}_m) - (\text{Undischarged Energy}_m)}{(\text{Storage Capacity at Delivery Point})} \times 100$$

<sup>6</sup> If there is no Stub Period because the Commercial Operation Date is January 1<sup>st</sup>, then Contract Year 1.

<sup>7</sup> If there was no Stub Period because the Commercial Operation Date was January 1<sup>st</sup>, then Contract Year 2.

**EXHIBIT 26**

**AVAILABILITY TESTS AND AVAILABILITY DAMAGES**

Example:

Month	Days in Month	Storage Contract Capacity (MW)	Storage Duration (hours)	Storage Capacity at Delivery Point (MWh)	Guaranteed Storage Availability (%)	Monthly Storage Availability (%)	Discharging Energy (MWh)	Undischarged Energy (MWh)	Undischarged Energy Price (\$/MWh)	Availability Liquidated Damages <sub>m</sub> (Guaranteed Storage Availability * Undischarged Energy x Undischarged Energy Price) \$
June	30	100	4	12,000	96.0	100.0	12,000	-	\$ 35.29	\$ -
July	31	100	4	12,400	96.0	95.9	11,892	508	\$ 60.02	\$ 30,490.16
August	31	100	4	12,400	96.0	91.9	11,396	1004	\$ 42.83	\$ 43,001.32
September	30	100	4	12,000	96.0	99.1	11,892	108	\$ 51.19	\$ -
<b>TOTAL</b>	<b>122</b>	<b>-</b>	<b>-</b>	<b>48,800</b>	<b>-</b>	<b>-</b>	<b>47,179</b>	<b>1,620</b>	<b>-</b>	<b>\$ 69,887.24</b>

**CYBERSECURITY**1.1. SCOPE OF THIS ARTICLE

This Exhibit applies to Supplier and its personnel and subcontractors that provide hardware, software, or services to Buyer that may impact the confidentiality, integrity, or availability of Buyer's networks, systems, software, Data, or Confidential Information for the term of this Agreement.

1.2. DEFINITIONS

- 1.2.1. "BES Cyber System Information" or "BCSI" shall mean information concerning CIPS Covered Assets that: (i) relates to the production, generation or transmission of energy; (ii) could be useful to a person planning an attack on critical infrastructure; and (iii) provides strategic information beyond the geographic location of the critical asset, and which is identified as BCSI by Buyer.
- 1.2.2. "CIPS Covered Assets" shall mean any assets identified by Buyer as "BES assets," "BES cyber assets," "BES cyber systems," "protected cyber assets," "electronic access control or monitoring systems," "electronic access points," or "physical access control systems," as those terms are defined in the North American Electric Reliability Corporation (NERC) Glossary of Terms.
- 1.2.3. "BES" shall mean the "Bulk Electric System" as defined by NERC.
- 1.2.4. "Confidential Information" shall mean: (i) proprietary information of Buyer; (ii) information marked or designated by Buyer as confidential, sensitive, or internal; (iii) BCSI of Buyer; (iv) information, whether or not in written form and whether or not designated as confidential, which is known to Supplier as being treated by Buyer as confidential; (v) information provided to Buyer that Buyer is obligated to keep confidential (including but not limited to information that identifies an individual or customer of Buyer, such as customer account numbers, customer addresses, customer energy usage information, credit or bank account numbers, social security numbers, passport or driver's license numbers, whether or not such information is publicly available); and (vi) information developed by Supplier in connection with the performance of this Agreement.
- 1.2.5. "Data" shall mean any information, formulae, algorithms, or other content that Buyer or Buyer's employees, agents and end users upload, create or modify using any software provided pursuant to this Agreement. Data also includes user identification information and metadata which may contain Data or from which Buyer's Data may be ascertainable.
- 1.2.6. "Security Incident" shall mean any circumstance when (i) Supplier knows or reasonably believes that the confidentiality, integrity, or availability of any Buyer Data has been adversely impacted, including but not limited to, incidents where Buyer Data has been damaged, lost, corrupted, destroyed, or accessed, acquired, modified, used, or obtained by any unauthorized person, by any person in an

unauthorized manner, or for an unauthorized purpose; (ii) Supplier or Buyer knows or reasonably believes that an act or omission has adversely impacted the cybersecurity of the products or Facility, or the supply chain of products and equipment by Supplier or by the existence or discovery of active or latent risk which adversely impacts the physical, technical, administrative, or organizational safeguards protecting Supplier's systems or Buyer's systems holding Buyer Data; or (iii) Supplier or Buyer receives any complaint, notice, or communication for an active or latent risk which relates directly or indirectly to (a) Supplier's handling of Buyer Data or Supplier's compliance with the data safeguards in this Agreement or applicable Law in connection with Buyer Data or (b) the cybersecurity of the equipment or Facility, or the supply chain of equipment, provided by Supplier.

- 1.2.7. "Sensitive Personnel" shall mean all employees, agents or subcontractors of Supplier who may have authorized unescorted physical access or authorized cyber access to Buyer's CIPS Covered Assets.

### 1.3. CYBER SECURITY CONTROLS

- 1.3.1. Supplier shall have and maintain security controls to protect Buyer's networks, systems, software, Confidential Information, and Data that are no less rigorous than the latest published version of ISO/IEC 27001 – Information Security Management Systems–Requirements, and ISO/IEC 27002 – Code of Practice for International Security Management
- 1.3.2. Supplier agrees to disclose to Buyer known security vulnerabilities in hardware, software, and services provided under this Agreement in a timely manner.
- 1.3.3. Supplier warrants that the hardware, software, and patches provided under this Agreement, will not contain malicious code or any unwanted or unexpected features. Supplier agrees to provide a method to verify the integrity and authenticity of all software and patches provided by Supplier.
- 1.3.4. If Supplier will have remote access to Buyer systems or networks, Supplier shall follow all applicable Buyer requirements for Supplier-initiated interactive remote access and system-to-system remote access with Supplier. To the extent Supplier's personnel will have interactive remote access to Buyer's networks, systems or applications, Supplier's personnel will use multi-factor authentication provided by Buyer. Authentication tokens and passwords must not be shared. Upon either (i) personnel termination actions or (ii) changes in the status of personnel which removes their need for remote access, Supplier shall report such termination or change in status to Buyer's Service Desk by telephone and email as soon as practicable and no later than close of the same Business Day. In the case of Sensitive Personnel and/or involuntary termination, notification must be immediate. In all other cases, notification must be within one (1) Business Day.
- 1.3.5. Supplier shall ensure that email from Supplier and any services provided under this Agreement:

- 1.3.5.1. Originates from a domain or domains with a published Domain-based Message Authentication, Reporting and Conformance (“DMARC”) policy of “reject” and with a published Sender Policy Framework policy consisting of valid senders and a “fail” directive (-all). If the optional DMARC “pct” directive is used, “pct” must be set to “100”;
- 1.3.5.2. Passes a DMARC authentication check;
- 1.3.5.3. Utilizes a DomainKeys Identified Mail (DKIM) 2048 bit key; and,
- 1.3.5.4. Supports Transport Layer Security (TLS).
- 1.3.6. Supplier shall encrypt and sign file transfers to or from Buyer via Gnu Privacy Guard (GPG), Pretty Good Privacy (PGP), or other mutually agreeable payload encryption solution. Encryption shall utilize National Institute of Standards and Technologies-approved algorithms, key lengths and cryptoperiods, with a two (2)-year key lifetime or other mutually agreeable payload encryption solution.
- 1.3.7. Supplier shall utilize physical or virtual token-based multi-factor authentication compliant with National Institute of Standards and Technologies Authentication Assurance Level 2 or higher for remote access into Supplier networks and external access to Supplier email. Authenticators classified as Restricted by National Institute of Standards and Technologies guidance, such as short message service text messages or email, are prohibited.
- 1.3.8. If Supplier requires receipt and retention of Buyer Data during the Term of the Agreement and in accordance with the scope of the Agreement, Supplier shall follow all applicable Buyer requirements for storage, transfer, disposition and access of Buyer Data as set forth in this Agreement or in any agreement entered into between the Parties pursuant to this Agreement, including but not limited to:
  - 1.3.8.1. Supplier requests for Buyer Data shall be limited solely to the extent necessary to perform Supplier’s work, services or obligations to Buyer under the scope of this Agreement and shall be subject to Buyer approval of transfer and storage implementations.
  - 1.3.8.2. Supplier shall permanently delete Buyer Data in temporary transfer locations as soon as Supplier moves such data to a storage location.
  - 1.3.8.3. Supplier shall restrict access to Buyer Data to solely necessary Supplier personnel and in accordance with the scope of this Agreement.
  - 1.3.8.4. Supplier shall delete or return Buyer Data to Buyer during the Term when retention of such Buyer Data is no longer necessary to fulfillment of obligations under this Agreement.

