

BEFORE THE PUBLIC UTILITIES COMMISSION OF NEVADA

Application of NEVADA POWER COMPANY d/b/a NV Energy and SIERRA PACIFIC POWER COMPANY d/b/a NV Energy, seeking approval of the Third Amendment to the 2018 Joint Integrated Resource Plan, including a request for approval of three new renewable energy power purchase agreements, and updates to the Transmission Action Plan including several new projects needed to allow the new renewable facilities to interconnect into the system, and to meet distribution load growth.

Docket No. 19-06____

VOLUME 4 OF 5

TECHNICAL APPENDIX

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REN-6-MS (a)

**POWER PURCHASE AGREEMENT
FOR RENEWABLE-DISPATCHABLE GENERATING FACILITY**

BETWEEN

NEVADA POWER COMPANY D/B/A NV ENERGY

AND

ARROW CANYON SOLAR, LLC

**Moapa Solar
Clark County, Nevada**

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POWER PURCHASE AGREEMENT FOR A RENEWABLE-DISPATCHABLE GENERATING FACILITY

This Power Purchase Agreement for a Renewable-Dispatchable Generating Facility (this “Agreement”) is made and entered into as of March 27, 2019 (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 **ARROW CANYON SOLAR, 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 renewable energy 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, Buyer 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 sell to Buyer, and Buyer desires to purchase from Supplier, 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 “Accepted Compliance Costs” is defined in Section 3.5.

1.2 “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 and policies of such Person, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer, unless Buyer assigns 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.

- 1.3 “AGC” or “Automatic Generation Control” means Supplier’s Automatic Generation Control which shall be compatible with Buyer’s Energy Management System.
- 1.4 “Agreement” means this Long-Term Renewable Power Purchase Agreement together with the Exhibits attached hereto, as amended from time to time.
- 1.5 “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.
- 1.6 “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 but not limited to: voltage control, operating reserve, spinning reserve, and reactive power.
- 1.7 “ASC” is defined in Section 12.7.
- 1.8 “Availability Backcast Amount” means an amount determined by a backcasting analysis that takes into account both resource conditions and availability of the Generating Facility. The backcasting analysis will be performed by Supplier using a tool which will be mutually agreed upon by Buyer and Supplier in accordance with Exhibit 27 no later than one hundred eighty (180) days prior to Commercial Operation Date. Supplier shall provide Buyer its calculations and include all relevant back-up data and other information reasonably requested by Buyer. If the Parties disagree on the calculation of the Availability Backcast Amount, then the Availability Backcast Amount will be determined through the Dispute resolution provisions of Article 21.
- 1.9 “Availability Liquidated Damages” is defined in Exhibit 26.
- 1.10 “Availability Notice” means a notice delivered by Supplier to Buyer pursuant to Section 14.1 notifying Buyer of the availability of the Facility.
- 1.11 “Availability Test” means the test described in Exhibit 26.
- 1.12 “Balancing Authority Area” is defined in the OATT (as may be modified from time to time) of the Balancing Authority Area Operator.
- 1.13 “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.
- 1.14 “Billing Period” is defined in Section 7.2.1.

- 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 Charging Energy” means all Energy produced by the Generating Facility, net of transformation and transmission losses, if any, measured at the Storage Facility Metering Point that is a result of a Charging Notice given by Buyer. All Buyer’s Charging Energy shall be used for Buyer’s benefit in accordance with Charging Notices and Discharging Notices given by Buyer. Buyer’s payment for Buyer’s Charging Energy shall not be for more than the amount of Energy flowing through, and delivered at, the Storage Facility Metering Point and, in any event, not greater than the amount of Buyer’s Charging Energy included in the applicable Charging Notice
- 1.19 “Buyer’s PC Account” means the account maintained by the PC Administrator for the purpose of tracking the production, sale, transfer, purchase and retirement of PCs by Buyer, or such other account, including a WREGIS account, as Buyer may designate from time to time.
- 1.20 “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.
- 1.21 “CAMD” means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal Governmental Authority given jurisdiction over a program involving transferability of Renewable Energy Benefits or any part thereof.
- 1.22 “Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy. Capacity Rights are measured in MW and do not include any Tax incentives of any kind existing now or in the future associated with the construction, ownership or operation of the Facility. Any costs related to the use or enjoyment of such Capacity Rights will be borne by the holder or beneficiary thereof.
- 1.23 “Certified Nameplate Capacity Rating” is defined in Section 8.3.2.2.
- 1.24 “Charging Energy” means Buyer’s Charging Energy and Supplier’s Charging Energy.

- 1.25 “Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer to Supplier, directing delivery of Buyer’s Charging Energy to the Storage Facility to charge it at a specific MW rate to a specified Stored Energy Level, provided that any operating instruction shall be in accordance with the Storage 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 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.
- 1.26 “Commercial Operation” means that: a) the Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System, and that the Storage Facility is fully capable of charging, storing and discharging energy up to the Storage Contract Capacity; 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 without regard to timing) and 7 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.
- 1.27 “Commercial Operation Date” means the date on which Commercial Operation occurs.
- 1.28 “Commercial Operation Deadline” means the date specified in Exhibit 6 by which the Commercial Operation Date must occur, as such date may be extended if and to the extent Supplier fails to achieve the Commercial Operation Date as a result of Force Majeure.
- 1.29 “Compliance Cost Cap” is defined in Section 3.5.
- 1.30 “Construction Contract” means one or more construction and equipment supply agreements, 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.
- 1.31 “Construction Contractor” with respect to a Construction Contract, means the construction contractor and/or equipment supplier that is party to such Construction Contract.
- 1.32 “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.

- 1.33 “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).
- 1.34 “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, excluding any interests held by Supplier’s Lenders.
- 1.35 “Covered Facility” is defined in Section 24.5.1.
- 1.36 “Critical Project Milestones Delay Damages” or “CPM Delay Damages” means an amount equal to: a) with respect to the first 1st) through and including the sixtieth (60th) day subsequent to a Critical Project Milestone Date other than the Commercial Operation Date, two hundred sixty-seven dollars and thirty-six cents (\$267.36) per MW of Expected Nameplate Capacity Rating per day; and b) with respect to the sixty-first (61st) through and including the ninetieth (90th) day subsequent to the Critical Project Milestone Date other than the Commercial Operation Date, five hundred thirty-four dollars and seventy-two cents (\$534.72) per MW of Expected Nameplate Capacity Rating per day.
- 1.37 “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.
- 1.38 “Critical Project Milestone” means a Project Milestone designated as a Critical Project Milestone on Exhibit 6.
- 1.39 “Cure Period” is defined in Section 24.3.
- 1.40 “Curtailed Product” is defined in Section 10.1.2.
- 1.41 “Daily Delay Damages” 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, two hundred sixty-seven dollars and thirty-six cents (\$267.36) per MW of Expected 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, five hundred thirty-four dollars and seventy-two cents (\$534.72) per MW of Expected Nameplate Capacity Rating per day; and c) with respect to the one-hundred-twenty-first (121st) through and including the one hundred and eighty ((180th) day subsequent to the Commercial Operation Deadline, eight hundred two dollars and eight cents (\$802.08) per MW of Expected Nameplate Capacity Rating per day.
- 1.42 “Defaulting Party” is defined in Section 24.1.
- 1.43 “Deficit Damages” is defined in Section 8.6.1.

- 1.44 “Deficit Damages Rate” means \$200,000 per MW.
- 1.45 “Delivered Amount” means, with respect to any Delivery Hour or period, the actual amount of Net Energy delivered by Supplier and accepted by Buyer at the Delivery Point during such Delivery Hour or period and, if applicable, Buyer’s Charging Energy delivered by Supplier to the Storage Facility Metering Point during such Delivery Hour or period.
- 1.46 “Delivered PCs” means PCs that have been delivered by Supplier and awarded to Buyer pursuant to the terms of this Agreement, in accordance with the Portfolio Standard and which have been properly delivered and recorded to Buyer’s PC Account.
- 1.47 “Delivery Hour” means each hour.
- 1.48 “Delivery Point” means, with respect to Net Energy and Discharging Energy, the delivery point on the Transmission System set forth in Exhibit 5.
- 1.49 “Derating” means a condition of the Generating Facility as a result of which the actual capacity of the Generating Facility is less than the Certified Nameplate Capacity Rating.
- 1.50 “Development Security” is defined in Section 17.1.
- 1.51 “Deviation Amount” is defined in Section 3.6.2.1.
- 1.52 “Discharging Energy” means all Energy discharged by the Storage Facility, less transformation and transmission losses, if any, and delivered to the Delivery Point.
- 1.53 “Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer to Supplier, directing the Storage Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any operating instruction shall be in accordance with the Storage 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 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.
- 1.54 “Dispatch Availability Amount” means, with respect to any Delivery Hour, the amount of Energy stated in Exhibit 13A for the Dispatchable Period or the Full Requirements Period or both, as applicable.
- 1.55 “Dispatch Availability Month” is defined in Section 3.4.10.1.
- 1.56 “Dispatch Availability Shortfall” is defined in Section 3.6.1.1.

- 1.57 “Dispatch Availability Shortfall Amount” is defined in Section 3.6.1.1.
- 1.58 “Dispatchable Accuracy Rate” or “DAR” means a measure of the ability of the Generating Facility and the AGC, as applicable) to follow Buyer’s Energy Management System signals as defined in Exhibit 16.
- 1.59 “Dispatchable Accuracy Rate Threshold” or “DAR Threshold” is 97%.
- 1.60 “Dispatchable Period” the period outside of the Full Requirements Period, consisting of January through May, and September through December, for all hours, and for the months of June through August, hour ending 0100 through 1600, and hour ending 2200 through 2400 as identified in Exhibit 13B.
- 1.61 “Dispatchable Period Product” is the amount of Product capable of being delivered during the Dispatchable Period as determined pursuant to Section 3.6.1.1.
- 1.62 “Dispatchable Period Product Rate” means for any hour of the Dispatchable Period, the Product Rate identified in Exhibit 2A.
- 1.63 “Dispatchable Period Replacement Costs” is defined in Section 3.6.1.2.
- 1.64 “Dispatched Amount” means the amount of megawatts scheduled by Buyer’s Energy Management System in accordance with Section 3.4.7.
- 1.65 “Dispute” is defined in Section 21.1.
- 1.66 “Effective Date” is defined in the preamble of this Agreement.
- 1.67 “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.
- 1.68 “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 Supplier, the Transmission Provider or any Electric System Authority, whether planned or unplanned, 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.
- 1.69 “EMS” or “Energy Management System” means Buyer’s equipment and software used to monitor, control and optimize the performance of Buyer’s generating system.

- 1.70 “Energy” means all energy that is generated by the Generating Facility.
- 1.71 “Energy Choice Initiative” means the initiated constitutional amendment that: a) appeared as ballot question 3 in the State of Nevada general election held on November 8, 2016 titled Nevada Legislature to Minimize Regulations on the Energy Market and Eliminate Legal Energy Monopolies Amendment); (b was approved by a majority of the Nevada voters in the State of Nevada general election on November 8, 2016; and c) will appear on the ballot of the State of Nevada general election scheduled to be held on or about November 6, 2018.
- 1.72 “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.
- 1.73 “Environmental Contamination” means the introduction or presence of Hazardous Substances at such levels, quantities or location, 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.
- 1.74 “Environmental Law” shall mean 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.
- 1.75 “Event of Default” is defined in Section 24.1.
- 1.76 “EWG” means an “exempt wholesale generator” as defined in the Public Utility Holding Company Act of 2005 and in implementing regulations issued thereunder.
- 1.77 “Excess Charging Energy” is defined in Section 3.4.6.3.
- 1.78 “Excess Energy” means for the Dispatchable Period, a) with respect to the Stub Period, the portion of the Delivered Amount plus any Un-Dispatched Amount for the Stub Period, if any, that exceeds one hundred percent (100% of the Maximum Amount, and b) with respect to a Contract Year, the portion of the Delivered Amount plus any Un-Dispatched Amount for such Contract Year, if any, that exceeds one hundred percent (100%) of the Maximum Amount for such Contract Year; provided, however, that Delivered Amount plus Un-Dispatched Amount in excess of the Maximum Amount for any Delivery Hour shall be excluded for purposes of determining Excess Energy.
- 1.79 “Excused Product” is defined in Section 3.6.6.
- 1.80 “Expected Nameplate Capacity Rating” is defined in Exhibit 1.

- 1.81 “Facility” means the Generating Facility and the Storage Facility.
- 1.82 “Fair Market Value” means 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, as such price shall be determined by mutual agreement of the Parties or, absent mutual agreement of the Parties, pursuant to Section 6.7.
- 1.83 “FERC” means the Federal Energy Regulatory Commission and any successor.
- 1.84 “FRP Deemed Delivered Energy” is defined in Section 14.3.2.
- 1.85 “Full Requirements Capacity Shortfall” is defined in Section 3.6.4.1
- 1.86 “Full Requirements Capacity Shortfall Amount” is defined in Section 3.6.4.1.
- 1.87 “Full Requirements Period” means hours ending 1700-2100 for the months of June, July and August as identified in Exhibit 13B.
- 1.88 “Full Requirements Period Capacity Factor” means the percentage stated in Exhibit 1, Section 5(b)(v).
- 1.89 “Full Requirements Period Capacity Shortfall” is defined in Section 3.6.4.1.
- 1.90 “Full Requirements Period Charging Energy” means all Energy produced by the Generating Facility, less transformation and transmission losses, if any, delivered to the Storage Facility Metering Point during the months of June, July or August.
- 1.91 “Full Requirements Period Product” is the amount of Product required to be delivered during the Full Requirements Period as set forth in Exhibit 13B equal to the product of a) the Full Requirements Period Capacity Factor, times b) the Certified Nameplate Capacity Rating, times c) the total number of hours in the Full Requirements Period, namely 460 hours in accordance with Exhibit 1, less any Excused Product.
- 1.92 “Full Requirements Period Product Rate” means for any hour of the Full Requirements Period, the Product Rate identified in Exhibit 2A.
- 1.93 “Full Requirements Period Replacement Costs” is defined in Section 3.6.4.1.
- 1.94 “Force Majeure” is defined in Section 20.2.
- 1.95 “Generating Facility” means Supplier’s generating power plant as described in Exhibit 1, located at the Project Site as identified in Exhibit 3A and 3B and including mechanical equipment and associated facilities and equipment required to deliver Net Energy to the Delivery Point and Storage Facility Metering Point, including items as further described in Exhibits 1, 3A, 3B, 5 and 14, and as such

generating power plant may be modified from time to time in accordance with the terms hereof.

- 1.96 “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 generating facilities with integrated storage 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 generating facilities with integrated storage 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.
- 1.97 “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.
- 1.98 “Governmental Authority” means, as to any Person, any federal, state, local, 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 PUCN, NERC, WECC and WREGIS.
- 1.99 “Guaranteed Storage Availability” is defined in Section 3.4.10.1.
- 1.100 “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.

- 1.101 “IA” means the Large Generator Interconnection Agreement executed on December 7, 2018, as amended from time to time, between Supplier and the Transmission Provider for the Facility.
- 1.102 “IEEE-SA” means the Institute of Electrical and Electronics Engineers Standards Association and any successor entity thereto.
- 1.103 “Indemnified Party” is defined in Section 18.1.
- 1.104 “Indemnifying Party” is defined in Section 18.1.
- 1.105 “Initial Dispatch Period Product Rate” is defined in Exhibit 2A.
- 1.106 “Intraday Schedule Change” is defined in Section 14.2.2.
- 1.107 “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.
- 1.108 “ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.
- 1.109 “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 or any of its property.
- 1.110 “Loss” with respect to a Person means, any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, Regulatory 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.
- 1.111 “Licensed Professional Engineer” means a person proposed by Supplier and acceptable to Buyer in its reasonable judgment who: a) is licensed to practice engineering in the appropriate engineering discipline for the required certification being made in Nevada; 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 and is not an employee of its members or Affiliates, other than with the prior written consent of Buyer, for services previously or currently being rendered to 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.

- 1.112 “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.
- 1.113 “Market Price” means the simple average of MEAD for the On-Peak hours of the Dispatchable Period or the Full Requirements Period, as applicable.
- 1.114 “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.
- 1.115 “Maximum Amount” means, with respect to a Delivery Hour the amount defined in Section 5(b)(iv) of Exhibit 1 in MW, and for any Contract Year, 100% of the Dispatch Availability Amounts (in MWh).
- 1.116 “Mead” means the Hourly Mead Index published by Powerdex.
- 1.117 “Measurement Period” means each one 1) Contract Year commencing with the first one (1) Contract Year of the Term.
- 1.118 “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 Delivered Amounts from the Facility, the quantities of Charging Energy delivered to the Storage Facility Metering 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.
- 1.119 “Minimum Credit Rating” of a Person means that the Credit Rating of that Person is at least (a) BBB- (or its equivalent) as determined by Standard & Poor’s and (b) Baa3 (or its equivalent) as determined by Moody’s.
- 1.120 “Minimum Purchase Price” means the following: i) for the Purchase Option exercisable after the 8th anniversary of the Commercial Operation Date, Four Hundred Twenty-Five Million Dollars (\$425,000,000.00); ii) for the Purchase Option exercisable after the 16th anniversary of the Commercial Operation Date, Three Hundred Sixty-Five Million Dollars (\$365,000,000.00); and (iii) for the Purchase Option exercisable at the end of the Term, Three Hundred Fifteen Million Dollars (\$315,000,000.00).

- 1.121 “Monthly Storage Availability” is defined in Exhibit 26.
- 1.122 “Moody’s” means Moody’s Investor Services, Inc. and any successor.
- 1.123 “MW” means megawatts of electrical power in AC.
- 1.124 “MWh” and “MWhs” mean a megawatt hour or megawatt hours of electrical energy.
- 1.125 “NAC” means the Nevada Administrative Code.
- 1.126 “NERC” means the North American Electric Reliability Corporation and any successor.
- 1.127 “Net Energy” means: a) during the Dispatchable Period, all Energy produced by the Generating Facility including Buyer’s Charging Energy, but not Full Requirements Period Charging Energy or Discharging Energy), all of which shall be net of Station Usage, and transformation and transmission losses and other adjustments e.g., Supplier’s load other than Station Usage), if any, and delivered to Buyer at the Delivery Point or the Storage Facility Metering Point, and b) during the Full Requirements Period, all Energy produced by the Generating Facility and all Discharging Energy delivered to and received by Buyer at the Delivery Point.
- 1.128 “Network Resource” is defined in the OATT.
- 1.129 “Non-Defaulting Party” means the Party other than the Defaulting Party.
- 1.130 “Notice” is defined in Section 29.1.1.
- 1.131 “Notice to Proceed” means the initial notification by Supplier to its Construction Contractor to commence work under the Construction Contract.
- 1.132 “NRS” means the Nevada Revised Statutes.
- 1.133 “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.
- 1.134 “Offered Interests” is defined in Section 6.1.1.
- 1.135 “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.
- 1.136 “Operating Security” is defined in Section 17.2.

- 1.137 “Operation Date” means the first date on which the Generating Facility is energized and operates in parallel with the Transmission System and delivers Net Energy to and at the Delivery Point and Storage Facility Metering Point and the Storage Facility is fully capable of charging, storing and discharging energy up to the Storage Contract Capacity and receiving instructions to charge, store and discharge energy.
- 1.138 “Output Right of First Offer” is defined in Section 24.5.1.
- 1.139 “Over Delivery Amount” is defined in 3.6.3.
- 1.140 “PPT” means Pacific Standard Time or Pacific Daylight Time, whichever is then prevailing in Las Vegas, Nevada.
- 1.141 “Party” or “Parties” means each entity set forth in the preamble of this Agreement and its permitted successor or assigns.
- 1.142 “PC” or “Portfolio Energy Credit” means a unit of credit which equals one kilowatt-hour of electricity generated, acquired or saved (or deemed so) by the Facility, all as calculated by the PUCN operations staff and certified by the PC Administrator pursuant to the Renewable Energy Law or by a successor Governmental Authority pursuant to a successor Law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada), and certified by WREGIS.
- 1.143 “PC Administrator” means the Person appointed by the PUCN to administer the system of Portfolio Energy Credits established pursuant to the Portfolio Standard or a successor Governmental Authority pursuant to a successor law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada.
- 1.144 “PC Replacement Costs” is defined in Section 3.7.1.
- 1.145 “PC Shortfall” is defined in Section 3.7.1.
- 1.146 “PC Shortfall Amount” is defined in Section 3.7.1.
- 1.147 “Person” or “Persons” means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.
- 1.148 “Planned Outage” is defined in Article 11.1.
- 1.149 “Portfolio Standard” means the amount of electricity that Buyer must generate, acquire, or save from renewable energy systems or efficiency measures specified

by the percentage of the total amount of electricity sold by Buyer to its retail customers in the State of Nevada pursuant to the Renewable Energy Law, as established pursuant to NRS 704.7821, and the regulations, guidance and requirements promulgated thereunder, as may be amended, preempted or superseded from time to time or pursuant to a successor law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada).

- 1.150 “Power Quality Standards” means the power quality standards established by NERC, WECC, Buyer, IEEE-SA, National Electric Safety Code, the National Electric Code, or their respective successor organizations or codes, as they may be amended or superseded from time to time, and consistent with Good Utility Practice.
- 1.151 “Product” means all a) Net Energy, b) PCs and any equivalent rights in any other jurisdiction), c) Renewable Energy Benefits, d) Capacity Rights, and e) Ancillary Services, in each case arising from or relating to the Facility, including Storage Product.
- 1.152 “Product Rate” means, for any period, the applicable rate set forth in Exhibit 2A.
- 1.153 “Project Milestone” means each of the milestones listed in Exhibit 6.
- 1.154 “Project Site” means the site for the Facility, as more particularly described in Exhibit 3A and depicted in Exhibit 3B.
- 1.155 “Provisional Energy” means Net Energy (but not Test Energy) that is delivered by Supplier to Buyer prior to the Commercial Operation Date and at the request of Buyer in increments of no less than five 5) MW up to an aggregate maximum of two-hundred (200) MW.
- 1.156 “Provisional Product Rate” is defined in Section 4.1.1.2.
- 1.157 “PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.
- 1.158 “PUCN” means the Public Utilities Commission of Nevada and any successor.
- 1.159 “PUCN Approval” is defined in Section 16.2.
- 1.160 “PUCN Approval Date” means the date the PUCN Approval becomes effective pursuant to NAC §703.790.
- 1.161 “PUCN Approval Deadline” means December 31, 2019.
- 1.162 “Purchase Option” is defined in Sections 6.2 and 6.3.

- 1.163 “QF” means a cogeneration or small power production facility that meets the criteria as defined in Title 18, Code of Federal Regulations, §§ 292.201 through 292.207.
- 1.164 “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.
- 1.165 “Qualified Transferee” means a Person that a) is at least as financially and operationally qualified as Supplier as of the Effective Date 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, (b) should the assignment or transfer of ownership interests occur prior to COD, is technically qualified to develop and construct at least three (3) generating plants of similar technology and similar size to the Facility, and c) has or agrees to contract with an operator who has) at least three (3) years of experience operating a generating plant or a stand-alone or integrated storage facility of similar technology and similar size to the Facility.
- 1.166 “Regulatory Penalties” means any penalties, fines, damages, or sanctions attributable to Supplier’s failure to perform under this Agreement and actually imposed on Buyer pursuant to an order issued by any Governmental Authority, the Transmission Provider or any Electric System Authority.
- 1.167 “Relevant Rating Agency” means Moody’s or S P.
- 1.168 “Renewable Energy Benefits” means any and all renewable and environmental attributes, emissions reductions attributes, Portfolio Energy Credits and any equivalent rights in any other jurisdictions), credits, offsets, allowances, reporting rights and benefits, howsoever entitled, and includes any and all: a) available, allocated, assigned, awarded, certified or otherwise transferred or granted to Supplier or Buyer by the PC Administrator or any Governmental Authority in any jurisdiction in connection with the Facility or the generation, transmission or use of the Product, including those related to the Clean Air amendments of 1970 and regulations of the Environmental Protection Agency thereunder; b) associated with the production of Energy or based in whole or part on the Facility’s use of renewable resources for generation or because the Generating Facility constitutes a Renewable Energy System or the like or because the Facility does not produce or produces less greenhouse gasses, regulated emissions or other pollutants, whether any such credits, offsets, allowances or benefits exist now or in the future and whether they arise under existing Law or any future Law or whether such credit, offset, allowance or benefit or any Law, or the nature of such, is foreseeable or unforeseeable; c) credits, offsets, allowances or benefits attributable to Energy generated by the Facility, d) claims, credits, benefits, emissions, reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or

generation of the Product, and include : 1) any avoided emissions of pollutants into the air, soil, or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO), and other pollutants; and 2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; and e) the Renewable Energy Benefits Reporting Rights. Renewable Energy Benefits exclude and do not include: i) any Tax Credits or other Tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility; ii) matters designated by Buyer as sources of liability; and (iii) adverse wildlife or environmental impacts.

- 1.169 “Renewable Energy Benefits Reporting Rights” means the exclusive right of a purchaser of Renewable Energy Benefits to report ownership of Renewable Energy Benefits in compliance with any applicable Law, and to Governmental Authorities or other Persons at such purchaser's discretion, and include reporting under: a) Section 1605(b) of the Energy Policy Act of 1992; b) the Environmental Protection Agency; c) the Clean Air Act Amendments Section 111(d) and regulations thereunder; and d) any present or future domestic, international or foreign emissions trading program or renewable portfolio standard.
- 1.170 “Renewable Energy Law” means an act of the Nevada Legislature relating to energy that requires certain electric service providers to comply with the portfolio standard for renewable energy, and providing for other matters relating thereto, codified as NRS §§ 704.7801 through 704.7828, inclusive, and the rules and regulations of WREGIS, and the regulations, guidance and other requirements promulgated thereunder, in each case, as such Laws, rules, regulations, guidance and other requirements may be amended, preempted or superseded from time to time.
- 1.171 “Renewable Energy System” means a generation facility that is both a) a “renewable energy system” as defined in the Renewable Energy Law and b) a “renewable Generating Unit” under WREGIS.
- 1.172 “Replacement Costs” means the Full Requirements Period Replacement Costs or Dispatch Period Replacement Costs, as applicable.
- 1.173 “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.
- 1.174 “Resource-Adjusted Backcast Amount” means an amount determined by a backcasting analysis that takes into account weather conditions including cloud cover, rain and snow impacting the solar resource, but assumes 100% operational availability of the Generating Facility. The backcasting analysis will be performed by the Supplier using a tool, which will be mutually agreed upon by Buyer and

Supplier in accordance with Exhibit 27 no later than one hundred eighty (180) days prior to Commercial Operation Date. Supplier shall provide Buyer its calculations and include all relevant back-up data and other information reasonably requested by Buyer. If the Parties disagree on the calculation of the Resource-Adjusted Backcast Amount, then the Resource-Adjusted Backcast Amount will be determined through the Dispute resolution provisions of Article 21.

- 1.175 “Restricted Period” is defined in Section 8.4.2.
- 1.176 “Restricted Transaction” is defined in Section 6.1.1.
- 1.177 “ROFO” is defined in Section 6.1.
- 1.178 “ROFO Period” is defined in Section 6.1.1.
- 1.179 “ROFO Seller” is defined in Section 6.1.1.
- 1.180 “Scheduled Amount” is defined in Section 14.2.1.
- 1.181 “Seller ROFO Notice” is defined in Section 6.1.1.
- 1.182 “Shortfall” means the Full Requirements Capacity Shortfall and/or the Dispatch Availability Shortfall, as applicable.
- 1.183 “Shortfall Amount” means the Full Requirements Capacity Shortfall Amount and/or the Dispatch Availability Shortfall Amount, as applicable.
- 1.184 “Standard and Poor’s” or “S&P” means Standard and Poor’s Ratings Group, a division of McGraw Hill, Inc., and any successor.
- 1.185 “Standby Service” means the electric service supplied by Nevada Power Company for Station Usage pursuant to Schedule LSR, Large Standby Service Rider, as such tariff is in effect and as may be amended from time to time.
- 1.186 “Station Usage” means all Energy used by the Facility with the exception of any energy used to charge the Storage Facility as provided herein.
- 1.187 “Storage Capacity” means the maximum dependable operating capability (in MWh) of the Storage Facility to store or 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.
- 1.188 “Storage Capacity Test” means the testing procedures, requirements and protocols set forth in Section 3.4.9 and Exhibit 25.

- 1.189 “Storage Contract Capacity” means the total capacity in MW of the Storage Facility determined in accordance with Section 3.4.9 and Exhibit 25, as the same may be adjusted from time to time pursuant to Section 3.4.9 and Exhibit 25.
- 1.190 “Storage Deficit Damages” is defined in Section 8.6.3.
- 1.191 “Storage Deficit Damages Rate” means six-hundred thousand dollars (\$600,000) per MW.
- 1.192 “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.
- 1.193 “Storage Facility Metering Point” means, with respect to Charging Energy, the point at the Storage Facility set forth in Exhibit 5.
- 1.194 “Storage Operating Procedures” is defined in Section 8.8 and set forth on Exhibit 24.
- 1.195 “Storage Product” means a) Discharging Energy, b) PCs and any equivalent rights in any other jurisdiction), if any, c) Renewable Energy Benefits, if any, d) Storage Capacity, and e) Ancillary Services, in each case arising from or relating to the Storage Facility.
- 1.196 “Storage Rate” means, for any period, the applicable charge set forth in Exhibit 2A.
- 1.197 “Stored Energy Level” means, at a particular time, the amount of energy in the Storage Facility available to Buyer, expressed in MWh recognizing that the total capacity of the Storage Facility may be in excess of the amount stated in Exhibit 1, Section 8(c)).
- 1.198 “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).
- 1.199 “Supplier” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.200 “Supplier’s Charging Energy” means all energy, including Energy produced by the Generating Facility, less transformation and transmission losses, if any, delivered to and measured at the Storage Facility Metering Point that is not Buyer’s Charging Energy or Full Requirements Period Charging Energy. Supplier’s Charging Energy

shall be used as needed to power the Storage Facility's Station Usage and other auxiliary loads.

- 1.201 "Supplier's Lenders" means any Person or its trustees or agents), other than an Affiliate of Supplier, and its permitted successors and assigns providing money or credit to Supplier or an Affiliate (but only where and to the extent such Affiliate is receiving such money or credit for the purpose of funding development of Supplier or the Facility) in connection with any development, bridge, construction, takeout, permanent debt, tax equity or other 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.
- 1.202 "Supplier's Required Regulatory Approvals" means the Governmental Approvals listed on Exhibit 10.
- 1.203 "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.
- 1.204 "Tax Credits" means the PTC, ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities.
- 1.205 "Term" is defined in Section 2.2.
- 1.206 "Test Energy" is defined in Section 4.1.1.1.
- 1.207 "Test Product Rate" is defined in Section 4.1.1.1.
- 1.208 "Transmission Provider" means Nevada Power Company or any successor operator or owner of the Transmission System.
- 1.209 "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 advance notice provided to Supplier.

- 1.210 “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.
- 1.211 “Un-Dispatched Amount” is defined in Section 10.2.2.
- 1.212 “Weather Meter” is defined in Section 7.1.8.
- 1.213 “WECC” means the Western Electric Coordinating Council (formerly Western System Coordinating Council) and any successor.
- 1.214 “WREGIS” means the Western Renewable Energy Generation Information System and any successor.
- 1.215 “Yearly PC Amount” means the amount of PCs the Facility is expected to generate in a Contract Year as stated in Exhibit 18.

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 Product, and Buyer’s obligation to accept and pay for Product, shall commence on the Commercial Operation Date and shall continue for a period of 25 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 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 Product, and Supplier shall not be obligated to sell or deliver any 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 two 2) 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 Supplier shall first require that Supplier deliver Notice to Buyer stating prominently therein in type font no smaller than 14 point all-capital letters that “THIS IS A TERMINATION NOTICE UNDER A RENEWABLE RESOURCE PPA. YOU MUST CURE A DEFAULT, OR THE PPA 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, Supplier 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 if Supplier's obligations hereunder have been excused by the occurrence of an event of Force Majeure for longer than twelve (12) consecutive months or three hundred sixty (360) days in any five hundred forty (540) day period.

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 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;

2.4.3 Limitation of liability provisions contained in Article 19;

2.4.4 For a period of two (2) years after the termination date, the right to submit a payment Dispute pursuant to Article 21; or

2.4.5 The resolution of any Dispute submitted pursuant to Article 21 prior to, or resulting from, termination.

3. SUPPLY SERVICE OBLIGATIONS

3.1 Dedication. One hundred percent (100%) of the 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 Product to any Person other than Buyer; b) provide Buyer with any 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 Product, Supplier sells to Buyer, and Buyer purchases from Supplier, all rights, title and interest that Supplier may have in and to the Product, including Capacity Rights, Ancillary Services and Renewable Energy Benefits on all Energy including Excess Energy and the Un-Dispatched Amount, as applicable) 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 Product, including the Capacity Rights, if any, and the Renewable Energy Benefits on all Energy including Excess Energy and the Un-Dispatched Amount, as applicable) existing during the Term, whether Buyer has scheduled Product or not, other than as provided in Section 24.2. During the Term, Supplier shall not report to any person or entity that the Product, including the Capacity Rights, if any, and the Renewable Energy Benefits on all Energy including Excess Energy) existing during the Term, belong to anyone other than Buyer. Buyer may report to any person that it exclusively owns the Product, including the Capacity Rights, if any, the Ancillary Services and the Renewable Energy Benefits on all Energy including Excess Energy) existing during the Term. At Buyer's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights, if any, to Buyer.
- 3.4 Delivery Responsibilities.
- 3.4.1 Product. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and throughout the Term, Supplier shall supply and deliver the Product to Buyer at the Delivery Point other than Buyer's Charging Energy which shall be delivered at the Storage Facility Metering Point and the Renewable Energy Benefits which shall be delivered as provided in Sections 5.1.1 and 5.3).
- 3.4.2 Delivered Amount. Buyer shall take delivery of the Energy, including any Excess Energy, and 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 Net Energy and Discharging Energy up to the Delivery Point, including transmission costs, transmission line losses, any costs or charges imposed in connection with scheduling and delivery of the Charging Energy to the Storage Facility Metering Point and any operation and maintenance charges imposed by the Transmission Provider. Buyer shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Energy and 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 generating capacity of the

Generating Facility. 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. Title and risk of loss with respect to Energy and Discharging Energy delivered by Supplier shall pass from Supplier to Buyer at the Delivery Point. Supplier shall be deemed in exclusive control of the Energy and Discharging Energy and shall be responsible for any damage or injury caused prior to the Delivery Point. Buyer shall be deemed in exclusive control of the Energy and Discharging Energy and shall be responsible for any damage or injury caused at and after the Delivery Point. Supplier warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.
- 3.4.4 Provisional Energy Delivery. Buyer may request by written notice to Supplier to deliver Provisional Energy prior to the Commercial Operation Date, in increments as defined in Section 1.153, and on and after a specified date. Supplier may, in its sole discretion, elect to deliver such Provisional Energy to Buyer by delivering written notice thereof to Buyer. Notwithstanding the foregoing, Buyer and Supplier shall mutually agree on the amounts of Provisional Energy to be supplied and the date and time when such Provisional Energy shall be supplied.
- 3.4.5 Voltage Support. The IA requires the Facility to maintain a composite power delivery at continuous rated power output at the point of interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless Transmission Provider has established different requirements that apply to the Facility and all generators in the control area on a comparable basis. In addition to the requirements of the IA, the Facility will provide voltage set point control at the point of interconnection within the range of 0.90 leading to 0.90 lagging, as available. If Buyer requests reactive power or a voltage set-point outside the Generating Facility's capacity at its currently dispatched real power set-point, Buyer will dispatch the Generating Facility downward to a set-point that permits the desired reactive power within the capabilities of the Facility. The amount of Energy that could have been but was not produced due to such dispatch down shall be an Un-Dispatched Amount. In furtherance of the requirements of the IA, the Facility will provide voltage set point control at the point of interconnection for the scheduled real-power output, as available, within the capabilities of the Facility shown in Exhibit 22. The Facility shall provide dynamic reactive power as required for voltage regulation twenty-four 24) hours per day, if the Facility is capable of providing reactive power, regardless of real power output. The performance of reactive power output to provide voltage support shall be according to unit real/reactive capability curves provided in Exhibit 22.
- 3.4.6 Dispatchable Accuracy Rate. Supplier shall meet the Dispatchable Accuracy Rate subject to Section 3.6.2.

3.4.7 Automated Generation Control. Supplier shall operate the Facility, but shall ensure that the Generating Facility is able to be dispatched by Buyer's Energy Management System sending signals to Supplier's AGC so that the Generating Facility can be dispatched dynamically. The energy dispatched in this manner is the "Dispatched Amount."

3.4.8 Charging Energy Management.

3.4.8.1 During the Dispatchable Period (excluding the months of June, July and August), Supplier shall take any and all action necessary to deliver Buyer's 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 deliver Buyer's Charging Energy from the Generating Facility to the Storage Facility.

3.4.8.2 Subject to the requirements and limitations set forth in this Agreement, including Supplier's right to charge the Storage Facility using Supplier's Charging Energy and to charge the Storage Facility in order to meet Supplier's obligations during the Full Requirements Period, during the Dispatchable Period (excluding the months of June, July and August), subject to the Storage Operating Procedures, Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Supplier electronically; provided that the Generating Facility is producing Energy and the Charging Notice does not request a Stored Energy Level that exceeds the Energy available. 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 of 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. Notwithstanding the above, Buyer shall not have the right to send a Charging Notice during the months of June, July or August or to charge the Storage Facility with energy that is not generated by the Generating Facility.

3.4.8.3 Supplier shall not charge the Storage Facility during the Dispatchable Period (excluding the months of June, July and August) other than pursuant to a Charging Notice, in

connection with a Storage Capacity Test, using Supplier's Charging Energy, or as required by Supplier to meet Supplier's obligations during the Full Requirements Period in accordance with Section 14.2.4. If during the Dispatchable Period excluding the months of June, July and August), Supplier charges the Storage Facility except as provided in the preceding sentence, then x) Supplier shall be responsible for all costs associated with the additional energy in the Storage Facility due to such unauthorized charging "Excess Charging Energy"), y) Buyer shall not be required to pay for such Excess Charging Energy, and z) Buyer shall be entitled to use such Excess Charging Energy and to all of the benefits including Storage Product) associated with discharging such Excess Charging Energy. During the months of June, July and August, Supplier may charge the Storage Facility as it determines in its sole discretion.

3.4.9 Storage Capacity Tests.

- 3.4.9.1 Prior to the Commercial Operation Date, Supplier shall schedule and complete a Storage Capacity Test 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 shall have the right to run a retest of the Storage Capacity Test in accordance with Exhibit 25.
- 3.4.9.2 Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. 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 3.4.9, 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).
- 3.4.9.3 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 75 MW, the Storage Contract Capacity shall be deemed to be 75MW.

3.4.10 Storage Availability.

3.4.10.1 During the months of January through May and September through December the “Dispatch Availability Months”) of the Term, the Storage Facility shall maintain a Monthly Storage Availability of no less than ninety-eight percent (98%) the “Guaranteed Storage Availability”), which Monthly Storage Availability shall be calculated in accordance with Exhibit 26.

If the Monthly Storage Availability during the Dispatch Availability Months 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.

3.4.10.2 The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.4.10 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 3.4.10 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 Renewable Energy System. Notwithstanding anything in this Agreement to the contrary, Buyer shall not be obligated to purchase or accept delivery of Product if the Generating Facility: a) is not at the time of delivery qualified as a Renewable Energy System; or b) is not delivering to Buyer all of the Renewable Energy Benefits associated with the Net Energy and Discharging Energy being delivered; provided that if there is a change in the Renewable Energy Law after the execution of this Agreement that causes the Net Energy and Discharging Energy from the Generating Facility to be ineligible or non-qualifying as a Renewable Energy System under such Renewable Energy Law, Supplier shall use commercially reasonable efforts to comply with such Renewable Energy Law. For purposes

hereof, commercially reasonable efforts shall include the expenditure of amounts up to two hundred thousand dollars (\$200,000) in any Contract Year. If Supplier reasonably concludes that it may incur costs in excess of the Compliance Cost Cap in any Contract Year in order to comply with the Renewable Energy Law, it shall provide Buyer with a notice itemizing such excess costs. Buyer shall evaluate such notice and either: i) agree to reimburse Supplier for such excess costs the “Accepted Compliance Costs”); or (ii) waive Supplier’s obligation to comply with the Renewable Energy Law to the extent such inability results from failing to expend amounts in excess of the Compliance Cost Cap. If Buyer agrees to reimburse Supplier for the Accepted Compliance Costs, then Supplier shall be required to comply in full with the Renewable Energy Law, and Buyer shall reimburse Supplier for Supplier’s actual and reasonable out-of-pocket compliance costs in excess of the Compliance Cost Cap, not to exceed the Accepted Compliance Costs. If Supplier’s inability to comply with the Renewable Energy Law cannot be cured by the expenditure of money, such noncompliance shall be excused and shall not constitute an Event of Default or release Buyer from or reduce any of Buyer’s obligations hereunder including Sections 8.1, 8.8, 15.1 and 25.11.

- 3.6 Shortfalls; Replacement Costs; DAR. Supplier shall pay Buyer Replacement Costs, DAR Threshold remedies and any Regulatory Penalties, if any, incurred as a result of any Shortfall in any Measurement Period in accordance with the following provisions:

3.6.1 Dispatchable Period Shortfall.

- 3.6.1.1 If a) the sum of all Delivered Amounts, and all Excused Product for the Dispatchable Period during a Measurement Period is less than b) ninety-five hundredths (0.95) multiplied by the Resource-Adjusted Backcast Amount minus the Full Requirements Period Charging Energy for the Dispatchable Period during such Measurement Period), then an availability shortfall a “Dispatch Availability Shortfall”) will be deemed to exist for such Dispatchable Period equal to b minus a) the “Dispatch Availability Shortfall Amount”).
- 3.6.1.2 Buyer’s “Dispatchable Period Replacement Costs” with respect to any Dispatchable Period in any Measurement Period for a Dispatch Availability Shortfall shall equal the product of a) the Dispatch Availability Shortfall Amount for such Dispatchable Period multiplied by b) the sum of i) an amount equal to the positive difference, if any, between the Market Price for the Dispatchable Period minus the applicable Product Rate, plus ii) the PC Replacement Cost. The portions of the Dispatchable Period Replacement Costs attributable to the difference between the Market Rate and the Product Rate and to the PC Replacement Costs may be invoiced separately or jointly.

- 3.6.1.3 Within five 5) Business Days after the end of any Measurement Period in which a Dispatch Availability Shortfall has occurred, Supplier shall calculate the Replacement Costs with respect to such Dispatch Availability Shortfall Amount and provide Buyer with written notice of such calculation. Such Replacement Costs shall be reflected on the Invoice for the same Billing Period in which such Availability Replacement Costs are calculated.

3.6.2 Dispatchable Accuracy Rate.

- 3.6.2.1 In the event the Generating Facility's DAR is less than ninety-seven percent 97%) "DAR Threshold") for any calendar month during the Dispatchable Period, and not to exceed any three 3) consecutive calendar months, Buyer will not pay Supplier for an amount of megawatt hours equal to the product of 0.97 less the Generating Facility's DAR expressed as a decimal) and the Dispatched Amount the "Deviation Amount"). For the Invoice immediately following any such calendar month that includes a Deviation Amount, the invoiced amount shall be reduced by an amount equal to the Deviation Amount multiplied by the applicable Dispatchable Period Product Rate.
- 3.6.2.2 If after three 3) consecutive months the Generating Facility does not meet the DAR Threshold for a fourth month or for any month thereafter through six 6) months, Buyer shall only pay Supplier for the Dispatched Amount during such months and shall not be obligated to compensate Supplier for any Un-Dispatched Amount in such months .
- 3.6.2.3 If after six 6) consecutive months but not to exceed twelve 12) consecutive months the Generating Facility does not meet the DAR Threshold for each such month, Supplier shall only be entitled to receive 75% of the Dispatchable Period Product Rate for the Dispatched Amount and shall only pay Supplier for the Dispatched Amount during such months and shall not be obligated to compensate Supplier for any Un-Dispatched Amount in such months).
- 3.6.2.4 If after twelve 12) consecutive months the Generating Facility's DAR is less than the DAR Threshold for each such month then Buyer shall have the right to terminate this Agreement pursuant to Section 24.1.
- 3.6.2.5 If Supplier fails to meet the DAR Threshold for any twenty 20) non-consecutive months during the Dispatchable Periods of any ten 10) consecutive Contract Years during the Term, Buyer will have the right to terminate this Agreement pursuant to Section 24.1.

3.6.3 Full Requirements Period Over Delivery.

- 3.6.3.1 If for any Full Requirements Period the Delivered Amount is greater than the Full Requirements Period Product by more than five percent (5%), the Delivered Amount over such 5% threshold is the “Over Delivery Amount”.

3.6.4 Full Requirements Capacity Shortfall.

- 3.6.4.1 If for any Full Requirements Period of a Contract Year, a) the Delivered Amount plus Excused Product during the Full Requirements Period is less than b) ninety-five hundredths (0.95) multiplied by the Full Requirements Period Product, then a shortfall a “Full Requirements Period Capacity Shortfall”) will be deemed to exist for such Full Requirements Period equal to b) minus a) the “Full Requirements Capacity Shortfall Amount”), Supplier shall pay Replacement Costs for such Full Requirements Capacity Shortfall Amount equal to the product of x) Full Requirements Capacity Shortfall Amount, times y) the sum of i) an amount equal to the positive difference if any between the Market Price for the Full Requirements Period minus the Full Requirements Period Product Rate the result of such calculation, the “Full Requirements Period Replacement Costs”, which shall not be less than zero) plus ii) the PC Replacement Cost). The portions of the Full Requirements Period Replacement Costs attributable to the difference between the Market Rate and the Full Requirements Period Product Rate and to the PC Replacement Costs may be invoiced separately or jointly.
- 3.6.4.2 If in the second consecutive Full Requirements Period, Supplier incurs another Full Requirements Capacity Shortfall, then for the purpose of calculating payment to Supplier in the immediately successive Invoice, such invoiced amount shall be reduced by an amount equal to: i) the Full Requirements Capacity Shortfall for such Full Requirements Period multiplied by ii) the applicable Full Requirements Period Product Rate plus the PC Replacement Cost. If this reduction results in a negative Invoice amount, subsequent Invoices will be reduced until the entire Full Requirements Capacity Shortfall amount has been recovered by Buyer.
- 3.6.4.3 If after the third consecutive Full Requirements Period Supplier incurs a third Full Requirements Capacity Shortfall, Supplier shall pay the amount calculated in Section 3.6.4.2 for such third Full Requirements Period, and Buyer shall have the right to terminate this Agreement pursuant to Section 24.1. Buyer’s termination right must be exercised, if at all, within one hundred eighty (180) days after the end of such third Full Requirements Period. If Buyer does not terminate and for consecutive subsequent Full Requirements Periods thereafter a Full Requirements Capacity Shortfall occurs, Buyer shall have the right to terminate this Agreement pursuant to

Section 24.1 until a Full Requirements Period in which Supplier does not have a Full Requirements Capacity Shortfall, after which time the termination right will reset and Supplier will have to have three consecutive Full Requirements Periods with Full Requirements Capacity Shortfall for Buyer again to have the termination right defined in this Section.

3.6.4.4 Within five 5) Business Days after the end of any Full Requirements Period in which a Full Requirements Capacity Shortfall has occurred, Supplier will calculate the Full Requirements Period Replacement Costs with respect to such Full Requirements Capacity Shortfall and provide Buyer with written notice of such calculation. Such Replacement Costs shall be reflected on the Invoice immediately subsequent to the Full Requirements Period and will reflect any set-off or true-ups in accordance with this Agreement.

3.6.5 Not a Penalty. The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.6 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 damages for the failure of Supplier to supply and deliver Net Energy are 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.

3.6.6 Calculations. As soon as practicable following any period of: a) Force Majeure; b) Buyer's failure to accept Net Energy or PCs in breach of this Agreement; c) Emergency except as provided in Section 9.4); d) Planned Outage; e) Curtailed Product; f) Transmission Provider Instructions; g) an Un-Dispatched Amount, or h) FRP Deemed Delivered Energy, in each case as a result of which Supplier has failed to deliver any portion of the Product to Buyer during such period and, subject to the terms of this Agreement, such failure and Supplier's liability for damages therefor are excused, Supplier shall calculate the amount of Net Energy that Supplier was unable to generate solely as a result of such event, by summing for each hour of the period the difference between i) the Availability Backcast Amount, and ii) the Delivered Amount during each hour the "Excused Product")

3.7 PC Shortfall; PC Replacement Costs.

3.7.1 If there is a Dispatch Availability Shortfall or a Full Requirements Period Capacity Shortfall, after the PC Administrator issues all the PC statements or certificates for any Measurement Period there will also be deemed to be a "PC Shortfall", and Supplier shall pay Buyer for the replacement costs and any Regulatory Penalties associated with such PC Shortfall

collectively, the “PC Replacement Costs”) as provided in Sections 3.6.1.2, 3.6.4.1 and 3.6.4.2.

- 3.7.2 The PC Replacement Costs shall be determined on a per MWh basis by Buyer exercising its reasonable discretion based on the cost of purchasing PCs from the same resource type with a comparable expiration date or the cost of PCs of Buyer’s choice already in Buyer’s PC Account used to replace the PC Shortfall Amount; provided, however, that Buyer shall not be required to actually purchase replacement PCs in order to receive payment from Supplier for PC Replacement Costs. Buyer shall include in the PC Replacement Costs any Regulatory Penalties allocable for any Measurement Period to Supplier’s PC Shortfall Amount as a portion of Buyer’s aggregate shortfall under the applicable Portfolio Standard factoring in Supplier’s PC Shortfall Amount in Measurement Periods carried forward as a deficit or reducing the surplus in such prior Measurement Periods). The corresponding Dispatch Availability Shortfall Amount or Full Requirements Capacity Shortfall Amount shall be the “PC Shortfall Amount”.
- 3.7.3 The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.7 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 3.7 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.
- 3.7.4 All information used by Buyer to establish PC Replacement Costs shall be verifiable by Supplier; and Buyer shall provide reasonable access to all such information supporting calculations within five 5) Business Days of Supplier’s request for such information. Supplier agrees to execute a confidentiality agreement regarding the review of this information upon request by Buyer.
- 3.7.5 For any Measurement Period, Buyer, at its sole option, may allow Supplier to meet its PC Replacement Cost obligation by transferring a quantity of PCs to Buyer in the amount of no less than the PC Shortfall Amount. Such PCs shall be from the same resource type with a comparable expiration date as the PCs that should have been delivered to Buyer under this Agreement.
- 3.8 Supply Degradation. Beginning with the second Contract Year, and each Contract Year thereafter, the Dispatch Availability Amount, the Maximum Amount and the Yearly PC Amount shall be reduced by three-tenths of a percent (0.3%), such that the applicable amount is reduced by such percentage using the prior year adjusted amount i.e. after the reduction for the prior year has been applied) as the base amount to which the percentage is applied. No later than January 1 of each Contract

Year Buyer shall deliver to Supplier revised Exhibits 13 and 18 which shall reflect such reductions, and effective as of January 1 of each Contract Year this Agreement shall automatically be amended to substitute such revised Exhibits 13 and 18 for the then existing Exhibits 13 and 18.

4. PRICE OF PRODUCT

4.1 Product Payments. Supplier shall be paid for the Product as follows:

4.1.1 Prior to the Commercial Operation Date.

- 4.1.1.1 On and after the Operation Date and prior to the Commercial Operation Date, all Product associated with Delivered Amounts of Net Energy from the Generating Facility, other than a) Excess Energy which shall not be compensable) and b) Provisional Energy, shall be considered "Test Energy" shall be paid for by Buyer at fifty-percent (50%) of the applicable Product Rate ("Test Product Rate").
- 4.1.1.2 Notwithstanding the above, if Buyer requests Supplier to deliver Provisional Energy and Supplier elects to deliver Provisional Energy and delivers written notice to Buyer that it is delivering Provisional Energy in accordance with Section 3.4.4, Buyer shall pay Supplier seventy-five percent (75%) of the applicable Product Rate ("Provisional Product Rate") for such Provisional Energy.
- 4.1.1.3 Provisional Energy shall be distinguished from Test Energy in so far as Provisional Energy is for a determined amount of capacity the Generating Facility is capable of consistently generating, whereas Test Energy is energy generated after the Operation Date and prior to Commercial Operation that is needed to commission the Generating Facility. Supplier shall provide notice when Provisional Energy is available and Buyer and Supplier shall mutually agree to the date and time when Provisional Energy requested by Buyer and agreed to by Supplier shall be supplied in accordance with Section 3.4.4. Five (5) Business Days prior to the start of each month, beginning with the month in which the Operation Date is expected to occur, Supplier shall provide notice to Buyer with an estimate of the forecasted amounts of Test Energy and Provisional Energy for that month with correlated meter data for actual amounts of Test Energy and Provisional Energy amounts to be provided with invoicing. Such determination shall be subject to verification by Buyer in the exercise of its reasonable discretion.

4.1.2 Subsequent to the Commercial Operation Date.

4.1.2.1 All Product associated with Delivered Amounts of Net Energy from the Generating Facility, other than Excess Energy, shall be paid for by Buyer at the applicable Product Rate set forth in Exhibit 2A and based on the quantity of Net Energy; provided that such payment constitutes the entirety of the amount due to Supplier from Buyer for the Product associated with Delivered Amounts of Net Energy other than Excess Energy; provided further that Supplier shall be paid at the Test Product Rate for the month in which the Commercial Operation Date occurs if the Commercial Operation Date occurs on or after the sixteenth (16th day of such month.

4.1.2.2 All Un-Dispatched Amount of Product shall be paid for at the Dispatchable Period Product Rate in consideration for Ancillary Services and Capacity.

4.1.2.3 All Product associated with Excess Energy shall be paid for at the Test Product Rate.

4.1.2.4 All FRP Deemed Delivered Energy shall be paid for at the Full Requirements Period Product Rate.

4.1.2.5 The payment for all Storage Product is included in payments for the applicable Product Rates.

4.1.2.6 All Over Delivery Amounts shall be paid for at three (3) times the Dispatchable Period Product Rate for the Over Delivery Amount.

4.1.3 No payment shall be owing to Supplier for any Product associated with Energy that is for any reason not Net Energy except as otherwise provided in Section 4.1.2.2.

4.1.4 Buyer shall not be required to accept from Supplier any Product associated with Delivered Amounts of Net Energy from the Generating Facility delivered during any Delivery Hour in excess of the Maximum Amount and no payment shall be owing to Supplier for any Product associated with Delivered Amounts of Net Energy from the Generating Facility accepted by Buyer during any Delivery Hour in excess of the Maximum Amount.

4.2 Excused Product. Buyer shall not pay for Product comprising Excused Product except for Excused Product described in Sections 3.6.6(b), (g) and (h).

4.3 Tax Credits. The Parties agree that neither any Product Rate nor the Test Product Rate are 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 Supplier's 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 Net Energy and Discharging Energy and Product, shall be effective regardless of whether the sale of Energy or Net Energy from the Facility is eligible for, or receives Tax Credits during the Term.

5. PORTFOLIO ENERGY CREDITS/RENEWABLE ENERGY BENEFITS

5.1 Delivery of Renewable Energy Benefits and Portfolio Energy Credits.

5.1.1 All Renewable Energy Benefits are exclusively dedicated to and vested in Buyer. Supplier shall deliver to Buyer all Renewable Energy Benefits derived from the Facility, including Renewable Energy Benefits associated with Energy for Station Usage, if any. Supplier shall timely prepare and execute all documents and take all actions necessary under Law or the requirements of any Governmental Authority or Person and otherwise to cause the Renewable Energy Benefits to vest in Buyer, without further compensation, including: a) taking all actions necessary to register or certify any Renewable Energy Benefits or the Facility with the PUCN or any other Person pursuant to NAC 704.8921 or otherwise) and WREGIS; b) causing the automatic transfer of the Renewable Energy Benefits derived from the Facility to Buyer pursuant to NAC 704.8927 or otherwise); c) providing all production data and satisfying the reporting requirements of the PUCN or PC Administrator, as applicable; and d) cooperating in any registration by Buyer of the Facility in any other renewable portfolio standard or equivalent program in any states in which Buyer may wish to register or maintain registration of the Facility, including providing copies of all such information as Buyer reasonably requires for such registration; provided that any costs related to the use or enjoyment of renewable portfolio standard or equivalent program in any other states will be borne by the holder or beneficiary thereof. Without limitation of the foregoing, Supplier acknowledges that the Renewable Energy Benefits, may be used by Buyer in meeting its present and future obligations pursuant to applicable Law, including the Portfolio Standard, and agrees to cooperate with Buyer to assist in Buyer's compliance with all applicable requirements set forth in the Portfolio Standard and provide all information reasonably requested by Buyer or otherwise necessary to allow the PUCN to determine compliance with the Portfolio Standard. No Person other than Buyer or its designee) will be entitled to claim Renewable Energy Benefits supplied to Buyer during the Term in any jurisdiction in connection with the Facility. The benefit of all representations and warranties made by Supplier with respect to Renewable Energy Benefits are freely transferrable by Buyer to any purchaser or transferee of such Renewable Energy Benefits or part thereof without requiring any consent from Supplier.

- 5.1.2 On or before January 31 of each year of the Term following the Operation Date, Supplier, as owner or operator of the Renewable Energy System, shall deliver to Buyer a written attestation for the prior year that no part of the Renewable Energy Benefits: have been or will be a) used for or by any Person to obtain renewable energy credit in any state or jurisdiction, except for Buyer pursuant to this Agreement; b) sold or otherwise exchanged for compensation or used for credit in any other state or jurisdiction; and c) included within a blended energy product certified to include a fixed percentage of renewable energy in any other state or jurisdiction, pursuant to Chapter 704 of the NAC. No Person other than Buyer or its designee) will be entitled to claim Portfolio Energy Credits, Renewable Energy Benefits or equivalents in any jurisdiction) in connection with the Facility.
- 5.2 Injunction. If any Person other than Buyer or its designee) attempts to claim such Renewable Energy Benefits or part thereof, the Parties agree that remedies at Law may be inadequate to protect Buyer in the event of a breach of this Section 5.2, and Supplier hereby in advance agrees: a) that Buyer shall be entitled to seek without proof of actual damages or the necessity of posting any bond or other security, temporary, preliminary and permanent injunctive relief from any Governmental Authority of competent jurisdiction restraining Supplier from committing or continuing any breach of this Section 5.2; and b) that Supplier will promptly undertake all necessary actions to prevent such other Person from claiming such Renewable Energy Benefits including joining with or otherwise assisting Buyer in seeking the relief described in clause (a)).
- 5.3 Transfers. Buyer shall be entitled to PC Replacement Costs as provided in Section 3.7. Supplier shall promptly give Buyer copies of all documentation it submits to WREGIS or PUCN or otherwise with respect to Renewable Energy Benefits. Further, in the event of the promulgation of a scheme involving any part of the Renewable Energy Benefits administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Supplier shall not report under Section 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Renewable Energy Benefits generated during the Term belong to any person other than Buyer. Without limiting the generality of Buyer's ownership of the Renewable Energy Benefit Reporting Rights, Buyer may report under such program that all Renewable Energy Benefits purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfers.

6. RIGHT OF FIRST OFFER; RIGHT OF FIRST REFUSAL; PURCHASE OPTIONS

6.1 Right of First Offer ("ROFO").

- 6.1.1 Except in accordance with this Section 6.1.1 or in connection with a transaction between Supplier or its Affiliates and Supplier's Lenders in connection with any development, bridge, construction, takeout, permanent

debt, tax equity or other 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, 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 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” , and Buyer shall have a right of first offer with respect to the purchase of such Offered Interests. Within fifteen 15) days after receipt of the Seller ROFO notice, if given before the Commercial Operation Date, or within thirty 30) days after receipt of the Seller ROFO Notice, if given on or after the Commercial Operation Date, 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 than sixty 60) days after receipt of the Seller ROFO notice, if given before the Commercial Operation Date, or seventy-five 75) days after receipt of the Seller ROFO Notice, if given on or after the Commercial Operation Date, the terms of a purchase by Buyer or its designee of the Offered Interests such fifteen 15)-day period as extended, if applicable, by such thirty 30)-day period, and if on or after the Commercial Operation Date, such thirty (30)-day period as extended, if applicable, by such seventy five 75) day period, the “ROFO Period”). NV Energy 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. Buyer’s failure to respond to a Seller ROFO Notice within fifteen 15) or thirty 30 , as applicable, 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) 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, ROFO Seller may negotiate a Restricted Transaction with any other Person within one hundred eighty 180) days or for a Restricted Transaction involving multiple offered projects for sale two hundred ten 210) days following ROFO Seller’s receipt of the Buyer

ROFO Notice, subject, in all cases, to the terms and conditions of this Agreement, including Section 6.1.3 and the provisions of Article 23. If negotiations had commenced but were not concluded as provided in clause b) and c), ROFO Seller shall not enter into a Restricted Transaction with any other Person for a price that is less than the price that Buyer was willing to pay before negotiations were terminated. For purposes of the foregoing comparison, a price that is not payable entirely in cash shall be converted to an equivalent cash price by discounting any portion of the price payable over time to its net present value and determining an equivalent value for portion of the price not payable in cash.

- 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 eighty (180) days following the expiration of the ROFO Period or for a Restricted Transaction involving multiple offered projects for sale, two hundred ten (210) days following expiration of the ROFO Period, 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 During Term. Supplier hereby grants to Buyer options to purchase (“Purchase Option”) on a date chosen by Buyer during the six (6) months after the Facility’s 8th and 16th anniversaries of the Commercial Operation Date at the greater of i) Fair Market Value and ii) Minimum Purchase Price, 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 Purchase Option at the End of Term. Supplier hereby grants to Buyer the option to purchase the Facility at the end of the Term at the greater of Fair Market Value or the Minimum Purchase Price also a “Purchase Option”), which option may be exercised by Buyer providing written notice to Supplier no less than one hundred and eighty (180) days prior to the end of the Term of Buyer’s election to exercise such option.
- 6.4 Efforts Required to Transfer Facility and Offered Interests. If Buyer exercises a 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 prepared by Buyer which shall contain customary representations, warranties and covenants and otherwise be in form reasonably acceptable to Buyer and Supplier, it being understood that the Facility will be sold on an “as is” basis. However, notwithstanding the above, Supplier shall transfer to Buyer all warranties, guaranties or assurances of any kind from any prior or existing vendor at the time of such transfer for equipment or performance. 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; provided that Buyer will seek such approvals as expeditiously as possible and shall use good faith efforts to minimize the time required for such

approvals. Pursuant to the purchase and sale agreement, Supplier will take all 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 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.

- 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.
- 6.7 Determination of Fair Market Value. Promptly following Buyer's written notice pursuant to Section 6.2 or Section 6.3, Buyer and Supplier shall mutually agree to the Fair Market Value of the Facility. If Buyer and Supplier cannot mutually agree to a Fair Market Value of the Facility within thirty (30) days of delivery of the Buyer's notice of intent, then Buyer and Supplier shall each select and retain, at their own cost and expense, a nationally recognized independent appraiser with experience and expertise in appraising solar photovoltaic generation facilities with integrated storage to determine separately the value of the Facility. Subject to the appraisers' execution and delivery to Supplier of a suitable confidentiality agreement in a form reasonably acceptable to Supplier, Supplier shall provide both appraisers access to the Facility and its books and records during business hours and upon prior written notice. The appraisers shall act reasonably and in good faith to determine the Fair Market Value of the Facility. If for any reason other than failure by Supplier to provide access hereunder to Buyer's appraiser), one of the appraisals is not completed

within sixty (60) days following delivery of the Buyer's notice of interest, the results of the other completed appraisal shall be deemed the Fair Market Value of the Facility. Buyer and Supplier may provide to both appraisers a list of factors which they suggest be taken into consideration when the appraisers generate their appraisals, consistent with industry standards prevailing at such time for appraising solar photovoltaic generation facilities with integrated storage. Any information provided to an appraiser by the Supplier or Buyer shall be provided to the other appraiser and the other Party at the same time, it being the intent of the Parties that the appraisers have access to the same information. Buyer and Supplier shall deliver the results of their respective appraisal to the other Party when completed. If so requested by either Buyer or Supplier, the appraisals shall be exchanged simultaneously. After both appraisals are completed and exchanged, the Parties and their appraisers shall promptly confer and attempt to agree upon the Fair Market Value of the Facility.

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, which shall be consistent with Good Utility Practice, 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, allowing for the DC-coupled nature of the Storage Facility. 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 or to the Storage Facility Metering Point. 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 WREGIS Metering. Supplier shall cause, at its sole cost and expense, the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility. Supplier shall be responsible to obtain all qualified reporting entity services required by WREGIS at Supplier's expense should Buyer not in its sole and absolute discretion provide them.
- 7.1.3 Location. Meters shall be installed at the location s) specified in Exhibit 5, or Meters will be corrected to provide readings as if the Meter were located

at such location(s) if installed at a different location, or as otherwise may be reasonably determined by Buyer and Supplier 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, or nationally approved equivalent (as available for DC meters), in which case the Party whose meters were found to be inaccurate (i.e. Buyer with respect to the Meters and Supplier with respect to check meters) 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 or nationally approved equivalent (as available for DC meters), Buyer shall repair and recalibrate or replace the Meters, and Buyer shall adjust payments to Supplier for the Delivered Amount 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 ninety (90) 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 for the Delivered Amount calculated 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 of the Delivered Amount. In such event, such payments made based upon the Parties' estimate of the Delivered Amount shall be in full satisfaction of payments due hereunder. If the Parties cannot agree on a best estimate of the Delivered Amount the Dispute shall be resolved in accordance with Article 21.
- 7.1.8 Weather Meter. Supplier shall, at Supplier's cost and no later than six (6) months prior to the Commercial Operation Date, provide, install, own, operate and maintain a device for the measurement of weather conditions relevant to the generation of Energy at the Project Site the "Weather Meter"), provided that Supplier shall not select the type of Weather Meter without the prior written consent of Buyer, which shall not be unreasonably withheld. No later than twelve (12) months prior to the Commercial Operation Date, the Parties shall agree on the location of the Weather Meter and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Meter.

7.2 Invoices.

- 7.2.1 Monthly Invoicing and Payment. On or before the 10th 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 twelve (12) 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 twelve (12) months after the close of the Billing Period, the right to payment for such Billing Period is waived.
- 7.2.2 Replacement PC Invoice Calculation. In addition to the requirements for monthly Invoices set forth in this Section 7.2, if after the PC Administrator issues its final PC statement covering any Measurement Period and a PC Shortfall as determined in accordance with Section 3.7.1) exists, Buyer shall send to Supplier an Invoice for such Measurement Period, which shall include the calculations set forth in Exhibit 2C.

- 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 ten 10) 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 20th day following the end of each Billing Period or the next following Business Day, if such twentieth 20th 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 upon five 5) Business Days written notice from Buyer its books and records as necessary for the purpose of allowing Buyer to verify the information contained within the invoices presented pursuant to Section 7.2.

- 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 Energy or Discharging Energy or its delivery from and after the Delivery Point. Supplier is responsible for any Taxes imposed on or associated with the Energy or 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. Supplier shall construct or cause the Facility to be constructed in accordance with Good Utility Practices and the Project Milestones so that: a) Supplier is capable of meeting its supply and delivery obligations with respect to Product over the Term; b) the Facility is consistent with the technical specifications set forth in Exhibit 11; c) subject to Section 3.5, the Generating Facility is at all times during the Term considered a Renewable Energy System; and d) subject to Section 3.5, the Generating Facility is at all times in compliance with all requirements imposed on Renewable Energy Systems as set forth in the applicable Renewable Energy Law. Supplier shall deliver to Buyer an ALTA Survey of the Project Site within ten 10) days of such 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 satisfactory to Buyer: y) not later than the Project Milestone described in Section 2 A of Exhibit 6, a completed version of Exhibit 14; and z) within thirty 30) days after the Commercial Operation Date, a revised version of Exhibit 14 reflecting the Facility as built. Supplier shall provide Buyer with copies of the Construction Contract promptly after its execution and any documentation and drawings reasonably requested by Buyer, redacted of any pricing or other proprietary information and any other information Supplier is not permitted to disclose pursuant to a confidentiality agreement, provided that Supplier shall use commercially reasonable efforts to secure in the Construction Contract the ability to disclose the terms of the Construction Contract other than pricing information. The Facility may share substations, gen-tie lines and related shared facilities with another facility or facilities, whether an affiliate of Supplier or not, so long as the applicable shared facilities agreement(s) i) permit Supplier to perform and satisfy, and do not purport to limit, Supplier's obligations hereunder, ii) provide for separate metering of the Facility, iii) include customary non-discriminatory curtailment provisions, and iv) permit Supplier to cure defaults by other parties under the shared facilities agreement(s). The Facility and its mechanical

components, buildings, and infrastructure shall be used solely for the purpose of generating, charging, storing and discharging Energy under this Agreement.

- 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.

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, if it is provided later than the date specified for such Project Milestone listed in Exhibit 6, Seller shall also provide the information described below and, if the Project Milestone is a Critical Project Milestone, pay liquidated damages as provided below. 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 on or before the scheduled date therefor, after expiration of the applicable period for which CPM Delay Damages are owed by Supplier pursuant to Section 8.2.3 or 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, 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.

- 8.2.3 In the event Supplier fails to achieve a Critical Project Milestone on or before the scheduled date therefor, then for each day up to, but not exceeding, ninety (90) days, that Supplier fails to achieve such Critical Project Milestone other than the Commercial Operation Date, Supplier shall be obligated to pay to Buyer liquidated damages equal to CPM Delay Damages; provided that there shall be no increase in or multiplication of CPM Delay Damages if the ninety(90) day periods related to more than one Critical Project Milestone overlap and the calculation of such delay shall be concurrent and not consecutive. If CPM Delay Damages have been accumulated for ninety (90) days and the applicable Critical Project Milestone has not been achieved, Buyer may terminate this Agreement. If the Development Security is insufficient to pay such CPM Delay Damages, Supplier shall pay any amounts owed to Buyer under this Section 8.2.3 within twenty (20) days of receipt of a demand for payment from Buyer.

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. 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, Supplier shall provide Buyer with written notice stating when Supplier believes that the Facility has achieved Commercial Operation, including 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 and the Generating Facility has delivered Energy to and at the Delivery Point and Charging Energy to the Storage Facility Metering Point; b) all of the requirements set forth in Sections 8.1, 8.3 and 17.2, and Exhibits 6 without regard to timing) and 7 of the Long-Term Renewable Power

Purchase Agreement between Supplier and Buyer dated [____], “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); and 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 Storage Contract Capacity.”

8.3.2.2 A certificate addressed to Buyer from a Licensed Professional Engineer under contract to Supplier confirming: 1) the nameplate capacity rating of the Generating Facility at the anticipated time of Commercial Operation in MW AC (“Certified Nameplate Capacity Rating”) and 2) that the Facility is able to generate and deliver electric power reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof, including the Storage Operating Procedures; and, 3) performance tests required by Exhibit 7 have been successfully completed; and 4) 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 Storage Operating Procedures. The Certified Nameplate Capacity Rating must not be less than one hundred eighty (180) MW.

8.3.2.3 A certificate addressed to Buyer from a Licensed Professional Engineer under contract to Supplier stating that, all required interconnection tests have been completed and the Facility is physically interconnected with the Transmission System and able to deliver Net 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 as Buyer may reasonably request and in form and substance reasonably satisfactory to Buyer.

8.3.3 Dispute of Commercial Operation. Buyer will have fifteen (15) Business Days after receipt of the certifications required by this Section 8.3 in which to Dispute the

Commercial Operation Date by written notice to Supplier. 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 Buyer fails to Dispute the Commercial Operation Date within the fifteen (15) Business Day period, Supplier's certification under Section 8.3.2 will be deemed accepted and the Commercial Operation Date of the Facility will be the date set forth in Supplier's certification. Notwithstanding the foregoing, through the first anniversary of the Commercial Operation Date, 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, to the extent Buyer was not and would not have been expected to be aware of such inaccuracy or the facts evidencing such inaccuracy at the time the certification was made.

8.4 Failure to Achieve Commercial Operation.

8.4.1 In the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline and Supplier fails to pay Daily Delay Damages 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 held by Buyer as of the date of termination 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 held by Buyer as of the date of termination from Supplier or from security provided on Supplier's behalf), this Agreement will be terminated, and neither Party will have any further obligations under this Agreement, including under Section 8.5, except those obligations expressly provided to survive termination pursuant to Section 2.4. 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 the 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. If this Agreement is terminated prior to Supplier achieving Commercial Operation or if Buyer exercises its step-in rights under Section 24.6, Supplier's liability hereunder shall be limited to the amount of the Development Security held by Buyer as of the date of termination plus the amount of CPM Delay Damages and Daily Delay Damages payable but unpaid hereunder.

8.4.2 Except as provided in the second and fourth sentences of Section 8.4.1, 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, 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 been accumulated for one hundred and eighty (180) days and Commercial Operation has not been achieved, Buyer may terminate this Agreement. If the Development Security is insufficient to pay such Daily Delay Damages, 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.
- 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 Regulatory 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 the 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 Nameplate Damages; Storage Capacity Damages.
- 8.6.1 If the Certified Nameplate Capacity Rating is less than the Expected Nameplate Capacity Rating, Supplier shall provide Buyer, as Buyer's sole damage remedy for such shortfall, but subject to, a onetime payment in an amount equal to a) subtracting i) Certified Nameplate Capacity Rating from ii) the Expected Nameplate Capacity Rating in MW, multiplied by b) Deficit Damages Rate per MW of difference ("Deficit Damages"), provided that in no event shall the Certified Nameplate Capacity Rating be less than one-hundred eighty (180) MW. Supplier's total liability for Deficit Damages shall not exceed four-million dollars (\$4,000,000). Deficit Damages, if any, shall be paid to Buyer within five (5) Business Days of Buyer's receipt of the certification required in Section 8.3.2.2. Upon payment of Deficit Damages: i) Exhibit 1 shall be revised to reflect the Certified Nameplate Capacity Rating; and ii) the Dispatch Availability Amount, the related definitions in Exhibit 13A, and the Maximum Amount and the Yearly PC Amount shall each be adjusted for the purpose of all relevant calculations hereunder by the ratio of the Certified Nameplate Capacity Rating to the Expected Nameplate Capacity Rating, and Exhibits 13 and 18 shall be revised accordingly.

- 8.6.2 If the Certified Nameplate Capacity Rating is greater than the Expected Nameplate Capacity Rating by greater than two percent (2%), as Buyer's sole remedy, but subject to Section 29.9, Supplier shall pay Buyer a onetime payment in an amount equal to one half of the Development Security, paid to Buyer within five (5) Business Days of Buyer's receipt of the certification required in Section 8.3.2.2. If Supplier fails to make such payment in a timely manner, Buyer may retain such amount from the Development Security or Operating Security. Supplier shall take all necessary actions, including but not limited to software or hardware solutions, to limit the Certified Nameplate Capacity Rating to the Expected Nameplate Capacity Rating.
- 8.6.3 If the tested Storage Contract Capacity as of the Commercial Operation Date is more than three percent (3%) below the Storage Contract Capacity set forth in paragraphs 8 b) and c) of Exhibit 1, Supplier shall provide Buyer, as Buyer's sole damages remedy for such shortfall, a onetime payment in an amount equal to a) subtracting i) the tested Storage Contract Capacity from (ii) the Expected Storage Contract Capacity in MW, multiplied by b) Storage Deficit Damages Rate per MW of difference ("Storage Deficit Damages"), provided that in no event shall the Storage Contract Capacity be less than seventy (70) MW. Supplier's total liability for Storage Deficit Damages shall not exceed one-million six-hundred fifty thousand dollars (\$1,650,000). Storage Deficit Damages, if any, shall be paid to Buyer within five (5) Business Days after Buyer's receipt of Storage Contract Capacity test results. Upon payment of Deficit Damages, Exhibit 1 shall be revised to reflect the tested Storage Contract Capacity as deemed appropriate by an independent, licensed engineer for the purpose of all relevant calculations hereunder.
- 8.7 Modification. Supplier shall not be permitted to make any modification to the Generating Facility that are inconsistent with the operating characteristics and limitations and technical specifications of the Facility set forth on Exhibit 1, 5, 11, 14, 22 and 24, without the prior written consent of the Buyer which may be withheld in Buyer's sole discretion. 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, or from revising the Project Site only as provided on Exhibit 3A. 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 that is not approved by Buyer, 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 the 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.

8.8 Operation and Maintenance. Subject to Section 3.5, Supplier, at all times shall install, operate, maintain and repair the Facility in accordance with Good Utility Practice and applicable Laws and to ensure: a) Supplier is capable of meeting its supply obligations over the Term; b) the Generating Facility is at all times a Renewable Energy System; and c) Supplier is at all times in compliance with all requirements of a renewable energy generator set forth in the Renewable Energy Law. 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 and Buyer's regulations, directions and procedures that are applied in a non-discriminatory manner 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. Supplier shall cause the Energy to meet the Power Quality Standards at all times, and 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 "Storage Operating Procedures"); provided that failure to agree on such procedures shall not relieve either of the Parties of its obligations under this Agreement. The Storage Operating Procedures are provided in Exhibit 24.

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 aspect of the operation of the Facility, 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 proposed sub-operator.

- 8.10 Right to Review. Buyer shall have the right to review during normal business hours the relevant books and records of Supplier as necessary to confirm the accuracy of anything relating to this Agreement. 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.
- 8.12 Refinement of Technical Matters. The Parties acknowledge and agree that Exhibits 16 and 27 and Sections I through IV of Exhibit 24 will be finalized by the Parties subsequent to the Effective Date. The Parties agree to cooperate and work together in good faith to finalize and agree on the final form of such exhibits, and such exhibits will be replaced once agreed upon in final form by the Parties. To the extent the Parties are unable to agree to the final form of such exhibits, the Parties will resolve any impasse pursuant to the dispute resolution process in accordance with Section 21.

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 Not Excused Product. An Emergency declared by Supplier will not result in any Excused Product except to the extent the Emergency qualifies as an event of Force Majeure.
- 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 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 Energy by the Transmission Provider or orders by any Electric System Authority.
- 10.1.1 Curtailments. Without limiting Section 10.1, Buyer shall not be obligated to purchase, receive, pay for, or pay any damages associated with, or incur any liability with respect to, compliance or curtailment of Energy by Supplier made in response to any orders for curtailment provided for in Section 10.1, including in respect of Net Energy or associated Renewable Energy Benefits) not delivered to the Delivery Point due to any of the following: a) the interconnection between the Facility and the Transmission System is disconnected, suspended or interrupted, in whole or in part; b) the Transmission Provider, Electric System Authority or Market Operator other than for economic reasons due to scheduling, such economically curtailed amounts being Un-Dispatched Amounts) directs a general curtailment, reduction or re-dispatch of generation in the area which would include the Net Energy), for any reason, even if such curtailment, reduction or re-dispatch directive is carried out by Buyer; c) if Buyer curtails or otherwise reduces the Net Energy in order to meet its obligations to the Transmission Provider, Electric System Authority or Market Operator other than for economic reasons due to scheduling, such economically curtailed amounts being Un-Dispatched Amounts) to operate within system limitations; d) the Facility's Energy is not received because the Facility is not fully integrated or synchronized with the Transmission System; or e) an event of Force Majeure prevents either Party from delivering or receiving Net Energy ("Curtailed Product").
- 10.1.2 Curtailed Product Verification. Supplier shall promptly calculate, based on the Availability Backcast Amount, and provide Buyer with such information and data as Buyer may request to confirm, the amount of the Curtailed Product that was not generated as a result of the curtailment. During any such period of curtailment, Supplier shall not produce Energy to the extent curtailed by Transmission Provider) or sell Product to any third party. Curtailed Product shall constitute Excused Product for purposes of calculating a Shortfall or PC Shortfall. Under no circumstance shall the provisions of this Section 10.1.2 apply to a curtailment of the Facility based upon an Emergency with respect to the Facility.

10.2 Dispatchability.

- 10.2.1 Buyer is permitted to schedule Energy deliveries in accordance with Section 14 during any Dispatchable Period.
 - 10.2.2 Except as expressly provided in this Agreement, Supplier shall comply with the schedules provided by Buyer during the Dispatchable Period. For any period during the Dispatchable Period, the “Un-Dispatched Amount” is the Availability Backcast Amount minus the Delivered Amount minus an amount equal to the Excused Product described in Sections 3.6.6 a) through f) and (h). During the Dispatchable Period, Supplier shall produce Energy solely in accordance with Buyer’s schedule (except as otherwise expressly provided herein) and Supplier shall not sell Product to any third party that was not scheduled by Buyer.
- 10.3 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 Generating Facility to deliver Energy or the Storage Facility to receive Buyer’s 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 January, February, March, April, October, November and December, 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 Delivery Hours and amount (in MWh) in which the Energy 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 Delivery Hour each requested outage will begin and conclude, the facilities impacted, the purpose of the requested outage, and any other relevant information. The total combined Delivery Hours of Planned Outages in any Contract Year based on the Dispatch

Availability Amounts for such Delivery Hours) shall not exceed four percent (4%) of the total annual Dispatch Availability Amounts for all hours in the applicable Contract Year prorated for the Stub Period, if any) unless otherwise approved by Buyer.

- 11.2.2 Buyer shall promptly review Supplier's proposed schedule of Planned Outages and either require modifications or approve the proposed schedule within thirty (30) days of Buyer's receipt of such schedule. If Buyer requires 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 June, July, August or September; provided that Supplier may schedule short term maintenance outages during off-peak hours as shown on Exhibit 13A) in such months if necessary due to forced outages or conditions that might imminently result in forced outages consistent with Good Utility Practice, which outages are not considered Planned Outages. Product not delivered to Buyer during periods of Planned Outages, up to the MWh specified in the Planned Outage schedule approved by Buyer in accordance with this Article 11, a) will comprise Excused Product to the extent such Planned Outages are conducted in accordance with the Planned Outage schedule approved by Buyer in accordance with this Article 11, and b) will not comprise Excused Product to the extent any outage period or MWh exceed that set forth in the Planned Outage schedule approved by Buyer in accordance with this Article 11, or the Planned Outage is not approved by Buyer. 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 Instructions 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, 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 or QF 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 temporary or permanent change to the performance, operating characteristics, or major generation components such as generators, inverters, solar panels or similar equipment, as applicable) of the Facility. Such notice shall describe any changes, expected or otherwise, to the Expected Nameplate Capacity Rating, generating capability, the rate of production and delivery of Net Energy, Discharging Energy and other Product, interconnection and transmission issues, and any additional information 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 monthly project report, 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; and a discussion of any foreseeable disruptions or delays. 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) all weather data from any collection device measuring data with respect to the Facility (such as a met tower or similar measurement device); b) any available site condition reports; c) all reporting information maintained in the operational log and any other SCADA data from the Facility; and d) any reports pertaining to the Facility resource and such other data and reports as may be reasonably requested by Buyer and which should be maintained by Supplier in accordance with Good Utility Practice for the relevant technology. 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 generating equipment; b) the cause (including any root cause analysis undertaken) and remediation undertaken by Supplier with respect to the events listed in a); c) the Delivered Amounts for the Stub Period and each Contract Year; and d) any other significant event or information related to the operation of the Facility or the delivery of Net Energy or other 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 most recent quarterly and annual unaudited financial statements, which financial statements shall be prepared in accordance with generally accepted accounting principles.