- 1.3.9. If Supplier's scope under this Agreement includes an application programming interface, Supplier shall provide to Buyer a specification for its interface aligned to the latest version available from the OpenAPI Initiative or mutually-agreed equivalent.

#### 1.4. OVERSIGHT OF COMPLIANCE

As evidence of compliance, Supplier shall either:

- 1.4.1. If this Agreement includes hosted or cloud services, Supplier shall provide annually to Buyer a Statement on Standards for Attestation Engagements (SSAE) Service Organization Control (SOC) 2 Type II audit covering the scope of this Agreement and pertaining directly to Supplier.
- 1.4.2. If this Agreement does not include hosted or cloud services, Supplier shall either:
  - 1.4.2.1. Annually provide a copy of ISO 27001 certification covering the scope of this Agreement and pertaining directly to Supplier; or,
  - 1.4.2.2. Annually provide a copy of a third-party audit covering the security controls relevant to hardware, software, or services provided under this Agreement and pertaining directly to Supplier. Audit results and Supplier's plan to correct any negative findings must also be made available to Buyer; or,
  - 1.4.2.3. Allow Buyer to conduct an assessment, audit, examination, or review of Supplier's security controls to confirm Supplier's adherence to the terms of this Article, as well as any applicable laws, regulations, and industry standards, not more than once per year or upon notification of any Security Incident or complaint regarding Supplier's privacy and security practices. Buyer may elect to obtain the services of a mutually-agreeable third party to conduct this assessment, audit, examination, or review on behalf of Buyer. Buyer shall give Supplier no less than thirty (30) calendar days' notice of its intent to conduct such assessment, audit, examination, or review. As part of this assessment, audit, examination, or review, Buyer may review all controls in Supplier's physical and/or technical environment in relation to all Confidential Information being handled and/or hardware, software, or services being provided pursuant to this Agreement. Supplier shall fully cooperate with such assessment by providing access to knowledgeable personnel, physical premises, documentation, infrastructure, application software, and systems relevant to the provision of hardware, software, or services under this Agreement.

#### 1.5. SECURITY INCIDENT PROCEDURES; EQUITABLE RELIEF

In the event of a Supplier, or subcontractor Security Incident affecting Buyer, Buyer's networks, systems, software, Data, or Buyer's Confidential Information,

- 1.5.1. Supplier shall:
  - 1.5.1.1. Notify Buyer of the Security Incident as soon as practicable, but no later than 48 hours after Supplier becomes aware of it, to 515-281-2967 and GlobalSecurityOperations@brkenenergy.com; and
  - 1.5.1.2. Provide Buyer with the name, phone number, and email for the Supplier personnel who shall serve as Supplier's primary security contact and shall be available to assist Buyer with Security Incident management, response, and recovery associated with the Security Incident.
- 1.5.2. Immediately following Supplier's notification to Buyer of a Security Incident, the Parties shall coordinate with each other to investigate such Security Incident. Supplier agrees to coordinate with Buyer in Buyer's handling of the matter, including: (i) assisting with any investigation and (ii) making available all relevant records and other materials required to comply with applicable law, regulation, industry standards, or otherwise reasonably required by Buyer.
- 1.5.3. Supplier shall use best efforts to immediately remedy any Security Incident and prevent any further or recurrent Security Incident at Supplier's expense in accordance with applicable privacy laws, regulations, and standards. Supplier shall reimburse Buyer for actual reasonable costs incurred by Buyer in responding to, and mitigating damages caused by, any Security Incident, including all costs of notice and/or remediation pursuant to this section.
- 1.5.4. Supplier shall fully cooperate at its own expense with Buyer in any litigation or other formal action deemed reasonably necessary by Buyer to protect its rights relating to the use, disclosure, protection, and maintenance of its Confidential Information and Data.
- 1.5.5. Supplier acknowledges that any breach of Supplier's obligations set forth in this Article may cause Buyer substantial irreparable harm for which monetary damages would not be adequate compensation and agrees that, in the event of such a breach or threatened breach, Buyer is entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance and any other relief that may be available from any court, in addition to any other remedy to which Buyer may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other available remedies at law or in equity, subject to any express exclusions or limitations in this Agreement to the contrary.

## 1.6. OBLIGATIONS ON TERMINATION AND TERMINATION ASSISTANCE

In addition to any other obligations that arise on termination or expiration of this Agreement, the Parties agree that, on any expiration or termination of this Agreement, upon completion of the delivery of the products and services to be provided under this Agreement, or at any time upon Buyer's request, regardless of the circumstance:

- 1.6.1. Supplier shall immediately surrender to Buyer all access cards, security passes, passwords and other such devices granting access to any Work Site or to Buyer networks or computer systems; and
  - 1.6.1.1. If Supplier has access to Buyer facilities or systems, Supplier shall immediately surrender to Buyer all access cards, security passes, passwords and other such devices granting access to any Work Site or to Buyer networks or computer systems; and
  - 1.6.1.2. If Supplier has Buyer Data, Supplier shall return any Buyer Data that is in its care, custody or control to Buyer in the format requested by Buyer and Supplier shall, within 14 days of receiving Buyer's written confirmation that it can read the Data provided by Supplier, (1) permanently delete any copies of the Data in Supplier's care, custody or control and (2) send Buyer written confirmation that data has been deleted.

If Supplier has Buyer hardware or removable media, Supplier will return to Buyer all hardware and removable media provided by Buyer that contains Buyer Data. Buyer Data in such returned hardware and removable media may not be removed or altered in any way. The hardware should be physically sealed and returned via a bonded courier or as otherwise directed by Buyer. If the hardware or removable media containing Buyer Data is owned by Supplier or a third-party, a written statement detailing the destruction method used and the data sets involved, the date of destruction and the entity or individual who performed the destruction will be sent to a designated Buyer security representative within fifteen (15) calendar days after completion of the delivery of the products and services to be provided under this Agreement, or at any time upon Buyer's request. Supplier's destruction or erasure of Buyer Data pursuant to this Exhibit must be in compliance with NIST or ISO Standards.

- 1.6.2. Prior to the expected expiration or termination of this Agreement (or any agreement entered into between the Parties pursuant to this Agreement) by either Party for any reason, or prior to the expected expiration or termination of this Agreement for any reason, including a default under this Agreement (or any other agreement entered into between the Parties pursuant to this Agreement), Supplier agrees to provide Buyer with the reasonable assistance services requested by Buyer. These services will include, at a minimum, converting data, providing parallel services until Buyer has transitioned to a new system, providing on-site technical support, cooperating with Buyer or its designated vendor in developing required interfaces, and such other assistance services as shall be necessary or appropriate to facilitate, without material or extended interruption to the services provided under this Agreement, the orderly transition of such services to Buyer or its new provider of services. The Parties agree that assistance services may extend beyond the Term as reasonably required by Buyer.

**STORAGE ROUND TRIP EFFICIENCY GUARANTEE**

A. Storage Round Trip Efficiency Test.

1. Testing Prior to Commercial Operation Date. Upon no less than ten (10) Business Days prior notice to Buyer, and at any time prior to the Commercial Operation Date, Supplier shall schedule and complete a Storage Round Trip Efficiency Test to verify that the Storage Facility can satisfy the Storage Round Trip Efficiency Guarantee. “Round Trip Efficiency”, measured as a percentage, is a ratio of Charging Energy to Discharging Energy, measured at the Delivery Point. It represents the AC-AC (or DC-DC for DC-coupled Storage Facility) efficiency of the Storage Facility including losses from self-discharge and other electrical losses.