12.6 Information to Governmental Authorities. Supplier shall, promptly upon written request from Buyer, provide Buyer with data reasonably available to Supplier related to the construction, operation and maintenance of the Facility reasonably required by Buyer or an Affiliate thereof for reports to, and information requests from, any Governmental Authority, or any intervenor or party in any rate case or regulatory proceeding of Buyer or an Affiliate thereof. In addition, Supplier shall provide to Buyer copies of all submittals to a Governmental Authority directed by Buyer in connection with the foregoing requests 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, financial and ownership information reasonably available to Supplier 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, financial and other information reasonably available to Supplier 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 promptly provide to Buyer a copy of any formal statement, application, report or document submitted to or received from any Governmental Authority, excluding routine documentation submitted or received in the ordinary course of developing and constructing the Facility, relating to operation and maintenance of the Facility.
- 12.9 Environmental Information. Supplier shall, promptly upon 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 it is known to Supplier, Supplier shall disclose to Buyer, the extent of any actual or alleged violation of any Environmental Laws arising out of the construction or operation of the Facility, or the actual or alleged presence of Environmental Contamination at the Facility or on the Project Site, or occurrence of any enforcement, legal or regulatory action or proceeding relating to the foregoing.

13. COMMUNICATIONS

- 13.1 Supplier's Operating Representative. At least one of 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 operating 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 T1 lines for purposes of accessing Buyer's metering equipment and for communications with Buyer's operations center; and

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

14. SCHEDULING NOTIFICATION

14.1 Availability Notice.

14.1.1 No later than 0500 PPT each day or as otherwise specified or agreed to by Buyer consistent with Good Utility Practice, Supplier shall deliver to Buyer's Operating Representative an Availability Notice, in accordance with WECC scheduling protocols and deadlines, containing information including Supplier's good faith daily and hourly forecast of the Delivered Amount, Planned Outages, Derating, other outages and similar changes that may affect the Delivered Amount and the availability of Product in the form set forth in Exhibit 8. 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.

14.1.2 Supplier shall update the Availability Notice and notify Buyer's Operating Representative as soon as practical after becoming aware of: a) an expected Derating; b) an expected increase of Delivered Amount; or c) reductions to estimated hourly Delivered Amount. The updated Availability Notice shall include Supplier's best estimate of the time required to resolve the condition s) that caused the reductions to the estimated hourly Delivered Amount.

14.1.3 The information in any Availability Notice, including the forecasted Delivered Amount, will be Supplier's good faith forecast and will indicate

any Delivery Hour for which the Delivered Amount is expected to be less than or greater than the Scheduled Amount.

- 14.1.4 In the event of a Derating of the Facility, Supplier shall provide: (a) the extent, if any, to which the Derating is attributable to a Planned Outage; b) the magnitude of the Derating; c) the Delivery Hours during which the Derating is expected to apply; and d) the cause of the Derating.

14.2 Scheduling. Buyer's right to schedule the Generating Facility during June, July and August is limited by Supplier's schedule of Energy, Full Requirements Period Charging Energy, Supplier's Charging Energy and Discharging Energy as utilized to meet its obligations during the Full Requirements Period. Supplier shall deliver Energy and operate the Generating Facility in order to comply with this Section 14.2.

- 14.2.1 For the Dispatchable Period, except as provided above with respect to June, July and August, the Parties shall schedule energy to be delivered pursuant to this Agreement. All scheduling communications shall be by email or by telephone with an email confirmation. Buyer shall submit to Supplier each day's hourly energy preschedule by the earlier of 0700 PPT or 30 minutes prior to the prescheduling deadline on each WECC prescheduling day, which shall provide notice of Buyer's intent to schedule energy for the following day or days consistent with the then-current WECC prescheduling calendar "Scheduled Amount"). Supplier shall electronically confirm the preschedule with Buyer by 0730 PPT on each WECC prescheduling day.

- 14.2.2 Buyer shall have the right to change the Scheduled Amount on an intraday basis "Intraday Schedule Change") only if Buyer has provided at least one 1) hour's notice prior to the delivery hour; provided, however, that Supplier shall make commercially reasonable efforts to accommodate Intraday Schedule Changes upon less notice.

- 14.2.3 During the Full Requirements Period Buyer shall not, and shall not be obligated to, submit a schedule and Supplier shall deliver Full Requirements Period Product in accordance with Exhibit 13A and B.

- 14.2.4 Except as set forth in Section 14.3.2., during the months of June, July and August, Buyer's schedule may be limited by the amount of Energy required by Supplier in its sole discretion to charge the Storage Facility to meet Supplier's obligations during the Full Requirements Period. In such event, Buyer's schedules during any Dispatchable Period may be limited as set forth in any applicable Availability Notice.

14.3 Storage Facility Scheduling.

- 14.3.1 Subject to Section 14.3.2, during the Dispatchable Period (except the months of June, July and August), Buyer has the exclusive right to schedule

or designate the Storage Facility to deliver the Storage Product to Buyer and/or accept Buyer Charging Energy, in accordance with the Storage Operating Procedures and the operational requirements specified in Exhibit 1.

- 14.3.2 Notwithstanding anything in this Agreement to the contrary, during the months of June, July and August of the Dispatchable Period Buyer has the right to schedule notwithstanding Supplier's Scheduling Notice in Section 14.2, Energy and Discharging Energy from the Storage Facility, in which case the Discharging Energy and any Energy not able to be used by Supplier, that could have been used as Full Requirements Period Charging Energy, but was not able to be used due to Buyer's use of the Storage Facility or use of the Generating Facility, shall be considered "FRP Deemed Delivered Energy". The amount of Energy so delivered will not be considered a shortfall for the Full Requirements period and Buyer shall pay Supplier the Full Requirements Period Product Rate for the Energy so delivered. Supplier has no obligation to charge the Storage Facility to satisfy Buyer's Discharging Notice and the Storage facility will only be discharged in accordance with Section 14.3.4.
- 14.3.3 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, Transmission Provider Instructions, an Emergency, a Planned Outage or a forced outage (but without relieving Supplier of any liability it may have for damages hereunder due to such forced 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 3.4.8. The Storage Facility may only be charged with Charging Energy from the Generating Facility. Subject to Section 14.3.2, during the Dispatchable Period, Supplier shall not dispatch and operate the Storage Facility other than pursuant to an instruction by Buyer pursuant to Section 3.4.8.
- 14.3.4 So long as there is no interference with or impairment or reduction of Supplier's performance of its obligations hereunder, or with Buyer's access to and right to charge and discharge the Storage Facility as provided in this Agreement, Supplier shall be entitled to use Energy from the Generating Facility, when available, to serve Station Usage or to charge the Storage Facility so that it can be used to serve Station Usage. When the Generating Facility is not generating Energy, so long as there is no interference with or impairment or reduction of Supplier's performance of its obligations hereunder, or with Buyer's access to and right to charge and discharge the Storage Facility as provided in this Agreement, Supplier may use energy from the Storage Facility to serve Station Usage.

15. COMPLIANCE

- 15.1 Laws. Subject to Section 3.5, each Party shall comply with all relevant Laws in connection with the performance of its obligations under this Agreement. Supplier shall comply with all Laws to ensure that, the Generating Facility is at all times a Renewable Energy System and Supplier is at all times in compliance with all requirements of a renewable energy generator as set forth in the Renewable Energy Law, and 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. Supplier shall be responsible for any costs associated with the Clean Power Plan, including for obtaining, at its sole cost, any allowances that may be required under applicable Law pertaining to the Clean Power Plan, in a quantity or amount sufficient to support Supplier's obligations set forth in 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 Interconnection Agreement. Supplier shall operate the Facility in accordance with the IA and to the extent there is a conflict between this Agreement and the IA, the IA shall prevail.

16. APPROVALS

- 16.1 Condition Precedent. Notwithstanding any provision to the contrary contained in this Agreement, each Party's performance of its respective obligations under Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 25 and 26 of this Agreement is subject to Buyer obtaining the PUCN Approval described in Section 16.2 before the PUCN Approval Deadline and in form and substance satisfactory to Buyer in its sole discretion.
- 16.2 PUCN Approval. Within one hundred twenty (120) 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") consisting of:
- 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 Product under this Agreement are prudently incurred and that the Buyer may recover all just and reasonable costs of Product purchased under this Agreement.

Buyer will notify Supplier promptly after PUCN Approval is obtained or if the PUCN declines to 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 [reserved]
- 16.5 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; b) a cash deposit, in either case, in an amount equal to six million eight hundred seventy-five thousand dollars (\$6,875,000) or c) a Guaranty substantially in the form of Exhibit 20 if the Guarantor has at least the Minimum Credit Rating or otherwise meets Buyer’s minimum credit requirements as determined by Buyer in its sole and absolute discretion the “Development Security”). The Development Security shall be posted within five (5) Business Days after the Effective Date. Following the PUCN Approval Date, the Development Security shall increase to an amount equal to nineteen million two hundred fifty thousand dollars (\$19,250,000). The revised Development Security shall be posted within five (5) 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 except as otherwise provided herein) available to Buyer under Article 24; ii) in the event Supplier fails to achieve a Critical Project Milestone and fails to pay CPM Delay Damages as provided in Section 8.2.3 or fails to achieve

Commercial Operation by the Commercial Operation Deadline and fails to pay Daily Delay Damages as provided in Section 8.5.1, if the Development Security is insufficient to pay such CPM Delay Damages or Daily Delay Damages; iii) to pay CPM Delay Damages or Daily Delay Damages; iv) if Supplier fails to make any payments owing under this Agreement after expiration of applicable notice and cure periods; or v) if Supplier fails to reimburse Buyer for costs, including Replacement Costs, PC Replacement Costs and Regulatory Penalties, that Buyer has incurred or may incur up to Commercial Operation 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 three (3) Business Days of the drawing; provided, however, that Supplier's total replenishment obligation shall not exceed \$14,000,000. 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, or if this Agreement is terminated prior to the Commercial Operation Date for reasons other than an Event of Default by Supplier, the Development Security shall be released to Supplier upon the earlier of x) termination of this Agreement in accordance with its terms or y) on the fifteenth (15th) 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 b) a cash deposit, in each of a) and b), in an amount equal to sixteen-million five hundred two thousand one hundred dollars (\$16,502,100); or c) a Guaranty substantially in the form of Exhibit 20 if the guarantor meets Buyer's minimum credit requirements as determined by Buyer in its sole and absolute discretion the "Operating Security"). The Operating Security shall be posted 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 make any payments owing under this Agreement; or 3) if Supplier fails to reimburse Buyer for costs, including Replacement Costs, PC Replacement Costs and Regulatory Penalties that Buyer has incurred or may incur as a result of Supplier's failure to perform its obligations under this Agreement. 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 three (3) Business Days. In the event that no amounts are due and owing by Supplier to Buyer under this Agreement, the Operating Security shall be released to Supplier upon the fifteenth (15th) Business Day after the earlier of x) termination of this Agreement in accordance with its terms or (y) the expiration of the Term.

- 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; 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 as Development Security or Operating Security, as applicable, 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 five (5) 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, Standard & Poor's, Moody's or another nationally recognized firm downgrades the Credit Rating of the financial institution issuing a letter of credit pursuant to this Agreement to below that required of a Qualified Financial Institution, then Supplier shall: a) provide Buyer with written notice of such downgrade within two (2) 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 five (5) 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 five (5) 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 guarantor providing a guaranty pursuant to Sections 17.1 or 17.2 fails to have at least the Minimum Credit Rating or otherwise meet Buyer's minimum credit requirements as determined by Buyer in its sole and absolute discretion, then Buyer shall notify Supplier in writing and Supplier shall cause a letter of credit 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 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 property of Supplier, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; 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 obligations under the Agreement. Supplier remaining liable for any amounts owing to Buyer after such application, subject to the 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, except as provided in Section 8.4.1; and b) subject to Section 8.4.1 with respect to termination prior to the Commercial Operation Date, 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.

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, negligence or non-performance of its obligations 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, except for Replacement Costs, PC Replacement Costs or payment made by either Party to satisfy Regulatory Penalties or payments owing under Sections 3.4.10, 3.6, 3.7, 7.6, 8.4.1, 8.5, 8.6, 15.1, 17.1, 17.2, and 18.1 with respect to third parties only), 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). 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 Pre-Commercial Operation Date Liability. Notwithstanding anything herein to the contrary, Supplier's liability under this Agreement with respect to any obligations to be performed prior to the Commercial Operation Date, including the obligation to achieve the Commercial Operation Date, shall not in any event exceed the amount of the Development Security posted as of the date of the exercise of Buyer's step-in-right in accordance with Section 24.6.1 or termination of this Agreement, as applicable, plus the amount of Daily Delay Damages, if any, payable but unpaid hereunder as of such date; provided that the foregoing shall not limit Supplier's obligations under to Buyer pursuant to Section 24.6.1

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

20. FORCE MAJEURE

- 20.1 Excuse. Subject to Section 20.4, neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations under this Agreement including any obligation to deliver or accept Product) if such delay or failure is due to an event of Force Majeure.
- 20.2 Definition. “Force Majeure” or “an event of Force Majeure” means an event that:
- a) is not specifically related to the Facility and not reasonably anticipated as of the Effective Date i.e. excluding general events, such as major weather events or fires);
 - b) is not within the reasonable control of the Party affected by the event;
 - c) is not the result of the affected Party’s negligence or failure to act; and
 - d) could not be overcome by the affected Party’s use of due diligence in the circumstances.
- 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; fires; earthquakes; tornados, hurricanes and floods; civil disturbance; sabotage; strikes not attributable to Supplier’s actions; lock-outs not attributable to Supplier’s actions; work stoppages not attributable to Supplier’s actions; 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).
- 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;
 - 20.3.2 The non-availability or reduced availability of the resource supply to generate electricity from the Generating Facility, including due to weather, high or low temperatures or climate conditions that are not acts of God;
 - 20.3.3 A Party’s failure to obtain 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 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 a Force Majeure event;

- 20.3.7 Supplier's ability to sell, or Buyer's ability to purchase energy, PCs and equivalent rights in any other jurisdiction), Renewable Energy Benefits, or Capacity Rights at a more advantageous price than is provided hereunder;
 - 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;
 - 20.3.9 Delay or failure of Supplier to obtain or perform any Required Facility Document unless due to a Force Majeure event;
 - 20.3.10 Any delay, alleged breach of contract, or failure by the Transmission Provider unless due to a Force Majeure event;
 - 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 event of Force Majeure ; or
 - 20.3.12 The increased cost of electricity, equipment, steel, labor, or transportation.
- 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:
- 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 two (2) Business Days following Supplier having actual knowledge 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 Washoe, 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 assigned by either Party, including by operation of Law, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment of this Agreement in violation of the foregoing shall be, at the option of the non-assigning Party, void.

- 23.1 Buyer Assignment. Buyer may, without the consent of Supplier, assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or, with respect to clause a), in part, if such assignment or delegation is made to: a) Sierra Pacific Power Company; 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 that meets the Minimum Credit Rating, so long as there is no material adverse effect on Supplier as a result of such assignment; 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, in each case reasonably acceptable to Supplier; e) a Person other than a natural person) whose Credit Rating, as published by either Relevant Rating Agency, is equal or superior to the Minimum Credit Rating as of the time of assignment, so long as there is no material adverse effect on Supplier as a result of such assignment; or f) a Person other than a natural person) as otherwise required by Law, so long as there is no material adverse effect on Supplier as a result of such assignment. Buyer shall provide Supplier with written notice of any assignment pursuant to this Section 23.1.
- 23.2 Supplier Assignment. Supplier may, without the consent of Buyer and without relieving itself from liability hereunder), transfer or assign, or permit the transfer and assignment of, a Controlling Interest in Supplier to any of Supplier's Affiliates, or this Agreement to any of Supplier's Affiliates in connection with a transfer of the Facility to such Affiliate, so long as Buyer retains its rights under the ROFO in Article 6 following such a transfer or assignment; provided that Supplier provides Buyer prior notice of any such transfer or 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 Operational Security, as applicable, is maintained without change due to such transfer or assignment or is replaced with Development Security or Operational 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 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 transfer or assignment of this Agreement by Supplier to an Affiliate pursuant to this Section 23.2, together with information supporting the permissible nature of the transfer or 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 transfer or assignment.

- 23.3 Liability After Assignment. A Party's assignment or transfer of rights or obligations pursuant to this Article 23 (other than Section 23.2) of this Agreement shall relieve such Party from any liability and financial responsibility for the performance thereof arising after any such transfer or 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 or transferring Party's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.
- 23.4 Transfers of Ownership. Subject to the provisions of Article 6, Supplier shall not sell, transfer, assign or otherwise dispose of its ownership interest in the Facility to any third party absent: a) a transfer of this Agreement to such third party; b) Supplier entering into an assignment and assumption agreement, in form and substance satisfactory to Buyer, with such third party pursuant to which such third party assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement; and c) either i) Buyer's prior written approval, not to be unreasonably withheld, of such third party; or ii) such third party being a Qualified Transferee. This Section 23.4 shall not apply or restrict any sale, transfer, assignment or disposal of the Facility in accordance with the provisions of Section 23.2. This Section 23.4 shall also not apply to any transfer that complies with the ROFO provisions of Section 6.1, provided that such transfer is to a Qualified Transferee, or any transaction between Supplier (or its Affiliates) and Supplier's Lenders in connection with any development, bridge, construction, takeout, permanent debt, tax equity or other 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.
- 23.5 Controlling Interest. Subject to the provisions of Article 6, no Controlling Interest in Supplier may be directly or indirectly sold, transferred or assigned (whether through a single transaction or a series of transactions over time) 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 sale, transfer or assignment of a Controlling Interest in Supplier a) in accordance with the provisions of Section 23.2, (b) that complies with the ROFO provisions of Section 6.1, provided that such transfer is to a Qualified Transferee, c) between Supplier (or its Affiliates) and Supplier's Lenders in connection with any development,

bridge, construction, takeout, permanent debt, tax equity or other 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, or d) to a Person that directly or indirectly owns material assets or equity interests in other entities in addition to the Facility and the direct or indirect ownership interests in Supplier, which other assets and interests collectively comprise more than 50% of the value of such Person's total assets.

- 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 sell, transfer or otherwise dispose of 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 in the form and substance of the Lender's Consent in Exhibit 19, subject to reasonable modifications of the form of Lender's Consent reasonably requested by Supplier's Lenders. Buyer will also, from time to time on Supplier's request and at Supplier's sole cost and expense, deliver estoppel certificates reasonably requested by Supplier's Lenders.

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 in the case of Supplier, its failure at any time to qualify and maintain, subject to Section 3.5, the Generating Facility as a Renewable Energy System;
- 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, unless excused by an event of Force Majeure, its failure to timely achieve: a) any of the Critical Project Milestones (excluding Commercial Operation) before the scheduled date set forth in Exhibit 6, after expiration of the applicable period for which CPM Delay Damages are owed by Supplier pursuant to Section 8.3.3; or b) Commercial Operation 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 termination event has occurred pursuant to Section 3.6.2.4.
- 24.1.8 In the case of Supplier, a termination event has occurred pursuant to Section 3.6.2.5.
- 24.1.9 In the case of Supplier, a termination event has occurred pursuant to Section 3.6.4.3.
- 24.1.10 in the case of Supplier, its failure to comply with the provisions of Section 17 (including any replenishment requirement);
- 24.1.11 in the case of Supplier, its failure to comply with the provisions of Section 23;
- 24.1.12 in the case of Supplier, its failure to comply with the provisions of Section 27;
- 24.1.13 if Supplier: 1) a) becomes insolvent, files for or is forced into bankruptcy and in the case of an involuntary bankruptcy, such proceeding is not dismissed within thirty (30) 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 thirty (30) days;

24.1.14 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, or an event of Force Majeure; and

24.1.15 in the case of Supplier, if: (a) the Storage Capacity of the Storage Facility determined pursuant to a Storage Capacity Test is less than or equal to ninety percent (90%) of the Storage Contract Capacity set forth on Exhibit 1, Section 8(c), as degraded in accordance with Exhibit 1, Table A, 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 at least three (3) consecutive Dispatch Availability Months during any Contract Year or any five (5) non-consecutive Dispatch Availability Months during a period of two (2) consecutive Contract Years.

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 seeking to maximize the price for Product received by Supplier from third parties, including (if appropriate at the time) entering into an enabling agreement with one or more power marketers of nationally recognized standing to market such Product not purchased or accepted by Buyer during a period Buyer is a Defaulting Party and Supplier is entitled to sell such 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 or 24.1.10 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: a) for purposes of Section 24.1.2, 24.1.7, 24.1.8, 24.1.9, 24.1.11 and 24.1.12, had 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 24.1.11 which are addressed above), had 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) Supplier 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 electric generation 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 Product. If Buyer terminates this Agreement in accordance with Section 2.3.1 due to a Supplier Event of Default, then neither Supplier nor Supplier's Affiliates may sell, or enter into a contract to sell, Net Energy or any Product generated by, associated with or attributable to a generating facility that from time to time may be constructed by Supplier or any Affiliate of Supplier on the Project Site installed at the Project Site to a party other than Buyer for a period of three (3) years following the effective date of such termination ("Restricted Period"). The foregoing prohibition on contracting and sale will not apply if, before entering into such contract or making a sale to a party other than Buyer, Supplier or Supplier's Affiliate provides Buyer with a written offer to sell the Net Energy or any Product to Buyer at the rate at which Supplier is offering the Net Energy or other Product to a third party and otherwise on terms and conditions materially similar to the terms and conditions set forth in this Agreement and Buyer fails to accept such offer within A) forty-five (45) days after Buyer's receipt of such offer if this Agreement had originally been terminated by Buyer after the commencement of construction of the Facility, and B) one hundred twenty (120) days after Buyer's receipt of such offer if this Agreement had originally been terminated by Buyer prior to the commencement of construction of the Facility. If Buyer elects to purchase such Product, then 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 their land rights or interests in the Project Site (including the interconnection queue position) during the Restricted Period 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 pursuant to a written agreement approved by Buyer. Notwithstanding the above prohibition on a sale of transfer, this prohibition will not prevent the sale by Supplier or Supplier's Affiliates of their interests in the Project Site to a third party if an independent engineer provides a notarized certification to the fact that a solar facility cannot be developed on the Project Site. Buyer shall be permitted to file a notice of the rights contained in this Section 24.5.1 with respect to the Supplier's and Supplier's Affiliates' interests in 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 a) Supplier commits an Event of Default pursuant to Section 24.1.6(b), and this Agreement has not been terminated by Buyer, then without limiting its other rights and remedies hereunder, and b) 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 have expired, 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 Commercial Operation, Buyer shall: a) return possession of the Facility to Supplier upon execution by Supplier of an indemnity and release agreement subject to Buyer's indemnity set forth below), 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 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 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. Notwithstanding the foregoing, Buyer shall be responsible for, and shall indemnify and defend Supplier and its Affiliate at the Project Site from and against all Losses resulting from Buyer's negligence or willful misconduct in exercising its rights under this Section 24.6.

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 upon the conditions and during the periods authorized above. During any period in which Buyer constructs,

operates or maintains the Facility pursuant to the license granted in this Section 24.6.2, Buyer shall pay for all 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 Product Rate otherwise due to Supplier until they have been paid in full. 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. All such information shall be considered confidential information and shall not be disclosed by Buyer except to the extent required by Law. 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 the 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. Except for payments and costs which are to be paid by Buyer under this Section 24.6, and subject to Section 8.4.1, 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 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 for the term of this Agreement and at the Commercial Operation Date as set forth in Sections 25.1 through 25.12, and covenants to Buyer as set forth in Sections 25.13 through 25.15:

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 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 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 that has not been obtained, 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 debt instrument or debt 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 Net 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 Product provided for in this Agreement.
- 25.8 Required Facility Documents. All Required Facility Documents are listed on Exhibit 12. Pursuant to the Required Facility Documents, Supplier 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 has applied or will apply for or has received the Governmental Approvals listed in Exhibits 10 and 12, and, as of the Effective Date, no other Governmental Approvals are required by Supplier 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 Certification. Subject to Section 3.5, the Generating Facility qualifies as a Renewable Energy System and Supplier has been and is in compliance with all requirements set forth in the Renewable Energy Law.
- 25.12 Title. Supplier will own all Product attributable to the Facility and has the right to sell such Product to Buyer. Supplier will convey good title to the Product to Buyer 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 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 January 5, 2018. To the extent the Facility uses equipment types listed on Exhibit 23, Supplier shall construct the Facility using only such equipment manufactured by the vendors, subcontractors and equipment suppliers listed on Exhibit 23.
- 25.14 Work Site Agreement. Supplier shall enter into a work site agreement, memorandum of understanding, or similar document in the form attached hereto as Exhibit 21.
- 25.15 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. 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 25.15 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 of the Effective Date as follows and covenants to Supplier that such representations and warranties will be true and correct for so long as this Agreement is in force and effect:

- 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 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. 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 no reduction, cancellation or non-renewal of the policy shall 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 reduction, 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. Within thirty (30) days of 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 [reserved]
- 27.5 Inspection of Insurance Policies. Buyer shall have the right to inspect the original policies of insurance applicable to this Agreement at Supplier's place of business during regular business hours.
- 27.6 Supplier's Minimum Insurance Requirements.
- 27.6.1 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 (\$1,000,000.00) per each bodily injury by accident; b) one million dollars (\$1,000,000.00) per each employee bodily injury by occupational disease; and c) one million dollars (\$1,000,000.00) in the annual aggregate per each bodily injury by occupational disease.
 - 27.6.2 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.
 - 27.6.3 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 least 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 insurance policy.

- 27.6.4 Excess Liability. Excess liability insurance with a minimum limit of five million dollars \$5,000,000) (“Excess Minimum”) for each occurrence and an 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.
- 27.6.5 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, which shall not be unreasonably withheld, 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, so long as such advertisements, brochures and announcements do not include pricing or other proprietary or confidential information. Supplier may disclose this Agreement and information regarding the Facility to its Affiliates and to its and its Affiliates’ members, officers, directors, employees, attorneys, agents, representatives and 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. 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), overnight 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), overnight 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 overnight 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 3.5 Renewable Energy System , 3.6 Shortfall; Replacement Costs), 3.7 PC Shortfall; PC Replacement Costs), 8.4 Failure to Achieve Commercial Operation), 8.5 Delay Damages), 8.6 Nameplate 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 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 3.4.10, 3.6, 3.7, 8.4, 8.5 and 8.6, 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 liquidated damages constitute an adequate remedy for the breach of such obligation, and Supplier hereby conclusively waives such defense except as provided above; provided, however, that Buyer reserves the right to assert that specific performance or injunctive relief is not proper for other reasons. 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 sufficient to perform its obligations hereunder.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

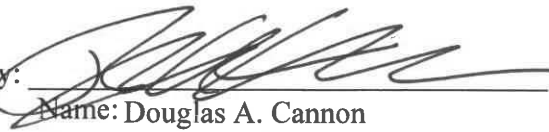
IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representative as of the Effective Date.

BUYER:

SUPPLIER:

NEVADA POWER COMPANY

ARROW CANYON SOLAR, LLC

By: 

Name: Douglas A. Cannon
Title: President & CEO

By: 

Name: Tristan Grimbart
Title: President & CEO

EXHIBIT 1

DESCRIPTION OF FACILITY

1. Name of Generating Facility: Moapa Solar

a) Location: Clark County, Nevada

b) Delivery Point: Harry Allen Substation, 230 kV bus

2. Supplier: Arrow Canyon Solar, LLC

3. Parent: EDF Renewables Development, Inc.

4. Operator: To be determined not less than 180 days before COD per Section 8.9

5. Equipment:

a) Type of Generating Facility: Solar Photovoltaic

b) Installed Capacity:

i) Total capacity: 241.4 MVA

ii) Expected Nameplate Capacity Rating: 200 MW AC @ +/- 0.95, subject to the provisions of Section 3.4.5

iii) Total gross output capacity: 207.604 MW

iv) Total capacity net of Station Usage: 200 MW

v) Full Requirements Period Capacity Factor: 68%

vi) Full Requirements Period Capacity Product: 136 MWh each hour of the Full Requirements Period on average (62,560 MWh over each Full Requirements Period)

c) Additional Technology Specific Information, if any: Total gross output at inverter terminal is sized at 0.9PF in order to meet 0.95PF at Point of Delivery to compensate for AC losses between the inverter terminals and Delivery Point including applicable step-up transformers, MV collection Lines, gen-tie losses and Station Usage). All gross capacity ratings and loss assumptions are pending final equipment selection and design. However, the Expected Nameplate Capacity Rating at Delivery Point is not subject to change. The selected equipment and site controller will ensure the capability to meet, but not exceed, the Expected Nameplate Capacity Rating at Delivery Point.

6. Operating Characteristics of Generating Facility:

a) VAR, leading: 83.79 MVar

b) VAR, lagging (-): -47.68 MVar

c) Controlled Ramp Rate (MW/minute): 30 MW/minute

d) Minimum Operating Capacity (MW : 0 MW

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

EXHIBIT 1

DESCRIPTION OF FACILITY

7. Type of Storage Facility: (e.g. AC or DC coupled, technology, chemistry, etc.)

DC coupled, Li-ion battery, NMC, NCA or LFP chemistry

8. Operating Characteristics of Storage Facility available to Buyer:

a) Charge capacity at the Storage Facility Metering Point : 80 MW

b) Discharge capacity at Delivery Point : 75 MW

c) Discharge capacity at the Delivery Point] for a five-hour duration : 75 MW as of
COD, degraded per Exhibit 1 Table A attached

d) Storage capacity at Delivery Point : 375 MWh as of COD, degraded per Exhibit 1
Table A attached

For the avoidance of doubt, the Parties agree that Supplier may increase the capabilities of the Storage Facility in MW or MWh, in Supplier's discretion, so long as Buyer has access to and a right to charge and discharge the Storage Facility as provided in clauses a), b), c) and d) and that Buyer will not have access to or the right to charge or discharge any of such additional Storage Facility capacity; provided that any modification of the Facility shall comply with Section 8.7 of the Agreement.

EXHIBIT 1**DESCRIPTION OF FACILITY**

TABLE A
Degradation by Contract Year

End of Contract Year	Storage Facility Contract Capacity (MW)	Storage Facility Contract Capacity Degradation by Contract Year (%)
0	75.0	100.0%
1	74.0	98.6%
2	72.7	97.0%
3	71.5	95.4%
4	70.3	93.7%
5	69.1	92.1%
6	67.8	90.5%
7	66.6	88.8%
8	65.4	87.2%
9	64.2	85.6%
10	63.0	83.9%
11	61.7	82.3%
12	60.5	80.7%
13	59.3	79.1%
14	58.1	77.4%
15	56.9	75.8%
16	55.6	74.2%
17	54.4	72.5%
18	53.2	70.9%
19	52.0	69.3%
20	50.7	67.7%
21	49.5	66.0%
22	48.3	64.4%
23	47.1	62.8%
24	45.9	61.1%
25	44.6	59.5%

EXHIBIT 2A

PRODUCT RATES

DISPATCHABLE PERIOD PRODUCT RATE

The Dispatchable Period Product Rate shall be \$21.26 per MWh.

FULL REQUIREMENTS PERIOD PRODUCT RATE

The Full Requirements Period Product Rate during the Full Requirements Period shall be 6.5 times the Dispatchable Product Rate for the applicable period the “Full Requirements Period Product Rate”) as represented below.

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Jan	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Feb	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Mar	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Apr	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
May	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Jun	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	6.5x	6.5x	6.5x	6.5x	6.5x	x	x	x
Jul	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	6.5x	6.5x	6.5x	6.5x	6.5x	x	x	x
Aug	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	6.5x	6.5x	6.5x	6.5x	6.5x	x	x	x
Sep	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Oct	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Nov	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Dec	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x

EXHIBIT 2B

FORM OF MONTHLY ENERGY INVOICE

Supplier Letterhead

Facility: _____

Date: _____

Facility ID: _____

Billing Period: _____

Invoice Number: _____

CURRENT MONTHLY BILLING DATA INPUT

Pricing

\$/MWh

Dispatchable Period Product Rate

Full Requirements Period Product Rate

Provisional Product Rate

Test Product Rate

Monthly Supply Amount (kWh)

On-Peak

Supply Amount

Excused Product

Planned Outages

Force Majeure

Emergencies (as applicable)

Curtailed Product

Un-Dispatched Amount

Transmission Provider Instructions

Buyer's Failure to Accept Net Energy

Total Excused Product

Delivered Amount (kWh)

On-Peak

Off-Peak

Dispatchable Period – Net Energy

Full Requirements Period – Net Energy

Total Delivered Amount

Storage Pricing

\$/MW

Storage Product Rate

CURRENT MONTHLY INVOICE CALCULATION

	Net Energy		Rate/kWh		Amount
a. Dispatchable Period Product ¹	_____	x	_____	=	\$ _____
b. Full Requirements Product	_____	x	_____	=	\$ _____
c. Reserved					
d. Un-Dispatched Amount	_____	x	_____	=	\$ _____
e. Provisional Energy	_____	x	_____	=	\$ _____
f. Test Energy	_____	x	_____	=	\$ _____
g. Shortfall/Replacement Cost from page 2B-2					\$ _____
h. Storage Product (MW)	_____	x	_____	=	\$ _____
i. Total Product Payment (a+b+c+d+e+f+g+h)					\$ _____

¹ Excluding Provisional Energy and Test Energy

EXHIBIT 2B

FORM OF MONTHLY ENERGY INVOICE

j. Adjustments (+/-) \$ _____

TOTAL AMOUNT DUE (i + j) \$ _____

PAYMENT DUE DATE NO LATER THAN: _____

EXHIBIT 2B

FORM OF MONTHLY ENERGY INVOICE

REPLACEMENT COST CALCULATION – For Billing Period: _____

Full Requirements Period

a. Full Requirements Period Product	_____	kWh
b. Excused Product	_____	kWh
c. Difference (a – b)	_____	kWh
d. 98% of Difference (0.98 * c)	_____	kWh
e. Delivered Amount	_____	kWh

Shortfall (Y/N ?) _____

f. Shortfall Amount max d – e or zero _____ kWh

Replacement Cost Calculation

g. Average Market Price	_____	\$/MWh
h. Full Requirements Period Product Rate	_____	\$/MWh
i. Difference (max g – h or zero)	_____	\$/MWh

j. Replacement Cost (f ÷ i) \$ _____

REPLACEMENT COST CALCULATION – For Billing Period: _____

Dispatchable Period

k. Dispatchable Period Product	_____	kWh
l. Excused Product	_____	kWh
m. Difference (k – l)	_____	kWh
n. 90% of Difference (0.90 * m)	_____	kWh

o. Delivered Amount _____ kWh

p. Shortfall (Y/N ?) _____

q. Shortfall Amount max o – p or zero) _____ kWh

Replacement Cost Calculation

r. Average Dispatchable Mead	_____	\$/MWh
s. Dispatchable Period Product Rate	_____	\$/MWh
t. Difference (max r – s or zero)	_____	\$/MWh

u. Replacement Cost (q ÷ t) \$ _____

EXHIBIT 2B

FORM OF MONTHLY ENERGY INVOICE DETAIL

Date	Hour Ending	On- Peak/ Off- Peak	Dispatc h Availab ility Amount	Total Delivered Amount	Base Product Amount	Product Rate	Full Requirements Period Delivered Amount	Un-Dispatched Amount	Base Product Cost	Excess Energy	Maximum Amount Energy	Excused Product	Reason for Excused Product
	0100												
	0200												
	0300												
	0400												
	0500												
	0600												
	0700												
	0800												
	0900												
	1000												
	1100												
	1200												
	1300												
	1400												
	1500												
	1600												
	1700												
	1800												
	1900												
	2000												
	2100												
	2200												
	2300												
	2400												
	Total On-Peak:												
	Total Off-Peak:												
	TOTAL:												

EXHIBIT 2C

FORM OF PC REPLACEMENT INVOICE

Buyer Letterhead

Facility: _____

Facility ID: _____

Date: _____

Contract Year: _____

Invoice Number: _____

Payment Due Date: _____

PC REPLACEMENT COSTS CALCULATION

Contract Year Data

PCs

a. Full Requirements Capacity Shortfall Amount

b. Dispatch Availability Shortfall Amount

c. PC Shortfall Amount (a + b)

=====

d. PC Replacement Rate

\$ _____

e. PC REPLACEMENT COSTS (c * d)

\$ =====

EXHIBIT 3A

DESCRIPTION OF PROJECT SITE

PARCEL 1: (LEASE AREA)

BEING ALL OF SECTION 31 AND A PORTION OF THE SOUTHWEST QUARTER (SW ¼ OF SECTION 29 AND A PORTION OF THE SOUTH HALF (S ½) OF SECTION 30 AND A PORTION OF THE WEST HALF W ½ OF SECTION 32, TOWNSHIP 16 SOUTH, RANGE 64 EAST, OF THE MOUNT DIABLO MERIDIAN, MOAPA INDIAN RESERVATION, CLARK COUNTY, NEVADA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SECTION 31, TOWNSHIP 16 SOUTH, RANGE 64 EAST; THENCE ALONG THE WEST LINE OF SECTION 31, TOWNSHIP 16 SOUTH, RANGE 64 EAST AND ABUTTING THE EAST LINE OF SECTION 36, TOWNSHIP 16 SOUTH, RANGE 63 EAST, NORTH 00°10'04" WEST, 2,639.61 FEET TO THE WEST QUARTER (W ¼) CORNER OF SECTION 31, TOWNSHIP 16 SOUTH, RANGE 64 EAST;

THENCE ALONG THE WEST LINE OF SECTION 31, TOWNSHIP 16 SOUTH, RANGE 64 EAST AND ABUTTING THE EAST LINE OF SECTION 36, TOWNSHIP 16 SOUTH, RANGE 63 EAST, NORTH 00°10'19" WEST, 2,639.58 FEET TO THE NORTHWEST (NW) CORNER OF SECTION 31, TOWNSHIP 16 SOUTH, RANGE 64 EAST;

THENCE LEAVING SAID NORTHWEST (NW) CORNER OF SECTION 31, TOWNSHIP 16 SOUTH, RANGE 64 EAST, ALONG THE WEST LINE OF SECTION 30, TOWNSHIP 16 SOUTH, RANGE 64 EAST, AND ABUTTING THE EAST LINE OF SECTION 25, TOWNSHIP 16 SOUTH, RANGE 63 EAST, NORTH 00°10'21" WEST, 805.69 FEET TO A POINT ON SAID WEST LINE;

THENCE LEAVING SAID WEST LINE OF SECTION 30, TOWNSHIP 16 SOUTH, RANGE 64 EAST, SOUTH 89°59'00" EAST, 6,084.92 FEET TO A POINT;

THENCE SOUTH 00°10'13" EAST, 6,084.92 FEET TO THE SOUTH LINE OF THE MOAPA INDIAN RESERVATION SECTION 32, TOWNSHIP 16 SOUTH, RANGE 64 EAST, AND ABUTTING THE NORTH LINE OF SECTION 8, TOWNSHIP 17 SOUTH, RANGE 64 EAST

THENCE CONTINUING ALONG THE SOUTH LINE OF THE MOAPA INDIAN RESERVATION OF SAID SECTION 32, TOWNSHIP 16 SOUTH, RANGE 64 EAST, AND ABUTTING THE NORTH LINE OF SECTION 8, TOWNSHIP 17 SOUTH, RANGE 64 EAST, NORTH 89°59'21" WEST, 805.41 FEET TO THE SOUTHWEST (SW) CORNER OF SAID SECTION 32.

THENCE LEAVING SAID SOUTHWEST SW CORNER, SECTION 32, TOWNSHIP 16 SOUTH, RANGE 64 EAST ALONG THE SOUTH LINE OF THE MOAPA INDIAN RESERVATION OF SAID SECTION 31, TOWNSHIP 16 SOUTH, RANGE 64 EAST, AND ABUTTING THE NORTH LINE OF SECTION 8, TOWNSHIP 17 SOUTH, RANGE 64 EAST, NORTH 89°58'59" WEST, 2,639.81 FEET TO THE SOUTH QUARTER S ¼) CORNER SECTION 31, TOWNSHIP 16 SOUTH, RANGE 64 EAST.

THENCE CONTINUING ALONG THE SOUTH LINE OF SAID SECTION 31, TOWNSHIP 16 SOUTH, RANGE 64 EAST, AND ABUTTING THE NORTH LINES OF SECTION 7 AND 8, TOWNSHIP 17 SOUTH, RANGE 64 EAST, NORTH 89°58'51" WEST, 2,639.73 FEET TO THE POINT OF BEGINNING.