2. Testing after Commercial Operation Date. At least once per Contract Year (starting after the first Contract Year) at such time during the Contract Year as the Parties may mutually agree, Supplier shall schedule and complete a Storage Round Trip Efficiency Test. Supplier shall coordinate with Buyer to identify a mutually agreeable time for each Storage Round Trip Efficiency Test. In each Contract Year, Supplier shall have the right to run up to four (4) additional Storage Round Trip Efficiency Tests at any time upon five (5) days prior written notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Good Utility Practice). In addition, Buyer shall have the right to require an additional Storage Round Trip Efficiency Test at any time upon five (5) days prior written notice to Supplier if Buyer reasonably believes that the Storage Round Trip Efficiency has varied materially from the results of the most recent Storage Round Trip Efficiency Test. For the avoidance of doubt, any additional Storage Round Trip Efficiency Test performed pursuant to the immediately preceding two sentences shall be considered a Storage Round Trip Efficiency Test for purposes of this Exhibit 28. If Supplier runs three (3) additional Storage Round Trip Efficiency Test (whether requested by Supplier or Buyer) within a rolling three (3) year period, then promptly after the third such additional Storage Round Trip Efficiency Test Supplier shall: (i) deliver to Buyer a written plan on the maintenance or improvements that it will make with respect to the Storage Facility to ensure that the fourth Storage Round Trip Efficiency Test is passed at the Storage Round Trip Efficiency Guarantee, which plan shall be subject to Buyer’s reasonable approval and (ii) thereafter promptly implement the approved plan. Notwithstanding anything to the contrary contained in this Exhibit 28, in no event shall Storage Round Trip Efficiency Tests be performed more frequently than monthly.

3. Witnessing Test; Costs and Expenses. Buyer shall have the right to send one or more representative(s) to witness all Storage Round Trip Efficiency Tests. Buyer shall be responsible for all costs and expenses payable or reimbursable to its representative(s) witnessing any Storage Round Trip Efficiency Test. All other costs of any Storage Round Trip Efficiency Test shall be borne by Supplier (other than (i) any Charging Energy required to perform such Storage Round Trip Efficiency Test and (ii) any third party costs incurred by Supplier for any Storage Round Trip Efficiency Test required by Buyer, unless such Storage Round Trip Efficiency Test shall result in the Storage Round Trip Efficiency being less than the Storage Round Trip Efficiency established by the immediately preceding Storage Round Trip Efficiency Test, in which case Supplier shall be responsible for such costs).

4. Test Results. No later than five (5) days following any Storage Round Trip Efficiency Test, whether successfully passed or failed, Supplier shall deliver a testing report to Buyer detailing results and findings of the Storage Round Trip Efficiency Test (the “Storage Round Trip Efficiency Testing Report”), including screen shots of the Storage Facility’s SCADA

Delivery Point data showing Charging Energy and Discharging Energy during the Storage Round Trip Efficiency Test and other reasonable supporting data. The Storage Round Trip Efficiency Testing Report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility.

5. Storage Round Trip Efficiency Damages. If Storage Round Trip Efficiency determined as a result of the Storage Round Trip Efficiency Test (“Actual RTE”) is less than Storage Round Trip Efficiency Guarantee (“Guaranteed RTE”), then Supplier shall be liable to pay Buyer liquidated damages (“Storage Round Trip Efficiency Damages”) calculated as provided below, provided that Supplier shall not be liable for Storage Round Trip Efficiency Damages if within thirty (30) days following such failed Storage Round Trip Efficiency Test Supplier is able to conduct a Storage Round Trip Efficiency Test which verifies that the Storage Facility satisfies the Storage Round Trip Efficiency Guarantee. The Storage Round Trip Efficiency Damages shall equal the hourly product of:

- (a) Positive value of  $((\text{Guaranteed RTE} / \text{Actual RTE}) - 1)$ ; where Actual RTE is less than Guaranteed RTE; where  $\text{Actual RTE} = \text{EnergyOUT} / \text{EnergyIN}$  (both defined below);
- (b) the Average On-Peak Mead; and
- (c) the actual Discharging Energy.

A Storage Round Trip Efficiency will be considered remedied after a successful re-test. Storage Round Trip Efficiency Damages shall accrue from the day following date of Storage Round Trip Efficiency Test and continuing until successful re-test.

Below is an example scenario and calculation for hourly Storage Round Trip Efficiency Damages:

- a) Actual RTE is 80%; Guaranteed RTE is 84%;  $(0.84 / 0.80) - 1$ , or 0.05,
- b) Applicable Average On-Peak Mead is \$50/MWh, and
- c) Discharging Energy is 50 MWhs

Storage Round Trip Efficiency Damages =  $0.05 * \$50 * 50 \text{ MWhs} = \$125$

6. Invoicing. If Storage Round Trip Efficiency determined as a result of the Storage Round Trip Efficiency Test is less than Storage Round Trip Efficiency Guarantee, then within thirty (30) days after receipt by Buyer of the Storage Round Trip Efficiency Testing Report, including reasonable supporting data, Buyer shall deliver to Supplier an invoice showing Buyer’s computation of the Storage Round Trip Efficiency Damages calculated pursuant to Section A.5 of this Exhibit V. Thereafter, Buyer shall deliver to Supplier an invoice showing Buyer’s computation of the Storage Round Trip Efficiency Damages calculated pursuant to Section A.5 of this Exhibit V for each subsequent month until there is a successful Storage Round Trip Efficiency Test in accordance with this Exhibit V. Within twenty (20) days of receipt of the invoice, Supplier shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice. Any Storage Round Trip Efficiency Damages not paid by Supplier when due under this Section A.6 will bear interest calculated pursuant to Section 7.3

of the Agreement from the date due until but not including the date paid. Buyer reserves its right pursuant to Section 7.5 of the Agreement to set off any amounts owed by Supplier hereunder against any amounts owed by Buyer to Supplier under this Agreement. The dispute provisions of Article 21 shall apply with respect to any dispute between the Parties with respect to the Storage Round Trip Efficiency Testing Report or Buyer's invoice of Storage Round Trip Efficiency Damages.

B. Storage Round Trip Efficiency Test Procedures.

Supplier will perform each Storage Round Trip Efficiency Test in the following manner and utilizing the following steps:

1. Supplier may conduct any pre-capacity test activities required or recommended by the Storage Facility equipment suppliers, including charging or discharging the Storage Facility, prior to commencing step 2 below. During commissioning or re-commissioning after repairs, Supplier to complete any battery balancing activities recommended by the Storage Facility equipment suppliers prior to commencing step 2 below.

2. Supplier will fully discharge the Storage Facility to the minimum recommended state of charge. This is dependent upon the Storage Facility equipment manufacturer specifications, but typically when the state of charge is at 0% as registered in the SCADA.

3. Select appropriate operating mode.

4. Set the Storage Facility ramp rate parameter to the value specified in the applicable Operating Procedures.

5. Charge the Storage Facility to the maximum state of charge. This is dependent on the Storage Facility equipment manufacturer specifications but typically when the state of charge is at 100% as registered in the SCADA. Complete the specified Storage Facility rest period in accordance with the applicable Operating Procedures, if applicable, based on the Storage Facility equipment manufacturer specifications.

6. Review the Delivery Point data, and determine and record the "EnergyIN", which is the amount of energy used to charge the Storage Facility from minimum state of charge to maximum state of charge.

7. Discharge the Storage Facility according to the Storage Capacity Test procedures at the higher of the full capacity or the Storage Contract Capacity for the full four (4) hours. Do not cease discharging at four (4) hours, but instead discharge shall be stopped based upon the lower of (a) the minimum state of charge specified in the applicable Operating Procedures and (b) any of the following conditions: a critically low state of charge, power foldbacks, or other safety and system stability reasons.

8. Complete the Storage Facility rest period as provided in the applicable Operating Procedures, if applicable, based on equipment manufacturer specifications.

9. Review the Delivery Point data, and determine and record the “EnergyOUT”, which is the amount of energy used to discharge the Storage Facility from maximum state of charge to minimum state of charge.

10. If the Storage Facility will not follow a Discharging Notice within the rest period as specified in the applicable Operating Procedures, then Supplier shall return the state of charge to within the range specified by the Storage Facility equipment manufacturer for standby operations.

**EXHIBIT 29**

**[SHARED FACILITIES AGREEMENT]**

[To be added as necessary provided by Buyer]

**RESERVED**

**EXHIBIT 31**

**PERMITTING AND REAL ESTATE OPINION**

[see attached]

**EXHIBIT 31**

**PERMITTING AND REAL ESTATE OPINION**

**SAMPLE**

Date

NV Energy  
Attn: Edgar Patino  
Director, Contract Management and Special Programs  
7155 S. Lindell Road, MS B13RE  
Las Vegas, NV 89118

**Re:** Energy Storage Agreement between Nevada Power Company d/b/a NV Energy and \_\_\_\_\_ (“Developer”) dated as of \_\_\_\_\_, 20\_\_ (the “ESA”).