APN s): 067-00-002-007, 008, 013, 014

PARCEL 2: (TRANSMISSION LINE)

BEING A PORTION OF SECTION 31, TOWNSHIP 16 S, RANGE 64 E AND A PORTION OF SECTIONS 8, 17, 19, 20 AND 30, TOWNSHIP 17 S, RANGE 64 E AND A PORTION OF SECTIONS 25, TOWNSHIP 17 S, RANGE 63 E, OF THE MOUNT DIABLO MERIDIAN, MOAPA INDIAN RESERVATION, CLARK COUNTY, NEVADA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND BLM BRASS CAP STAMPED S31, 32 1987 ACCEPTED AS THE SOUTHEAST CORNER OF SAID SECTION 31, TOWNSHIP 16S, RANGE 64 E, FROM WHICH A FOUND BLM BRASS CAP STAMPED ¼, S31, 1987 ACCEPTED AS THE SOUTH QUARTER CORNER OF SAID SECTION 31, BEARS NORTH 89°58'59" WEST, 2639.81 FEET;

THENCE ON SAID SOUTH LINE SECTION 31 TOWNSHIP 16 S, RANGE 64 E, NORTH 89°58'59" WEST, 316.40 FEET TO THE POINT OF BEGINNING.

EXHIBIT 3A

DESCRIPTION OF PROJECT SITE

THENCE LEAVING SAID SOUTH LINE SECTION 31, TOWNSHIP 16 SOUTH, RANGE 64 EAST, SOUTH 00°23'01" EAST, 2,906.62 FEET;
THENCE WEST, 50.00 FEET;
THENCE SOUTH 00°23'01" EAST, 6,310.36 FEET TO A POINT ON THE EXISTING RIGHT-OF-WAY OF THE HARRY ALLEN/CRYSTAL 500 KKV LINE BLM PERMIT # N-74510;
THENCE ABUTTING THE EXISTING RIGHT-OF-WAY OF THE HARRY ALLEN/CRYSTAL 500 KKV LINE BLM PERMIT # N-74510, SOUTH 50°25'02" WEST, 16,646.90 FEET;
THENCE LEAVING SAID EXISTING RIGHT-OF-WAY, BLM PERMIT# N-74510, NORTH 39°3'58" WEST, 300.00 FEET;
THENCE NORTH 50°25'02" EAST, 16,504.44 FEET;
THENCE NORTH 00°23'01" WEST, 9,076.64 FEET TO THE SOUTH LINE SECTION 31, TOWNSHIP 16 SOUTH, RANGE 64 EAST;
THENCE LEAVING SAID SOUTH LINE SECTION 31, TOWNSHIP 16 SOUTH, RANGE 64 EAST, NORTH 00°23'01" WEST, 450.57 FEET
THENCE NORTH 89°36'59" EAST, 350.00 FEET;
THENCE SOUTH 00°23'01" EAST, 453.02 FEET TO THE SOUTH LINE SECTION 31, TOWNSHIP 16 SOUTH, RANGE 64 EAST, AND THE POINT OF BEGINNING.

APN s): 083-08-000-001, 083-17-000-001, 083-20-000-001, 083-19-000-001,
083-30-000-001, 083-31-000-001, 084-25-000-001

PARCEL 3: (ACCESS ROAD)

BEING A PORTION OF SECTION 31, TOWNSHIP 16 S, RANGE 64 E AND A PORTION OF SECTION 8, 16 AND 17, TOWNSHIP 17 S, RANGE 64 E, OF THE MOUNT DIABLO MERIDIAN, MOAPA INDIAN RESERVATION, CLARK COUNTY, NEVADA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A FOUND BLM BRASS CAP STAMPED S31, 32 1987 ACCEPTED AS THE SOUTHEAST CORNER OF SAID SECTION 31, TOWNSHIP 16S, RANGE 64 E, FROM WHICH A FOUND BLM BRASS CAP STAMPED ¼, S31, 1987 ACCEPTED AS THE SOUTH QUARTER CORNER OF SAID SECTION 31, BEARS NORTH 89°58'59" WEST, 2639.81 FEET;
THENCE ON SAID SOUTH LINE SECTION 31 TOWNSHIP 16 S, RANGE 64 E, NORTH 89°58'59" WEST, 341.40 FEET;
THENCE SOUTH 00°23'01" EAST, 2,673.87 FEET TO THE POINT OF BEGINNING.

THENCE SOUTH 25°49'43" EAST, 2,138.29 FEET TO THE BEGINNING OF A CURVE;
THENCE SOUTHEASTERLY ALONG SAID CURVE BEING CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 150.01 FEET, AN ARC LENGTH OF 51.73 FEET, THE CHORD OF WHICH BEARS SOUTH 35°42'29" EAST WITH A DISTANCE OF 51.48 FEET;
THENCE SOUTH 45°35'16" EAST, 255.99 FEET TO THE BEGINNING OF A CURVE;
THENCE SOUTHEASTERLY ALONG SAID CURVE BEING CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 150.01 FEET, AN ARC LENGTH OF 51.04 FEET, THE CHORD OF WHICH BEARS SOUTH 55°20'08" EAST WITH A DISTANCE OF 50.80 FEET;
THENCE SOUTH 65°05'01" EAST, 536.93 FEET TO THE BEGINNING OF A CURVE;
THENCE SOUTHEASTERLY ALONG SAID CURVE BEING CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 250.01 FEET, AN ARC LENGTH OF 73.11 FEET, THE CHORD OF WHICH BEARS SOUTH 56°42'22" EAST WITH A DISTANCE OF 72.85 FEET;
THENCE SOUTH 48°19'43" EAST, 298.73 FEET TO THE BEGINNING OF A CURVE;
THENCE SOUTHEASTERLY ALONG SAID CURVE BEING CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 150.01 FEET, AN ARC LENGTH OF 79.58 FEET, THE CHORD OF WHICH BEARS SOUTH 63°31'35" EAST WITH A DISTANCE OF 78.65 FEET;
THENCE SOUTH 78°43'27" EAST, 594.09 FEET TO THE BEGINNING OF A CURVE;

EXHIBIT 3A

DESCRIPTION OF PROJECT SITE

THENCE EASTERLY ALONG SAID CURVE BEING CONCAVE SOUTHERLY, HAVING A RADIUS OF 250.01 FEET, AN ARC LENGTH OF 69.57 FEET, THE CHORD OF WHICH BEARS SOUTH 70°45'07" EAST WITH A DISTANCE OF 69.35 FEET;
THENCE SOUTH 62°46'46" EAST, 153.74 FEET TO THE BEGINNING OF A CURVE;
THENCE EASTERLY ALONG SAID CURVE BEING CONCAVE NORTHERLY, HAVING A RADIUS OF 200.01 FEET, AN ARC LENGTH OF 149.72 FEET, THE CHORD OF WHICH BEARS SOUTH 84°13'26" EAST WITH A DISTANCE OF 146.25 FEET;
THENCE NORTH 74°19'53" EAST, 156.42 FEET TO THE BEGINNING OF A CURVE;
THENCE EASTERLY ALONG SAID CURVE BEING CONCAVE SOUTHERLY, HAVING A RADIUS OF 250.01 FEET, AN ARC LENGTH OF 42.56 FEET, THE CHORD OF WHICH BEARS NORTH 79°12'30" EAST WITH A DISTANCE OF 42.51 FEET;
THENCE NORTH 84°05'08" EAST, 150.30 FEET TO THE BEGINNING OF A CURVE;
THENCE EASTERLY ALONG SAID CURVE BEING CONCAVE NORTHERLY, HAVING A RADIUS OF 150.01 FEET, AN ARC LENGTH OF 27.36 FEET, THE CHORD OF WHICH BEARS NORTH 78°51'35" EAST WITH A DISTANCE OF 27.33 FEET;
THENCE NORTH 73°38'01" EAST, 579.11 FEET TO THE BEGINNING OF A CURVE;
THENCE EASTERLY ALONG SAID CURVE BEING CONCAVE SOUTHERLY, HAVING A RADIUS OF 250.01 FEET, AN ARC LENGTH OF 141.61 FEET, THE CHORD OF WHICH BEARS NORTH 89°51'39" EAST WITH A DISTANCE OF 139.73 FEET;
THENCE SOUTH 73°54'43" EAST, 587.36 FEET TO THE BEGINNING OF A CURVE;
THENCE EASTERLY ALONG SAID CURVE BEING CONCAVE NORTHERLY, HAVING A RADIUS OF 150.01 FEET, AN ARC LENGTH OF 23.63 FEET, THE CHORD OF WHICH BEARS SOUTH 78°25'29" EAST WITH A DISTANCE OF 23.61 FEET;
THENCE SOUTH 82°56'16" EAST, 360.52 FEET TO THE BEGINNING OF A CURVE;
THENCE SOUTHEASTERLY ALONG SAID CURVE BEING CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 400.02 FEET, AN ARC LENGTH OF 577.39 FEET, THE CHORD OF WHICH BEARS SOUTH 41°35'15" EAST WITH A DISTANCE OF 528.56 FEET;
THENCE SOUTH 00°14'13" EAST, 1,206.30 FEET TO THE BEGINNING OF A CURVE;
THENCE SOUTHERLY ALONG SAID CURVE BEING CONCAVE EASTERLY, HAVING A RADIUS OF 100.01 FEET, AN ARC LENGTH OF 14.90 FEET, THE CHORD OF WHICH BEARS SOUTH 04°30'20" EAST WITH A DISTANCE OF 14.89 FEET;
THENCE SOUTH 08°46'28" EAST, 159.64 FEET TO THE BEGINNING OF A CURVE;
THENCE SOUTHERLY ALONG SAID CURVE BEING CONCAVE WESTERLY, HAVING A RADIUS OF 250.01 FEET, AN ARC LENGTH OF 175.36 FEET, THE CHORD OF WHICH BEARS SOUTH 11°19'12" WEST A DISTANCE OF 171.79 FEET;
THENCE SOUTH 31°24'52" WEST, 306.78 FEET TO THE BEGINNING OF A CURVE;
THENCE SOUTHWESTERLY ALONG SAID CURVE BEING CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 150.01 FEET, AN ARC LENGTH OF 16.88 FEET, THE CHORD OF WHICH BEARS SOUTH 28°11'30" WEST WITH A DISTANCE OF 16.87 FEET;
THENCE SOUTH 24°58'07" WEST, 405.11 FEET TO THE BEGINNING OF A CURVE;
THENCE SOUTHERLY ALONG SAID CURVE BEING CONCAVE EASTERLY, HAVING A RADIUS OF 200.01 FEET, AN ARC LENGTH OF 135.14 FEET, THE CHORD OF WHICH BEARS SOUTH 05°36'46" WEST WITH A DISTANCE OF 132.58 FEET;
THENCE SOUTH 13°44'36" EAST, 291.79 FEET;
THENCE CONTINUING ALONG SAID LINE SOUTH 13°44'36" EAST, 100.01 FEET;
THENCE SOUTH 76°15'24" WEST, 100.00 FEET;
THENCE NORTH 13°44'36" WEST, 100.01 FEET;
THENCE CONTINUING ALONG SAID LINE NORTH 13°44'36" WEST, 291.79 FEET TO THE BEGINNING OF A CURVE;
THENCE NORTHERLY ALONG SAID CURVE BEING CONCAVE EASTERLY, HAVING A RADIUS OF 300.01 FEET, AN ARC LENGTH OF 202.70 FEET, THE CHORD OF WHICH BEARS NORTH 05°36'45" EAST WITH A DISTANCE OF 198.87 FEET;
THENCE NORTH 24°58'07" EAST, 405.11 FEET TO THE BEGINNING OF A CURVE;

EXHIBIT 3A

DESCRIPTION OF PROJECT SITE

THENCE NORTHEASTERLY ALONG SAID CURVE BEING CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 250.01 FEET, AN ARC LENGTH OF 28.13 FEET, THE CHORD OF WHICH BEARS NORTH 28°11'29" EAST WITH A DISTANCE OF 28.11 FEET;
THENCE NORTH 31°24'52" EAST, 306.78 FEET TO THE BEGINNING OF A CURVE;
THENCE NORTHERLY ALONG SAID CURVE BEING CONCAVE WESTERLY, HAVING A RADIUS OF 150.01 FEET, AN ARC LENGTH OF 105.22 FEET, THE CHORD OF WHICH BEARS NORTH 11°19'12" EAST WITH A DISTANCE OF 103.08 FEET;
THENCE NORTH 08°46'28" WEST, 159.64 FEET TO THE BEGINNING OF A CURVE;
THENCE NORTHERLY ALONG SAID CURVE BEING CONCAVE EASTERLY, HAVING A RADIUS OF 200.01 FEET, AN ARC LENGTH OF 29.80 FEET, THE CHORD OF WHICH BEARS NORTH 04°30'21" WEST WITH A DISTANCE OF 29.78 FEET;
THENCE NORTH 00°14'13" WEST, 1,206.30 FEET TO THE BEGINNING OF A CURVE;
THENCE NORTHWESTERLY ALONG SAID CURVE BEING CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 300.02 FEET, AN ARC LENGTH OF 433.05 FEET, THE CHORD OF WHICH BEARS NORTH 41°35'14" WEST WITH A DISTANCE OF 396.42 FEET;
THENCE NORTH 82°56'16" WEST, 360.52 FEET TO THE BEGINNING OF A CURVE;
THENCE WESTERLY ALONG SAID CURVE BEING CONCAVE NORTHERLY, HAVING A RADIUS OF 250.01 FEET, AN ARC LENGTH OF 39.38 FEET, THE CHORD OF WHICH BEARS NORTH 78°25'30" WEST WITH A DISTANCE OF 39.34 FEET;
THENCE NORTH 73°54'43" WEST, 587.36 FEET TO THE BEGINNING OF A CURVE;
THENCE WESTERLY ALONG SAID CURVE BEING CONCAVE SOUTHERLY, HAVING A RADIUS OF 150.01 FEET, AN ARC LENGTH OF 84.97 FEET, THE CHORD OF WHICH BEARS SOUTH 89°51'39" WEST WITH A DISTANCE OF 83.84 FEET;
THENCE SOUTH 73°38'01" WEST, 579.11 FEET TO THE BEGINNING OF A CURVE;
THENCE WESTERLY ALONG SAID CURVE BEING CONCAVE NORTHERLY, HAVING A RADIUS OF 250.01 FEET, AN ARC LENGTH OF 45.61 FEET, THE CHORD OF WHICH BEARS SOUTH 78°51'34" WEST WITH A DISTANCE OF 45.54 FEET;
THENCE SOUTH 84°05'08" WEST, 150.30 FEET TO THE BEGINNING OF A CURVE;
THENCE WESTERLY ALONG SAID CURVE BEING CONCAVE SOUTHERLY, HAVING A RADIUS OF 150.01 FEET, AN ARC LENGTH OF 25.54 FEET, THE CHORD OF WHICH BEARS SOUTH 79°12'31" WEST A DISTANCE OF 25.51 FEET;
THENCE SOUTH 74°19'53" WEST, 156.42 FEET TO THE BEGINNING OF A CURVE;
THENCE NORTHWESTERLY ALONG SAID CURVE BEING CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 250.01 FEET, AN ARC LENGTH OF 85.07 FEET, THE CHORD OF WHICH BEARS NORTH 55°20'09" WEST WITH A DISTANCE OF 84.66 FEET;
THENCE NORTH 45°35'16" WEST, 255.99 FEET TO THE BEGINNING OF A CURVE;
THENCE NORTHWESTERLY ALONG SAID CURVE BEING CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 250.01 FEET, AN ARC LENGTH OF 86.22 FEET, THE CHORD OF WHICH BEARS NORTH 35°42'30" WEST WITH A DISTANCE OF 85.79 FEET;
THENCE NORTH 25°49'43" WEST, 1,928.12 FEET;
THENCE NORTH 00°23'01" WEST, 232.75 FEET TO THE POINT OF BEGINNING.

APN s): 083-08-000-001, 083-17-000-001, 083-16-000-001

PARCEL 4

ALL THOSE PORTIONS OF SECTION 28, 29, 30, 32 AND 33, ALL IN TOWNSHIP 16 SOUTH, RANGE 64 EAST, MOUNT DIABLO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF CLARK, STATE OF NEVADA, AND LOCATED WITHIN THE MOAPA INDIAN RESERVATION, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID SECTION 30;

THENCE ON AND ALONG THE NORTH LINE OF SAID SECTION, N 89°42'38" E, A DISTANCE OF 2646.40 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 30;

EXHIBIT 3A

DESCRIPTION OF PROJECT SITE

THENCE CONTINUING ON AND ALONG THE NORTH LINE OF SAID SECTION, N 89° 41'58" E, A DISTANCE OF 2639.36 FEET TO THE NORTHEAST CORNER OF SAID SECTION 30;
THENCE ON AND ALONG THE NORTH LINE OF SAID SECTION 29, N 89°32'30" E, A DISTANCE OF 2638.11 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 29;
THENCE CONTINUING ON AND ALONG THE NORTH LINE OF SAID SECTION, N 89° 44'23" E, A DISTANCE OF 2638.18 FEET TO THE NORTHEAST CORNER OF SAID SECTION 29;
THENCE ON AND ALONG THE NORTH LINE OF SAID SECTION 28, N 89°38'54" E, A DISTANCE OF 530.28 FEET;
THENCE LEAVING SAID NORTH LINE, S 41°11'30" E, A DISTANCE OF 5441.88 FEET;
THENCE S 05°33'22" W, A DISTANCE OF 6449.27 FEET TO THE SOUTH LINE OF SAID SECTION 33;
THENCE ON AND ALONG SAID SOUTH LINE, S 89°32'58" W, A DISTANCE OF 742.32 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 33;
THENCE CONTINUING ON AND ALONG THE SOUTH LINE OF SAID SECTION 33, S 89° 33'31" W, A DISTANCE OF 2638.87 FEET TO THE SOUTHWEST CORNER OF SAID SECTION 33;
THENCE ON AND ALONG THE SOUTH LINE OF SAID SECTION 32, S 89°33'30" W, A DISTANCE OF 2639.74 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 32;
THENCE CONTINUING ON AND ALONG THE SOUTH LINE OF SAID SECTION 32, S 89° 33'59" W, A DISTANCE OF 1832.97 FEET;
THENCE LEAVING SAID SOUTH LINE, N 00°36'44" W, A DISTANCE OF 6084.25 FEET;
THENCE S 89°34'20" W, A DISTANCE OF 6084.92 FEET TO THE WEST LINE OF SAID SECTION 30;
THENCE ON AND ALONG THE WEST LINE OF SAID SECTION 30, N 00°37'01" W, A DISTANCE OF 1833.58 FEET TO THE WEST QUARTER CORNER OF SAID SECTION 30;
THENCE CONTINUING ON AND ALONG SAID WEST LINE, N 00°37'05" W, A DISTANCE OF 2639.11 FEET TO THE POINT OF BEGINNING.

CONTAINING 2473.36 ACRES, MORE OR LESS.

PARCEL 5

ALL THAT PORTION OF SECTION 7, TOWNSHIP 17 SOUTH, RANGE 64 EAST, MOUNT DIABLO MERIDIAN, IN THE UNINCORPORATED AREA OF THE COUNTY OF CLARK, STATE OF NEVADA, AND LOCATED WITHIN THE MOAPA INDIAN RESERVATION, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING THE NORTHEAST QUARTER OF SAID SECTION 7.

CONTAINING 99.59 ACRES, MORE OR LESS.

Supplier shall also have a one time right to add parcel 6 below to the Project Site at any time prior to achieving Project Milestone 2 F , so long as Supplier provides Buyer with no less than thirty (30) days notice prior to adding such parcels in order for Buyer to perform due diligence on such parcels and approve such additional parcels prior to adding them to the Project Site, such approval not to be unreasonably delayed or withheld. Buyer shall respond with its approval or denial no later than 30 days after the receipt of Supplier's notice.

PARCEL 6

E ½ SECTION 8, T17S, R64E, MT. DIABLO MERIDIAN
PORTIONS OF THE W ½ OF THE W ½, SECTION 9, T17S, R64E, MT. DIABLO MERIDIAN

EXHIBIT 3B

MAP DEPICTING PROJECT SITE

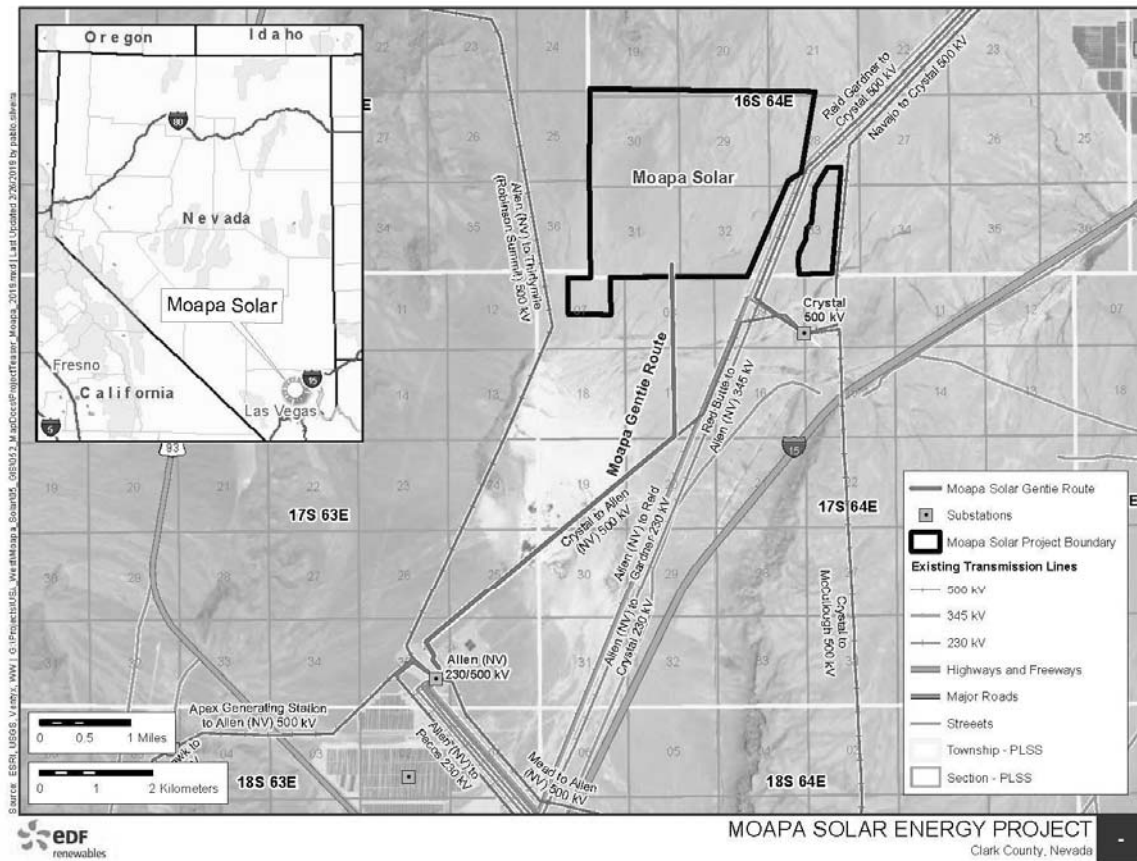


EXHIBIT 4

NOTICES, BILLING AND PAYMENT INSTRUCTIONS

SUPPLIER:

Arrow Canyon Solar, LLC

Contact	Mailing Address	Phone	E-mail
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CONTRACT REPRESENTATIVE

Prior to Commercial Operation Date:

Blane Sundwall	c/o Arrow Canyon Solar, LLC EDF Renewables, Inc 15445 Innovation Dr, San Diego, CA 92128	858-521-3300	Blaine.Sundwall@edf-re.com
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From and after Commercial Operation Date:

Blane Sundwall	c/o Arrow Canyon Solar, LLC EDF Renewables, Inc 15445 Innovation Dr, San Diego, CA 92128	858-521-3300	Blaine.Sundwall@edf-re.com
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OPERATING REPRESENTATIVE:

Prior to Commercial Operation Date:

Blane Sundwall	c/o Arrow Canyon Solar, LLC EDF Renewables, Inc 15445 Innovation Dr, San Diego, CA 92128	858-521-3300	Blaine.Sundwall@edf-re.com
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From and after Commercial Operation Date:

Blane Sundwall	c/o Arrow Canyon Solar, LLC EDF Renewables, Inc 15445 Innovation Dr, San Diego, CA 92128	858-521-3300	Blaine.Sundwall@edf-re.com
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CHARGING AND DISCHARGING NOTICE COMMUNICATIONS:

[To be provided prior to start of
construction.]

OPERATING NOTIFICATIONS:

[To be provided prior to start of construction.]

Prescheduling

Real-Time

Monthly Checkout

EXHIBIT 4

NOTICES, BILLING AND PAYMENT INSTRUCTIONS

INVOICES:

Blane Sundwall

c/o Arrow Canyon Solar, LLC
EDF Renewables, Inc
15445 Innovation Dr, San Diego, CA
92128

858-521-3300 Blaine.Sundwall@edf-re.com

PAYMENT INSTRUCTIONS

[To be provided by Supplier prior to the
start of construction]

EXHIBIT 4

NOTICES, BILLING AND PAYMENT INSTRUCTIONS

BUYER:

Nevada Power Company d/b/a NV Energy

Contact	Phone	E-mail
<u>CONTRACT REPRESENTATIVE</u>		
Manager, Energy Supply Contract Management 6226 W Sahara Ave, M/S 26A Las Vegas, NV 89146	702/402-5667	ContractManagement@nvenergy.com
<u>OPERATING REPRESENTATIVES</u>		
<u>Scheduling</u>		
- Portfolio Analytics-NPC (Normal Business Hours)	702/402-2882	PortfolioAnalytics@nvenergy.com
- Portfolio Analytics-SPPC (Normal Business Hours)	702/402-2884	PortfolioAnalytics@nvenergy.com
- Generation Dispatch (Control Area Operations)	702/402-7111	Sysopr@nvenergy.com
- Daily Availability Notice-NPC (Spreadsheet)	702/402-2882	PortfolioAnalytics@nvenergy.com
- Daily Availability Notice-SPPC (Spreadsheet)	702/402-2884	PortfolioAnalytics@nvenergy.com
<u>Emergencies (including Force Majeure)</u>		
- Grid Reliability	775/834-4216	Grid_Reliability@nvenergy.com
- Portfolio Analytics	702/402-1954	PortfolioAnalytics@nvenergy.com
<u>Planned Outages-NPC</u>		
<u>Planned Outages-SPPC</u>		
	702/402-6602	escoc@nvenergy.com
	775/834-4716	escoc@nvenergy.com
<u>Metering-NPC</u>		
<u>Metering-SPPC</u>		
	702/402-6110	NPCMeterOps@nvenergy.com
	775/834-7156	Electric_Meter_Ops_North@nvenergy.com
<u>INVOICES</u>		
Energy Supply Contract Management 6226 W Sahara Ave, M/S 26A Las Vegas, NV 89146	702/402-5667	ContractManagement@nvenergy.com
<u>CC all invoices to:</u>		
Fuel & Purchased Power Accounting 6100 Neil Road, M/S S2A20 Reno, NV 89511	775/834-6281	cmcelwee@nvenergy.com

“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, including the Storage Facility Metering Point.

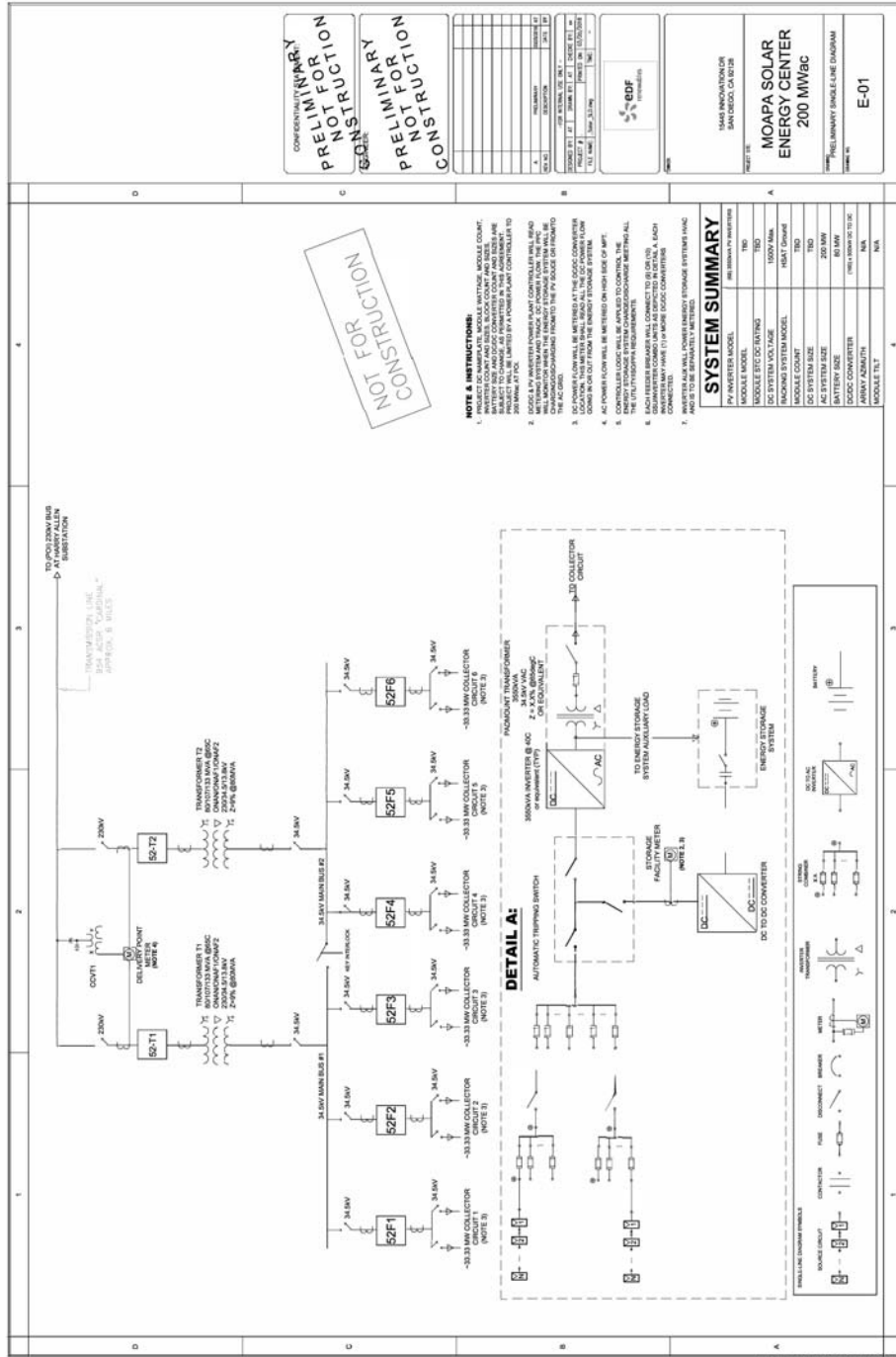


EXHIBIT 6

PROJECT MILESTONE SCHEDULE

1. All time periods are in months after the last day of the month in which the PUCN Approval Date occurs (but no earlier than August 31, 2019) (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 shall obtain all Required Facility Documents to construct the Facility.

Completion Date: Twenty-seven (27) 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 construct the Facility as listed in Exhibit 12 have been obtained, 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 Exhibit 14.

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

Completion Date: Twenty-nine (29) months AA.

Documentation: Supplier shall provide Buyer with documentation that the major equipment including modules, step-up and medium voltage transformers and inverters) has been delivered to the Project Site.

- C) Project Milestone: Supplier shall obtain the Required Facility Documents to operate (but not achieve Commercial Operation) the Facility, including registration with PC Administrator.

Completion Date: Thirty-eight (38) months AA.

Documentation: Supplier shall provide Buyer with an officer’s certificate from an authorized representative of Supplier certifying that Required Facility Documents to operate (but not achieve Commercial Operation) the Facility as listed in Exhibit 12 have been obtained, together with reasonable documentation evidencing registration with PC Administrator.

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

Completion Date: Thirty-seven (37) months AA.

Documentation: Buyer’s Meters shall record Energy being delivered from the Generating Facility to Buyer and the Storage Facility and Discharging Energy being delivered from the Storage Facility to Buyer, and Supplier provides written notice to Buyer that the Facility satisfies the definition of Operation Date.

EXHIBIT 6

PROJECT MILESTONE SCHEDULE

CRITICAL PROJECT MILESTONES

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

Completion Date: Thirty-eight (38) months AA.

Documentation: Supplier shall provide Buyer with an officer's certificate from an authorized Representative of Supplier certifying that debt and equity financing arrangements have been executed for funding of 100% of the construction financing of the Facility.

- F) 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: Twenty-eight (28) months AA.

Documentation: Supplier shall provide Buyer a copy of 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, as well as an ALTA Survey for the Project Site. Supplier shall provide Buyer with a copy of the Construction Contract.

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

Completion Date: December 1, 2022 ("Commercial Operation Deadline").

Documentation: Supplier provides certifications required by Section 8.3.2 to Buyer.

EXHIBIT 7

PERFORMANCE TESTS

1. Performance tests required by the Construction Contract in order to achieve Commercial Operation.
2. Such other tests as may be required by Law or by Buyer to document resource supply.

EXHIBIT 8

FORM OF AVAILABILITY NOTICE

Unit Name	Date	Measure	HE 01	HE 02	HE 03	HE 04	HE 05	HE 06	HE 07	HE 08	HE 09	HE 10	HE 11	HE 12	HE 13	HE 14	HE 15	HE 16	HE 17	HE 18	HE 19	HE 20	HE 21	HE 22	HE 23	HE 24
	Day 1	BaseMW																								
	Day 2	BaseMW																								
	Day 3	BaseMW																								
	Day 1	Max Capability																								
	Day 2	Max Capability																								
	Day 3	Max Capability																								
	Day 1	Min Capability																								
	Day 2	Min Capability																								
	Day 3	Min Capability																								
	Day 1	Min Capability																								
	Day 2	Min Capability																								
	Day 3	Min Capability																								

Note: Form of Availability Notice to be provided by Buyer to Supplier in Excel format. The format of the form may not be changed, except by Buyer.²

Date For Notice:

Supplier:

² NTD: Exhibit 8 to accommodate relevant information with respect to the Storage Facility.

EXHIBIT 8

FORM OF AVAILABILITY NOTICE

Name of Suppliers Representative: _____

Buyer: _____ Nevada Power Company

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	

Include other considerations current or anticipated events potentially impacting the Generating Facility's ability to produce the Delivered Amount or Ancillary Services including any Supplier plans to charge the battery.

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.

EXHIBIT 10

SUPPLIER'S REQUIRED REGULATORY APPROVALS

1. Renewable Energy System certification as specified in WREGIS.
2. PUCN Approval of this Agreement.
3. Although obtaining EWG status is not a Seller 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.
4. 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.
5. U.S. Energy Information Administration, filing of Forms 860 and 923
6. Moapa Band of Paiute Indians, Lease, with Bureau of Indian Affairs BIA) review including environmental review under the National Environmental Policy Act (NEPA)
7. Bureau of Land Management, right of way grant issued pursuant to the Federal Land Policy Management Act and implementing regulations at 43 C.F.R. Part 2800, including NEPA if separate from BIA review)
8. U.S. Fish and Wildlife Service, Endangered Species Act, consultation letter or Biological Opinion
9. Public Utilities Commission of Nevada, Utility Environmental Protection Act, order and permit to construct
10. Nevada Department of Environmental Protection, Groundwater Discharge Permit, if applicable
11. EPA and/or Nevada Department of Environmental Protection, construction storm water general permit (NPDES Section 402)
12. State Historic Preservation Office, National Historic Preservation Act, Section 106 consultation and determination of no effect; for federal actions only
13. Clean Water Act, Section 404, jurisdictional determination and, if required, general permit/nationwide permit coverage
14. Clean Water Act, Section 401, state water quality certification, if required in connection with other permits
15. NDEP and/or Clark County Air Pollution Control Program Dust Control Permit
16. Special Purpose Permit for Desert Tortoise relocation (NDOW)

EXHIBIT 11

TECHNICAL SPECIFICATIONS

In accordance with Section 8.1, Supplier shall provide, 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 11.

EXHIBIT 12

REQUIRED FACILITY DOCUMENTS

Construction Documents

1. Construction Contract
2. Construction Permits
3. This Agreement
4. Permits and approvals listed as items 6 through 16 on Exhibit 10

Operating Documents

1. Permits and approvals listed as items 1 through 5 on Exhibit 10
2. Operating and Maintenance Agreement.
3. Interconnection Agreement
4. Western Renewable Energy Generation Information System (WREGIS), registrations, including as a Nevada Renewable Energy System, as applicable.
5. Transmission Provider's permission to operate.
6. Crossing consents or easements, Kern River Gas Transmission Company and BLM consents if required) .

EXHIBIT 13A

DISPATCH AVAILABILITY AMOUNT

Hour Ending		JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
0100	Off-Peak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0200		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0300		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0400		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0500		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0600		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0700	On Peak	0.0	0.0	3.5	13.9	99.9	86.0	86.2	20.2	0.2	0.0	0.2	0.0
0800		56.8	102.8	118.8	170.8	196.1	195.0	178.0	132.5	147.5	62.9	102.1	63.0
0900		156.4	159.4	184.5	199.6	200.0	197.9	175.4	160.2	192.5	175.0	168.8	135.5
1000		158.3	164.8	191.7	195.1	199.6	197.5	177.3	169.2	194.9	191.4	168.4	140.0
1100		150.2	167.9	191.3	196.6	200.0	197.7	178.5	171.8	195.6	190.5	159.9	136.1
1200		143.9	164.6	192.3	197.2	200.0	198.7	179.9	173.0	197.8	185.6	156.2	130.3
1300		144.8	168.2	192.2	194.3	197.8	198.7	179.5	172.6	193.4	181.9	157.7	133.6
1400		154.5	167.0	190.3	198.1	196.5	198.7	179.5	170.6	191.3	185.5	164.3	140.8
1500		161.3	164.6	193.3	197.6	195.9	197.6	172.0	168.9	189.5	187.2	167.8	137.9
1600		131.2	144.1	184.1	197.8	195.4	197.6	174.4	178.5	188.9	187.5	124.6	80.0
1700		1.3	66.5	173.9	195.9	194.5	XXXX	XXXX	XXXX	188.3	166.2	30.0	0.0
1800		0.0	0.0	99.7	190.8	188.6	XXXX	XXXX	XXXX	153.0	29.7	0.0	0.0
1900		0.0	0.0	1.5	51.1	123.9	XXXX	XXXX	XXXX	6.8	0.0	0.0	0.0
2000		0.0	0.0	0.0	0.0	0.1	XXXX	XXXX	XXXX	0.0	0.0	0.0	0.0
2100		0.0	0.0	0.0	0.0	0.0	XXXX	XXXX	XXXX	0.0	0.0	0.0	0.0
2200		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2300	Off-Peak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2400		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Daily Supply Amount MWh)		1,258.8	1,470.1	1,917.1	2,198.8	2,388.3	1,916.5	1,839.7	1,749.6	2,039.6	1,743.5	1,400.0	1,097.2
Daily On-Peak Supply Amount MWh)		1,258.8	1,470.1	1,917.1	2,198.8	2,388.3	1,916.5	1,839.7	1,749.6	2,039.6	1,743.5	1,400.0	1,097.2
Monthly Supply Amount MWh)		39,021.3	41,162.4	59,431.0	65,962.9	74,036.4	57,494.3	57,030.6	54,237.9	61,187.6	54,048.3	42,001.3	34,011.9
Annual Supply Amount MWh)		639,625.9											
Maximum Amount MW		200											

On Peak Hours for purposes of this Exhibit 13A, not Market Prices) are the hours ending 0700 through 2200 PPT, 7 days a week. Off Peak Hours are all other hours.

EXHIBIT 13B

PERFORMANCE PERIODS

Dispatchable Period, Full Requirements Period and Full Requirements Period Product)

The Dispatchable Period, the Full Requirements Period and the Full Requirements Period Product are identified in the table below.

Hour Ending	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
0100	Dispatchable Period											
0200												
0300												
0400												
0500												
0600												
0700												
0800												
0900												
1000												
1100												
1200												
1300												
1400												
1500												
1600												
1700	136.0	136.0	136.0									
1800	136.0	136.0	136.0									
1900	136.0	136.0	136.0									
2000	136.0	136.0	136.0									
2100	136.0	136.0	136.0									
2200												
2300												
2400												
Full Requirements Period Product (annual total) ³ :						62,560.0						

³ Full Requirements Period Product equals (the sum of June output hours ending 1700-2100 multiplied by 30) + (the sum of July output hours ending 1700-2100 multiplied by 31) + (the sum of August output hours ending 1700-2100 multiplied by 31)

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.

EXHIBIT 15

**OPERATIONS 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

DISPATCHABLE ACCURACY RATE

For purposes of determining whether the Generating Facility remains capable of being dispatched by the Buyer, the ability of the Generating Facility to timely reach output levels sent by the Energy Management System to the Facility's Automatic Generation Control system will be tracked at five minute intervals.

1. The Generating Facility's Dispatchable Accuracy Rate will be calculated as follows:
 - a. Determine the absolute value of the difference between the output level sent by Buyer's Energy Management System which shall not exceed the instantaneous maximum capability of the Generating Facility as communicated electronically from Supplier to Buyer) to the Facility's Automatic Generation Control and the Delivered Amount excluding any Buyer Charging Energy delivered to the Storage Facility Metering Point) of the Facility, as recorded and tracked at five minute intervals by Buyer;
 - b. During an interval that includes a ramp from one set point to another, the comparison described in Section 1a will be made between the average of the start and finish output levels sent by Buyer's Energy Management System which shall not exceed the instantaneous maximum capability of the Generating Facility) to the Facility's Automatic Generation Control and the Delivered Amount excluding any Buyer Charging Energy delivered to the Storage Facility Metering Point)
 - c. Divide this difference by the output level sent by the Buyer's Energy Management System;
 - d. Subtract this quotient from 1.00.

For example: If Automatic Generation Control signal was 50MW and Facility Delivered Amount was 48MW. Therefore⁴: a. 2, c. $2/50 = 0.04$, d. $1.0 - 0.04 = 0.96$, which expressed as a percentage is 96%

2. Each calendar month, the Facility's average Dispatchable Accuracy Rate will be calculated as follows:
 - a. Sum each recorded five minute interval difference between the output level sent by the EMS to the Facility's AGC and the actual output of the Facility as described above for purposes of summation, treat all differences, whether positive or negative, as positive values);
 - b. Sum each five minute recorded output level sent by the EMS to the Facility's AGC;
 - c. Divide the summed difference by the summed output level sent by the Facility's EMS to the Facility's AGC;
 - d. Subtract this quotient from 1.00;
 - e. This difference represents the Facility's average Dispatchable Accuracy Rate for the calendar month.

⁴ Where a, b and c represent the above concepts.

EXHIBIT 16

DISPATCHABLE ACCURACY RATE

3. Those periods in which the Facility is in a planned outage or wholly or partially unavailable due to Force Majeure, Emergencies, Transmission Provider Instructions or curtailment and therefore unable to follow dispatch orders shall be excluded for calculation of Dispatchable Accuracy Rate.
4. Real-Time and/or Instantaneous Availability of Supplier's Generating Facility
 - a. On an ongoing basis, the Generating Facility will provide real-time, instantaneous availability levels of minimum real power that could be generated at the referenced meter pMinimum and maximum real power that could be generated at the referenced meter pMaximum . The pMinimum and pMaximum shall be reported at least once per six seconds as an estimated forecast.
 - b. Power set-point instructions from Buyer's EMS to the Generating Facility's AGC will recognize and obey real-time, instantaneous pMinimum and pMaximum availability levels, and any other constraints which are caused due to real-time weather conditions. In the event the Power set-point instructions from Buyer's EMS to the Generating Facility's AGC are lower than the instantaneous PMaximum, then Section 10.2.2 shall apply.
 - c. The Dispatchable Accuracy Rate will therefore be an indication of how the Generating Facility performed relative to its real-time or instantaneous capabilities as a result of existing weather and site conditions.
5. The difference between the set-point sent by the Buyer's Energy Management System and the Delivered Amount from the Facility shall be considered zero for purposes of calculating the Dispatchable Accuracy Rate under the following conditions:
 - a. Those periods in which the Generating Facility is in a planned outage or affected by a force outage or Force Majeure or Emergency and therefore unable to follow dispatch orders shall be excluded for calculation of Dispatchable Accuracy Rate.
 - b. Those periods when the Buyer's Energy Management System is not sending the Generating Facility a dispatch command
 - c. The actual available solar generation is less than the estimated pMaximum forecast during the five minute set-point.
 - d. The 12 seconds following the receipt of an AGC signal for required response time of the Facility.
 - e. Those periods when the ramp rate of the Buyer's AGC exceeds 10% per minute of the Expected Nameplate Capacity Rating as reported in Exhibit 1, Section 5(b)(ii) during the 5 minute dispatch period.
 - f. The referenced meter is the Delivery Point for the Generating Facility's AGC set-point but the Storage Facility is given a charge/discharge notice.
 - g. Frequency response, Volt-Watt or other operating set-points are triggered that require the Storage Facility to charge or discharge something other than the AGC set-point.
 - h. Those periods when the Power set-point instructions from Buyer's EMS to the Generating Facility's AGC are higher than the instantaneous PMaximum.

EXHIBIT 17

FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name of Issuing Bank]
[Address of Issuing Bank]
[City, State of Issuing Bank]

Letter Of Credit No. [_____]
Irrevocable Standby Letter Of Credit

Date of Issue: [_____] , 20__

Stated Expiration Date: [_____]

Applicant:
[Name and address]
[_____]
[_____]

Stated Amount: USD \$[_____]

Beneficiary:
Nevada Power Company d/b/a NV Energy
6226 W. Sahara Avenue
Las Vegas, NV 89146
Attn: Jenny Venter – Risk Control
Mailstop 9A

Credit Available With: [_____]

EXHIBIT 17

FORM OF LETTER OF CREDIT

Ladies and Gentlemen:

At the request and for the account of [] the “Applicant”), we hereby establish in favor of Nevada Power Company “Beneficiary”) for the aggregate amount not to exceed [] million United States Dollars \$[], in connection with the Long Term Renewable Power Purchase Agreement dated as of [] as amended, restated, amended and restated or otherwise modified, the “Agreement”), by and between the Applicant and Beneficiary this Irrevocable Standby Letter of Credit no. [] this “Letter of Credit”) expiring on [date not earlier than 364 days from issuance] (the “Stated Expiration Date”).

We irrevocably authorize you to draw on this Letter of Credit, in accordance with the terms and conditions hereinafter set forth, in any amount up to the full Available Amount as defined below) available against presentation of a dated drawing request drawn on [***Name of Issuing Bank***] manually signed by a purported authorized representative of a Beneficiary completed in the form of Annex 1 hereto a “Drawing Request”). Partial drawings and multiple drawings are allowed under this Letter of Credit. Each Drawing Request honored by us shall immediately reduce the amount available to be drawn hereunder by the amount of the payment made in satisfaction of such Drawing Request (each, an “Automatic Reduction”).

On any given date, the Stated Amount as set forth on the first page of this Letter of Credit minus any Automatic Reductions plus any amounts increased pursuant to the terms and conditions hereto shall be the aggregate amount available hereunder (the “Available Amount”).

Drawing Requests and all communications with respect to this Letter of Credit shall be in writing, addressed or presented in person to us at: [***Address of Issuing Bank***], Attn: [], referencing this Letter of Credit No. []. In addition, presentation of a Drawing Request may also be made by facsimile transmission to [***Fax number of Issuing Bank***], or such other facsimile number identified by us in a written notice to you. To the extent a Drawing Request is made by facsimile transmission, you must i) provide telephone notification to us at [***Telephone number of Issuing Bank***] prior to or simultaneously with the sending of such facsimile transmission and (ii) send the original of such Drawing Request to us by overnight courier, at the same address provided above; provided, however, that our receipt of such telephone notice or original documents shall not be a condition to payment hereunder. Presentation of the original of this Letter of Credit shall only be required for any drawing of the entire Available Amount.

If a Drawing Request is presented in compliance with the terms of this Letter of Credit to us at such address or facsimile number by 11:00 a.m., New York City time, on any Business Day as defined below), payment will be made not later than the close of business, New York City time, on the following Business Day, and if such Drawing Request is so presented to us after 11:00 a.m., New York City time, on any Business Day, payment will be made on the second following Business Day not later than the close of business, New York City time on such following Business Day. Payment under this Letter of Credit shall be made in immediately available funds by wire transfer to such account as specified in the Drawing Request.

EXHIBIT 17

FORM OF LETTER OF CREDIT

As used in this Letter of Credit, “Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by Law to remain closed in the State of New York.

This Letter of Credit shall expire on the earliest to occur of 1) our receipt of written confirmation from a Beneficiary authorizing us to cancel this Letter of Credit accompanied by the original of this Letter of Credit; (2) the close of business, New York time, on the date the “Early Expiration Date”) specified in a notice of early expiration in the form of Annex 2 hereto sent by us to the Beneficiary and the Applicant by courier, mail delivery or delivery in person or facsimile transmission and stating that this Letter of Credit shall terminate on such date, which date shall be no less than thirty (30) days after the date of such notice, with the Beneficiary remaining authorized to draw on us prior to such Early Expiration Date in accordance with the terms hereof; or (3) the Stated Expiration Date. It is a condition of this letter of credit that it shall be deemed automatically extended without an amendment for periods of one (1) year each beginning on the present expiry date hereof and upon each anniversary of such date, unless at least thirty (30) days prior to any such expiry date we have sent you written notice the “Notice of Non-Renewal”) by certified mail or overnight courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored. To the extent a Notice of Non-Renewal has been provided to the Beneficiary and Applicant in accordance herewith, the Beneficiary are authorized to draw on us up to, in the aggregate, the full Available Amount of this Letter of Credit, by presentation to us, in the manner and at the address specified in the third preceding paragraph, of a Drawing Request completed in the form of Annex 1 hereto and sent and purportedly signed by a Beneficiary’s authorized representative.

This Letter of Credit is effective immediately.

In the event that a Drawing Request fails to comply with the terms of this Letter of Credit, we shall provide the Beneficiary prompt notice of same stating the reasons therefore and shall upon receipt of a Beneficiary’s instructions, hold any nonconforming Drawing Request and other documents at your disposal or return any non-conforming Drawing Request and other documents to the Beneficiary at the addresses set forth above by delivery in person or facsimile transmission. Upon being notified that the drawing was not effected in compliance with this Letter of Credit, a Beneficiary may attempt to correct such non-complying Drawing Request in accordance with the terms of this Letter of Credit.

This Letter of Credit sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited or amplified by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for Drawing Requests and certificates. The foregoing notwithstanding, this Letter of Credit is subject to the rules of the “International Standby Practices 1998, International Chamber of Commerce, Publication No. 590” published by the Institute of International Banking Law and Practice (“ISP 98”) and, as to matters not governed by ISP 98, shall be governed by and construed in accordance with the Laws of the State of New York.

EXHIBIT 17

FORM OF LETTER OF CREDIT

This Letter of Credit is transferable, only in its entirety and not in part, upon presentation to us, at our presentation office specified herein, of a signed transfer certificate in the form of Annex 3 accompanied by this original Letter of Credit and all amendments, if any, in which a Beneficiary irrevocably transfers to its successor or assign all of its rights hereunder, whereupon we will either issue a substitute letter of credit to such successor or assign or endorse such transfer on the reverse of this Letter of Credit. Transfers to designated foreign nationals are not permitted as being contrary to the U.S. Treasury Department or Foreign Assets Controls Regulations.

Any voluntary reduction hereunder shall be in the form of Annex 4 hereto.

All banking charges are for the account of the Applicant. All transfer fees are for the account of the Beneficiary.

All Drawing Requests under this Letter of Credit must bear the clause: "Drawn under [*Name of Issuing Bank*], Letter of Credit Number [] dated []."

This Letter of Credit shall not be amended except with the written concurrence of [*Name of Issuing Bank*], the Applicant and the Beneficiary.

We hereby engage with you that a Drawing Request drawn strictly in compliance with the terms of this Letter of Credit and any amendments thereto shall be honored.

We irrevocably agree with you that any legal action or proceeding with respect to this Letter of Credit shall be brought in the courts of the State of New York in the County of New York or of the United States of America in the Southern District of New York. You and we irrevocably submit to the nonexclusive jurisdiction of such courts solely for the purposes of this Letter of Credit. You and we hereby waive to the fullest extent permitted by Law any objection either of us may now or hereafter have to the laying of venue in any such action or proceeding in any such court.

[*Name of Issuing Bank*]

Authorized signature

EXHIBIT 17

FORM OF LETTER OF CREDIT

ANNEX 1

[Letterhead of a Beneficiary]

Drawn under [insert name of Issuing Bank],
Letter of Credit Number [] dated []

DRAWING REQUEST

[Date]

[name and address of Issuing Bank]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of a Beneficiary hereby draws on [insert name of Issuing Bank], Irrevocable Standby Letter of Credit No. [] the “Letter of Credit”) dated [] issued by you in favor of us. Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

In connection with this drawing, we hereby certify that:

A) This drawing in the amount of US\$_____ is being made pursuant to the Letter of Credit;

[Use one or more of the following forms of paragraph B, as applicable, and include in this Drawing Request]

B-1) Beneficiary is authorized to make a drawing under this Letter of Credit in accordance with the terms of the Agreement applicable to Beneficiary.

or

B-2) The Letter of Credit will expire within thirty 30) days of the date of this Drawing Request pursuant to a Notice of Non-Renewal and the Applicant has failed to provide a replacement letter of credit from an acceptable credit provider and satisfying the requirements of the Agreement applicable to Beneficiary;

or

B-3) [insert name of Issuing Bank] has delivered an Early Expiration Notice and such Early Expiration Notice has not been rescinded and the Applicant has not replaced the Letter of Credit;

; and

C) You are directed to make payment of the requested drawing to:

EXHIBIT 17

FORM OF LETTER OF CREDIT

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on
this ____ day of _____.

[Beneficiary]

By: _____

Name:

Title:

EXHIBIT 17

FORM OF LETTER OF CREDIT

ANNEX 2
NOTICE OF EARLY EXPIRATION
[Date]

[Beneficiary name and address]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [] the "Letter of Credit") dated [] issued by [Issuing Bank] in favor of [] the "Beneficiary"). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

This constitutes our notice to you pursuant to the Letter of Credit that the Letter of Credit shall terminate on _____, _____ *[insert a date which is thirty (30) or more days after the date of this notice of early expiration]* (the "Early Expiration Date").

Pursuant to the terms of the Letter of Credit, the Beneficiary is authorized to draw pursuant to one or more drawings), prior to the Early Expiration Date, on the Letter of Credit in an aggregate amount that does not exceed the then Available Amount (as defined in the Letter of Credit).

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this _____ day of _____.

[ISSUING BANK]

By: _____
Name:
Title:

cc:

[Applicant name and address]

EXHIBIT 17

FORM OF LETTER OF CREDIT

ANNEX 3

REQUEST FOR TRANSFER OF LETTER OF CREDIT IN ITS ENTIRETY

[Name of Issuing Bank],

Date: _____

[Address]

[City, State]

Attn: Trade Services Department

Re: [Name of Issuing Bank], Irrevocable Standby Letter of Credit No. [_____]

For value received, the undersigned beneficiary hereby irrevocably transfers to:

NAME OF TRANSFEREE

ADDRESS OF TRANSFEREE

CITY, STATE/COUNTRY ZIP

hereinafter, the “transferee”) all rights of the undersigned beneficiary to draw under above letter of credit, in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary hereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original of such Letter of Credit and all amendments, if any, is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

In payment of your transfer commission in amount equal to a minimum of \$[_____] and maximum of \$[_____].

Select one of the following:

____ we enclose a cashier's/certified check

____ we have wired funds to you through _____ bank

____ we authorize you to debit our account # _____ with you, and in addition thereto, we agree to pay you on demand any expenses which may be incurred by you in connection with this transfer

EXHIBIT 17

FORM OF LETTER OF CREDIT

We certify that this transfer request is not in violation of any federal or state laws and further confirm our understanding that the execution of this transfer request by you is subject to compliance with all legal requirements and related procedures implemented by your bank under applicable laws of the United States of America [and the jurisdiction of Issuing Bank].

Very truly yours,

[BENEFICIARY NAME]

Authorized Signature

The signature(s) of _____ with title(s) as stated conforms to those on file with us; are authorized for the execution of such instrument; and the beneficiary has been approved under our bank's Customer Identification Program. Further, pursuant to Section 326 of the USA Patriot Act and the applicable regulations promulgated thereunder, we represent and warrant that the undersigned bank: i) is subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. section 5318(h); ii) is regulated by a Federal functional regulator [as such term is defined in 31 C.F.R. section 103.120(a)(2)]; and iii) has a Customer Identification Program that fully complies with the requirements of the regulations.

Signature of Authenticating Bank)

(Name of Bank)

Printed Name/Title)

(Date)

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this ____ day of _____.

[Beneficiary name]

By: _____

Name:

Title:

cc:

[insert name and address of Transferee]

[insert name and address of Applicant]

EXHIBIT 17

FORM OF LETTER OF CREDIT

ANNEX 4
VOLUNTARY REDUCTION REQUEST CERTIFICATE
[Date]

[insert name of Issuing Bank]
[insert address of Issuing Bank]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [] the “Letter of Credit”) dated [] issued by you in favor of [] the “Beneficiary”). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

The undersigned, a duly authorized representative of the Beneficiary, having been so directed by [] the “Applicant”), hereby requests that the Stated Amount as such term is defined in the Letter of Credit) of the Letter of Credit be reduced by U.S.\$[] to U.S.\$[].

We hereby certify that the undersigned is a duly authorized representative of the Beneficiary.

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this ____ day of _____.

[Beneficiary name]

By: _____
Name:
Title:

cc:

[Applicant name and address]

EXHIBIT 18

YEARLY PC AMOUNT

Yearly PC Amount ⁵	639,625.9 MWh
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EXHIBIT 19

FORM OF LENDERS CONSENT

This CONSENT AND AGREEMENT (this “Consent”), dated as of _____, 20____, is entered into by and among [Sierra Pacific Power Company or 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 solar-powered electric generating facility [and integrated storage facility]⁶ 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 a direct or indirect 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 Power Purchase 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.

⁶ NTD: Only for projects with integrated storage.

FORM OF LENDERS CONSENT

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:

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, terminate or suspend its performance under the PPA, ii) 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, or iii) enter into any material amendment or modification of the PPA.

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 period of time 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 plus fifteen (15 Business Days, 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 thirty (30) 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 but not to exceed ninety (90) days. NVE consents to the transfer of Borrower's interest under the PPA to the Administrative Agent or 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 the Administrative Agent or such

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Qualified Transferee as the applicable party under the PPA provided that such Qualified Transferee assumes the obligations of Borrower under the PPA). Qualified Transferee” 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 seven million five hundred thousand dollars (\$7,500,000) 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 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 as may be mutually agreed if 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 and Operating Security 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. 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 Borrower) shall be released from any further liability thereunder accruing from and after the date of such assignment.

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

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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) i) neither NVE nor, to NVE's actual knowledge, any other party to the PPA, is in default of any of its obligations thereunder; ii) NVE and, to NVE's actual knowledge, Borrower has complied with all conditions precedent to the effectiveness of its obligations under the PPA; iii) to NVE's actual knowledge, 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; and iv) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto; and

G) NVE has no notice of, and has not consented to, any previous assignment by Borrower of all or any part of its rights 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

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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. CONFIRMATION, TERMINATION, AMENDMENT AND GOVERNING LAW

NVE agrees to confirm its continuing obligation hereunder in writing upon the reasonable request of and at the expense of) Borrower, Administrative Agent, the Lenders, a tax equity investor or any of their respective successors, transferees or assigns. NVE also agrees to deliver an estoppel in favor of a tax equity investor covering the matters in Section 2. 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 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).

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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: _____

Title: _____

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_____,
a _____

By: _____
Name: _____
Title: _____

_____,
as Administrative Agent for the Lenders

[Borrower]

By: _____
Name: _____
Title: _____

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

Pursuant to that certain Long-Term Renewable Power Purchase 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. The aggregate liability of Guarantor under this Guaranty shall not at any time exceed [*insert required amount of Development Security or Operating Security, as applicable*]. 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

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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

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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

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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.

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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

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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 Agreement and y) claims arising out of Subsidiary's fraud or willful misconduct, under no

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

EXHIBIT 20

FORM OF GUARANTEE

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.]

EXHIBIT 20

FORM OF GUARANTEE

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:

EXHIBIT 21

WORK SITE AGREEMENT

[See Attached.]

WORK SITE AGREEMENT MOAPA SOLAR

1. INITIAL PROVISIONS

- 1.1. This Work Site Agreement (“Agreement”) is entered into by Arrow Canyon Solar, LLC (referred to as “Supplier” in the Power Purchase Agreement and referred to herein as “Owner”), and IBEW Local Unions 357 and 396 (“IBEW”) collectively (“the Unions”)
- 1.2. The NV Energy Moapa Solar (the “Project”) will provide 200 MW as a solar PV and battery storage renewable energy power plant located in Southern Nevada. This location is known as the “Project Site”. The Project is owned by Arrow Canyon Solar, LLC. Owner and NV Energy are parties to that certain Long Term Renewable Power Purchase Agreement dated [____] (the “PPA”), and this Agreement has been attached to the PPA as Exhibit 21. 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 Fall 2018 Renewable Energy Request for Proposals issued by NV Energy on October 16, 2018 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 (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 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. If PUCN Approval for the Project is not obtained as outlined in the PPA, 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.

2.3. 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 and the Employer agree to meet and confer to determine if that work can be covered by IBEW Local 357 & 396.

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, assembled or pre-assembled 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. Covered Work does not include operations or maintenance work.

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 duration of the current Project. 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. EPC 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 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. In the event work conditions do not permit members to safely show up and work due to conditions beyond the Primary employers control per the Master Agreement, the member will be notified the day ahead to call in to a 24/7 voicemail hotline prior to 4:00am the morning of a regularly scheduled work day to be informed whether work will commence on schedule or work will be canceled due to unsafe or unforeseen conditions beyond employers control. Show-up pay shall not be allowed in instances where personnel are not able to work due to conditions beyond Primary Employer's control, as per the Master Agreement.
- 4.8. There will be no pyramiding of overtime rates.
- 4.9. 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, 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.
- 4.10. 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.
- 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 15 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.
- 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 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.
- 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: Robert.Miller@edf-re.com

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.
- 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 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 the pre-employment drug testing. This pay provision shall only apply to pre-employment drug tests.
- 10.10. Primary Employer shall utilize its behavior based safety program, C.A.T.S., on the Project. IBEW Local 357 & 396 members shall participate in the program. IBEW Local 357 & 396 members fulfilling a leadership role, such as foreman or leadman, shall participate in observer training and complete C.A.T.S. observations. All IBEW Local 357 & 396 members may be observed as part of the C.A.T.S. program.
- 10.11. 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.
- 10.12. 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:

To the Unions:

Robert Miller
General Counsel
EDF Renewables Development, Inc.
15445 Innovation Drive
San Diego, CA, 92128
Robert.Miller@edf-re.com
858.521.3324

Al Davis
Business Manager/Financial Sec.
IBEW Local 357
808 North Lamb Blvd.
Las Vegas, NV 89110
ADavis@IBEW357.org
702.452.9357

and

Mathew Magdanz
Director, Pre-Construction
EDF Renewables Development, Inc.
15445 Innovation Drive
San Diego, CA, 92128
Mathew.Magdanz@edf-re.com
858.521.3720

Jesse Newman
Business Manager/Financial Sec.
IBEW Local 396
3520 Boulder Hwy
Las Vegas NV 89121
jesse@ibew396.org
702.457.3011

With a copy to:

Ryan Bellows
Director, Labor Relations
NV Energy
6100 Neil Road
Reno, NV 89511
rbellows@nvenergy.com
775-834-5716

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

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and effective as of 26 day of March 2019.

ARROW CANYON SOLAR, LLC

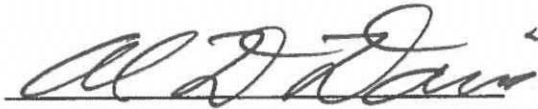


By: Tristan Grimberty

Arrow Canyon Solar, LLC

By: EDF Renewables Development, Inc,
it's Sole Member

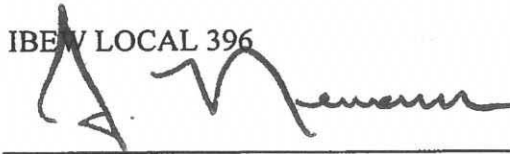
IBEW LOCAL 357



By: Al D Davis

Its: Business Manager/Financial Sec.

IBEW LOCAL 396



By: Jesse Newman

Its: Business Manager/Financial Sec.

ATTACHMENT A
AGREEMENT TO BE BOUND
MOAPA SOLAR

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 To Be 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)

ATTACHMENT B
SCHEDULE OF LIQUIDATED DAMAGES FOR BOTH PARTIES

WORK SITE AGREEMENT
MOAPA SOLAR

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).

ATTACHMENT C

IBEW 357 NV Energy MOAPA SOLAR Project Helper Rates

	Check	H&W	DFW	B-Plan	JATC	LMCC	NLMCC	NEBF 3%	CAF 0.2%	Total
Helper										
1/1/19	\$21.60	\$5.45	\$0.06	\$1.00	\$0.66	\$0.30	\$0.01	\$0.65	\$0.04	\$29.77
1/1/20	\$21.60 **	\$5.45	\$0.06	\$1.00	\$0.66	\$0.30	\$0.01	\$0.65	\$0.04	TBD
1/1/21	\$21.60 **	\$5.45	\$0.06	\$1.00	\$0.66	\$0.30	\$0.01	\$0.65	\$0.04	TBD

** Starting on each of 1/1/20 and 1/1/21, the Parties agree to increase the Wage rate from the rate of the previous contract year (which is \$21.60 in 2019) at the same percentage increase as the percentage increase for the Wage rate of the Union's lowest rate apprentice classification for the previous contract year, up to a cap of 3%.

Wages and Benefits are for workers dispatched from the Helper Books for the NV Energy MOAPA Solar Project.

EXHIBIT 22

REACTIVE CAPABILITY CURVES

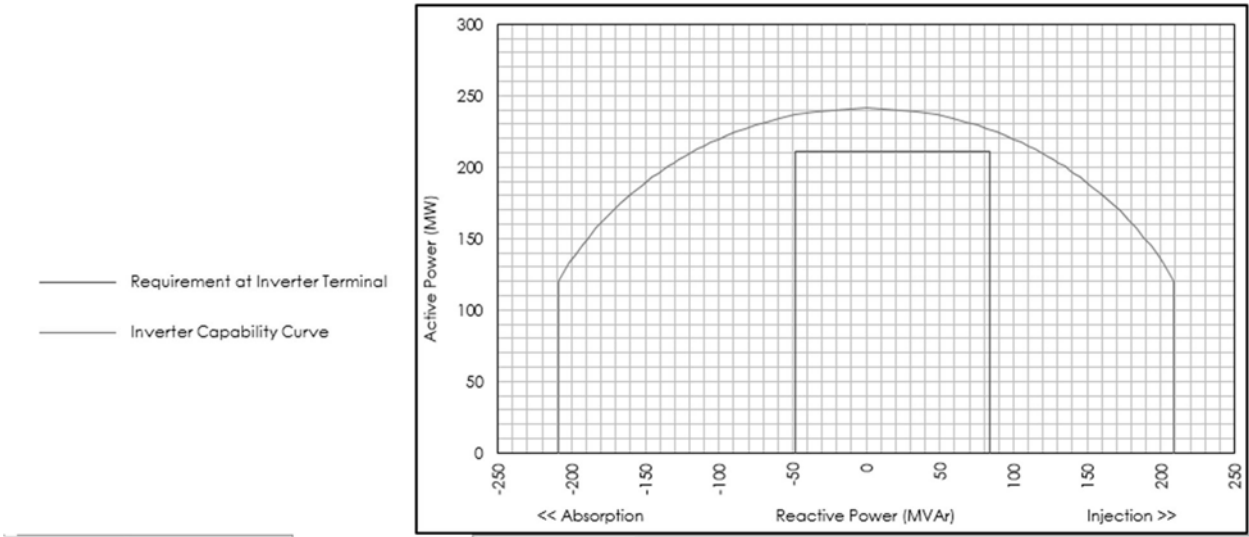


EXHIBIT 23

APPROVED VENDORS LIST

[To be provided by Buyer]

EXHIBIT 24

STORAGE OPERATING PROCEDURES

The operating guidelines of the Generation Facility and Energy Storage Facility will be defined herein. The main operations are broken into two parts: Charging Notice and Discharging Notice. Final Operating Procedures for the Facilities will be mutually developed and agreed upon within 90 days of the Operation Date. The procedures will be periodically reviewed to optimize operations for both parties. Parties shall cooperate to integrate the systems and controls necessary to implement the Operating Procedures.

I. Forecasting

- A. Supplier will provide to Buyer a 7-day hourly rolling availability forecast, the Availability Notice, of the solar resource, which incorporates the following information:
 - 1) Supplier's optimal charging schedule, including charging window and hourly charging rate;
 - 2) hourly maximum charging rate availability of the Storage Facility;
 - 3) hourly minimum charging rate availability of the Storage Facility; and
 - 4) current status of the Storage Facility, expressed in a percentage of total battery available for discharge or state of charge;
- B. Planned and forced outage notification and scheduling shall be via the Availability Notice. Additionally, in the event of a forced outage, Supplier shall notify the appropriate NV Energy personnel of forced outage and expected return to service.

II. Charging Notices and Discharging Notices

- A. A Discharging Notice will be delivered to the Supplier in conjunction with each Charging Notice
- B. Buyer will provide to Supplier, per the Western Electricity Coordinating Council "WECC") pre-scheduling calendar, a forecasted Charging Notice and Discharging Notice. The Charging and Discharging Notice will incorporate Supplier's solar resource availability per Supplier's 7-day hourly rolling forecast.
- C. For the Charging component of the Charging and Discharging Notice, Buyer shall provide Supplier with the following information:
 - 1) the hours in which Supplier shall charge the Storage Facility;
 - 2) the Stored Energy Level the Supplier shall charge the Storage Facility to, by the end of the last hour in which Supplier shall charge the Storage Facility.
 - 3) Buyer, whenever feasible, will utilize Supplier's provided optimal charging window identified in section I.A.1.
- D. For the Discharging Notice, Buyer shall provide Supplier with the following information:
 - 1) the hours in which the Supplier shall discharge the Storage Facility;
 - 2) the energy discharged in each hour the Supplier shall discharge the Storage Facility.

EXHIBIT 24

STORAGE OPERATING PROCEDURES

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, as well the current forecasts of PV generation.
- 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:
 - 1) either through a software application which allows Buyer to directly adjust the charge or discharge status of the Storage Facility, including the rate of charge or discharge of the Storage Facility; or
 - 2) 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; or
 - 3) through a software application which allows for real-time communication, such as Microsoft Lync, Skype for Business, etc. to request adjustments to the charge or discharge status of the Storage Facility, including the rate of charge or discharge of the Storage Facility.
 - 4) A real time dispatch signal will be the primary control of the 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 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 and Discharging notice.
 - 3) any adjustments necessary to future charge or discharge schedules contained in Buyer's Charging 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

The Supplier will deliver the Discharging Energy to the point of delivery in response to:

- 1. Primarily with a real time dispatch command Per section III above
- 2. Or an automated, scheduled Discharge Notice per section II.D above as a backup.

EXHIBIT 24

STORAGE OPERATING PROCEDURES

The total discharged energy in real time will be limited to the Stored Energy Level less any losses to deliver such stored Energy to the Delivery Point) of the Storage Facility and to the available power rating of the Generating Facility.

V. Measurement and Verification

Buyer will also have real time access to view the Supplier's Energy Management system and data historian that will monitor the Storage Facility's state of health metrics as well usage metrics such as Equivalent Cycles to date. In accordance to Exhibit 1 Buyer will be allowed to use 273 Equivalent Cycles per year. Buyer will be able to monitor the amount of cycles that have occurred over the life of the project on a real-time basis. As soon as the Storage Facility meets the cycle limit, the supplier will no longer be able to execute Charge and Discharges for that year.

VI. Scheduling Reports

Supplier will send out a daily report to the Buyer so they may transmit to other parties. The report will include at a minimum the following day's Charging Notice and Discharging Notice as well as forecasted Energy Generation, including the forecasted output of the solar facility in so much as it is reduced by charging the Storage Facility.

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	0.2, based on a 5-hour battery, which can be adjusted accordingly, as reasonably agreed upon by the Parties, based up on the final design of the Facility	
4	Charging Source	Generating Facility only	
5	Maximum Annual Average State of Charge (SOC)	30.0%	
6	Resting State of Charge (SOC) of the Storage Facility	2%-5%	When not actively charging or discharging for more than a period of 48 hours, the SOC of the Storage Facility shall be maintained in this range
7	Operational State of Charge (SOC) Limits	0%-100%	As defined in the EMS

EXHIBIT 24**STORAGE OPERATING PROCEDURES**

8	Maximum Number of Equivalent Full Cycles per Calendar Year	365	Buyer allowed to use a total of 273 cycles in all months other than June, July and August
9	Maximum Cumulative Energy Discharge per Calendar Year	Storage Contract Capacity MW of the Storage Facility for the given Contract Year * 5 * 365	For e.g., 75 MW * 5 * 365 = 136,875 MWh
10	Maximum Cumulative Energy Discharge per Calendar Day	Storage Contract Capacity MW of the Storage Facility for the given Contract Year * 5	For e.g., 75 MW * 5 = 375 MWh

EXHIBIT 25

STORAGE CAPACITY TESTS

Upon no less than ten (10) Business Days prior notice to Buyer, and at any time up until the Commercial Operation Date, Supplier shall schedule and complete a Storage Capacity Test to determine the Storage Contract Capacity of the Storage Facility for the first Contract Year. The Storage Capacity Test shall require the Supplier to maintain Discharging Energy from the Storage Facility for a period of no more than five (5) consecutive hours and the Storage Contract Capacity in megawatts (MW) shall be determined as the quotient of the aggregate quantity of Discharging Energy (MWh) at the end of the five (5) hour test period, as measured at the Delivery Point, divided by five (5).

Thereafter, at least once per Contract Year within the first quarter of each Contract Year, upon no less than five (5) 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 up to three (3) retests 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). Except for establishing the Storage Contract Capacity prior to the Commercial Operation Date, the Supplier may with Buyer's approval, fulfill the requirement to conduct a Storage Capacity Test by use of operational data from a Meter.

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 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;
- 2) Supplier will discharge the Storage Facility at full capacity, over a duration of no more than five (5) full and consecutive hours or until the Storage Facility is fully discharged, if earlier;
- 3) Supplier will add the quantity of MWh produced by the Storage Facility for each of the consecutive hours of the Storage Test to produce a sum quantity of MWh for the full discharge of the Storage Facility;
- 4) Supplier will divide the sum quantity of MWh produced over the full discharge of the Storage Facility, as calculated in Step 3 above, by number of hours to full discharge, to produce a value that will become the Storage Contract Capacity for the Contract Year.

EXHIBIT 25

STORAGE CAPACITY TESTS

Example:

Hour 1 Discharge = 75 MWh

Hour 2 Discharge = 75 MWh

Hour 3 Discharge = 75 MWh

Hour 4 Discharge = 75 MWh

Hour 4 Discharge = 20 MWh

$75 + 75 + 75 + 75 + 20 = 320 \text{ MWh}$

$320 \text{ MWh} / 5 \text{ hours} = 64 \text{ MW}$

Storage Contract Capacity = 64 MW

EXHIBIT 26

STORAGE AVAILABILITY LIQUIDATED DAMAGES

Availability Liquidated Damages

Subject to the Availability Liquidated Damages Annual Cap, the Availability Liquidated Damages in Dispatch Availability Month m in which the Monthly Storage Availability is less than the Guaranteed Storage Availability shall be calculated as follows:

$$\text{Availability Liquidated Damages}_{sm} = .98 \times \text{Undischarged Energy Price}_m \times \text{Undischarged Energy}_m$$

Where:

$$\text{Availability Liquidated Damages}_{sm} = \text{Availability Liquidated Damages in Summer Month } m \text{ (in \$)}$$

$$\text{Availability Liquidated Damages Annual Cap (each Contract Year)} = \$4,500,000$$

$$\text{Undischarged Energy Price}_m = \text{simple average of the MEAD for the On-Peak hours correlating to the day or days that the Storage Facility was unavailable of Month } m \text{ (in \$/MWh)}$$

$$\text{Undischarged Energy}_m = \text{The total amount of Discharging Energy in Dispatch Availability Month } (m), \text{ excluding Excused Products, that Buyer could have scheduled and received at the Delivery Point pursuant to Section 14.3 from the Storage Facility but was unable to schedule and receive because the Storage Facility was out of service, in whole or in part, or otherwise not performing in accordance with the operational requirements specified in Exhibits 1 and 24, such amount of Discharging Energy to be reasonably determined by Supplier (i) during the period the Storage Facility was out of service, in whole or in part, or otherwise not performing in accordance with the operational requirements specified in Exhibit 1 and (ii) consistent with the Operating Procedures and operational requirements specified in Exhibit 1 (in MWh).}$$

$$\text{Storage Capacity at Point of Delivery}_m = \text{the Storage Capacity at Point of Delivery as adjusted from time to time in accordance with Section 3.4.9, multiplied by the number of days in Month } m.$$

$$\text{Monthly Storage Availability} = \frac{\text{Storage Capacity at Point of Delivery}_m - (\text{Undischarged Energy}_m)}{\text{Storage Capacity at Point of Delivery}_m}$$

EXHIBIT 27

BACKCASTING TOOL GENERAL INPUTS

The main concepts of backcasting are broken into two parts: Resource-Adjusted Backcast Amount and Availability Backcast Amount. Both concepts are aimed at determining what the Generating Facility's solar generation capability, adjusted for various factors, would have been in cases where the actual solar output was dispatched lower than the Generating Facility's full capacity. Both are intended to calculate the energy that could have been generated by the Generating Facility and delivered to the Delivery Point, absent the use of the Storage Facility, except as relating to Buyer's rights in Section 14.3.2, in which case the Availability Backcast Amount should also include the energy that could have been used as Full Requirements Period Charging Energy (including otherwise clipped energy).

Final methodologies for backcasting shall be mutually developed and agreed upon within 90 days of the Operation Date based on industry-standard methodologies. The methodologies will be periodically reviewed to optimize operations, administrative efficiency and accuracy for the benefit of both parties. The Backcasting Tool will be calibrated one year after the Commercial Operation Date, and periodically thereafter, with actual measurements taken from the Generation Facility. Parties shall cooperate to integrate the systems and controls necessary to implement backcasting.

Backcasting will, in general, consist of a set of calculations and a mix of inputs to those calculations that include, but are not limited to, technical assumptions, real-time instrument measurements, historic instrument measurements, and data reported by Supplier. The inputs may include but are not limited to:

- As built designs;
- Generation Facility planned degradation as identified in Exhibit 1;
- Measured onsite plane of array (POA) irradiance;
- Measured module temperature;
- Measured onsite soiling conditions;
- All applicable losses to the Delivery Point including transformation and transmission losses from the PV array to point of delivery;
- Site controller and any ACG set-point limitations at the Delivery Point;
- Measurement uncertainties of equipment;
- Downtime/Planned Outages;
- Forced and maintenance outages
- Forced and maintenance derating of the Generating Facility
- Any non-production hours or standby loads

The Backcasting Tool outputs the hypothetical energy generation of the Generating Facility under certain weather conditions and Generating Facility operational status. Those outputs are then used throughout this Agreement to determine payments, shortfalls, dispatchability limits and damages (e.g. Un-Dispatched Amounts, Excused Product, etc.).

Resource-Adjusted Backcast Amount means an amount determined by the backcasting analysis that takes into account weather conditions including cloud cover, rain and snow impacting the solar resource, but assumes 100% mechanical availability of the Generating Facility.

EXHIBIT 27

BACKCASTING TOOL GENERAL INPUTS

Availability Backcast Amount means an amount determined by a backcasting analysis that takes into account both resource conditions and availability of the Generating Facility where availability, in this context, refers to the status of the Generating Facility's mechanical and electrical systems and equipment e.g. operational capability of inverters, converters, transformers, etc. . The Availability Backcast Amount may be adjusted downwards from the Resource-Adjusted Backcast Amount by the amount of capacity lost due to these systems and equipment being impaired for any reason that is not a cause of Excused Product, as defined in Section 3.6.6. This calculation will include Supplier-reported derates and real-time status signals and calculations performed at the Generating Facility that are communicated to the Energy Management System (EMS) such that the EMS can send Automatic Generator Control (AGC) signals that are within the actual plant and weather conditions of the Generating Facility (reference Exhibit 16 Dispatchable Accuracy Rate).

Supplier shall provide Buyer its calculations and include all relevant back-up data and other information reasonably requested by Buyer.

If the Parties disagree on the calculation of the Resource Adjusted Backcast Amount or Availability Backcast Amount, then the Backcast Amount will be determined through the Dispute resolution provisions of Article 21.

REN-6-MS (b)

Technical Appendix REN-6-MS (b)

Summary of the Nevada Administrative Code sections applicable to Moapa Solar.

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) require that the Companies provide specific information regarding new renewable energy contracts for which they are seeking approval. The information responsive to NAC 704.8885 and 704.8887 is set forth below:

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 renewable energy contract or energy efficiency contract by calculating the levelized market price for the electricity.

The Levelized Cost of Energy (“LCOE”) for the contract is \$36.79/ megawatt-hour (“MWh”) including network upgrade costs. The rate is for the purchase of energy and portfolio credits (“PCs”) at a blended rate, as well as the use and maintenance associated with the battery energy storage system.

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 project is being proposed as part of the third amendment to the Companies’ 2018 triennial integrated resource plan to increase its supply of electricity.

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.

The price for renewable energy and PCs set forth in this contract is \$21.26/MWh with no escalation except during hours ending 1700 through 2100 in June, July and August when the price for renewable energy and PCs is \$138.19/MWh with no escalation.

The price for the storage portion of the Power Purchase Agreement (“PPA”) is included in the rates above for the term of 25 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.

The technology that the Moapa Solar project utilizes creates zero air emissions. When compared to a modern gas-fired combined cycle unit, the emissions avoided are shown in the table below.