Ladies and Gentlemen:

We have acted as Nevada counsel to Developer in connection with the PPA, and Developer has requested that we provide this opinion letter to you pursuant to Section 8.3.2.4 of the ESA. We are not employees of Developer (or any Affiliate, parent, or subsidiary of Developer) and have no financial interest in the Facility.

Unless otherwise expressly provided herein, capitalized terms used but not defined herein have the meaning given them in the PPA.

**1. Documents Reviewed.**

For the purposes of these opinions we have examined executed copies of the following documents:

1.1 Public Utilities Commission of Nevada Approval of the PPA.

1.2 Notice of Self Certification as an EWG filed with the Federal Energy Regulatory Commission (“FERC”) and dated as of \_\_\_\_\_, 20\_\_.

1.3 FERC authorization under section 205 of the Federal Power Act to make sales from the Facility dated as of \_\_\_\_\_, 20\_\_ (FERC Docket \_\_\_\_\_).

1.4 The ESA.

1.5 Battery Energy Storage System Supply and Services Agreement between Developer and \_\_\_\_\_ [BESS Supplier], dated as of \_\_\_\_\_, 20\_\_.

**EXHIBIT 31**

**PERMITTING AND REAL ESTATE OPINION**

1.6 Engineering, Procurement and Construction Services Agreement (Substation) between Developer and \_\_\_\_\_ [EPC Contractor], dated as of \_\_\_\_\_, 20\_\_.

1.7 Balance of Plant and Installation Agreement by and between Developer and \_\_\_\_\_, dated as of \_\_\_\_\_, 20\_\_, as the same was amended by that certain First Amendment to Balance of Plant and Installation Agreement by and between Developer and \_\_\_\_\_, dated as of \_\_\_\_\_, 20\_\_.

1.8 Balance of System Product Supply Agreement by and between Developer and \_\_\_\_\_, dated as of \_\_\_\_\_. 20\_\_.

1.9 Safe Harbor Product Supply Agreement by and between Party Y and Party Z dated as of \_\_\_\_\_, 20\_\_, as the same was assigned to Developer pursuant to that Notice of Partial Assignment from Party Y to Party Z, dated as of \_\_\_\_\_, 20\_\_.

1.10 Module Sales Contract by and between Developer and \_\_\_\_\_ [Module Supplier] dated as of \_\_\_\_\_, 20\_\_.

1.11 Operations and Maintenance Agreement between Developer and \_\_\_\_\_, dated as of \_\_\_\_\_, 20\_\_.

1.12 Standard Large Generator Interconnection Agreement (LGIA) Service Agreement # \_\_\_\_\_ between \_\_\_\_\_ Power Company d/b/a NV Energy and Developer dated as of \_\_\_\_\_, 20\_\_.

1.13 Co-tenancy, Common Assets, and Common Use Agreement by and among Developer, Party 1, and Party 2, dated as of \_\_\_\_\_, 20\_\_.

1.14 Electrical Transformer Supply Agreement by and between Developer and Transformer Supplier for the \_\_\_\_\_ Solar Project dated as of \_\_\_\_\_, 20\_\_.

1.15 Project Administration Agreement by and between Developer and \_\_\_\_\_, dated as of \_\_\_\_\_, 20\_\_.

1.16 Long-Term Services Agreement between Developer and \_\_\_\_\_, dated as of \_\_\_\_\_, 20\_\_.

1.17 \_\_\_\_\_ Solar Project Surface Water Protection Plan prepared by \_\_\_\_\_ for Developer dated as of \_\_\_\_\_, 20\_\_.

1.18 \_\_\_\_\_ Solar Project Stormwater Pollution Protection Plan prepared by \_\_\_\_\_ for Developer dated as of \_\_\_\_\_, 20\_\_.

**EXHIBIT 31**

**PERMITTING AND REAL ESTATE OPINION**

1.19 \_\_\_\_\_ Solar Project Spill Prevention, Control, and Countermeasure Plan prepared by Developer for the Bureau of Land Management (“BLM”) dated as of \_\_\_\_\_, 20\_\_, and updated as of \_\_\_\_\_, 20\_\_.

1.20 Jurisdictional Determination issued by the Department of the Army, U.S. Army Corps of Engineers to Developer on \_\_\_\_\_, 20\_\_.

1.21 Determinations of No Hazard to Air Navigation issued by the Federal Aviation Administration to Developer on \_\_\_\_\_, 20\_\_, and \_\_\_\_\_, 20\_\_, respectively, and denominated as Aeronautical Study Numbers \_\_\_\_\_ though \_\_\_\_\_, *inclusive*.<sup>8</sup>

1.22 Public Utilities Commission of Nevada (“PUCN”) Utility Environmental Protection Act (“UEPA”) Permit to Construct (“PTC”) No. \_\_\_\_\_, issued to Developer in Docket No. \_\_\_\_\_ on \_\_\_\_\_, 20\_\_.

1.23 PUCN UEPA Permit to Construct No. \_\_\_\_\_, issued to Developer in Docket No. \_\_\_\_\_ on \_\_\_\_\_, 20\_\_.

1.24 PUCN UEPA Permit to Construct No. \_\_\_\_\_, issued to Developer in Docket No. \_\_\_\_\_ on \_\_\_\_\_, 20\_\_.

1.25 Special Purpose Permit, License Number \_\_\_\_\_, issued to \_\_\_\_\_ Consulting by the Nevada Department of Wildlife on \_\_\_\_\_, 20\_\_.

1.26 Clark County Special Use Permit \_\_\_\_\_, issued by the Clark County Planning Commission to Developer on \_\_\_\_\_, 20\_\_.

1.27 Clark County Department of Environment and Sustainability (“Clark County DES”) Dust Control Operating Permit (“DCOP”) for Construction Activities Permit No. \_\_\_\_\_, issued to Developer’s EPC Contractor on \_\_\_\_\_, 20\_\_.

1.28 Clark County DES DCOP for Construction Activities Permit No. \_\_\_\_\_ issued to Developer’s EPC Contractor on \_\_\_\_\_, 20\_\_.

1.29 Clark County DES DCOP for Construction Activities Permit No. \_\_\_\_\_ issued to NV Energy on \_\_\_\_\_, 20\_\_.

1.30 [Reserved.]

1.31 Biological Opinion (File No. \_\_\_\_\_), issued by the United States Department of the Interior, Fish and Wildlife Service, on \_\_\_\_\_, 20\_\_.

---

<sup>8</sup> NTD: Because these No Hazard Determinations are substantively identical we have collectively grouped them in Section 1.21 as opposed to listing all \_\_\_ No Hazard Determinations individually.

**EXHIBIT 31**

**PERMITTING AND REAL ESTATE OPINION**

1.32 U.S Department of Energy Form EIA 860 Monthly, as submitted by Developer for the month of \_\_\_\_\_.

1.33 U.S. Department of Energy Form EIA 923 Monthly Plant Operations Report, as submitted by Developer for the month of \_\_\_\_\_ 20\_\_.<sup>9</sup>

1.34 Permission to Operate sent from NV Energy to Developer and dated as of \_\_\_\_\_ 20\_\_.

1.35 Solar Energy Ground Lease Agreement between \_\_\_\_\_, as Landlord, and Developer, as Tenant dated as of \_\_\_\_\_, 20\_\_, and recorded in the Official Records of Clark County, Nevada on \_\_\_\_\_, 20\_\_ as Instrument No. \_\_\_\_\_.

1.36 BLM Right-of-Way (“ROW”) Grant No. \_\_\_\_\_ in favor of Developer, recorded in the Official Records of Clark County, Nevada on \_\_\_\_\_, 20\_\_ as Instrument No. \_\_\_\_\_.

1.37 [Reserved.]

1.38 Consent and Crossing Agreement between \_\_\_\_\_ and Developer dated as of \_\_\_\_\_, 20\_\_, recorded in the Official Records of Clark County, Nevada on \_\_\_\_\_, 20\_\_ as Instrument No. \_\_\_\_\_.

1.39 Permanent Access Road Encroachment Permit issued by \_\_\_\_\_ Partners to Developer dated as of \_\_\_\_\_, 20\_\_.

1.40 Encroachment Permit issued by \_\_\_\_\_ Partners to Developer dated as of \_\_\_\_\_, 20\_\_.

1.41 Governmental Access and Utility Notification issued by NV Energy to Developer on \_\_\_\_\_, 20\_\_.

1.42 Governmental Access and Utility Notification issued by NV Energy to Developer on \_\_\_\_\_, 20\_\_.

The documents referenced in Sections 1.1 to 1.3 are individually referred to herein as a “Supplier Required Regulatory Approval” and, collectively, as the “Supplier Required Regulatory Approvals”. The documents referenced in Sections 1.4 to 1.34 are individually referred to herein as a “Required Facility Document” and, collectively, as the “Required Facility Documents.” The documents referenced in Sections 1.35 to 1.42 are individually referred to herein as a “Real Property Right” and, collectively, as the “Real Property Rights”. The documents referred in

---

<sup>9</sup> NTD: We have not scheduled all of the EIA 923 Forms submitted by Developer, but rather the most recent one made available to us.

**EXHIBIT 31**

**PERMITTING AND REAL ESTATE OPINION**

Sections 1.1 to 1.42 are individually referred to herein as a “Reviewed Document” and, collectively, as the “Reviewed Documents”.

We have further made such inquiries and investigations of law as we have deemed necessary or appropriate for the purpose of rendering these opinions. We have made no other independent investigation or inquiry except as stated below.

**2. Assumptions, Exceptions and Qualifications.**

2.1 In rendering the opinions set forth below, we have, without any independent investigation or inquiry, assumed:

2.1.1 Developer is duly formed, validly existing and in good standing under the laws of the State of Nevada and has all requisite limited liability company power and authority to execute and deliver the Reviewed Documents and to perform its obligations thereunder;

2.1.2 the execution, delivery, and performance by Developer of the Reviewed Documents have been duly authorized by all necessary [corporate/company] action on the part of Developer;

2.1.3 the Reviewed Documents have been duly and validly authorized, executed and delivered by Developer and have been properly acknowledged;

2.1.4 the genuineness of signatures not witnessed by us the authenticity of any documents submitted to use as originals and the conformity to originals of documents submitted to us as copies or drafts;

2.1.5 the necessary legal capacity of all natural persons signing the Reviewed Documents;

2.1.6 the certifications, representations and warranties as to matters of fact made by Developer in the Reviewed Documents are accurate and may be relied upon by us;

2.1.7 Developer is not named or is acting in, engaging in, instigating or facilitating the Transaction, directly or indirectly, for or on behalf of any person, group, entity, or nation named by any Executive Order or the United States Treasury Department as a terrorist, “Specially Designated National and Blocked Person”, or other banned or blocked person, entity, nation, or transaction pursuant to any law, order, rule, or regulation that is enforced or administered by the Office of Foreign Assets Control; and

2.2 The opinions set forth below are subject to the following exceptions and qualifications:

**EXHIBIT 31**

**PERMITTING AND REAL ESTATE OPINION**

2.2.1 we are expressing no opinion as to any consents, approvals, authorizations or other action by, or filing with, any governmental agencies that are required pursuant to the terms of any agreements to which such agencies and Developer are parties and that are applicable to Developer or any such agreements but that are not generally applicable to other parties or agreements;

2.2.2 we do not purport to express any opinion concerning any law other than the Federal laws identified in the Reviewed Documents and the laws of the State of Nevada.

2.2.3 the opinions in this letter are limited in all respects to the Federal laws identified in the Reviewed Documents and the laws of Nevada now in effect, to the matters set forth herein as of the date hereof, and we assume no obligation to review or supplement those opinions should any such law be changed by legislative action, judicial decision or otherwise.

2.2.4 we have relied on the representations set forth in the Fact Certificate attached hereto as Exhibit A; nonetheless, we have no knowledge that any of the representations set forth in the Fact Certificate are incorrect.

**3. Opinions.**

Based on the foregoing and relying thereon and the subject to the assumptions, exceptions and qualifications set forth above, it is our opinion that:

3.1 Except for the Renewable Energy System certification referenced as Item 1 of Exhibit 10 to the PPA, which will be received after the Commercial Operation Date, and Items 10 and 11 of Exhibit 10 to the PPA, which are not required under Nevada law for the Facility as designed, Developer has received (or Developer's contractors or consultants have received on behalf of the Facility) the Supplier Required Regulatory Approvals listed in Exhibit 10 to the PPA.

3.2 Developer has entered into or obtained (or Developer's contractors or consultants have entered into or obtained on behalf of the Facility) all Required Facility Documents listed in Exhibit 12 to the PPA, excluding only the Nevada Renewable Energy System certification referenced as Item 4 of Operating Documents listed in Exhibit 12 to the PPA.

3.3 The Real Property Rights obtained by Developer with respect to the Project Site are adequate in all respects for the ownership, operation, access to and maintenance of the Facility as of the date of this Opinion.

3.4 Copies of the Supplier Required Regulatory Approvals and Required Facility Documents are available at <https://> [web address for data room or repository containing Supplier's documents].

3.5 As of the date of this Opinion each Reviewed Document has been duly obtained by or on behalf of the Developer, was validly issued, and is in full force and effect. Each

**EXHIBIT 31**

**PERMITTING AND REAL ESTATE OPINION**

Reviewed Document is not, to our knowledge, subject to any appeals or further proceedings, is final, and all applicable periods to seek administrative or judicial review have expired. To our knowledge, there are no unsatisfied conditions that would allow for material modifications, revocation or suspension of any Reviewed Document. To our knowledge, there is no proceeding pending or threatened which seeks to, or which may rescind, terminate, modify, condition, suspend, or otherwise alter any Reviewed Document.

3.6 \_\_\_\_\_, the Independent Engineer for the Facility, is independent from Developer, and neither Developer nor its Affiliates have any ownership interest in the Independent Engineer.

Very truly yours,

Law Firm

**EXHIBIT 31**

**PERMITTING AND REAL ESTATE OPINION**

**EXHIBIT A**

**FACT CERTIFICATE**

*[see attached]*

**EXHIBIT 31**

**PERMITTING AND REAL ESTATE OPINION**

**CERTIFICATE OF DEVELOPER**

This Certificate is made as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ , by [ \_\_\_\_\_ ], who represents and warrants that he is the duly elected, qualified, and acting [ \_\_\_\_\_ ] of Developer, a \_\_\_\_\_ corporation/company (the "**Company**") for reliance upon by \_\_\_\_\_ ("**Law Firm**") in connection with the issuance of an opinion letter dated of even date herewith by Law Firm (the "**Opinion Letter**") with respect to that certain Long-Term Energy Storage Agreement between Nevada Power Company d/b/a NV Energy and the Company dated as of \_\_\_\_\_, [202\_], (the "**ESA**"). Capitalized terms not otherwise defined herein shall have the meanings given those terms in the Opinion Letter, or if not defined in the Opinion Letter, shall have the meanings given those terms in the ESA. In connection with the Opinion Letter, [ \_\_\_\_\_ ], on behalf of the Company, hereby certifies to Law Firm for its reliance, the truth, accuracy, and completeness of the following matters:

1. I am familiar with the business of the Company, and due inquiry has been made of all persons, including internal legal counsel, deemed necessary or appropriate to verify or confirm the statements contained herein. I have access to the Company's records and am familiar with the matters contained and certified to in this Certificate.

2. The Company has received no notice of the revocation of its authority to do business, and the Company is in good standing in the State of Nevada.

3. No proceedings for the dissolution, liquidation, consolidation or merger of the Company have been commenced or are threatened as of the date hereof.

4. The Company owns and is constructing an approximately \_\_\_\_ MW alternating-current ("**AC**") energy storage facility (collectively with the ancillary facilities described below, the "**Project**") located on land leased to the Company by the Landlord (the "**Land**"), along with ancillary facilities typical of utility-scale energy storage facilities, including communications facilities, generation-tie, and substation improvements.

5. The entire output and energy attributes of the Project is sold to a single buyer: NV Energy.

6. The Project has declared commercial operation.

7. No hazardous chemicals are, or have been, stored on the Land. The Project will not generate, transport, treat, store, or dispose of any of the hazardous wastes listed in 40 C.F.R. §§ 261.31, 261.32, or 261.33 or dispose of any solid waste that exhibits one of the hazardous characteristics identified in 40 C.F.R. §§ 261.21, 261.22, 261.23, or 261.24 (ignitability, corrosivity, reactivity, and toxicity).