Avoided Air Emissions [tons] ¹					
Project	S02	CO	VOC	NOX	PM
Moapa Solar	1.36	3.17	0.07	14.59	4.98

¹ Avoided Emissions derived from average heat rate for a state of the art combined cycle unit. This is a conservative assumption as avoided emissions are likely to be from higher heat rate market purchases or from older, less efficient units.

The project uses de minimis amounts of water, creates no waste streams in its energy production, efficiently utilizes land for solar energy generation, and has minimal impacts on wildlife.

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.

According to the developer, the expected net economic impact of the project includes:

- A temporary increase in workforce during the construction phase of the facility of an estimated 300 positions;*
- 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 \$81,000 annually, and a total payroll of \$13.3 million over 35 (life of the project) years; and,*
- The environmental benefit will be a reduction in air emissions as shown in the table above.*

NAC 704.8887(2)(e) addresses any economic benefits that might inure to any sector of the economy of this State.

The economic benefits of the project include increased 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.

Commission approval of the PPA will increase the diversity of energy sources used to generate electricity that is consumed in Nevada. The portfolio of renewable energy will increase with a commensurate decrease in its reliance on fossil fuel generation.

NAC 704.8887(2)(g) addresses the diversity of energy suppliers generating or selling electricity in this State.

Arrow Canyon Solar, LLC is wholly-owned by EDF Renewables North America (“EDFR”), which is a U.S.-based company, headquartered in San Diego with over 30 years of expertise in renewable energy. Its parent company EDF SA, is a publicly traded company that is majority owned by the French Government.

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.

The agreement has a low starting price with no escalation over the term of the contract. The price is therefore known through the term of the contract and is not subject to fuel risk.

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 1, 2022.

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.

The agreement permits Nevada Power Company (“NPC”) the flexibility to economically dispatch the facility. During the hours ending 1700 through 2100 in June, July and August, the agreement calls for NPC to take all net energy, including any excess energy and PCs generated by the facility. Curtailment or re-dispatch of up to 100 percent of the expected output can be ordered by the transmission provider, electric system authority, or market operator. NPC has no obligation to

pay for transmission-provider curtailed product or for generation in excess of the maximum amount. Excess energy is paid for at fifty percent (50%) of the applicable product rate. NPC has flexibility in operation of the battery storage system which can be dispatched at the discretion of the Company.

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.

The System Impact Study and Facilities Study for this project have been completed and the project has an executed Large Generator Interconnection Agreement (“LGIA”). The studies did not identify any negative impacts to NPC’s transmission grid that could not be mitigated by the transmission system additions proposed in the study. The project generates electricity which will provide benefits to the transmission grid by providing real and reactive power at the point of interconnection. See Technical Appendix TRAN-1 for information on the LGIA.

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.

When compared to the long-term avoided costs approved by the Commission in Docket No. 18-06003, the blended rate for energy and PCs is lower than the long-term avoided costs in years 2030 through 2048.

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.

The cost of power and PCs delivered from the project are competitive to both the prices NPC pays for its current portfolio of renewable projects and the other compliant bids submitted in the Fall 2018 Renewable Energy RFP.

NAC 704.8885(2)(b) addresses the term of the contract.

The term of the PPA is 25 years, with a storage term of 25 years.

NAC 704.8885(2)(c) addresses the location of the portfolio [renewable] energy system or efficiency measure that is subject to the contract.

The project is located on the Moapa River Indian Reservation in Clark County, Nevada.

NAC 704.8885(2)(d) addresses the use of natural resources by each renewable energy system that is subject to the contract.

The project utilizes irradiance from the sun gathered by solar panels. No water is consumed during the operation of the project other than the occasional cleaning of the panels.

NAC 704.8885(2)(e) addresses the firmness of the electricity to be delivered and the delivery schedule.

The project generates non-firm energy that will be delivered into the utility's grid which will be delivered through firm transmission pursuant to the designation of the facility as a network resource.

NAC 704.8885(2)(f) addresses the delivery point for the electricity.

The generating facility will be interconnected to the Harry Allen 230-kilovolt ("kV") Substation. A one-line diagram depicting the interconnection can be found in Exhibit 5 of the PPA, Technical Appendix REN-6-MS (a).

NAC 704.8885(2)(g) addresses the characteristics of similar renewable energy systems.

The characteristics of the project are similar to those of NPCs' other large scale PV systems such as Boulder Solar I and Techren I. The plant design is proven technology. The storage portion 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.

Requirements for ancillary services are not affected by the PPA.

NAC 704.8885(2)(i) addresses the unit contingent provisions.

The energy from the facility is contingent upon the availability of the unit. If the unit is not producing within the performance specifications of the PPA, then energy will be replaced from other sources.

NAC 704.8885(2)(j) addresses the system peak capacity requirements of the utility provider.

The power purchase agreement will provide benefits to the system peak capacity requirements of the utility.

NAC 704.8885(2)(k) addresses the requirements for scheduling.

All net energy from the facility will be delivered directly to NPC's electric grid. The facility will be considered a network resource 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 LGIA for this project has been executed. Network Upgrades identified for this project are the Harry Allen 230-kV. 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 \$1,300,000.

NAC 704.8885(2)(m) addresses project insurance.

The PPA requires the supplier to provide workers compensation insurance of not less than \$1 million per occurrence, general liability of not less than \$5 million annual aggregate, and automobile liability insurance of at least \$2 million aggregate.

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 energy and PCs. Compensation for an energy shortfall is based upon the difference between the cost of replacement power, as specified in the PPA, and the PPA price. However, should the cost of replacement power be less than the contract price of power from supplier, the replacement cost will be \$0.00. Compensation for a PC shortfall is determined by NPC exercising its reasonable discretion based on the estimated cost of purchasing PCs.

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, as amended.

The generating facility uses renewable solar energy to generate electricity and transmits that energy to NPC. Therefore, the generating facility comports with NRS §§ 704.7815(1)(a) and 704.7815(1)(b).

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.

EDF Renewables currently owns and operates 5.2 GW of installed renewable capacity and states that it has developed and owns an interest in over 500-MW of Photovoltaic projects. The company is currently developing two large utility scale solar projects. The first is a 111.2-MW AC photovoltaic project, Valentine Solar, located in Kern County, California. The second is a 150-MW AC photovoltaic project, Desert Harvest Solar, located in Riverside County, California. EDF holds an ownership interest in Switch Station 1 (100-MW AC) and Switch Station 2 (79-MW AC) in Clark County, Nevada.

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 existing Harry Allen 230-kV substation. A one-line diagram depicting the interconnection can be found in Exhibit 5 of the PPA, Technical Appendix REN-6-MS (a).

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.

A LGIA between NPC and EDF Renewables was executed on December 7, 2018. The in-service date is projected to be achieved September 1, 2021.

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.

The facility is sited entirely on Moapa Band of Paiute Tribe (“Tribe”) lands held in trust by the Bureau of Indian Affairs (“BIA”). The proposed transmission tie line is sited on lands administered by the Bureau of Land Management. An Environmental Assessment under the National Environmental Policy Act (“NEPA”) has been completed for 800 acres of the site and an Environmental Impact Statement (“EIS”) will be completed for the balance of the planned site.

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.

Permits necessary for the construction and operation of the Moapa Solar project are listed in Exhibit 10 and Exhibit 12 of the PPA, Technical Appendix REN-6-MS (a).

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.

Applications required from Federal agencies for the development of the Moapa Solar project are listed in Exhibit 10 and Exhibit 12 of the PPA, Technical Appendix REN-6-MS (a).

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 developer, EDF Renewables, possesses a signed lease with the Tribe for 800 acres and has a right of way grant from the Bureau of Land Management (“BLM”) for the transmission tie route. The Tribe has provided a letter of intent indicating their willingness to extend additional land to the Project.

NAC 704.8885(2)(x) addresses whether the utility provider has any economical dispatch rights.

The agreement permits NPC the flexibility to economically dispatch the facility except during the peak period hours ending 1700 through 2100 in June, July and August, the agreement calls for NPC to take all net energy, including any excess energy and PCs generated by the facility.

REN-6-SBS (a)

**POWER PURCHASE AGREEMENT
FOR RENEWABLE-DISPATCHABLE GENERATING FACILITY**

BETWEEN

NEVADA POWER COMPANY D/B/A NV ENERGY

AND

300MS 8ME LLC

**Southern Bighorn Solar
Moapa Indian River Reservation, Clark County Nevada**

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POWER PURCHASE AGREEMENT FOR A RENEWABLE-DISPATCHABLE GENERATING FACILITY

This Power Purchase Agreement for a Renewable-Dispatchable Generating Facility (this “Agreement”) is made and entered into as of March 27, 2019 (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 **300 MS 8ME 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 renewable energy 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, Buyer 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 sell to Buyer, and Buyer desires to purchase from Supplier, 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 “Accepted Compliance Costs” is defined in Section 3.5.
- 1.2 “Actual Dispatch Availability Amount” is defined in Section 3.6.1.1
- 1.3 “Actual Full Requirements Availability Amount” is defined in Section 3.6.4.1.
- 1.4 “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 and policies of such Person, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer, unless Buyer assigns 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.

- 1.5 “AGC” or “Automatic Generation Control” means Supplier’s Automatic Generation Control which shall be compatible with Buyer’s Energy Management System.
- 1.6 “Agreement” means this Long-Term Renewable Power Purchase Agreement together with the Exhibits attached hereto, as amended from time to time.
- 1.7 “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.
- 1.8 “Ancillary Services” means those services necessary to support the transmission of electric power from Supplier to Buyer that can be provided given the physical and operational limitations of the Storage Facility as set forth on Exhibit 1 and to maintain reliable operations of the Transmission System, including but not limited to: voltage control, operating reserve, spinning reserve, frequency response and reactive power.
- 1.9 “ASC” is defined in Section 12.7.
- 1.10 “Availability Backcast Amount” means an amount determined by a backcasting analysis that takes into account both resource conditions and availability of the Generating Facility. The backcasting analysis will be performed by Supplier using a tool which will be mutually agreed upon by Buyer and Supplier in accordance with Exhibit 28, and the Parties will agree on the tool no later than the completion date for Milestone 2(A) on Exhibit 6. Supplier shall provide Buyer its calculations and include all relevant back-up data and other information reasonably requested by Buyer. If the Parties disagree on the calculation of the Availability Backcast Amount, then the Availability Backcast Amount will be determined through the Dispute resolution provisions of Article 21.
- 1.11 “Availability Liquidated Damages” is defined in Exhibit 26.
- 1.12 “Availability Notice” means a notice delivered by Supplier to Buyer pursuant to Section 14.1 notifying Buyer of the availability of the Facility.
- 1.13 “Availability Test” means the test described in Exhibit 26.
- 1.14 “Balancing Authority Area” is defined in the OATT (as may be modified from time to time) of the Balancing Authority Area Operator.
- 1.15 “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.

- 1.16 “Billing Period” is defined in Section 7.2.1.
- 1.17 “Business Day” means any day other than Saturday, Sunday and any day that is a holiday observed by Buyer.
- 1.18 “Buyer” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.19 “Buyer ROFO Notice” is defined in Section 6.1.1.
- 1.20 “Buyer’s PC Account” means the account maintained by the PC Administrator for the purpose of tracking the production, sale, transfer, purchase and retirement of PCs by Buyer, or such other account, including a WREGIS account, as Buyer may designate from time to time.
- 1.21 “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.
- 1.22 “CAMD” means the Clean Air Markets Division of the Environmental Protection Agency or successor administrator, or any state or federal Governmental Authority given jurisdiction over a program involving transferability of Renewable Energy Benefits or any part thereof.
- 1.23 “Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service or attribute thereof, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce energy. Capacity Rights are measured in MW and do not include any Tax incentives of any kind existing now or in the future associated with the construction, ownership or operation of the Facility.
- 1.24 “Certified Nameplate Capacity Rating” is defined in Section 8.3.2.2.
- 1.25 “Charging Energy” means all Energy produced by the Generating Facility, less transformation and transmission losses, if any, delivered to the Storage Facility Metering Point. All Charging Energy shall be used solely to charge the Storage Facility. Buyer’s payment for Charging Energy shall not be for more than the amount of Energy flowing through, and delivered at, the Storage Facility Metering Point and, in any event not greater than the amount of Charging Energy included in the applicable Charging Notice.

- 1.26 “Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer to Supplier, directing the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that any operating instruction shall be in accordance with the Storage 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 (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.
- 1.27 “Commercial Operation” means that: (a) the Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System, and that the Storage Facility is fully capable of charging, storing and discharging energy up to Storage Contract Capacity; (b) Supplier shall have received or obtained all Required Facility Documents; and (c) which occurs when all of the requirements applicable prior to Commercial Operation set forth in Sections 8.1, 8.3 and 17.2 and Exhibits 6 (without regard to timing) and 7 (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.
- 1.28 “Commercial Operation Date” means the date on which Commercial Operation occurs.
- 1.29 “Commercial Operation Deadline” means the date specified in Exhibit 6 by which the Commercial Operation Date must occur, as such date may be extended if and to the extent Supplier fails to achieve the Commercial Operation Date as a result of Force Majeure.
- 1.30 “Compliance Cost Cap” is defined in Section 3.5.
- 1.31 “Construction Contract” means one or more construction and equipment supply agreements, 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.
- 1.32 “Construction Contractor” with respect to a Construction Contract, means the construction contractor and/or equipment supplier that is party to such Construction Contract.
- 1.33 “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.

- 1.34 “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).
- 1.35 “Controlling Interest” with respect to a Person, means the direct ownership of more than fifty percent (50%) of the outstanding ownership interest of such Person, or the direct power to vote such percentage of ownership interest. For the avoidance of doubt, a Controlling Interest does not include ownership or voting rights held through one or more intervening subsidiaries.
- 1.36 “Covered Facility” is defined in Section 24.5.1.
- 1.37 “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.
- 1.38 “Critical Project Milestone” means a Project Milestone designated as a Critical Project Milestone on Exhibit 6.
- 1.39 “Cure Period” is defined in Section 24.3.
- 1.40 “Curtailed Product” is defined in Section 10.1.2.
- 1.41 “Daily Delay Damages” 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, two hundred eighty-one and 94/100 dollars (\$281.94) per MW of Expected 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, five hundred sixty-three and 89/100 dollars (\$563.89) per MW of Expected Nameplate Capacity Rating per day; and (c) with respect to the one-hundred-twenty-first (121st) through and including the one hundred and eighty ((180th) day subsequent to the Commercial Operation Deadline, eight hundred forty-five and 83/100 dollars (\$845.83) per MW of Expected Nameplate Capacity Rating per day.
- 1.42 “Defaulting Party” is defined in Section 24.1.
- 1.43 “Deficit Damages” is defined in Section 8.6.1.
- 1.44 “Deficit Damages Rate” means \$200,000 per MW.
- 1.45 “Delivered Amount” means, with respect to any Delivery Hour, the actual amount of Net Energy delivered by Supplier and accepted by Buyer at the Delivery Point during such Delivery Hour, or, with respect to Charging Energy, delivered by Supplier at the Storage Facility Metering Point, in each case during such Delivery Hour.

- 1.46 “Delivered PCs” means PCs that have been delivered by Supplier and awarded to Buyer pursuant to the terms of this Agreement, in accordance with the Portfolio Standard and which have been properly delivered and recorded to Buyer’s PC Account.
- 1.47 “Delivery Hour” means each hour.
- 1.48 “Delivery Point” means, with respect to Net Energy and Discharging Energy, the delivery point on the Transmission System set forth in Exhibit 5.
- 1.49 “Derating” means a condition of the Generating Facility as a result of which it is unable to produce the Dispatch Availability Amount during a Delivery Hour.
- 1.50 “Development Security” is defined in Section 17.1.
- 1.51 “Deviation Amount” is defined in Section 3.6.2.1.
- 1.52 “Discharging Energy” means all Energy discharged by the Storage Facility, less transformation and transmission losses, if any, and delivered to the Delivery Point.
- 1.53 “Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer to Supplier, directing the Storage Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any operating instruction shall be in accordance with the Storage 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 (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.
- 1.54 “Dispatch Availability Amount” means, with respect to any Delivery Hour, the amount of Net Energy stated in Exhibit 13A for the Dispatchable Period or the Full Requirements Period or both, as applicable.
- 1.55 “Dispatch Availability Shortfall” is defined in Section 3.6.1.1.
- 1.56 “Dispatch Availability Shortfall Amount” is defined in Section 3.6.1.1.
- 1.57 “Dispatchable Accuracy Rate” or “DAR” means a measure of the ability of the Generating Facility (and the AGC, as applicable) to follow Buyer’s Energy Management System signals as defined in Exhibit 16.
- 1.58 “Dispatchable Accuracy Rate Threshold” or “DAR Threshold” is 97%.
- 1.59 “Dispatchable Period” the period outside of the Full Requirements Period, consisting of January through May, and September through December, for all

hours, and for the months of June through August, hour ending 0100 through 1600, and hour ending 2200 through 2400 as identified in Exhibit 13B.

- 1.60 “Dispatchable Period Product” is the amount of Product capable of being delivered during the Dispatchable Period as determined pursuant to Section 3.6.1.1.
- 1.61 “Dispatchable Period Product Rate” means for any hour of the Dispatchable Period, the Product Rate identified in Exhibit 2A.
- 1.62 “Dispatchable Period Replacement Costs” is defined in Section 3.6.1.2.
- 1.63 “Dispatched Amount” means the amount of megawatts scheduled by Buyer’s Energy Management System in accordance with Section 3.4.7.
- 1.64 “Dispute” is defined in Section 21.1.
- 1.65 “Effective Date” is defined in the preamble of this Agreement.
- 1.66 “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.
- 1.67 “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 Supplier, the Transmission Provider or any Electric System Authority, whether planned or unplanned, 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.
- 1.68 “EMS” or “Energy Management System” means Buyer’s equipment and software used to monitor, control and optimize the performance of Buyer’s generating system.
- 1.69 “Energy” means all energy that is generated by the Generating Facility.
- 1.70 “Energy Choice Initiative” means the initiated constitutional amendment that: (a) appeared as ballot question 3 in the State of Nevada general election held on November 8, 2016 (titled Nevada Legislature to Minimize Regulations on the Energy Market and Eliminate Legal Energy Monopolies Amendment); (b) was approved by a majority of the Nevada voters in the State of Nevada general election on November 8, 2016; and (c) will appear on the ballot of the State of Nevada general election scheduled to be held on or about November 6, 2018.

- 1.71 “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.
- 1.72 “Environmental Contamination” means the introduction or presence of Hazardous Substances at such levels, quantities or location, 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.
- 1.73 “Environmental Law” shall mean 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.
- 1.74 “Event of Default” is defined in Section 24.1.
- 1.75 “EWG” means an “exempt wholesale generator” as defined in the Public Utility Holding Company Act of 2005 and in implementing regulations issued thereunder.
- 1.76 “Excess Charging Energy” is defined in Section 3.4.6.3.
- 1.77 “Excess Energy” means, (a) with respect to the Stub Period, the portion of the Delivered Amount delivered to the Delivery Point plus any Un-Dispatched Amount for the Stub Period, if any, that exceeds one hundred percent (100%) of the Maximum Amount, and (b) with respect to a Contract Year, the portion of the Delivered Amount delivered to the Delivery Point plus any Un-Dispatched Amount for such Contract Year, if any, that exceeds one hundred percent (100%) of the Maximum Amount for such Contract Year; provided, however, that Delivered Amount delivered to the Delivery Point plus Un-Dispatched Amount in excess of the Maximum Amount for any Delivery Hour shall be excluded for purposes of determining Excess Energy.
- 1.78 “Excused Product” is defined in Section 3.6.6.
- 1.79 “Expected Nameplate Capacity Rating” is defined in Exhibit 1.
- 1.80 “Facility” means the Generating Facility and the Storage Facility.
- 1.81 “Fair Market Value” means 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, as such price shall be determined by mutual agreement of the Parties or, absent mutual agreement of the Parties, pursuant to Article 21.
- 1.82 “FERC” means the Federal Energy Regulatory Commission and any successor.

- 1.83 “Full Requirements Capacity Shortfall” is defined in Section 3.6.4.1
- 1.84 “Full Requirements Period” means hours ending 1700-2100 for the months of June, July and August as identified in Exhibit 13B.
- 1.85 “Full Requirements Period Capacity Factor” means the percentage stated in Exhibit 1, Section 5(b)(v).
- 1.86 “Full Requirements Period Charging Energy” means all Energy and capacity produced by the Generating Facility, less transformation and transmission losses, if any, delivered to the Storage Facility Metering Point during the months of June, July or August.
- 1.87 “Full Requirements Period Product” is the amount of Product required to be delivered during the Full Requirements Period which is defined in Exhibit 13B, less any Excused Product.
- 1.88 “Full Requirements Period Product Rate” means for any hour of the Full Requirements Period, the Product Rate identified in Exhibit 2A.
- 1.89 “Full Requirements Period Replacement Costs” is defined in Section 3.6.4.1.]
- 1.90 “Force Majeure” is defined in Section 20.2.
- 1.91 “Generating Facility” means Supplier’s generating power plant as described in Exhibit 1, located at the Project Site as identified in Exhibit 3A and 3B and including mechanical equipment and associated facilities and equipment required to deliver Net Energy to the Delivery Point and Storage Facility Metering Point, including items as further described in Exhibits 1, 3A, 3B, 5 and 14, and as such generating power plant may be modified from time to time in accordance with the terms hereof.
- 1.92 “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 generating facilities with integrated storage 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 generating facilities with integrated storage 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.

- 1.93 “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.
- 1.94 “Governmental Authority” means, as to any Person, any federal, state, local, 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 PUCN, NERC, WECC and WREGIS.
- 1.95 “Guaranteed Storage Availability” is defined in Section 3.4.10.1.
- 1.96 “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.
- 1.97 “IA” means the Large Generator Interconnection Agreement, as amended from time to time, between Supplier and the Transmission Provider for the Facility.
- 1.98 “IEEE-SA” means the Institute of Electrical and Electronics Engineers Standards Association and any successor entity thereto.
- 1.99 “Indemnified Party” is defined in Section 18.1.
- 1.100 “Indemnifying Party” is defined in Section 18.1.
- 1.101 “Initial Dispatch Period Product Rate” is defined in Exhibit 2A.
- 1.102 “Intraday Schedule Change” is defined in Section 14.2.2.

- 1.103 “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.
- 1.104 “ITC” means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.
- 1.105 “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 or any of its property.
- 1.106 “Loss” with respect to a Person means, any and all claims, demands, suits, obligations, payments, liabilities, costs, fines, Regulatory 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.
- 1.107 “Licensed Professional Engineer” means a person proposed by Supplier and acceptable to Buyer in its reasonable judgment who: (a) is licensed to practice engineering in the appropriate engineering discipline for the required certification being made in Nevada; (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 and is not an employee of its members or Affiliates, other than with the prior written consent of Buyer, for services previously or currently being rendered to 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.
- 1.108 “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.
- 1.109 “Market Price” means the simple average of Mead hours of the Dispatchable Period or the Full Requirements Period, as applicable.
- 1.110 “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.
- 1.111 “Maximum Amount” means, with respect to a Delivery Hour the amount defined in Section 5(b)(iv) of Exhibit 1, and for any Contract Year, the Dispatch Availability Amounts for such Contract Year amount in Exhibit 13A.

- 1.112 “Mead” means the Hourly Mead Index published by Powerdex.
- 1.113 “Measurement Period” means each one (1) Contract Year commencing with the first Contract Year of the Term.
- 1.114 “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 Delivered Amounts and Station Usage from the Facility, the quantities of Charging Energy delivered to the Storage Facility Metering 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.
- 1.115 “Minimum Credit Rating” of a Person means that the Credit Rating of that Person is at least (a) BBB- (or its equivalent) as determined by Standard & Poor’s and (b) Baa3 (or its equivalent) as determined by Moody’s.
- 1.116 “Monthly Storage Availability” is defined in Exhibit 26.
- 1.117 “Moody’s” means Moody’s Investor Services, Inc. and any successor.
- 1.118 “MW” means megawatts of electrical power in AC.
- 1.119 “MWh” and “MWhs” mean a megawatt hour or megawatt hours of electrical energy.
- 1.120 “NAC” means the Nevada Administrative Code.
- 1.121 “NERC” means the North American Electric Reliability Corporation and any successor.
- 1.122 “Net Energy” means (a) during the Dispatchable Period, all Energy produced by the Generating Facility (including Charging Energy, but not Discharging Energy) delivered to and received by Buyer at the Delivery Point or delivered to the Storage Facility Metering Point, less Station Usage (if any), Full Requirements Period Charging Energy and (without duplication of losses already reflected in Meter readings) transformation and transmission losses and other adjustments (e.g., Supplier’s load other than Station Usage), if any, and (b) during the Full Requirements Period, all Energy generated by the Generating Facility and all Discharging Energy. Buyer’s payment for Net Energy during the Dispatchable Period shall not be for more than the amount of Energy delivered at the Delivery Point and Storage Facility Metering Point.

- 1.123 “Network Resource” is defined in the OATT.
- 1.124 “Non-Affiliated Buyer Assignee” means any assignee of Buyer other than those described in Section 23.1(a) and (b).
- 1.125 “Non-Defaulting Party” means the Party other than the Defaulting Party.
- 1.126 “Notice” is defined in Section 29.1.1.
- 1.127 “Notice to Proceed” means the initial notification by Supplier to its Construction Contractor to commence work under the Construction Contract.
- 1.128 “NRS” means the Nevada Revised Statutes.
- 1.129 “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.
- 1.130 “Offered Interests” is defined in Section 6.1.1.
- 1.131 “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.
- 1.132 “Operating Security” is defined in Section 17.2.
- 1.133 “Operation Date” means the first date on which the Generating Facility is energized and operates in parallel with the Transmission System and delivers Net Energy to and at the Delivery Point and Storage Facility Metering Point and the Storage Facility is fully capable of charging, storing and discharging energy up to the Storage Contract Capacity and receiving instructions to charge, store and discharge energy.
- 1.134 “Output Right of First Offer” is defined in Section 24.5.1.
- 1.135 “Over Delivery Amount” is defined in 3.6.3.
- 1.136 “PPT” means Pacific Standard Time or Pacific Daylight Time, whichever is then prevailing in Las Vegas, Nevada.
- 1.137 “Party” or “Parties” means each entity set forth in the preamble of this Agreement and its permitted successor or assigns.
- 1.138 “PC” or “Portfolio Energy Credit” means a unit of credit which equals one kilowatt-hour of electricity generated, acquired or saved (or deemed so) by the Facility, all as calculated by the PUCN operations staff and certified by the PC Administrator

pursuant to the Renewable Energy Law (or by a successor Governmental Authority pursuant to a successor Law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada), and certified by WREGIS.

- 1.139 “PC Administrator” means the Person appointed by the PUCN to administer the system of Portfolio Energy Credits established pursuant to the Portfolio Standard or a successor Governmental Authority pursuant to a successor law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada.
- 1.140 “PC Replacement Costs” is defined in Section 3.7.1.
- 1.141 “PC Shortfall” is defined in Section 3.7.1.
- 1.142 “PC Shortfall Amount” is defined in Section 3.7.1.
- 1.143 “PC Shortfall Threshold” is defined in Section 3.7.1.
- 1.144 “Person” or “Persons” means any natural person, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, or Governmental Authority.
- 1.145 “Planned Outage” is defined in Article 11.1.
- 1.146 “Portfolio Standard” means the amount of electricity that Buyer must generate, acquire, or save from renewable energy systems or efficiency measures specified by the percentage of the total amount of electricity sold by Buyer to its retail customers in the State of Nevada pursuant to the Renewable Energy Law, as established pursuant to NRS 704.7821, and the regulations, guidance and requirements promulgated thereunder, as may be amended, preempted or superseded from time to time (or pursuant to a successor law if the Renewable Energy Law is replaced, superseded or preempted by another Law or regulatory regime tasked with enforcement of renewable energy quotas by utility providers in Nevada).
- 1.147 “Power Quality Standards” means the power quality standards established by NERC, WECC, Buyer, IEEE-SA, National Electric Safety Code, the National Electric Code, or their respective successor organizations or codes, as they may be amended or superseded from time to time, and consistent with Good Utility Practice.
- 1.148 “Product” means all (a) Net Energy, (b) PCs (and any equivalent rights in any other jurisdiction), (c) Renewable Energy Benefits, (d) Capacity Rights, and (e) Ancillary Services in each case, arising from or relating to the Facility, including Storage Product.

- 1.149 “Product Rate” means, for any period, the applicable rate set forth in Exhibit 2A.
- 1.150 “Project Milestone” means each of the milestones listed in Exhibit 6.
- 1.151 “Project Site” means the site for the Facility, as more particularly described in Exhibit 3A and depicted in Exhibit 3B.
- 1.152 “Provisional Energy” means Net Energy (but not Test Energy) that is delivered by Supplier to Buyer prior to the Commercial Operation Date and at the request of Buyer in increments of no less than five (5) MW up to an aggregate maximum of three hundred (300) MW.
- 1.153 “Provisional Product Rate” is defined in Section 4.1.1.2.
- 1.154 “PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.
- 1.155 “PUCN” means the Public Utilities Commission of Nevada and any successor.
- 1.156 “PUCN Approval” is defined in Section 16.2.
- 1.157 “PUCN Approval Date” means the date the PUCN Approval becomes effective pursuant to NAC §703.790.
- 1.158 “PUCN Approval Deadline” means December 31, 2019.
- 1.159 “Purchase Option” is defined in Sections 6.2 and 6.3.
- 1.160 “QF” means a cogeneration or small power production facility that meets the criteria as defined in Title 18, Code of Federal Regulations, §§ 292.201 through 292.207.
- 1.161 “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.
- 1.162 “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 utility-scale photovoltaic solar generating plants similar to the Generating Facility and has experience operating a utility-scale integrated storage facility of similar technology to the Facility.
- 1.163 “Regulatory Penalties” means any penalties, fines, damages, or sanctions attributable to Supplier’s failure to perform under this Agreement and actually

imposed on Buyer pursuant to an order issued by any Governmental Authority, the Transmission Provider or any Electric System Authority.

- 1.164 “Relevant Rating Agency” means Moody’s or S&P.
- 1.165 “Renewable Energy Benefits” means any and all renewable and environmental attributes, emissions reductions attributes, Portfolio Energy Credits (and any equivalent rights in any other jurisdictions), credits, offsets, allowances, reporting rights and benefits, howsoever entitled, and includes any and all: (a) available, allocated, assigned, awarded, certified or otherwise transferred or granted to Supplier or Buyer by the PC Administrator or any Governmental Authority in any jurisdiction in connection with the Facility or the generation, transmission or use of the Product, including those related to the Clean Air amendments of 1970 and regulations of the Environmental Protection Agency thereunder; (b) associated with the production of Energy or based in whole or part on the Facility’s use of renewable resources for generation or because the Generating Facility constitutes a Renewable Energy System or the like or because the Facility does not produce or produces less greenhouse gasses, regulated emissions or other pollutants, whether any such credits, offsets, allowances or benefits exist now or in the future and whether they arise under existing Law or any future Law or whether such credit, offset, allowance or benefit or any Law, or the nature of such, is foreseeable or unforeseeable; (c) credits, offsets, allowances or benefits attributable to Energy generated and consumed by the Facility, such as Station Usage (parasitic load); (d) claims, credits, benefits, emissions, reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance to the air, soil or water or generation of the Product, and include : (1) any avoided emissions of pollutants into the air, soil, or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (e) the Renewable Energy Benefits Reporting Rights. Renewable Energy Benefits exclude and do not include any Tax Credits or other Tax incentives existing now or in the future associated with the construction, ownership or operation of the Facility.
- 1.166 “Renewable Energy Benefits Reporting Rights” means the exclusive right of a purchaser of Renewable Energy Benefits to report ownership of Renewable Energy Benefits in compliance with any applicable Law, and to Governmental Authorities or other Persons at such purchaser’s discretion, and include reporting under: (a) Section 1605(b) of the Energy Policy Act of 1992; (b) the Environmental Protection Agency; (c) the Clean Air Act Amendments Section 111(d) and regulations thereunder; and (d) any present or future domestic, international or foreign emissions trading program or renewable portfolio standard.
- 1.167 “Renewable Energy Law” means an act of the Nevada Legislature relating to energy that requires certain electric service providers to comply with the portfolio standard for renewable energy, and providing for other matters relating thereto,

codified as NRS §§ 704.7801 through 704.7828, inclusive, and the rules and regulations of WREGIS, and the regulations, guidance and other requirements promulgated thereunder, in each case, as such Laws, rules, regulations, guidance and other requirements may be amended, preempted or superseded from time to time.

- 1.168 “Renewable Energy System” means a generation facility that is both (a) a “renewable energy system” as defined in the Renewable Energy Law and (b) a “renewable Generating Unit” under WREGIS.
- 1.169 “Replacement Costs” mean the Full Requirements Period Replacement Costs and/or Dispatch Period Replacement Costs, as applicable.
- 1.170 “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.
- 1.171 “Resource-Adjusted Backcast Amount” means an amount determined by a backcasting analysis that takes into account measured site conditions impacting the solar resource, but assumes 100% operational availability of the Generating Facility. The backcasting analysis will be performed by Supplier using a tool which will be mutually agreed upon by Buyer and Supplier in accordance with Exhibit 28, and the Parties will agree on the tool no later than the completion date for Milestone 2(A) on Exhibit 6. Supplier shall provide Buyer its calculations and include all relevant back-up data and other information reasonably requested by Buyer. If the Parties disagree on the calculation of the Resource-Adjusted Backcast Amount, then the Resource-Adjusted Backcast Amount will be determined through the Dispute resolution provisions of Article 21.
- 1.172 “Restricted Period” is defined in Section 8.4.2.
- 1.173 “Restricted Transaction” is defined in Section 6.1.1.
- 1.174 “ROFO” is defined in Section 6.1.
- 1.175 “ROFO Period” is defined in Section 6.1.1.
- 1.176 “ROFO Seller” is defined in Section 6.1.1.
- 1.177 “Scheduled Amount” is defined in Section 14.2.1.
- 1.178 “Seller ROFO Notice” is defined in Section 6.1.1.
- 1.179 “Shortfall” means the Full Requirements Capacity Shortfall and/or the Dispatch Availability Shortfall, as applicable.

- 1.180 “Shortfall Amount” means the Full Requirements Capacity Shortfall Amount and/or the Dispatch Availability Shortfall Amount, as applicable.
- 1.181 “Standard and Poor’s” or “S&P” means Standard and Poor’s Ratings Group, a division of McGraw Hill, Inc., and any successor.
- 1.182 “Standby Service” means the electric service supplied by Nevada Power Company for Station Usage pursuant to Schedule LSR, Large Standby Service Rider, as such tariff is in effect and as may be amended from time to time.
- 1.183 “Station Usage” means all Energy used by the Facility with the exception of any Energy used to charge the Storage Facility as provided herein.
- 1.184 “Storage Capacity” means the maximum dependable operating capability of the Storage Facility to discharge electric energy.
- 1.185 “Storage Capacity Test” means the testing procedures, requirements and protocols set forth in Section 3.4.9 and Exhibit 25.
- 1.186 “Storage Contract Capacity” means the total capacity (in MW) of the Storage Facility determined in accordance with Section 3.4.9 and Exhibit 25, as the same may be adjusted from time to time pursuant to Section 3.4.9 and Exhibit 25.
- 1.187 “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.
- 1.188 “Storage Facility Metering Point” means, with respect to Charging Energy, the point at the Storage Facility set forth in Exhibit 5.
- 1.189 “Storage Operating Procedures” is defined in Section 8.8.
- 1.190 “Storage Product” means (a) Discharging Energy, (b) PCs (and any equivalent rights in any other jurisdiction), if any, (c) Renewable Energy Benefits, if any, (d) Storage Capacity, and (e) Ancillary Services, in each case arising from or relating to the Storage Facility; 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 and that can be provided without modification of the Facility.
- 1.191 “Storage Rate” means, for any period, the applicable charge set forth in Exhibit 2A.

- 1.192 “Stored Energy Level” means, at a particular time, the amount of electric energy in the Storage Facility, expressed in MWh.
- 1.193 “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).
- 1.194 “Supplier” is defined in the preamble of this Agreement and includes such Person’s permitted successors and assigns.
- 1.195 “Supplier’s Lenders” means any Person (or its trustees or agents), other than an Affiliate of Supplier, and its permitted successors and assigns, providing money or credit to Supplier and/or its Affiliates in connection with any development, bridge, construction, takeout, permanent debt, tax equity or other financing or refinancing for the development, construction or operation of the Facility and any Shared Facilities, including lease, inverted lease, sale-leaseback, partnership-flip, monetization of tax benefits, back-leverage financing, or credit derivative arrangements.
- 1.196 “Supplier’s Required Regulatory Approvals” means the Governmental Approvals listed on Exhibit 10.
- 1.197 “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.
- 1.198 “Tax Credits” means the PTC, ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy facilities.
- 1.199 “Term” is defined in Section 2.2.
- 1.200 “Test Energy” is defined in Section 4.1.1.1.
- 1.201 “Test Product Rate” is defined in Section 4.1.1.1.
- 1.202 “Transmission Provider” means Nevada Power Company or any successor operator or owner of the Transmission System.

- 1.203 “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 advance notice provided to Supplier.
- 1.204 “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.
- 1.205 “Un-Dispatched Amount” is defined in Section 10.2.2.
- 1.206 “Weather Meter” is defined in Section 7.1.8.
- 1.207 “WECC” means the Western Electric Coordinating Council (formerly Western System Coordinating Council) and any successor.
- 1.208 “WREGIS” means the Western Renewable Energy Generation Information System and any successor.
- 1.209 “Yearly PC Amount” means the amount of PCs for a Contract Year as stated in Exhibit 18.

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 Product, and Buyer’s obligation to accept and pay for Product, shall commence on the Commercial Operation Date and shall continue for a period of 25 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 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 Product, and Supplier shall not be obligated to sell or deliver any 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 two (2) 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 Supplier shall first require that Supplier deliver Notice to

Buyer stating prominently therein in type font no smaller than 14 point all-capital letters that “THIS IS A TERMINATION NOTICE UNDER A RENEWABLE RESOURCE PPA. YOU MUST CURE A DEFAULT, OR THE PPA 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, Supplier 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 if Supplier’s obligations hereunder have been excused by the occurrence of an event of Force Majeure for longer than twelve (12) consecutive months or three hundred sixty (360) days in any five hundred forty (540) day period.

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 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;

2.4.3 Limitation of liability provisions contained in Article 19;

2.4.4 For a period of two (2) years after the termination date, the right to submit a payment Dispute pursuant to Article 21; or

2.4.5 The resolution of any Dispute submitted pursuant to Article 21 prior to, or resulting from, termination.

3. SUPPLY SERVICE OBLIGATIONS

3.1 Dedication. Supplier shall own and operate the Facility. One hundred percent (100%) of the 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 Product to any Person other than Buyer; (b) provide Buyer with any 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 Product, Supplier sells to Buyer, and Buyer purchases from Supplier, all rights, title and interest that Supplier may have in and to the Product, including Capacity Rights, Ancillary Services and Renewable Energy Benefits on all Energy (including Excess Energy and the Un-Dispatched Amount, as applicable) 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 Product, including the Capacity Rights, if any, and the Renewable Energy Benefits on all Energy (including Excess Energy and the Un-Dispatched Amount, as applicable) existing during the Term, whether Buyer has scheduled Product or not, other than as provided in Section 24.2. During the Term, Supplier shall not report to any person or entity that the Product, including the Capacity Rights, if any, and the Renewable Energy Benefits on all Energy (including Excess Energy) existing during the Term, belong to anyone other than Buyer. Buyer may report to any person that it exclusively owns the Product, including the Capacity Rights, if any, the Ancillary Services and the Renewable Energy Benefits on all Energy (including Excess Energy) existing during the Term. At Buyer's request, the Parties shall execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Rights, if any, to Buyer.
- 3.4 Delivery Responsibilities.
- 3.4.1 Product. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and throughout the Term, Supplier shall supply and deliver the Product to Buyer at the Delivery Point (other than the Charging Energy which shall be delivered at the Storage Facility Metering Point) and the Renewable Energy Benefits which shall be delivered as provided in Sections 5.1.1 and 5.3).
- 3.4.2 Delivered Amount. Buyer shall take delivery of the Net Energy, including any Excess Energy, and 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 Net Energy and Discharging Energy up to the Delivery Point, including transmission costs, transmission line losses, any costs or charges imposed in connection with scheduling and delivery of the Charging Energy to the Storage Facility Metering Point and any operation and maintenance charges imposed by the Transmission Provider. Buyer shall be responsible for all costs or charges, if any, imposed in connection with the delivery of Net Energy and 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 generating capacity of the Generating Facility. 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. Title and risk of loss with respect to Net Energy and Discharging Energy delivered by Supplier shall pass from Supplier to Buyer at the Delivery Point. Supplier shall be deemed in exclusive control of the Net Energy and Discharging Energy and shall be responsible for any damage or injury caused prior to the Delivery Point. Buyer shall be deemed in exclusive control of the Net Energy and Discharging Energy and shall be responsible for any damage or injury caused at and after the Delivery Point. Supplier warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.
- 3.4.4 Provisional Energy Delivery. Buyer may request by written notice to Supplier to deliver Provisional Energy prior to the Commercial Operation Date, in increments as defined in Section 1.153, and on and after a specified date. Supplier may, in its sole discretion, elect to deliver such Provisional Energy to Buyer by delivering written notice thereof to Buyer. Notwithstanding the foregoing, Buyer and Supplier shall mutually agree on the amounts of Provisional Energy to be supplied and the date and time when such Provisional Energy shall be supplied.
- 3.4.5 Voltage Support. The IA requires the Facility to maintain a composite power delivery at continuous rated power output at the point of interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless Transmission Provider has established different requirements that apply to the Facility and all generators in the control area on a comparable basis. In addition to the requirements of the IA, the Facility will provide voltage set point control at the point of interconnection within the range of 0.90 leading to 0.90 lagging at full rated real-power output, as available, within the capabilities of the Facility. The Facility shall provide dynamic reactive power as required for voltage regulation twenty-four (24) hours per day, if the Facility is capable of providing reactive power, regardless of real power output. The performance of reactive power output to provide voltage support shall be according to unit real/reactive capability curves provided in Exhibit 22.
- 3.4.6 Dispatchable Accuracy Rate. Supplier shall meet the Dispatchable Accuracy Rate subject to Section 3.6.2.
- 3.4.7 Automated Generation Control. Supplier shall ensure that the Generating Facility is able to be dispatched by Buyer's Energy Management System

sending signals to Supplier's AGC so that the Generating Facility can be dispatched dynamically. The energy dispatched in this manner is the "Dispatched Amount."