8. Except with respect to: (i) as Item(s) [ \_\_\_\_\_ ] of Exhibit 10 to the PPA, which will be received after the Commercial Operation Date, and (ii) Items [ \_\_\_\_\_ ] of Exhibit 10 to the ESA, which are not required under Nevada law for the Facility as designed, Developer has received (or Developer's contractors or consultants have received on behalf of the Facility) each of the

**EXHIBIT 31**

**PERMITTING AND REAL ESTATE OPINION**

Supplier Required Regulatory Approvals listed in Exhibit 10 to the ESA, and each of the Required Facility Documents listed in Exhibit 12 to the ESA (collectively, the “**Approvals**”). The Approvals are presently held by the Company, and are not subject to any unsatisfied condition that may allow modification, suspension, or revocation. As to each such Approval, such Approval has not been amended, modified, or supplemented, directly or indirectly, by any other agreement, permit, or action by the holder or issuer thereof, and such Approval is in full force and effect, has not been rescinded or forfeited by the issuer or holder thereof, or rescinded or terminated under the terms thereof, and the Company is not in default in the performance of its obligations thereunder.

9. There are no legal or governmental proceedings pending or, to the knowledge of the undersigned, threatened against the Company contesting the validity of, or alleging a breach of, any Approvals, or contending that any additional material permits, licenses, or other approvals are currently necessary for the construction, use, ownership, operation, and maintenance of the Project.

10. There have been no governmental or regulatory enforcement actions taken or threatened against the Project.

11. Copies of the Supplier Required Regulatory Approvals and Required Facility Documents are available at <https://> [web address for data room or repository containing Supplier’s documents].

12. The undersigned has carefully reviewed and understands the PPA (and the exhibits and schedules thereto) and this Certificate and represents and warrants that the statements contained herein and therein are true, complete, and correct. Furthermore, the undersigned has thoroughly reviewed the Opinion Letter and is not aware of any inaccuracy in the assumptions, statements, and/or opinions given therein.

13. Law Firm may rely upon this Certificate in rendering the Opinion Letter.

**[Supplier]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**REN-8-DLE2(b)**  
**FILED UNDER CONFIDENTIAL SEAL**

**REN-8-DLE2(c)**

## REN-8-DLE2(c) - Dry Lake East Energy Storage II NAC-NRS Compliance

---

---

Summary of Nevada Administrative Codes applicable to Dry Lake East II Energy Storage.

NAC 704.8885 (New renewable energy contracts: Review by Commission; criteria for approval) and NAC 704.8887 (New renewable energy contracts: Determination of whether price for electricity is reasonable) requires that the Company provide specific information regarding new renewable energy contracts for which it is seeking approval.

NAC 704.8885(2)(a) requires the Commission to determine the reasonableness of the price of electricity based on the factors set forth in NAC 704.8887, detailed in pertinent part as follows:

NAC 704.8887(1) instructs the utility to calculate the price for electricity acquired or saved pursuant to a new long-term renewable energy contract or energy efficiency contract by calculating the levelized market price for the electricity.

*The project's calculated Levelized Cost of Storage is \$146.13 per megawatt-hour.*

NAC 704.8887(2)(a) requires the Commission to address whether the new renewable energy contract or energy efficiency contract comports with the utility provider's most recently approved plan to increase its supply of or decrease the demand for electricity.

*This NAC is not applicable to the Dry Lake East II Energy Storage long-term storage contract; however, the addition of this resource is expected to reduce the Companies' open position.*

NAC 704.8887(2)(b) addresses the reasonableness of any price indexing provisions set forth in the new renewable energy contract or energy efficiency contract.

*This requirement is not applicable to the Dry Lake East II Energy Storage long-term storage contract. Further, there are no price indexing provisions in the agreement. The capacity price for the storage portion of the PPA is \$13,930/MW-month with no escalation for the term of 20 years.*

NAC 704.8887(2)(c) addresses whether the new renewable energy systems will reduce environmental costs in this State as compared to competing facilities or energy systems that use fossil fuels.

*This NAC is not applicable to the Dry Lake East II Energy Storage long-term storage contract.*

NAC 704.8887(2)(d) addresses the net economic impact and all environmental benefits and environmental costs to this State in accordance with NAC 704.9005 to 704.9525, inclusive, and section 7 of this regulation (measurement and verification protocol for all energy efficiency measures).

*According to the bidder, the net economic impact of the project includes:*

- *A temporary increase in workforce during the construction phase of the facility of an estimated 40 positions at an estimated average salary of \$123,240 annually, equaling a total estimated payroll of \$4.93 million over one construction year;*
- *A permanent long-term increase in the workforce for the operation and maintenance of the facility of an estimated 3 positions at an estimated average salary of \$82,000 annually, and a total payroll of \$8.61 million over 35 years;*
- *Overall, based on information provided by the supplier, the Companies estimate that the investment in Nevada's economy, due to payroll, sale taxes and property taxes directly associated with the Dry Lake East II Energy Storage project will have a net economic impact of more than \$66.1 million.*

NAC 704.8887(2)(e) addresses any economic benefits that might incur to any sector of the economy of this State.

*The economic benefits of the project include increased property tax in Clark County, and sales taxes from the purchase of local goods. Other benefits include an increase in short-term construction employment and long-term operations employment.*

NAC 704.8887(2)(f) addresses the diversity of energy sources being used to generate electricity that is consumed in this State.

*This NAC is not applicable to the Dry Lake East II Energy Storage long-term storage contract.*

NAC 704.8887(2)(g) addresses the diversity of energy suppliers generating or selling electricity in this State.

*NextEra Energy Resources is a U.S.-based company, headquartered in Juno Beach, Florida. Its parent company, NextEra Energy Resources, is one of the largest wholesale generators of electric power in the U.S.*

NAC 704.8887(2)(h) addresses the value of any price hedging or energy price stability associated with the new renewable energy contract or energy efficiency contract.

*This NAC is not applicable to the Dry Lake East II Energy Storage long-term storage contract.*

NAC 704.8887(2)(i) addresses the date on which each renewable energy system is projected to begin commercial operation.

*The project's commercial operation date is estimated to be December 31, 2027.*

NAC 704.8887(2)(j) addresses whether the utility provider has any flexibility concerning the quantity of electricity that the utility provider must acquire or save pursuant to the new renewable energy contract or energy efficiency contract.

*This NAC is not applicable to the Dry Lake East II Energy Storage long-term storage contract.*

NAC 704.8887(2)(k) addresses whether the new renewable energy contract or energy efficiency contract will result in any benefits to the transmission system of the utility provider.

*This resource will add to Nevada Power Company's ("NPC") portfolio of dispatchable resources to meet resource adequacy and reduce open capacity positions. The resource also provides ancillary services that support grid reliability such as primary frequency response.*

NAC 704.8887(2)(l) addresses whether the electricity acquired or saved pursuant to the new renewable energy contract or energy efficiency contract is priced at or below the utility provider's long-term avoided cost rate.

*This NAC is not applicable to the Dry Lake East II Energy Storage long-term storage contract.*

NAC 704.8887(3) addresses the price of electricity acquired or saved in a renewable energy contract or energy efficiency contract for the solar energy requirement of its portfolio standard to be evaluated separately.

*This NAC is not applicable to the Dry Lake East II Energy Storage long-term storage contract.*

NAC 704.8885(2)(b) addresses the term of the contract.

*The term of the PPA with a storage term of 20 years.*

NAC 704.8885(2)(c) addresses the location of the portfolio energy system or efficiency measure that is subject to the contract.

*The project is located in the County of Clark, Nevada.*

NAC 704.8885(2)(d) addresses the use of natural resources by each renewable energy system that is subject to the contract.

*This NAC is not applicable to the Dry Lake East II Energy Storage long-term storage contract.*

NAC 704.8885(2)(e) addresses the firmness of the electricity to be delivered and the delivery schedule.

*This NAC is not applicable to the Dry Lake East II Energy Storage long-term storage contract.*

NAC 704.8885(2)(f) addresses the delivery point for the electricity.

*The generating facility will be interconnected to the existing Harry Allen 230 kV Substation. A one-line diagram depicting the interconnection can be found in Exhibit 5 of the PPA.*

NAC 704.8885(2)(g) addresses the characteristics of similar renewable energy systems.

*The characteristics of the project are similar to those of NPC's other large battery storage systems such as the Reid Gardner BESS project. The plant consists of lithium-ion battery and inverter technology in use in utility scale applications.*

NAC 704.8885(2)(h) addresses the requirements for ancillary services.

*The storage facility provides ancillary services that support and maintain reliable operations of the transmission system, such as voltage control, Primary Frequency Response, secondary response through Automatic Generator Control (AGC), and reactive power.*

NAC 704.8885(2)(i) addresses the unit contingent provisions.

*This NAC is not applicable to the Dry Lake East II Energy Storage long-term storage contract.*

NAC 704.8885(2)(j) addresses the system peak capacity requirements of the utility provider.

*This NAC is not applicable to the Dry Lake East II Energy Storage long-term storage contract.*

NAC 704.8885(2)(k) addresses the requirements for scheduling.

*All charging and discharging energy will be scheduled by NPC. All energy stored at the facility will be delivered directly to SPNPC's electric grid. The facility will be considered a network resource within NPC's system and output from the facility will be used to meet its native load.*

NAC 704.8885(2)(l) addresses conditions and limitations on the transmission system.

*The Large Generator Interconnection Agreement for this project has been executed. Network Upgrades identified for this project are the Harry Allen 230 kV Substation. This project will require transmission provider interconnection facilities, which includes associated protection, communications, and metering, that are directly paid for by the interconnection customer. The estimated cost for the Network Upgrades is \$3.43 million.*

NAC 704.8885(2)(m) addresses project insurance.

*The PPA requires the supplier to provide workers' compensation insurance of not less than \$1,000,000 per each bodily injury by accident; and per \$1,000,000 per each employee bodily injury by occupational disease. The PPA also requires the supplier provide general liability insurance of not less than \$5,000,000 annual aggregate. The PPA also requires automobile liability insurance including owned, non-owned, and hired automobiles with combined bodily injury and property damage with a combined single limit of at \$2,000,000.*

NAC 704.8885(2)(n) addresses the costs for procuring replacement power in the event of non-delivery.

*In the event the project does not meet certain performance requirements, the supplier is obligated to compensate NPC for shortfalls in storage availability. Compensation for a storage availability shortfall is calculated in accordance with Exhibit 26 of the PPA. Additionally, failure to reach commercial operation by the Commercial Operation Date (COD) of December 31, 2027, will incur monetary penalties in the form of daily delay damages as provided for in the PPA.*

NAC 704.8885(2)(o) addresses information verifying that each renewable energy system transmits or distributes or will transmit or distribute the electricity that it generates in accordance with the requirements of NRS 704.7815.

*This NAC is not applicable to the Dry Lake East II Energy Storage long-term storage contract.*

NAC 704.8885(2)(p) addresses the total number of renewable energy systems that the owner of the renewable energy system is or has been associated with as an owner or operator.

*NextEra Energy has developed, constructed, and operated more than 26,000 MW of wind and 10,000 MW of solar. Their portfolio includes 3,000 MW of battery storage*

*NextEra Energy has experience in Nevada, having contributed \$2.7 billion in total infrastructure investment, \$1.2 million in annual land payments, \$4.8 million in property taxes, and 1,245 MW in operational energy.*

NAC 704.8885(2)(q) addresses the points of interconnection with the electric system of the utility.

*The generating facility will be interconnected to the proposed Harry Allen 230 kV Substation. A one-line diagram depicting the interconnection can be found in Exhibit 5 of the PPA.*

NAC 704.8885(2)(r) addresses the interconnection priority which has been established for the available transmission capacity of the utility provider for all proposed renewable energy systems that will interconnect and begin commercial operation within the three-year period immediately following the date on which the new renewable energy contract or energy efficiency contract is submitted for approval.

*Commission approval of the project will not affect any pending Federal Energy Regulatory Commission (“FERC”) interconnection priorities. Pursuant to the provisions of NV Energy’s FERC-approved OATT, interconnection priority of a generator is determined based on the date the requesting customer submits a valid interconnection request.*

NAC 704.8885(2)(s) addresses any requests for transmission service that have been filed with the utility provider.

*The LGIA to support the Dry Lake East II Energy Storage interconnection position was originally executed on June 25, 2025. An Amended and Restated LGIA between NPC and NextEra Energy Resources Development, LLC has been executed. The commercial operation date is projected to be achieved by December 31, 2027.*

NAC 704.8885(2)(t) addresses any evidence that an environmental assessment, an environmental impact statement or an environmental impact report is being completed or has been completed with regard to the renewable energy system, or any evidence that a contract has been executed with an environmental contractor who will prepare such an assessment, statement or report within the 3-year period immediately preceding the date on which the renewable energy system is projected to begin commercial operation.

*An Environmental Assessment was completed for the project and a Finding of No Significant Impact (FONSI) was issued from the BLM. There will be minimal impacts to wildlife from the project.*

NAC 704.8885(2)(u) addresses permits required for the renewable energy systems within the 3-year period immediately preceding the date on which the renewable energy system is projected to begin commercial operation.

*Dry Lake East Energy Storage II expects all Clark County permitting completed by Q3 2026, including dust, grading, building, and substation permits. The project's UEPA permit has been approved and full authorization is expected following completed permitting.*

NAC 704.8885(2)(v) addresses applications for development rights with the appropriate Federal agencies (including BLM), where the granting of such developmental rights is not contingent upon a competitive bidding process.

*A right-of-way (ROW) grant has been secured from the BLM, and an amendment to the ROW grant has been submitted. The Plan of Development amendment and associated Notice to Proceed are anticipated to be issued by Q2 2026. Development rights under the BLM lease were obtained through a BLM-administered competitive auction; however, subsequent development activities, including approval of the amended Plan of Development and issuance of the Notice to Proceed, are not contingent upon any future competitive bidding.*

NAC 704.8885(2)(w) addresses any evidence that establishes rights of ownership, possession or use concerning land or natural resources, including, without limitation, deeds, land patents, leases, contracts, licenses or permits concerning land, geothermal drilling rights or other rights to natural resources.

*The project site lease, parcel number N-95554, was secured on May 20, 2022. The BLM right-of-way grant (Form SF-299) has been secured, and the NDOT encroachment permit associated with the project has also been secured.*

NAC 704.8885(2)(x) addresses whether the utility provider has any economical dispatch rights.

*Nevada Power Company has full charging and discharging rights of the storage facility.*

Summary of **Nevada Revised Statutes** applicable to Dry Lake East Energy Storage II.

NRS 704.741 Plan to increase supply or decrease demands: Submission not less than triennially; joint plans by certain affiliated utilities; contents prescribed by regulation; requirements (Regulation of Public Utilities Generally, Electric Service, Optional Pricing and Resource Planning).

NRS 704.741.4(a) For each energy resource proposed:

NRS 704.741.4(a)(1) addresses a description of each energy resource to be constructed, acquired or contracted for by the utility, including, without limitation, the location of the energy resource, the technology to be used by the energy resource to generate electricity, the anticipated capacity of the energy resource and the anticipated date by which the energy resource will be placed into service;

*The Dry Lake East II Energy Storage project is 150 megawatts four-hour battery storage project by NextEra Energy Resources Development, LLC. The facility will be located in Clark County, Nevada. Its commercial operation date is targeted for 12/31/2027.*

NRS 704.741.4(a)(2) addresses the cost of constructing or acquiring, operating and maintaining the energy resource or, if the energy resource is contracted for by the utility, the price of the energy to be supplied by the energy resource;

*This facility is a 150-megawatt four-hour battery energy storage system at a price of \$13,930 per megawatt-month for a 20 year term.*

NRS 704.741.4(a)(3) addresses whether the energy resource will be owned by the utility or utilized by the utility pursuant to a contract with a third party;

*This facility will be utilized by Nevada Power Company dba NV Energy pursuant to a Power Purchase Agreement with NextEra Energy Resources Development, LLC*

NRS 704.741.4(a)(4) addresses any other information required by the Commission to evaluate the prudence of the scenario.

*NV Energy issued an All-Source Request for Proposal in November 2024, resulting in the shortlisting of this facility that underwent pricing and non-pricing due diligence and commercial negotiations. The project's calculated Levelized Cost of Storage is \$146.13 per megawatt-hour.*

NRS 704.741.4(b) An evaluation of the impact that the implementation of the scenario will have on:

NRS 704.741.4(b)(8) addresses the benefits from high-quality jobs, job training and apprenticeships provided by the projects included in the plan, whether constructed or operated by the utility or a third-party developer.