3.4.8 Charging Energy Management.

3.4.8.1 During the Dispatchable Period, Supplier shall take any and all actions necessary to deliver the 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 deliver the Charging Energy from the Generating Facility to the Storage Facility.

3.4.8.2 Subject to the requirements and limitations set forth in this Agreement, including Exhibits 1 and 24, during the Dispatchable Period (excluding the months of June, July and August), to the extent the Generating Facility is generating Energy, Buyer will have the right to charge the Storage Facility with Energy from the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Supplier electronically. 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. Notwithstanding the above, Buyer shall not have the right (a) to send a Charging Notice during the months of June, July or August, or (b) to charge the Storage Facility with energy that is not generated by the Generating Facility. The Parties agree at a future date to discuss and negotiate in good faith for the ability to charge the Storage Facility from the transmission grid at such time that the Parties agree that doing so would not jeopardize Supplier's right to claim the ITC.

3.4.8.3 Supplier shall not charge the Storage Facility during the Dispatchable Period (excluding the months of June, July and August) other than pursuant to a Charging Notice, in connection with a Storage Capacity Test, or as required by Supplier (in its sole discretion) to meet Supplier's obligations during the Full Requirements Period in accordance with Section 14.2.4. If during the Dispatchable Period (excluding the months of June, July and August),

Supplier, except as provided above in this Section 3.4.8.3, (a) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (b) charges the Storage Facility without Buyer providing a Charging Notice (the Energy used for such purpose being the “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. During the months of June, July and August, Supplier may charge and discharge the Storage Facility as it determines in its sole discretion to be necessary or appropriate to comply with its obligations during the Full Requirements Period.

3.4.9 Storage Capacity Tests.

- 3.4.9.1 Prior to the Commercial Operation Date, Supplier shall schedule and complete a Storage Capacity Test 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 shall have the right to run a retest of the Storage Capacity Test in accordance with Exhibit 25.
- 3.4.9.2 Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. 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 3.4.9, 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).
- 3.4.9.3 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 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.

3.4.10 Storage Availability.

3.4.10.1 During the Dispatchable Period (excluding the months of June, July and August), the Storage Facility shall maintain a Monthly Storage Availability during of no less than ninety-eight percent (98%) (the “Guaranteed Storage Availability”), which Monthly Storage Availability shall be calculated in accordance with Exhibit 26.

If the Monthly Storage Availability during the Dispatchable Period is less than the Guaranteed Storage Availability, Supplier shall pay Buyer Availability Liquidated Damages calculated in accordance with Exhibit 26. Such liquidated damages shall be Buyer’s sole remedy for the failure to maintain a Monthly Storage Availability of no less than 98%; provided that this does not release Supplier from or diminish other express liquidated damage remedies hereunder that are measured differently but that may be based on some or all of the same facts as Availability Liquidated Damages. 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.

3.4.10.2 The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.4.10 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 3.4.10 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 Renewable Energy System. Notwithstanding anything in this Agreement to the contrary, Buyer shall not be obligated to purchase or accept delivery of Product if the Generating Facility: (a) is not at the time of delivery qualified as a Renewable Energy System; or (b) is not delivering to Buyer all of the Renewable Energy Benefits associated with the Net Energy and (without duplication) Discharging Energy being delivered; provided that if there is a change in the Renewable Energy Law after the execution of this Agreement that causes the Net Energy and Discharging Energy from the Generating Facility to be ineligible or non-qualifying as a Renewable Energy System under such Renewable Energy Law, Supplier shall

use commercially reasonable efforts to comply with such Renewable Energy Law. For purposes hereof, commercially reasonable efforts shall include the expenditure of amounts up to three hundred thousand dollars (\$300,000) in any Contract Year and up to three million dollars (\$3,000,000) in the aggregate over the Term (the “Compliance Cost Cap”). If Supplier reasonably concludes that it may incur costs in excess of the Compliance Cost Cap in any Contract Year in order to comply with the Renewable Energy Law, it shall provide Buyer with a notice itemizing such excess costs. Buyer shall evaluate such notice and either: (i) agree to reimburse Supplier for such excess costs (the “Accepted Compliance Costs”); or (ii) waive Supplier’s obligation to comply with the Renewable Energy Law to the extent such inability results from failing to expend amounts in excess of the Compliance Cost Cap. If Buyer agrees to reimburse Supplier for the Accepted Compliance Costs, then Supplier shall be required to comply in full with the Renewable Energy Law, and Buyer shall reimburse Supplier for Supplier’s actual and reasonable out-of-pocket compliance costs in excess of the Compliance Cost Cap, not to exceed the Accepted Compliance Costs. If Supplier’s inability to comply with the Renewable Energy Law cannot be cured by the expenditure of money, such noncompliance shall be excused and shall not constitute an Event of Default or release Buyer from or reduce any of Buyer’s obligations hereunder including Sections 8.1, 8.8, 15.1 and 25.11.

- 3.6 Shortfalls; Replacement Costs; DAR. Supplier shall pay Buyer Replacement Costs, DAR Threshold remedies and any Regulatory Penalties, if any, incurred as a result of any Shortfall in any Measurement Period in accordance with the following provisions:

3.6.1 Dispatchable Period Shortfall.

- 3.6.1.1 If (a) the sum of all Delivered Amounts, and all Excused Product for the Dispatchable Period during a Measurement Period is less than (b) (i) ninety-five hundredths (0.95) multiplied by (ii) (the Resource-Adjusted Backcast Amount minus all Full Requirements Period Charging Energy, for the Dispatchable Period during such Measurement Period), then an availability shortfall (a “Dispatch Availability Shortfall”) will be deemed to exist for such Dispatchable Period equal to the excess of (b) over (a) (the “Dispatch Availability Shortfall Amount”).
- 3.6.1.2 Buyer’s “Dispatchable Period Replacement Costs” with respect to any Dispatchable Period in any Measurement Period for a Dispatch Availability Shortfall shall equal (a) the Dispatch Availability Shortfall Amount for such Dispatchable Period multiplied by (b) an amount equal to the Market Price for the Dispatchable Period minus the applicable Product Rate; provided that if the calculation of Dispatchable Period Replacement Costs yields an amount of zero or less for such Dispatchable Period, then no Dispatchable Period Replacement Costs will be payable with respect to such Dispatchable Period.

- 3.6.1.3 Within five (5) Business Days after the end of any Measurement Period in which a Dispatch Availability Shortfall has occurred, Supplier shall calculate the Dispatch Availability Replacement Costs with respect to such Dispatch Availability Shortfall Amount and provide Buyer with written notice of such calculation. Such Replacement Costs shall be reflected on the Invoice for the same Billing Period in which such Availability Replacement Costs are calculated.

3.6.2 Dispatchable Accuracy Rate.

- 3.6.2.1 In the event the Generating Facility's DAR is less than ninety-seven percent (97%) ("DAR Threshold"). for any calendar month during the Dispatchable Period, and not to exceed any three (3) consecutive calendar months, Buyer will not pay Supplier for an amount of megawatt hours equal to the product of (i) (0.97 less the Generating Facility's DAR expressed as a decimal) and (ii) the Dispatched Amount (the "Deviation Amount") for each such month. For the Invoice immediately following any such calendar month that includes a Deviation Amount, the invoiced amount shall be reduced by an amount equal to the Deviation Amount multiplied by the applicable Dispatchable Period Product Rate. The initial version of the protocol for determining the DAR and related quantities is attached as Exhibit 16 and shall be finalized by mutual agreement of the Parties by the date set forth in Milestone 2(A) on Exhibit 6.
- 3.6.2.2 If after three (3) consecutive months the Generating Facility does not meet the DAR Threshold for a fourth month or for any month thereafter through six (6) months, Buyer shall only pay Supplier for the Dispatched Amount during such months when Supplier did not meet the DAR Threshold (and shall not be obligated to compensate Supplier for any Un-Dispatched Amount in such months).
- 3.6.2.3 If after six (6) consecutive months but not to exceed twelve (12) consecutive months the Generating Facility does not meet the DAR Threshold for each such month, Buyer shall only pay Supplier 75% of the Dispatchable Product Rate for the Dispatched Amount during the seventh (7th) through twelfth (12th) of such months when Supplier did not meet the DAR Threshold (and shall not be obligated to compensate Supplier for any Un- Dispatched Amount in such months).
- 3.6.2.4 If after twelve (12) consecutive months the Generating Facility's DAR is less than the DAR Threshold for each such month then Buyer shall have the right to terminate this Agreement pursuant to Section 24.1.

3.6.2.5 If for any twenty (20) non-consecutive months during the Dispatchable Periods of any ten (10) consecutive Contract Years during the Term, Buyer will have the right to terminate this Agreement pursuant to Section 24.1.

3.6.3 Full Requirements Period Over Delivery.

3.6.3.1 If for any Full Requirements Period the Delivered Amount is greater than the Full Requirements Period Product by more than five percent (5%), the Delivered Amount over such 5% threshold is the “Over Delivery Amount.” Supplier shall be compensated as provided in Section 4.1.2.5.

3.6.4 Full Requirements Capacity Shortfall.

3.6.4.1 If for any Full Requirements Period of a Contract Year the Delivered Amount plus Excused Product during such Full Requirements Period is more than five percent (5%) below the Full Requirements Period Product for such Full Requirements Period, then Supplier shall pay Replacement Costs. In such event, Replacement Costs shall be the product of (a) an amount expressed in MWh equal to (i) the applicable Full Requirements Period Product multiplied by 0.98, less (ii) the sum of all Delivered Amounts (including any deemed delivered amounts as provided in Section 14.3.2) plus Excused Amounts during the Full Requirements Period (“Full Requirements Capacity Shortfall”), and (b) an amount equal to the positive difference between (i) the Market Price for the applicable Full Requirements Period minus (ii) the Full Requirements Period Product Rate (the result of such calculation, the “Full Requirements Period Replacement Costs”); provided, that if the calculation of Full Requirements Period Replacement Costs yields an amount of zero or a negative, then no Full Requirements Period Replacement Costs will be payable.

3.6.4.2 If in the second consecutive Full Requirements Period Supplier incurs another Full Requirements Capacity Shortfall, then for the purpose of calculating payment to Supplier in the immediately successive Invoice following determination of such Full Requirements Capacity Shortfall, such invoiced amount shall be reduced by an amount equal to: (i) the Full Requirements Capacity Shortfall for such Full Requirements Period multiplied by (ii) the applicable Full Requirements Period Product Rate. If this reduction results in a negative Invoice amount, subsequent Invoices will be reduced until the entire Full Requirements Capacity Shortfall amount has been recovered by Buyer.

3.6.4.3 If after the third consecutive Full Requirements Period Supplier incurs a third Full Requirements Capacity Shortfall, Supplier shall

pay damages as calculated pursuant to Section 3.6.4.2, and Buyer shall have the right to terminate this Agreement pursuant to Section 24.1.

3.6.4.4 Within five (5) Business Days after the end of any Full Requirements Period in which a Full Requirements Capacity Shortfall has occurred, Supplier will calculate the Full Requirements Period Replacement Costs with respect to such Full Requirements Capacity Shortfall and provide Buyer with written notice of such calculation. Such Replacement Costs shall be reflected on the Invoice immediately subsequent to the Full Requirements Period and will reflect any set-off or true-ups in accordance with this Agreement.

3.6.5 Not a Penalty. The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.6 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 damages for the failure of Supplier to supply and deliver Net Energy are 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. Except as provided in Sections 3.6.2.4, 3.6.2.5 and 3.6.4.3, payment of such damages shall be Buyer's sole remedy for the shortfalls, deviations and over deliveries set forth in this Section 3.6.

3.6.6 Calculations. As soon as practicable following any period of: (a) Force Majeure; (b) Buyer's failure to accept Net Energy or PCs in breach of this Agreement; (c) Emergency (except for an Emergency with respect to the Facility that is also a Force Majeure); (d) Planned Outage; (e) Curtailed Product; (f) Transmission Provider Instructions; or (g) an Un-Dispatched Amount, in each case as a result of which Supplier has failed to deliver any portion of the Product to Buyer during such period and, subject to the terms of this Agreement, such failure and Supplier's liability for damages therefor are excused, Supplier shall calculate the amount of Net Energy that Supplier was unable to generate and deliver to the Storage Facility Metering Point for the Dispatchable Period and to Buyer at the Delivery Point solely as a result of such event, by summing for each hour of the period the difference between (i) the Availability Backcast Amount and (ii) the Delivered Amount during each hour (the "Excused Product"); provided that the amount of Curtailed Product shall be determined in accordance with Section 10.1.2. Supplier shall provide Buyer its calculations and include all relevant back-up data and other information reasonably requested by Buyer. If Buyer disagrees with the calculation of Excused Product, then the Excused Product will be determined through the Dispute resolution provisions of Article 21.

3.7 PC Shortfall; PC Replacement Costs.

- 3.7.1 If after the PC Administrator issues all the PC statements or certificates for any Measurement Period there is a PC Shortfall, then Supplier shall pay Buyer for the replacement costs and any Regulatory Penalties associated with such PC Shortfall (collectively, the “PC Replacement Costs”). Subject to the last sentence of this Section 3.7.1, for purposes of this Agreement a “PC Shortfall” shall occur in any Measurement Period if the sum of all Delivered PCs is less than the “PC Shortfall Threshold” defined as the product of (a) 0.90 multiplied by (b) an amount equal to (i) the Yearly PC Amount for such Measurement Period minus (ii) the total amount of PCs associated with Excused Product during such Measurement Period. For purposes of this Agreement, a “PC Shortfall Amount” with respect to any Measurement Period means: (A) the PC Shortfall Threshold for such Measurement Period; minus (B) the Delivered PCs during such Measurement Period. If the calculation of the PC Shortfall Amount set forth in this Section 3.7.1 yields an amount of zero or less for any Measurement Period, then no PC Shortfall will be deemed to exist with respect to such Measurement Period.
- 3.7.2 The PC Replacement Costs shall be determined by Buyer exercising its reasonable discretion based on the estimated cost of purchasing PCs to replace the PC Shortfall Amount from the same resource type with a comparable expiration date or the cost of replacing the PC Shortfall Amount with PCs of Buyer’s choice already in Buyer’s PC Account; provided, however, that Buyer shall not be required to actually purchase replacement PCs in order to receive payment from Supplier for PC Replacement Costs. Buyer shall include in the PC Replacement Costs any Regulatory Penalties allocable for any Measurement Period to Supplier’s PC Shortfall Amount as a portion of Buyer’s aggregate shortfall under the applicable Portfolio Standard (factoring in Supplier’s PC Shortfall Amount in Measurement Periods carried forward as a deficit or reducing the surplus in such prior Measurement Periods).
- 3.7.3 The Parties recognize and agree that the payment of amounts by Supplier pursuant to this Section 3.7 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 3.7 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.
- 3.7.4 All information used by Buyer to establish PC Replacement Costs shall be verifiable by Supplier; and Buyer shall provide reasonable access to all such information supporting calculations within five (5) Business Days of Supplier’s request for such information. Supplier agrees to execute a

confidentiality agreement regarding the review of this information upon request by Buyer.

3.7.5 For any Measurement Period, Buyer, at its sole option, may allow Supplier to meet its PC Replacement Cost obligation by transferring a quantity of PCs to Buyer in the amount of no less than the PC Shortfall Amount. Such PCs shall be from the same resource type with a comparable expiration date as the PCs that should have been delivered to Buyer under this Agreement.

3.8 Supply Degradation. Beginning with the second Contract Year, and each Contract Year thereafter, the Dispatch Availability Amount, the Maximum Amount and the Yearly PC Amount shall be reduced by three-tenths of one percent (0.3%) such that the applicable amount is reduced by such percentage using the prior year adjusted amount (i.e. after the reduction for the prior year has been applied) as the base amount to which the percentage is applied. No later than January 1 of each Contract Year Buyer shall deliver to Supplier revised Exhibits 13 and 18 which shall reflect such reductions, and effective as of January 1 of each Contract Year this Agreement shall automatically be amended to substitute such revised Exhibits 13 and 18 for the then existing Exhibits 13 and 18.

4. PRICE OF PRODUCT

4.1 Product Payments. Supplier shall be paid for the Product as follows:

4.1.1 Prior to the Commercial Operation Date.

4.1.1.1 On and after the Operation Date and prior to the Commercial Operation Date, all Product associated with Delivered Amounts of Net Energy from the Generating Facility, other than (a) Excess Energy (which shall not be compensable) and (b) Provisional Energy shall be "Test Energy" and shall be paid for by Buyer at the lesser of: (i) fifty percent (50%) of the applicable Product Rate; or (ii) Market Price for each Delivery Hour of Test Energy ("Test Product Rate").

4.1.1.2 Notwithstanding the above, if Buyer requests Supplier to deliver Provisional Energy and Supplier elects to deliver Provisional Energy and delivers written notice to Buyer that it is delivering Provisional Energy in accordance with Section 3.4.4, Buyer shall pay Supplier seventy-five percent (75%) of the applicable Product Rate ("Provisional Product Rate") for such Provisional Energy.

4.1.1.3 Provisional Energy shall be distinguished from Test Energy in so far as Provisional Energy is for a determined amount of energy provided as the Generating Facility is capable of consistently generating such amounts of energy, whereas Test Energy is energy generated after the Operation Date and

prior to Commercial Operation that is needed to commission the Generating Facility. Supplier shall provide notice when Provisional Energy is available and Buyer and Supplier shall mutually agree to the date and time when Provisional Energy requested by Buyer and agreed to by Supplier shall be supplied in accordance with Section 3.4.4. Five (5) Business Days prior to the start of each month, beginning with the month in which the Operation Date is expected to occur, Supplier shall provide notice to Buyer with an estimate of the forecasted amounts of Test Energy and Provisional Energy for that month with correlated meter data for actual amounts of Test Energy and Provisional Energy amounts to be provided with invoicing. Such determination shall be subject to verification by Buyer in the exercise of its reasonable discretion.

4.1.2 Subsequent to the Commercial Operation Date.

- 4.1.2.1 Except as provided at the end of this Section 4.1.2.1, Supplier shall be paid for all Delivered Amounts of Net Energy from the Generating Facility, other than Excess Energy, at the applicable Product Rate set forth in Exhibit 2A and based on the quantity of Net Energy, other than Excess Energy; provided that such payment constitutes the entirety of the amount due to Supplier from Buyer for the Product associated with Delivered Amounts of Net Energy other than Excess Energy during the Dispatchable Period; provided further that Supplier shall be paid at the Test Product Rate for the month in which the Commercial Operation Date occurs if the Commercial Operation Date occurs on or after the sixteenth (16th) day of such month.
- 4.1.2.2 All Un-Dispatched Amount of Product shall be paid for at the Dispatchable Period Product Rate in consideration for Ancillary Services and Capacity.
- 4.1.2.3 All Product associated with Excess Energy shall be paid for at a rate equal to fifty percent (50%) of the Product Rate.
- 4.1.2.4 Supplier shall be paid for all Net Energy deemed delivered pursuant to Section 14.3.2 at the Full Requirements Period Product Rate.
- 4.1.2.5 Supplier shall be paid for all Over Delivery Amounts at three (3) times the Dispatchable Period Product Rate.
- 4.1.3 No payment shall be owing to Supplier for any Product associated with Energy that is for any reason not Net Energy except as otherwise provided in Section 4.1.2.2.

- 4.1.4 Buyer shall not be required to accept from Supplier any Product associated with Delivered Amounts from the Facility delivered to the Delivery Point during any Delivery Hour in excess of the hourly Maximum Amount, and no payment shall be owing to Supplier for any Product associated with Delivered Amounts from the Facility accepted by Buyer at the Delivery Point during any Delivery Hour in excess of the hourly Maximum Amount.
- 4.2 Excused Product. Buyer shall not pay for Product comprising Excused Product except (i) Product not delivered due to Buyer's failure to accept Net Energy or PCs in breach of this Agreement or (ii) as otherwise provided in Section 4.1.2.2 with respect to the Un-Dispatched Amount as further delineated in Section 10.2.2.
- 4.3 Tax Credits. The Parties agree that neither any Product Rate, the Provisional Product Rate, nor the Test Product Rate are 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 Supplier's 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 Net Energy and Discharging Energy and Product, shall be effective regardless of whether the sale of Energy or Net Energy from the Facility is eligible for, or receives Tax Credits during the Term.

5. PORTFOLIO ENERGY CREDITS/RENEWABLE ENERGY BENEFITS

- 5.1 Delivery of Renewable Energy Benefits and Portfolio Energy Credits.
- 5.1.1 All Renewable Energy Benefits are exclusively dedicated to and vested in Buyer. Supplier shall deliver to Buyer all Renewable Energy Benefits derived from the Facility, including Renewable Energy Benefits associated with Energy for Station Usage. Supplier shall timely prepare and execute all documents and take all actions necessary under Law or the requirements of any Governmental Authority or Person and otherwise to cause the Renewable Energy Benefits to vest in Buyer, without further compensation, including: (a) taking all actions necessary to register or certify any Renewable Energy Benefits or the Facility with the PUCN or any other Person (pursuant to NAC 704.8921 or otherwise) and WREGIS; (b) causing the automatic transfer of the Renewable Energy Benefits derived from the Facility to Buyer (pursuant to NAC 704.8927 or otherwise); (c) providing all production data and satisfying the reporting requirements of the PUCN or PC Administrator, as applicable; and (d) cooperating in any registration by Buyer of the Facility in any other renewable portfolio standard or equivalent program in any states in which Buyer may wish to register or maintain registration of the Facility, including providing copies of all such information as Buyer reasonably requires for such registration. Without

limitation of the foregoing, Supplier acknowledges that the Renewable Energy Benefits, may be used by Buyer in meeting its present and future obligations pursuant to applicable Law, including the Portfolio Standard, and agrees to cooperate with Buyer to assist in Buyer's compliance with all applicable requirements set forth in the Portfolio Standard and provide all information reasonably requested by Buyer or otherwise necessary to allow the PUCN to determine compliance with the Portfolio Standard. No Person other than Buyer (or its designee) will be entitled to claim Renewable Energy Benefits generated during the Term in any jurisdiction in connection with the Facility. The benefit of all representations and warranties made by Supplier with respect to Renewable Energy Benefits are transferrable by Buyer to any purchaser or transferee of such Renewable Energy Benefits or part thereof without requiring any consent from Supplier.

5.1.2 On or before January 31 of each year following the Operation Date, Supplier, as owner or operator of the Renewable Energy System, shall deliver to Buyer a written attestation for the prior year that no part of the Renewable Energy Benefits: have been or will be (a) used for or by any Person to obtain renewable energy credit in any state or jurisdiction, except for Buyer pursuant to this Agreement; (b) sold or otherwise exchanged for compensation or used for credit in any other state or jurisdiction, except to Buyer under this Agreement; and (c) included within a blended energy product certified to include a fixed percentage of renewable energy in any other state or jurisdiction, pursuant to Chapter 704 of the NAC. No Person other than Buyer (or its designee) will be entitled to claim Portfolio Energy Credits, Renewable Energy Benefits (or equivalents in any jurisdiction) in connection with the Facility.

5.2 Injunction. If any Person other than Buyer (or its designee) attempts to claim such Renewable Energy Benefits or part thereof, the Parties agree that remedies at Law may be inadequate to protect Buyer in the event of a breach of this Section 5.2, and Supplier hereby in advance agrees: (a) that Buyer shall be entitled to seek without proof of actual damages or the necessity of posting any bond or other security, temporary, preliminary and permanent injunctive relief from any Governmental Authority of competent jurisdiction restraining Supplier from committing or continuing any breach of this Section 5.2; and (b) that Supplier will promptly undertake all necessary actions to prevent such other Person from claiming such Renewable Energy Benefits (including joining with or otherwise assisting Buyer in seeking the relief described in clause (a)).

5.3 Transfers. Buyer shall be entitled to PC Replacement Costs for the PC Shortfall Amount as provided in Section 3.7. Supplier shall promptly give Buyer copies of all documentation it submits to WREGIS or PUCN or otherwise with respect to Renewable Energy Benefits. Further, in the event of the promulgation of a scheme involving any part of the Renewable Energy Benefits administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfers can be recorded. Supplier shall not report under

Section 1605(b) of the Energy Policy Act of 1992 or under any applicable program that any of the Renewable Energy Benefits generated during the Term belong to any person other than Buyer. Without limiting the generality of Buyer's ownership of the Renewable Energy Benefit Reporting Rights, Buyer may report under such program that all Renewable Energy Benefits purchased hereunder belong to it. Each Party shall promptly give the other Party copies of all documents it submits to the CAMD to effectuate any transfers.

6. RIGHT OF FIRST OFFER; RIGHT OF FIRST REFUSAL; PURCHASE OPTIONS

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 enter into a binding agreement 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 enter into a binding agreement 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 a Supplier's Lenders Transaction (each a "Restricted Transaction"). For purposes hereof, a "Supplier's Lenders Transaction" means any transaction between Supplier or its Affiliates, on the one hand, and Supplier's Lenders, on the other hand, in connection with any development, bridge, construction, takeout, permanent debt, tax equity or other financing or refinancing for the development, construction or operation of the Facility and any Shared Facilities, including lease, inverted lease, sale-leaseback, partnership-flip, monetization of tax benefits, back-leverage financing, or credit derivative arrangements.. If a ROFO Seller intends to enter into a Restricted Transaction, Supplier shall provide Buyer with written notice of same (a "Seller ROFO Notice"), and Buyer shall have a right of first offer with respect to the purchase of such Offered Interests. Within fifteen (15) days, if prior to the Commercial Operation Date, or thirty (30) days, if on or after the Commercial Operation Date, 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"), and any failure to provide the Buyer ROFO Notice in such period shall be treated as a Buyer election not to negotiate. 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 than thirty (30) days, if prior to the Commercial Operation Date, or ninety (90) days, if on or after the Commercial Operation Date, following ROFO Seller's receipt of the Buyer ROFO Notice, the terms of a purchase by Buyer or its designee of the Offered Interests (if prior to the Commercial Operation Date, such fifteen (15)-day period as extended, if applicable, by such thirty (30)-day period, and if on or after the Commercial Operation Date, such thirty (30)-day period as extended, if applicable, by such ninety (90)-day period, the "ROFO Period"). NV Energy 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.

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) 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, ROFO Seller may negotiate a Restricted Transaction with any other Person within one hundred eighty (180) days following ROFO Seller's receipt of the Buyer ROFO Notice, 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 (taken as a whole) less favorable to ROFO Seller than such terms, if any (taken as a whole), 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 eighty (180) days following the expiration of the ROFO Period, ROFO Seller and any Offered Interests shall again be subject to this Section 6.1 with respect to any Restricted Transaction.

6.2 Purchase Option During the Term. Supplier hereby grants to Buyer options to purchase ("Purchase Option") on a date chosen by Buyer during the six (6) months after the Facility's 8th, 15th and 20th anniversaries of the Commercial Operation Date at the greater of (i) Fair Market Value and (ii) the price determined pursuant to Exhibit 27, 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; provided, however, that if the Purchase Option is exercised during the six (6) months after the Facility's 8th anniversary of the Commercial Operation Date, the purchase may only be accomplished through the purchase of the membership interests in Supplier or, if Supplier is wholly-owned by another entity in which the tax equity investors are members, the membership or partnership interests in such other entity, in each case that are directly or indirectly owned by Supplier's Parent set forth on Exhibit 1.

6.3 Purchase Option at the End of Term. Supplier hereby grants to Buyer the option to purchase the Facility at the end of the Term at the greater of (i) the Fair Market Value and (ii) the price determined pursuant to Exhibit 27 (also a "Purchase Option"), which option may be exercised by Buyer providing written notice to

Supplier no less than one hundred and eighty (180) days prior to the end of the Term of Buyer's election to exercise such option.

- 6.4 Efforts Required to Transfer Facility and Offered Interests. If Buyer exercises a 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 initially prepared by Buyer which shall contain customary representations, warranties and covenants, and otherwise be in form, reasonably acceptable to Buyer and Supplier, it being understood that the Facility will be sold on an "as is" basis, but that Supplier shall transfer all guaranties, warranties or other assurances for equipment, materials or services related to the Facility. 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 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, at closing, 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 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.
- 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 reasonable 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, or to the Storage Facility Metering Point. The Meters may 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 WREGIS Metering. Supplier shall cause, at its sole cost and expense, the Facility to implement all necessary generation information communications in WREGIS, and report generation information to WREGIS pursuant to a WREGIS-approved meter that is dedicated to the Facility and only the Facility. Supplier shall be responsible to obtain all qualified reporting entity services required by WREGIS at Supplier's expense should Buyer not in its sole and absolute discretion provide them.
- 7.1.3 Location. Meters shall be installed at the location(s) specified in Exhibit 5, or as otherwise may be reasonably approved by Buyer pursuant to Section 7.1.1.
- 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 for the Delivered Amount 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 ninety (90) 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 for the Delivered Amount calculated 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 of the Delivered Amount. In such event, such payments made based upon the Parties' estimate of the Delivered Amount shall be in full satisfaction of payments due hereunder. If the Parties cannot agree on a best estimate of the Delivered Amount the Dispute shall be resolved in accordance with Article 21.

7.1.8 Weather Meter. Supplier shall, at Supplier's cost and no later than six (6) months prior to the Commercial Operation Date, provide, install, own, operate and maintain a device for the measurement of weather conditions relevant to the generation of Energy at the Project Site (the "Weather Meter"), provided that Supplier shall not select the type of Weather Meter without the prior written consent of Buyer, which shall not be unreasonably withheld. No later than twelve (12) months prior to the Commercial Operation Date, the Parties shall agree on the location of the Weather Meter and any applicable protocols for testing, accuracy, failure or other relevant characteristics of the Weather Meter.

7.2 Invoices.

7.2.1 Monthly Invoicing and Payment. On or before the 10th 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 twelve (12) 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 twelve (12) months after the close of the Billing Period, the right to payment for such Billing Period is waived.

7.2.2 Replacement PC Invoice Calculation. In addition to the requirements for monthly Invoices set forth in this Section 7.2, if after the PC Administrator issues its final PC statement covering any Measurement Period and a PC Shortfall (as determined in accordance with Section 3.7.1) exists, Buyer shall send to Supplier an Invoice for such Measurement Period, which shall include the calculations set forth in Exhibit 2C.

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 ten (10) 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 (20th) day following the end of each Billing Period (or the next following Business Day, if such twentieth (20th) 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 upon five (5) Business Days written notice from Buyer its books and records to the extent necessary for the purpose of allowing Buyer to verify the information contained within the invoices presented pursuant to Section 7.2.
- 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 Net Energy or Discharging Energy or its delivery from and after the Delivery Point. Supplier is responsible for any Taxes imposed on or associated with the Net Energy or 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. Supplier shall construct or cause the Facility to be constructed in accordance with Good Utility Practices and the Project Milestones so that: (a) Supplier is capable of meeting its supply and delivery obligations with respect to Product over the Term; (b) the Facility is consistent with the technical specifications set forth in Exhibit 11; (c) subject to Section 3.5, the Generating Facility is at all times considered a Renewable Energy System; and (d) subject to Section 3.5, the Generating Facility is at all times in compliance with all requirements imposed on Renewable Energy Systems as set forth in the applicable Renewable Energy Law. Supplier shall deliver to Buyer an ALTA Survey of the Project Site within ten (10) days of such survey becoming available to Supplier. Supplier shall provide to Buyer in a form satisfactory to Buyer: (y) not later than the Project Milestone described in Section 2(B) of Exhibit 6, a completed version of Exhibit 14; and (z) within thirty (30) days after the Commercial Operation Date, a revised version of Exhibit 14 reflecting the Facility as built. Supplier shall provide Buyer with copies of the Construction Contract promptly after its execution and any documentation and drawings reasonably requested by Buyer, redacted of any pricing or other proprietary information and any other information Supplier is not permitted to disclose pursuant to a confidentiality agreement, provided that Supplier shall use commercially reasonable efforts to secure in the Construction Contract the ability to disclose the terms of the Construction Contract other than pricing information. The Facility may share substations, gen-tie lines and related shared facilities with another facility or facilities, whether an affiliate of Supplier or not, so long as the applicable shared facilities agreement(s): (i) permit Supplier to perform and satisfy, and do not purport to limit, Supplier's obligations hereunder, (ii) provide for separate metering of the Facility, (iii) include customary non-discriminatory curtailment provisions, and (iv) permit Supplier to cure defaults by other parties under the shared facilities agreement(s). The Facility and its mechanical components, buildings, and infrastructure shall be used solely for the purpose of generating, charging, storing and discharging Energy under this Agreement.
- 8.2 Performance of Project Milestones. Supplier shall complete each Project Milestone specified in Exhibit 6 on or before 1600 hours PPT on the date specified for each Project Milestone listed in Exhibit 6.
- 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 on or before the scheduled date (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, 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.

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. 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, Supplier shall provide Buyer with written notice stating when Supplier believes that the Facility has achieved Commercial Operation, including 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 and the Generating Facility has delivered Net Energy to and at the Delivery Point [and the Storage Facility Metering Point; (b) all of the requirements set forth in Sections 8.1, 8.3 and 17.2, and Exhibits 6 (without regard to timing) and 7 of the Long-Term Renewable Power Purchase Agreement between Supplier and Buyer dated [____], (“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, in each case that are necessary to have prior to the Commercial Operation Date as listed in Exhibit 12, true, correct and complete copies of which are attached (other than confidential or commercial terms which have been redacted); and (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 Storage Contract Capacity.”

8.3.2.2 A certificate addressed to Buyer from a Licensed Professional Engineer under contract to Supplier confirming: (1) the nameplate capacity rating of the Generating Facility at the anticipated time of Commercial Operation in MW AC (“Certified Nameplate Capacity Rating”) and (2) that the Facility is able to generate and deliver electric power reliably in amounts expected by this Agreement and in accordance with all other terms and conditions hereof, including the Storage Operating Procedures; and, (3) performance tests required by Exhibit 7 have been successfully completed; and (4) that the Storage Facility is able to charge, store and discharge energy reliably in amounts sufficient for Supplier to perform its obligations under this Agreement and in accordance with all other terms and conditions hereof, including the Storage Operating Procedures. The Certified Nameplate Capacity Rating must not be less than 270 MW.

8.3.2.3 A certificate addressed to Buyer from a Licensed Professional Engineer under contract to Supplier stating that, all required interconnection tests have been completed and the Facility is physically interconnected with the Transmission System and able to deliver Net 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 as Buyer may reasonably request and in form and substance reasonably satisfactory to Buyer.

8.3.3 Dispute of Commercial Operation. Buyer will have fifteen (15) Business Days after receipt of the certifications required by this Section 8.3 in which to Dispute the Commercial Operation Date by written notice to Supplier. 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 Buyer fails to Dispute the Commercial Operation Date within the fifteen (15) Business Day period, Supplier's certification under Section 8.3.2 will be deemed accepted and the Commercial Operation Date of the Facility will be the date set forth in Supplier's certification. Notwithstanding the foregoing, until twelve (12) months after the Commercial Operation Date, 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, to the extent NVE was not aware of such inaccuracy or the facts evidencing such inaccuracy at the time the certification was made.

8.4 Failure to Achieve Commercial Operation.

8.4.1 In the event Supplier fails to achieve Commercial Operation by the Commercial Operation Deadline and Supplier fails to promptly pay Daily Delay Damages 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 posted as of the date of termination as liquidated damages for Supplier's failure to meet its obligations prior to the Commercial Operation Deadline. Upon Buyer's collection of the Development Security amount required hereunder as of the date of termination 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. 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 the 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 posted as of the date of termination is reasonable as liquidated damages, and is not a penalty.

8.4.2 The limitation of liability under Section 8.4.1 shall not apply unless Buyer has elected to terminate this Agreement and collected the then applicable Development Security amount as provided in Section 8.4.1. Until such time, Buyer shall retain its 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, 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 been accumulated for one hundred and eighty (180) days and Commercial Operation has not been achieved, 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.

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 Regulatory 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 the 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 Nameplate Damages.

8.6.1 If the Certified Nameplate Capacity Rating is less than the Expected Nameplate Capacity Rating, Supplier shall provide Buyer, as Buyer's sole remedy for such shortfall, a onetime payment in an amount equal to (a) the amount obtained by subtracting (i) Certified Nameplate Capacity Rating from (ii) the Expected Nameplate Capacity Rating in MW, multiplied by (b) the Deficit Damages Rate ("Deficit Damages"), provided that in no event shall the Certified Nameplate Capacity Rating be less than 270 MW. Supplier's total liability for Deficit Damages shall not exceed six million dollars (\$6,000,000). Deficit Damages, if any, shall be paid to Buyer within five (5) business days of Buyer's receipt of the certification required in Section 8.3.2.2. Upon payment of Deficit Damages: (i) Exhibit 1 shall be revised to reflect the Certified Nameplate Capacity Rating; and (ii) the

Dispatch Availability Amount, the Maximum Amount and the Yearly PC Amount shall each be adjusted by the ratio of the Certified Nameplate Capacity Rating to the Expected Nameplate Capacity Rating, and Exhibits 13 and 18 shall be revised accordingly.

- 8.6.2 If the Certified Nameplate Capacity Rating is greater than the Expected Nameplate Capacity Rating by greater than two percent (2%), as Buyer's sole remedy, Supplier shall pay Buyer a onetime payment in an amount equal to one half of the Development Security, paid to Buyer within five (5) Business Days of Buyer's receipt of the certification required in Section 8.3.2.2. If Supplier fails to make such payment in a timely manner, Buyer may retain such amount from the Development Security or Operating Security. Supplier shall take all necessary actions, including but not limited to software or hardware solutions, to limit the Certified Nameplate Capacity Rating to the Expected Nameplate Capacity Rating.
- 8.6.3 If the tested Storage Contract Capacity as of the Commercial Operation Date is more than three percent (3%) less than the Expected Storage Contract Capacity, Supplier shall provide Buyer, as Buyer's sole remedy for such shortfall but subject to Section 29.15, a onetime payment in an amount equal to (a) the amount obtained by subtracting (i) the tested Storage Contract Capacity from (ii) ninety-seven percent (97%) of the Expected Storage Contract Capacity in MW, multiplied by (b) the Storage Deficit Damages Rate ("Storage Deficit Damages"), provided that in no event shall the test Storage Contract Capacity be less than 130 MW. Supplier's total liability for Storage Deficit Damages shall not exceed [four hundred seventy-five thousand dollars (\$475,000)]. Storage Deficit Damages, if any, shall be paid to Buyer within five (5) Business Days after Buyer's receipt of Storage Capacity test results. Upon payment of Storage Deficit Damages, Exhibit 1 shall be revised to reflect the tested Storage Contract Capacity.
- 8.7 Modification. Supplier shall not be permitted to make any modification to the Generating Facility that are inconsistent with or in violation of the operating characteristics and limitations set forth on Exhibits 1, 5, 11, 14, 22 and 24 without the prior written consent of the Buyer which may be withheld in Buyer's sole discretion. The above shall not prevent Supplier from performing maintenance and repairs (including replacement of equipment and replacement or augmentation of batteries) to the Facility so long as such maintenance and repairs do not alter the Facility or from making additions to the Project Site as provided in Exhibit 3A. 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 that is not approved by Buyer, 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 the 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.

- 8.8 Operation and Maintenance. Subject to Section 3.5, Supplier, at all times shall install, operate, maintain and repair the Facility in accordance with Good Utility Practice and applicable Laws and to ensure: (a) Supplier is capable of meeting its supply obligations over the Term; (b) the Generating Facility is at all times a Renewable Energy System; and (c) Supplier is at all times in compliance with all requirements of a renewable energy generator set forth in the Renewable Energy Law. 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 Buyer, 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 to the extent it knows about them. Supplier shall cause the Energy to meet the Power Quality Standards at all times, and 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, to the extent not addressed in Exhibit 24 or as they may otherwise agree, 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 "Storage Operating Procedures"); provided that failure to agree on such procedures shall not relieve either of the Parties of its obligations under this Agreement. The initial version of the Storage Operating Procedures is provided in Exhibit 24 and shall be finalized by mutual agreement of the Parties by the date set forth in Milestone 2(A) in Exhibit 6. Notwithstanding anything else contained in this Section 8.8, Buyer may, unilaterally and after providing Supplier with reasonable prior notice, make reasonable changes to the scheduling and outage procedures and requirements in Exhibit 24.