*According to the bidder, the net economic impact of the project includes:*

- *A temporary increase in workforce during the construction phase of the facility with an average monthly headcount of approximately 40, at an estimated average salary of \$123,240 annually, equaling a total estimated payroll of \$4.93 million over one construction year;*
- *A permanent long-term increase in the workforce for the operation and maintenance of the facility of an estimated 3 positions at an estimated average salary of \$82,000 annually, and a total payroll in excess of \$8.61 million over 35 years.*

**REN-8-DLE2(d)**

## REN-8-DLE2(d) - Dry Lake East Energy Storage II Key Provisions

Owner/Project Name	<b>Dry Lake East Energy Storage II, LLC</b>
Developer/Counterparty	NextEra Energy Resources
Off Taker	Nevada Power Company dba NV Energy
Term	The term of the PPA is 20 years for Storage Facility. The Terminated Storage Provisions shall automatically terminate, be null and void and of no force and effect on the last day of the twentieth (20th) Contract Year. [§ 2.2]
Technology	Battery Storage (BESS)
Contract Capacity	150 MW of Battery Storage Facility [Exhibit 1]
Commercial Operation	Means that: (a) the Storage Facility is fully capable of charging, storing and discharging energy up to the Expected Storage Facility Nameplate Capacity Rating; (b) Supplier shall have received or obtained all Required Facility Documents; and (c) which occurs when all of the requirements set forth in Sections 8.1, 8.3 and 17.2 and Exhibits 6, 7 and 7A (i) have occurred, and (ii) remain simultaneously true and accurate: (A) as of the date and time Supplier gives Buyer notice that Commercial Operation has occurred; and (B) for (the period Buyer has to review Supplier’s notice of Commercial Operation pursuant to Section 8.2.1. [§1.23]
Expected Commercial Operation	December 31, 2027 (“Commercial Operation Deadline”) [§1.25 and Exhibit 6]
Delivery Point Maximum Amount	150 MW [Exhibit 24]
Conditions Precedent	Obligations thereunder, shall not become effective unless and until Buyer has obtained the PUCN Approval described in Section 16.2 before the PUCN Approval Deadline in form and substance satisfactory to Buyer in its sole discretion. [§16.1]
Interconnection Delay	Means any actual delay in the achievement of Commercial Operation that arises from the Transmission Provider’s failure to achieve the “In Service Date” (as defined in the IA) by November 1, 2026, and that such delay is not caused by the acts or omissions of Supplier and could not have been mitigated or avoided by Supplier despite the exercise of diligent and commercially reasonable efforts by Supplier; provided that

**Key Provisions for: Dry Lake East Energy Storage II, LLC  
New Power Purchase Agreement**

	in no event shall the total amount of Interconnection Delay exceed one hundred eighty (180) days [§1.73]
Development Security	<u>A</u> s a condition of Buyer’s execution of and continuing obligations under this Agreement, Supplier shall provide to Buyer, as security for the performance of Supplier’s obligations hereunder, either: (a) a letter of credit from a Qualified Financial Institution substantially in the form attached hereto as Exhibit 17 (or such other form acceptable to Buyer) in an amount equal to Four Million Five Hundred Thousand Dollars (\$4,500,000); (b) a cash deposit in an amount equal to Four Million Five Hundred Thousand Dollars (\$4,500,000), or (c) a Guaranty from a Qualified Guarantor in an amount equal to Four Million Five Hundred Thousand Dollars (\$4,500,000) (the “Development Security”). Supplier shall post the Development Security on the Effective Date. Upon the PUCN Twelve Million Seven Hundred Fifty Thousand Dollars (\$12,750,000). Conditions for replenishment are applicable. See Section 17.1 for more details.
Operating Security	As a condition to achieving Commercial Operation, Supplier shall provide to Buyer, as security for the performance of Supplier’s obligations hereunder, either: (a) a letter of credit from a Qualified Financial Institution substantially in the form attached hereto as Exhibit 17 (or such other form acceptable to Buyer) in an amount equal to Twenty-Five Million Seventy-Four Thousand Dollars (\$25,074,000); (b) a cash deposit in an amount equal to Twenty-Five Million Seventy-Four Thousand Dollars (\$25,074,000), or (c) a Guaranty from a Qualified Guarantor in an amount equal to Twenty-Five Million Seventy-Four Thousand Dollars (\$25,074,000) (the “Operating Security”). See §17.2 for further details.
Product Rate	Storage: \$13,930 MW-month, the Storage Rate for 20 years. [Exhibit 2A]
Measurement Period	Means each two (2) consecutive Contract Years commencing with the first two (2) Contract Years of the Term (i.e., Contract Years one (1) and two (2) shall comprise the first such Measurement Period, Contract Years three (3) and four (4) shall comprise the second Measurement Period, Contract Years five (5) and six (6) shall comprise the third Measurement Period, etc.). [§1.84]

**Key Provisions for: Dry Lake East Energy Storage II, LLC  
New Power Purchase Agreement**

<p>Availability Liquidated Damages</p>	<p>The Availability Liquidated Damages in Summer Month (m) in which the Monthly Storage Availability is less than the Guaranteed Storage Availability shall be calculated as follows:</p> <p>Availability Liquidated Damages<sub>m</sub> = Guaranteed Storage Availability * Undischarged Energy Price<sub>m</sub> * Undischarged Energy<sub>m</sub></p> <p>See Exhibit 26 for more details.</p>
<p>Storage Availability</p>	<p>The Storage Facility shall maintain a Monthly Storage Availability during the On-Peak hours of each of the Summer Months of no less than (a) ninety-five percent (95%) for the Stub Period (or, if there is no Stub Period because the Commercial Operation Date is January 1st, for the first Contract Year), (b) ninety-six percent (96%) for the first Contract Year (or, if there was no Stub Period because the Commercial Operation Date was January 1st, for the second Contract Year), and (b) ninety-seven percent (97%) for the remainder of the Term (the “Guaranteed Storage Availability”), which Monthly Storage Availability shall be calculated in accordance with Exhibit 26. [§3.4.8.1]</p> <p>See Exhibit 26 for more details.</p>
<p>Storage Round Trip Efficiency</p>	<p>During the Term, the Storage Facility shall maintain a Round Trip Efficiency of no less than eighty four percent (84.0%), declining at three tenths of one percent (.3%) per year (the “Storage Round Trip Efficiency Guarantee”), which Round Trip Efficiency shall be calculated in accordance with Exhibit 28. If the Round-Trip Efficiency of the Storage Facility is less than the Storage Round Trip Efficiency Guarantee, then Supplier shall cure such failure by paying to Buyer Storage Round Trip Efficiency Damages calculated in accordance with Exhibit 28. Also see §3.4.9.</p>

**Key Provisions for: Dry Lake East Energy Storage II, LLC  
New Power Purchase Agreement**

Storage Round Trip Efficiency Damages	<p>The Storage Round Trip Efficiency Damages shall equal the hourly product of:</p> <p>(a) Positive value of <math>((\text{Guaranteed RTE} / \text{Actual RTE}) - 1)</math>; where Actual RTE is less than Guaranteed RTE; where Actual RTE = EnergyOUT / EnergyIN (both defined below);</p> <p>(b) the Average On-Peak Mead; and</p> <p>(c) the actual Discharging Energy.</p> <p>[Exhibit 28 and §3.4.9.2]</p>
Primary Frequency Response (Defined)	<p>Means the primary frequency response (also known as fast frequency response) provided through the Facility’s governor and governed by the provisions of Exhibit 16 and subject to the limitations set forth in the Operating Procedures.</p> <p>[§1.118 and Exhibit 16]</p>
Daily Delay Damages	<p>Means an amount equal to: (a) with respect to the first (1st) through and including the sixtieth (60th) day subsequent to the Commercial Operation Deadline, Three Hundred Eighty-Eight Dollars and Eighty-Nine Cents (\$388.89) per MW of the Expected Storage Facility Nameplate Capacity Rating per day; (b) with respect to the sixty-first (61st) through and including the one-hundred twentieth (120th) day subsequent to the Commercial Operation Deadline, Seven Hundred Seventy-Seven Dollars and Seventy-Eight Cents (\$777.78) per MW of the Expected Storage Facility Nameplate Capacity Rating per day; and (c) with respect to the one-hundred-twenty-first (121st) through and including the one hundred and eightieth (180th) day subsequent to the Commercial Operation Deadline, One Thousand One Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$1,166.67) per MW of the Expected Storage Facility Nameplate Capacity Rating per day. [§1.39]</p>
Force Majeure	<p>Supplier's obligations may be excused by an event of Force Majeure.</p> <p>[§20]</p>