- 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 aspect of the operation of the Facility, 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 proposed sub-operator.

- 8.10 Right to Review. Buyer shall have the right to review during normal business hours the relevant books and records of Supplier as necessary to confirm the accuracy of anything relating to this Agreement. 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 Not Excused Product. An Emergency declared by Supplier will not result in any Excused Product except to the extent the Emergency qualifies as an event of Force Majeure.
- 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

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 Energy by the Transmission Provider or orders by any Electric System Authority.

10.1.1 Curtailments. Without limiting Section 10.1, Buyer shall not be obligated to purchase, receive, pay for, or pay any damages associated with, or incur any liability with respect to, compliance or curtailment of Energy by Supplier made in response to any orders for curtailment provided for in Section 10.1, including in respect of Net Energy (or associated Renewable Energy Benefits) not delivered to the Delivery Point or the Storage Facility Metering Point due to any of the following: (a) the interconnection between the Facility and the Transmission System is disconnected, suspended or interrupted, in whole or in part; (b) the Transmission Provider, Electric System Authority or Market Operator (except for economic reasons) directs a general curtailment, reduction or re-dispatch of generation in the area (which would include the Net Energy), for any reason, even if such curtailment, reduction or re-dispatch directive is carried out by Buyer, which may fulfill such directive by acting in its sole but good faith discretion; (c) if Buyer curtails or otherwise reduces the Net Energy in order to meet its obligations to the Transmission Provider, Electric System Authority or Market Operator (except for economic reasons) to operate within system limitations; (d) the Facility's Energy is not received because the Facility is not fully integrated or synchronized with the Transmission System; or (e) an event of Force Majeure prevents either Party from delivering or receiving Net Energy at the Delivery Point (collectively, the "Curtailed Product").

10.1.2 Curtailed Product. Supplier shall promptly provide Buyer with such information and data as Buyer may request to confirm the amount of the Curtailed Product that was not generated as a result of the curtailment. During any such period of curtailment, Supplier shall not produce Energy (to the extent curtailed by Transmission Provider, unless Supplier has been given a Charging Notice, in which case Supplier may charge the Storage Facility to the extent provided in the Charging Notice, but may not deliver Energy to the Delivery Point) or sell Product to any third party. Curtailed Product shall constitute Excused Product for purposes of calculating a Shortfall or PC Shortfall. Under no circumstance shall the provisions of this Section 10.1.2 apply to a curtailment of the Facility based upon an Emergency with respect to the Facility.

10.2 Dispatchability.

- 10.2.1 Buyer is permitted to schedule Energy deliveries in accordance with Section 14 during any Dispatchable Period.
- 10.2.2 Except as expressly provided in Section 14.2.4 or excused as a result of the reasons described in Section 3.6.6, Supplier shall comply with the schedules provided by Buyer during the Dispatchable Period. Supplier shall calculate the amount of Net Energy not scheduled by Buyer but that could have been generated by Supplier and delivered to Buyer at the Delivery Point or to the Storage Facility Metering Point, which shall be deemed to be (a) the Availability Backcast Amount minus (b) the Dispatched Amount plus Buyer's Charging Energy for the applicable period (such difference being the "Un-Dispatched Amount"). Supplier shall promptly provide Buyer with such information and data as Buyer may request to confirm the Un-Dispatched Amount. Except as provided above, Supplier shall produce Energy solely in accordance with Buyer's schedule and Supplier shall not sell Product to any third party that was not scheduled by Buyer. Un-Dispatched Amount shall constitute Excused Product for purposes of calculating a Shortfall or PC Shortfall. Under no circumstance shall the provisions of this Section 10.2.2 apply to a curtailment of the Facility based upon an Emergency or Transmission Provider Instructions with respect to the Facility.
- 10.3 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 Generating Facility to deliver the Net Energy or 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 January through April and October through December, 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 Delivery Hours and amount (in MW) in which the Energy 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 Delivery Hour each requested outage will begin and conclude, the facilities impacted, the purpose of the requested outage, and any other relevant information. The total combined Delivery Hours of Planned Outages in any Contract Year shall not exceed four percent (4%) of the MWhs comprising the Dispatch Availability Amount for the applicable Contract Year (prorated for the Stub Period, if any) unless otherwise approved by Buyer.

- 11.2.2 Buyer shall promptly review Supplier's proposed schedule of Planned Outages and either require modifications or approve the proposed schedule within thirty (30) days of Buyer's receipt of such schedule. If Buyer requires 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 June, July, August or September; provided that Supplier may schedule short term maintenance outages during off-peak hours (as shown on Exhibit 13A) in such months if necessary due to forced outages or conditions that might imminently result in forced outages consistent with Good Utility Practice, which outages are not considered Planned Outages. Product not delivered to Buyer during periods of Planned Outages, up to the MWh specified, (a) will comprise Excused Product to the extent such Planned Outages are conducted in accordance with the Planned Outage schedule approved by Buyer in accordance with this Article 11, and (b) will not comprise Excused Product to the extent any outage period or MWh exceed that set forth in the Planned Outage schedule approved by Buyer in accordance with this Article 11, or is not approved by Buyer. 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 Instructions 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, 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 or QF 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 temporary or permanent change to the performance, operating characteristics, or major generation components (such as turbines, generators, inverters, solar panels or similar equipment, as applicable) of the Facility. Such notice shall describe any changes, expected or otherwise, to the Expected Nameplate Capacity Rating, generating capability, the rate of production and delivery of Net Energy, Discharging Energy and other Product, interconnection and transmission issues, and any additional information 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 monthly project report, 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; and a discussion of any foreseeable disruptions or delays. 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 the 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) all weather data from any collection device measuring data with respect to the Facility (such as a met tower or similar measurement device); (b) any available site condition reports; (c) all reporting information maintained in the operational log and any other SCADA data from the Facility; and (d) any reports pertaining to the Facility resource and such other data and reports as may be reasonably requested by Buyer and which should be maintained by Supplier in accordance with Good Utility Practice for the relevant technology. 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 generating equipment; (b) the cause (including any root cause analysis undertaken) and remediation undertaken by Supplier with respect to the events listed in (a); (c) the Delivered Amounts for the Stub Period and each Contract Year; and (d) any other significant event or information related to the operation of the Facility or the delivery of Net Energy or other 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 most recent quarterly and annual unaudited financial statements, which financial statements shall be prepared in accordance with generally accepted accounting principles.

12.6 Information to Governmental Authorities. Supplier shall, promptly upon written request from Buyer, provide Buyer with data reasonably available to Supplier related to the construction, operation and maintenance of the Facility (redacted for data that Supplier reasonably determines to be confidential or proprietary)

reasonably required by Buyer or an Affiliate thereof for reports to, and information requests from, any Governmental Authority, or any intervenor or party in any rate case or regulatory proceeding of Buyer or an Affiliate thereof. In addition, Supplier shall provide to Buyer copies of all submittals to a Governmental Authority directed by Buyer pursuant to the previous sentence 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, financial and ownership information reasonably available to Supplier 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, financial and other information reasonably available to Supplier 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 promptly provide to Buyer a copy of any statement, application, report or other document (other than routine correspondence) delivered to or received from any Governmental Authority relating to operation and maintenance of the Facility.
- 12.9 Environmental Information. Supplier shall, promptly upon 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 it is known to Supplier, Supplier shall disclose to Buyer, the extent of any actual or alleged violation of any Environmental Laws arising out of the construction or operation of the Facility, or the actual or alleged presence of Environmental Contamination at the Facility or on the Project Site, or occurrence of any enforcement, legal or regulatory action or proceeding relating to the foregoing.

13. COMMUNICATIONS

- 13.1 Supplier's Operating Representative. At least one of 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 operating 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 T1 lines for purposes of accessing Buyer's metering equipment and for communications with Buyer's operations center; and
- 13.2.3 Equipment to transmit to and receive facsimiles and email from Buyer and the Balancing Authority Area Operator, including cellular telephones.

14. SCHEDULING NOTIFICATION

- 14.1 Availability Notice.
- 14.1.1 No later than 0500 PPT each day or as otherwise specified (or agreed to) by Buyer consistent with Good Utility Practice, Supplier shall deliver to Buyer's Operating Representative an Availability Notice, in accordance with WECC scheduling protocols and deadlines, containing information including Supplier's good faith daily and hourly forecast of the Delivered Amount, Planned Outages, Derating, other outages and similar changes that may affect the Delivered Amount and the availability of Product in the form set forth in Exhibit 8. 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.
- 14.1.2 Supplier shall update the Availability Notice and notify Buyer's Operating Representative as soon as practical after becoming aware of: (a) an expected Derating; (b) an expected increase of Delivered Amount; or (c) reductions to estimated hourly Delivered Amount. The updated Availability Notice shall include Supplier's best estimate of the time

required to resolve the condition(s) that caused the reductions to the estimated hourly Delivered Amount.

14.1.3 The information in any Availability Notice, including the forecasted Delivered Amount, will be Supplier's good faith forecast and will indicate any Delivery Hour for which the Delivered Amount is expected to be less than or greater than the Scheduled Amount.

14.1.4 In the event of a Derating of the Facility, Supplier shall provide: (a) the extent, if any, to which the Derating is attributable to a Planned Outage; (b) the magnitude of the Derating; (c) the Delivery Hours during which the Derating is expected to apply; and (d) the cause of the Derating.

14.2 Scheduling. Buyer does not have the right to schedule the Generating Facility during the Full Requirements Period. Supplier shall deliver Energy and operate the Generating Facility in order to comply with this Section 14.2.

14.2.1 For the Dispatchable Period, the Parties shall schedule energy to be delivered pursuant to this Agreement. All scheduling communications shall be by email or by telephone with an email confirmation. Buyer shall submit to Supplier each day's hourly energy preschedule by the earlier of 0700 PPT or 30 minutes prior to the prescheduling deadline on each WECC prescheduling day, which shall provide notice of Buyer's intent to schedule energy for the following day or days consistent with the then-current WECC prescheduling calendar ("Scheduled Amount"). Supplier shall electronically confirm the preschedule with Buyer by 0730 PPT on each WECC prescheduling day.

14.2.2 Buyer shall have the right to change the Scheduled Amount on an intraday basis ("Intraday Schedule Change") only if Buyer has provided at least one (1) hour's notice prior to the delivery hour; provided, however, that Supplier shall make commercially reasonable efforts to accommodate Intraday Schedule Changes upon less notice.

14.2.3 During the Full Requirements Period, Buyer shall not, and shall not be obligated to, submit a schedule and Supplier shall deliver Full Requirements Period Product in accordance with Exhibit 13A and B.

14.2.4 Except as set forth in Section 14.3.2, during the months of June, July and August, Buyer's schedule may be limited by the amount of Charging Energy required by Supplier to meet Supplier's obligations during the Full Requirements Period. In such event, Buyer's schedules during any Dispatchable Period may be limited as set forth in any applicable Availability Notice.

14.3 Storage Facility Scheduling.

- 14.3.1 Subject to Section 14.3.2, during the Dispatchable Period (except for the months of June, July and August), Buyer has the exclusive right to schedule or designate the Storage Facility to deliver the Storage Product to Buyer and/or accept Charging Energy, in accordance with the Storage 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, in accordance with Exhibit 1, unless the Storage Facility is, in whole or in part, incapable of operations due to forced outage, Force Majeure, Transmission Provider Instructions, an Emergency or a Planned Outage. During the Dispatchable Period (except for the months of June, July and August), Supplier shall operate the Storage Facility to charge or discharge the Storage Facility in accordance with Buyer's instruction pursuant to Section 3.4.8. During the Dispatchable Period (except for the months of June, July and August), Supplier shall not dispatch and operate the Storage Facility other than pursuant to an instruction by Buyer pursuant to Section 3.4.8.
- 14.3.2 Notwithstanding anything in this Agreement to the contrary, during the months of June, July and August of the Dispatchable Period, Buyer has the right to schedule Discharging Energy from the Storage Facility to be delivered during the Dispatchable Period, which will be paid for at the Dispatchable Period Product Rate. If, on any day that Buyer has exercised its right to schedule Discharging Energy pursuant to this Section 14.3.2, the Delivered Amounts during the Full Requirements Period on such day are less than the total amount of Net Energy Supplier had scheduled to deliver during the Full Requirements Period on such day, Supplier will be deemed to have delivered the full amount of Net Energy it had scheduled to deliver during the Full Requirements Period on such day and (a) shall be paid for the greater of all such deemed delivered Net Energy or the Net Energy actually delivered during such Full Requirements Period at the Full Requirements Period Product Rate, as provided in Section 4.1.2.4, and (b) shall be deemed to have delivered the greater of all such deemed delivered Net Energy or the actually delivered Net Energy during such Full Requirements Period for purposes of calculating the Full Requirements Capacity Shortfall pursuant to Section 3.6.4. In addition, if Buyer's exercise of its right to schedule Discharging Energy pursuant to this Section 14.3.2 results in the Storage Facility going through more than one full cycle on such day, the number of cycles available to Buyer under Section V of Exhibit 24 will be reduced by the number of excess cycles used in connection with Buyer's exercise of its right under this Section 14.3.2. The amount of Energy so discharged will not be considered a shortfall for the Full Requirements Period, and Buyer shall pay Supplier the Full Requirements Period Product Rate for the Energy so discharged during the Full Requirements Period. Supplier has no obligation to charge the Storage Facility to satisfy Buyer's Discharging Notice.

14.3.3 Storage Product will not serve Station Usage. Supplier shall obtain retail service from its load serving entity for Station Usage. Supplier shall separately meter Station Usage from the Storage Facility with a Meter for Station Usage. Supplier will design, construct and operate the Storage Facility such that (a) no Station Usage is measured and served via a Meter for the Delivered Amount and (b) Storage Product does not serve Station Usage.

15. COMPLIANCE

- 15.1 Laws. Subject to Section 3.5, each Party shall comply with all relevant Laws in connection with the performance of its obligations under this Agreement. Supplier shall comply with all Laws to ensure that, the Generating Facility is at all times a Renewable Energy System and Supplier is at all times in compliance with all requirements of a renewable energy generator as set forth in the Renewable Energy Law, and 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. Supplier shall be responsible for any costs associated with the Clean Power Plan, including for obtaining, at its sole cost, any allowances that may be required under applicable Law pertaining to the Clean Power Plan, in a quantity or amount sufficient to support Supplier's obligations set forth in 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 Interconnection Agreement. Supplier shall operate the Facility in accordance with the IA and to the extent there is a conflict between this Agreement and the IA, the IA shall prevail.

16. APPROVALS

- 16.1 Condition Precedent. Notwithstanding any provision to the contrary contained in this Agreement, each Party's performance of its respective obligations under Articles 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 17, of this Agreement is subject to Buyer obtaining the PUCN Approval described in Section 16.2 before the PUCN Approval Deadline and in form and substance satisfactory to Buyer in its sole discretion.
- 16.2 PUCN Approval. Within one hundred twenty (120) 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") consisting of:

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 Product under this Agreement are prudently incurred and that the Buyer may recover all just and reasonable costs of Product purchased under this Agreement.

Buyer will notify Supplier promptly after PUCN Approval is obtained or if the PUCN declines to 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 [reserved]

16.5 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; (b) a cash deposit, in either case, in an amount equal to ten million eight hundred seventy-five thousand dollars (\$10,875,000) or (c) a Guaranty substantially in the form of Exhibit 20 if the guarantor has at least the Minimum Credit Rating or otherwise meets Buyer’s minimum credit requirements as

determined by Buyer in its sole and absolute discretion (the “Development Security”). The Development Security shall be posted within five (5) Business Days after the Effective Date. Following the PUCN Approval Date, the Development Security shall increase to an amount equal to thirty million four hundred fifty thousand dollars (\$30,450,000). The revised Development Security shall be posted within five (5) 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 (except as otherwise provided herein) available to Buyer under Article 24; (ii) 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; (iii) if Supplier fails to make any payments owing under this Agreement after expiration of applicable notice and cure periods; or (iv) if Supplier fails to reimburse Buyer for costs, including Replacement Costs, PC Replacement Costs and Regulatory Penalties, that Buyer has incurred or may incur 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 three (3) Business Days of the drawing. 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, or if this Agreement is terminated prior to the Commercial Operation Date for reasons other than an Event of Default by Supplier, the Development Security shall be released to Supplier upon the earlier of (x) termination of this Agreement in accordance with its terms or (y) on the fifteenth (15th) 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 (b) a cash deposit, in each of (a) and (b), in an amount equal to twenty six million, three hundred eighty-seven thousand, nine hundred dollars (\$26,387,900); or (c) a Guaranty substantially in the form of Exhibit 20 if the guarantor has at least the Minimum Credit Rating or otherwise meets Buyer’s minimum credit requirements as determined by Buyer in its sole and absolute discretion (the “Operating Security”). The Operating Security shall be posted 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 make any payments owing under this Agreement; or (3) if Supplier fails to reimburse Buyer for costs, including Replacement Costs, PC Replacement Costs and Regulatory Penalties that Buyer has incurred or may incur as a result of Supplier’s failure to perform its obligations under this Agreement. 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 three (3) Business Days. In the event that no amounts are due and owing by Supplier to Buyer under this Agreement, the Operating Security shall be released to Supplier upon the fifteenth (15th) Business Day after the earlier of (x) termination of this Agreement in accordance with its terms or (y) the expiration of the Term.

- 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; (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 as Development Security or Operating Security, as applicable, (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 five (5) 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, Standard & Poor's, Moody's or another nationally recognized firm downgrades the Credit Rating of the financial institution issuing a letter of credit pursuant to this Agreement to below that required of a Qualified Financial Institution, then Supplier shall: (a) provide Buyer with written notice of such downgrade within two (2) 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 five (5) 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 five (5) 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 guarantor providing a guaranty pursuant to Sections 17.1 or 17.2 fails to have at least the Minimum Credit Rating or otherwise meet Buyer's minimum credit requirements as determined by Buyer in its sole and absolute discretion, then Buyer shall notify Supplier in writing and Supplier shall cause a letter of credit 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 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 property of Supplier, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (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 obligations under the Agreement (Supplier remaining liable for any amounts owing to Buyer after such application), subject to the 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.

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, negligence or non-performance of its obligations 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, except for Replacement Costs, PC Replacement Costs or payment made by either Party to satisfy Regulatory Penalties or payments owing under Sections 3.4.10, 3.6, 3.7, 8.4.1, 8.5, 8.6, 15.1, 17.1, 17.2 and 18.1 (with respect to third parties only), 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). In addition, this limitation on damages shall not apply with respect to claims brought by third parties for which a Party is entitled to indemnification under this Agreement.

19.3 Pre-Commercial Operation Date Liability. Notwithstanding anything herein to the contrary, Supplier's liability under this Agreement with respect to any obligations to be performed prior to the Commercial Operation Date, including the obligation to achieve the Commercial Operation Date, shall not in any event exceed the amount of the Development Security posted as of the date of the exercise of Buyer's

step-in-rights under Section 24.6.1 or termination of this Agreement, as applicable, plus the amount of Daily Delay Damages, if any, payable but unpaid hereunder as of such date; provided that the foregoing shall not limit Supplier's obligations under a Section 24.6.1.

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

20. FORCE MAJEURE

- 20.1 Excuse. Subject to Section 20.4, neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations under this Agreement (including any obligation to deliver or accept Product) if such delay or failure is due to an event of Force Majeure.

- 20.2 Definition. "Force Majeure" or "an event of Force Majeure" means an event that: (a) is not reasonably anticipated to specifically occur with respect to the Facility as of the Effective Date (i.e. excluding general events, such as major weather events or fires); (b) is not within the reasonable control of the Party affected by the event; (c) is not the result of the affected Party's negligence or failure to act; and (d) could not be overcome by the affected Party's use of due diligence in the circumstances. 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 tornados, hurricanes, earthquake or lightning; civil disturbance; sabotage; strikes not attributable to Supplier's actions; lock-outs not attributable to Supplier's actions; work stoppages not attributable to Supplier's actions; 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).

- 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;

20.3.2 The non-availability or reduced availability of the resource supply to generate electricity from the Generating Facility, including due to weather, high or low temperatures or climate conditions, except for acts of God;

20.3.3 A Party's failure to obtain 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 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 a Force Majeure event;
 - 20.3.7 Supplier's ability to sell, or Buyer's ability to purchase energy, PCs (and equivalent rights in any other jurisdiction), Renewable Energy Benefits, or Capacity Rights at a more advantageous price than is provided hereunder;
 - 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;
 - 20.3.9 Delay or failure of Supplier to obtain or perform any Required Facility Document unless due to a Force Majeure event;
 - 20.3.10 Any delay, alleged breach of contract, or failure by the Transmission Provider unless due to a Force Majeure event;
 - 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 event of Force Majeure); or
 - 20.3.12 The increased cost of electricity, equipment, steel, labor, or transportation.
- 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:
- 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 two (2) Business Days following Supplier knowing 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 assigned by either Party, including by operation of Law, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment of this Agreement in violation of the foregoing shall be, at the option of the non-assigning Party, void.

- 23.1 Buyer Assignment. Buyer may, without the consent of Supplier, assign this Agreement or assign or delegate its rights and obligations under this Agreement, in whole or, in the case of an assignment described in clause (a), in part, if such assignment or delegation is made to: (a) Nevada Power Company; (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 that meets the Minimum Credit Rating or provides credit assurance or a guarantee from a party that meets the Minimum Credit Rating; (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, in each case reasonably acceptable to Supplier; (e) a Person (other than a natural person) whose Credit Rating, as published by either Relevant Rating Agency, is equal or superior to the Minimum Credit Rating as of the time of assignment, so long as there is no material adverse effect on Supplier as a result of such assignment; or (f) a Person (other than a natural person) as otherwise required by Law. Buyer shall provide Supplier with written notice of any assignment pursuant to this Section 23.1.
- 23.2 Supplier Assignment. Supplier may, without the consent of Buyer (and without relieving itself from liability hereunder), transfer or assign, or permit the transfer and assignment of, this Agreement or a Controlling Interest in Supplier to any of Supplier's Affiliates or this Agreement to any of Supplier's Affiliates in connection with a transfer of the Facility to such Affiliate so long as Buyer retains its rights under the ROFO in Article 6 and the purposes of the ROFO are not frustrated by such a transfer or assignment; provided that Supplier provides Buyer prior notice of any such transfer or 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 Operational Security, as applicable, is maintained without change due to such transfer or assignment or is replaced with Development Security or

Operational 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 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 transfer or assignment of this Agreement by Supplier to an Affiliate pursuant to this Section 23.2, together with information supporting the permissible nature of the transfer or 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 transfer or assignment.

- 23.3 Liability After Assignment. A Party's assignment or transfer of rights or obligations pursuant to this Article 23 (other than Section 23.2) of this Agreement shall relieve such Party from any liability and financial responsibility for the performance thereof arising after any such transfer or 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 or transferring Party's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement.
- 23.4 Transfers of Ownership. Subject to the provisions of Article 6, Supplier shall not sell, transfer, assign or otherwise dispose of its ownership interest in the Facility to any third party absent: (a) a transfer of this Agreement to such third party; (b) Supplier entering into an assignment and assumption agreement, in form and substance satisfactory to Buyer, with such third party pursuant to which such third party assumes all of Supplier's obligations hereunder and otherwise agrees to be bound by the terms of this Agreement; and (c) either (i) Buyer's prior written approval, not to be unreasonably withheld, of such third party; or (ii) such third party being a Qualified Transferee. This Section 23.4 shall not apply or restrict any sale, transfer, assignment or disposal of the Facility in accordance with the provisions of Section 23.2. This Section 23.4 shall also not apply to any transfer that complies with the ROFO provisions of Section 6.1, provided that such transfer is to a Qualified Transferee.
- 23.5 Controlling Interest. Subject to the provisions of Article 6, no Controlling Interest in Supplier may be directly or indirectly sold, transferred or assigned (whether through a single transaction or a series of transactions over time) 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 sale, transfer or assignment of a Controlling Interest in Supplier (a) in accordance with the provisions of Section 23.2, (b) that complies with the ROFO provisions of Section 6.1, provided that such transfer is to a Qualified Transferee, (c) that is a Supplier's Lenders Transaction (as such term is defined in Section 6.1.1), or (d) that is a direct or indirect change in the equity ownership of Supplier (whether through a single transaction or a series of transactions over time) arising out of the direct or indirect change in the equity ownership of a Person that directly or indirectly owns equity

interests in Supplier and also directly or indirectly owns assets other than the Facility or equity interests in any entity(ies) other than Supplier.

- 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 sell, transfer or otherwise dispose of 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 in the form and substance of the Lender's Consent in Exhibit 19, including such revisions as may be reasonably requested by Supplier's Lenders. From time to time, at Supplier's request and sole cost and expense, Buyer will execute and deliver estoppel certificates reasonably requested by Supplier's Lenders.

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 in the case of Supplier, its failure at any time to qualify and maintain, subject to Section 3.5, the Generating Facility as a Renewable Energy System;
- 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, unless excused by an event of Force Majeure, its failure to timely achieve: (a) any of the Critical Project Milestones (excluding Commercial Operation) before the scheduled date set forth in Exhibit 6; and (b) Commercial Operation 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 termination event has occurred pursuant to Section 3.6.2.4.
- 24.1.8 In the case of Supplier, a termination event has occurred pursuant to Section 3.6.2.5.
- 24.1.9 In the case of Supplier, a termination event has occurred pursuant to Section 3.6.4.3.
- 24.1.10 in the case of Supplier, its failure to comply with the provisions of Section 17 (including any replenishment requirement);
- 24.1.11 in the case of Supplier, its failure to comply with the provisions of Section 23;
- 24.1.12 in the case of Supplier, its failure to comply with the provisions of Section 27;
- 24.1.13 if Supplier or a Non-Affiliated Buyer Assignee (a) becomes insolvent, files for or is forced into bankruptcy (and in the case of an involuntary bankruptcy, such proceeding is not dismissed within thirty (30) 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 thirty (30) days); and
- 24.1.14 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, or an event of Force Majeure; and

24.1.15 in the case of Supplier, if: (a) the Storage Capacity Test results in a Storage Capacity that is less than or equal to ninety percent (90%) of the Storage Contract Capacity of the Storage Facility for at least two (2) consecutive Contract Years; or (b) except as a result of the loss of a generation step up transformer for which this performance standard will be suspended until such time as such step up transformer is replaced, the Monthly Storage Availability is less than or equal to seventy-five percent (75%) for at least three (3) consecutive calendar months during the Dispatchable Period or any six (6) calendar months during the Dispatchable Period for two (2) consecutive Contract Years.

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 seeking to maximize the price for Product received by Supplier from third parties, including (if appropriate at the time) entering into an enabling agreement with one or more power marketers of nationally recognized standing to market such Product not purchased or accepted by Buyer during a period Buyer is a Defaulting Party and Supplier is entitled to sell such 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 or 24.1.10 for which there is no cure period, an Event of Default shall not be deemed to have occurred under Section 24.1, unless and until the Defaulting Party shall: (a) for purposes of Section 24.1.2, 24.1.7, 24.1.8, 24.1.9, 24.1.11 and 24.1.12, had 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, 24.1.11 or 24.1.12 which are addressed above), had 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) Supplier 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 electric generation 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 Product. If Buyer terminates this Agreement in accordance with Section 2.3.1 due to a Supplier Event of Default, then neither Supplier nor Supplier's Affiliates may sell, or enter into a contract to sell, Net Energy or any Product generated by, associated with or attributable to a generating facility that from time to time may be constructed by Supplier or any Affiliate of Supplier on the Project Site installed at the Project Site to a party other than Buyer for a period of three (3) years following the effective date of such termination ("Restricted Period"). The foregoing prohibition on contracting and sale will not apply if, before entering into such contract or making a sale to a party other than Buyer, Supplier or Supplier's Affiliate provides Buyer with a written offer to sell the Net Energy or any Product to Buyer at the rate set forth in this Agreement and otherwise on terms and conditions materially similar to the terms and conditions set forth in this Agreement and Buyer fails to accept such offer within (A) forty-five (45) days after Buyer's receipt of such offer if this Agreement had originally been terminated by Buyer after the commencement of construction of the Facility, and (B) one hundred twenty (120) days after Buyer's receipt of such offer if this Agreement had originally been terminated by Buyer prior to the commencement of construction of the Facility. If Buyer elects to purchase such Product, then 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 their land rights or interests in the Project Site (including the interconnection queue position) during the Restricted Period 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 pursuant to a written agreement approved by Buyer. Notwithstanding the above prohibition on a sale of transfer, this prohibition will not prevent the sale by Supplier or Supplier's Affiliates of their interests in the Project Site to a third party if an independent engineer provides a notarized certification to

the fact that a solar facility cannot be developed on the Project Site. Buyer shall be permitted to file a notice of the rights contained in this Section 24.5.1 with respect to the Supplier's and Supplier's Affiliates' interests in 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 (A) Supplier commits an Event of Default pursuant to Section 24.1.6(b), all applicable Cure Periods have expired, and this Agreement has not been terminated by Buyer, then without limiting its other rights and remedies hereunder, and (B) all applicable cure rights, extended cure periods and rights to pursue remedies, including foreclosure, under the consent to assignment among Buyer, Supplier and Supplier's Lenders, have expired, 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 Commercial Operation, 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 (subject to the proviso at the end of this Section 24.6.1) indemnify and release Buyer from all claims arising out of Buyer's exercise of its rights pursuant to this Section 24.6; or (b) if and for so long as Supplier refuses to execute such indemnity and release agreement or reimburse Buyer in accordance with 24.6.2: (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; provided that, notwithstanding the foregoing or any such release and indemnity, Buyer shall be responsible for and indemnify, defend, and hold harmless Supplier and its Affiliates from and against all Losses arising out of, relating to, or resulting from Buyer's negligence or willful misconduct in exercising Buyer's rights under this Section 24.6.

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 for the periods authorized under Section 24.6.1. Buyer shall not be required to return possession of the Facility to Supplier unless Supplier reimburses Buyer for all costs reasonably incurred by Buyer to construct, operate and maintain the Facility through the date possession is returned. During any period in which Buyer constructs, operates or maintains the Facility pursuant to the license granted in this Section 24.6.2, Buyer will continue to make payments in accordance

with the terms of this Agreement for Product delivered during such period. If, after Buyer completes construction of the Facility, Supplier does not reimburse Buyer for its costs reasonably incurred to construct, operate and maintain the Facility, but Buyer nevertheless returns the Facility to Supplier, Buyer may net payment for Product with Buyer's reasonable costs reasonably incurred to construct, operate and maintain the Facility, including carrying costs, until repaid in full. During the time Buyer is exercising its rights pursuant to this Section 24.6, it shall conduct all of its activities in accordance with Good Utility Practice and all applicable Laws and reliability criteria.

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. All such information shall be deemed confidential information and shall not be disclosed by Buyer without Supplier's prior written consent, except as required by Law or court order, and except for disclosures required to the PUCN or PUCN Staff, all subject to customary protective orders or appropriate confidentiality protections. Buyer and Supplier shall cooperate in executing such further confidentiality agreements with third-party suppliers as may be reasonably required to enable disclosure of documents, records and information without breaching Supplier's contracts with or legal obligations to such third parties. Subject to the provisions of this Section 24.6, 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, subject to Good Utility Practice and all applicable Laws, and 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. Except for payments and costs which are to be paid by Buyer under this Section 24.6, 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 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 25.8 and 25.10 through 25.12, and covenants with Buyer as set forth in Sections 25.13 through 25.15:

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 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 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 Net 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 Product provided for in this Agreement.
- 25.8 Required Facility Documents. All Required Facility Documents are listed on Exhibit 12. Pursuant to the Required Facility Documents, Supplier 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 in force for as long as required during 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 has applied or will apply for or has received the Governmental Approvals listed in Exhibits 10 and 12, and, as of the Effective Date, no other Governmental Approvals are required by Supplier 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 Certification. Subject to Section 3.5, the Generating Facility qualifies as a Renewable Energy System and Supplier has been and is in compliance with all requirements set forth in the Renewable Energy Law.
- 25.12 Title. Supplier will own all Product attributable to the Facility and has the right to sell such Product to Buyer. Supplier will convey good title to the Product to Buyer 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 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 January 5, 2018. To the extent the Facility uses equipment types listed on Exhibit 23, Supplier shall construct the Facility using only such equipment manufactured by the vendors, subcontractors and equipment suppliers listed on Exhibit 23.
- 25.14 Work Site Agreement. Supplier shall enter into a work site agreement, memorandum of understanding, or similar document in the form attached hereto as Exhibit 21.
- 25.15 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. 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 25.15 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 of the Effective Date as follows and covenants to Supplier that such representations and warranties will be true and correct for so long as this Agreement is in force and effect:

- 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 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. 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 or an S&P Global 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 no non-renewal of the policy shall be effective until thirty (30) days from the date of notice, no cancellation of the policy shall 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 reduction, 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. Within thirty (30) days of 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 (ten (10) days in the case of cancellation for non-payment of premiums) prior notice of cancellation of a policy and at least thirty (30) days prior written notice of non-renewal of a policy.
- 27.4 Certified Copies of Insurance Policies. At Buyer's request, in addition to the foregoing certificates of insurance, Supplier shall deliver to Buyer a copy of each insurance policy, certified as a true and complete copy by an authorized representative of the issuing insurance company.
- 27.5 Inspection of Insurance Policies. Buyer shall have the right to inspect the original policies of insurance applicable to this Agreement at Supplier's place of business during regular business hours.
- 27.6 Supplier's Minimum Insurance Requirements.
- 27.6.1 Worker's Compensation. If applicable, 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 (\$1,000,000.00) per each bodily injury by accident; (b) one million dollars (\$1,000,000.00) per each employee bodily injury by occupational disease; and (c) one million dollars (\$1,000,000.00) in the annual aggregate per each bodily injury by occupational disease.
- 27.6.2 General Liability. General liability insurance including bodily injury, property damage, products/completed operations, contractual and personal injury liability with a limit of liability of at least five million dollars (\$5,000,000) per occurrence and at least five million dollars (\$5,000,000) annual aggregate.
- 27.6.3 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 least 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 insurance policy.

27.6.4 Excess Liability. Excess liability insurance with a minimum limit of \$5 million ("Excess Minimum") for each occurrence and an 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.

27.6.5 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, which shall not be unreasonably withheld, 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, so long as such advertisements, brochures and announcements do not include pricing or other proprietary or confidential information. Supplier may disclose this Agreement and information regarding the Facility to its Affiliates and to its and its Affiliates' members, officers, directors, employees, attorneys, agents, representatives and 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. 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), overnight 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), overnight 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 overnight 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 3.5 (Renewable Energy System), 3.6 (Shortfall; Replacement Costs), 3.7 (PC Shortfall; PC Replacement Costs), 8.4 (Failure to Achieve Commercial Operation), 8.5 (Delay Damages), 8.6 (Nameplate Damages) and 8.7 (Modification)), such express remedy or measure of damages will be the sole 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.

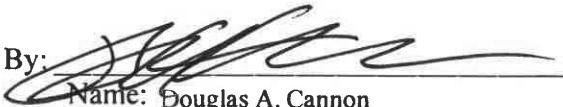
- 29.14 No Third-Party Beneficiaries. Nothing in this Agreement nor any action taken hereunder shall be construed to create any duty, liability or standard of care to any third party, no third party shall have any rights or interest, direct or indirect, in this Agreement or the services to be provided 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 certain material obligations 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 fixed amounts for performance obligations in Sections 3.4.10, 3.6, 3.7, 8.4, 8.5 and 8.6, it will not assert as a defense to Buyer's action for specific performance of, or injunctive relief relating to, Buyer's obligations hereunder that the amounts payable or paid by Supplier in respect of liquidated damages constitute an adequate remedy for the breach of such obligation, and Supplier hereby conclusively waives such defense; provided, however, that Supplier retains all other defenses to specific enforcement or injunctive relief it may have. 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.

[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: Douglas A. Cannon
Title: President & CEO

SUPPLIER:

300MS 8ME LLC


By: 
Name: Thomas Buttgenbach
Title: President

EXHIBIT 1

DESCRIPTION OF FACILITY

1. Name of Generating Facility: Southern Bighorn Solar Farm
 - (a) Location: Moapa River Indian Reservation; Clark County; NV
 - (b) Delivery Point: Reid Gardner Substation 230 kV bus
2. Supplier: 300MS 8me LLC
3. Parent: 8minutenergy LLC
4. Operator: To be determined in accordance with Exhibit 15
5. Equipment:
 - (a) Type of Generating Facility: Photovoltaic Solar
 - (b) Installed Capacity:
 - (i) Total capacity: PV capacity up to 429 MVA AC
 - (ii) Expected Nameplate Capacity Rating: Facility Capacity of 300 MW AC at the Point of Delivery @ +/- 0.95, subject to the provisions of Section 3.4.5
 - (iii) Total gross output capacity: PV capacity up to 390 MW AC
 - (iv) Total capacity net of Station Usage: 300 MW AC at Point of Delivery
 - (v) Full Requirements Period Capacity Factor: 65%
 - (c) Additional Technology Specific Information, if any:
6. Operating Characteristics of Generating Facility:
 - (a) VAR, leading: 98.6 MVAR at Point of Delivery
 - (b) VAR, lagging (-): 98.6 MVAR at Point of Delivery
 - (c) Controlled Ramp Rate (MW/minute): 300 MW/minute maximum with expected 30 MW/minute operation
 - (d) Minimum Operating Capacity (MW): 0 MW
 - (e) Power Factor: +/- 0.95 at the Point of Delivery, subject to the provisions of Section 3.4.5
 - (i) Buyer can control Ramp Rate via SCADA to between 30-300 MW/minute
 - (ii) Ramp Rate is only controllable within the limitations of available solar PV generation at any given time and subject to local weather conditions
 - (iii) control regulation accuracy is reduced at ramp rates faster than 30 MW/minute and may require more than 12 seconds to reach the setpoint at no penalty to the Supplier or Facility.
7. Type of Storage Facility: lithium-ion battery

EXHIBIT 1

DESCRIPTION OF FACILITY

8. Operating Characteristics of Storage Facility:

Power at the POI is limited by site controller to 300 MW regardless of power generation (from inverters or batteries). The Storage Facility shall allow for 365 Equivalent Cycles per year, each Contract Year. Storage Facility used to maintain generation output to maximum levels as long as possible throughout the day.

- (a) Contracted charge capacity [MW AC]: at least 135 MW as may be adjusted consistent with PPA section 8.6.3
- (b) Contracted discharge capacity at Point of Delivery [MW AC]: at least 135 MW as may be adjusted consistent with PPA section 8.6.3
- (c) Contracted storage capacity at Point of Delivery [MWh]: 540 MWh or four (4) times the Contracted Discharge capacity at Point of Delivery
- (d) Round trip efficiency: approximately 85-90% RTE
- (e) Degradation by contract year [%]: battery augmentation and Storage Facility maintenance result in 0% degradation per year at the Point of Delivery
- (f) Capacity augmentation by contract year [%]: as necessary to maintain charge capacity, discharge capacity at Point of Delivery and storage capacity at Point of Delivery

EXHIBIT 2A

PRODUCT RATES

DISPATCHABLE PERIOD PRODUCT RATE

The Dispatchable Period Product Rate shall be \$22.32 per MWh.

.

FULL REQUIREMENTS PERIOD PRODUCT RATE

The Full Requirements Period Product Rate during the Full Requirements Period shall be 6.5 times the Initial Dispatchable Product Rate or the Dispatchable Product Rate for the applicable period (the “Full Requirements Period Product Rate”) as represented below.

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Jan	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Feb	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Mar	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Apr	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
May	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Jun	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	6.5x	6.5x	6.5x	6.5x	6.5x	x	x	x
Jul	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	6.5x	6.5x	6.5x	6.5x	6.5x	x	x	x
Aug	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	6.5x	6.5x	6.5x	6.5x	6.5x	x	x	x
Sep	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Oct	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Nov	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
Dec	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x

EXHIBIT 2B

FORM OF MONTHLY ENERGY INVOICE

Supplier Letterhead

Facility: _____ **Date:** _____
Facility ID: _____ **Billing Period:** _____
Invoice Number: _____

CURRENT MONTHLY BILLING DATA INPUT

Pricing	\$/MWh
Dispatchable Period Product Rate	_____
Full Requirements Period Product Rate	_____
Provisional Product Rate	_____
Test Product Rate	_____

Monthly Supply Amount (kWh)	On-Peak
Supply Amount	_____

Excused Product

Planned Outages	_____
Force Majeure	_____
Emergencies (as applicable)	_____
Curtailed Product	_____
Un-Dispatched Amount	_____
Transmission Provider Instructions	_____
Buyer's Failure to Accept Net Energy	_____

Total Excused Product	_____
------------------------------	-------

Delivered Amount (kWh)	On-Peak	Off-Peak
Dispatchable Period – Net Energy	_____	_____
Full Requirements Period – Net Energy	_____	_____
Total Delivered Amount	_____	_____

Storage Pricing	\$/MW
Storage Product Rate	_____

CURRENT MONTHLY INVOICE CALCULATION

	Net Energy		Rate/kWh		Amount
a. Dispatchable Period Product ¹	_____	x	_____	=	\$ _____
b. Full Requirements Product	_____	x	_____	=	\$ _____
c. Reserved					
d. Un-Dispatched Amount	_____	x	_____	=	\$ _____
e. Provisional Energy	_____	x	_____	=	\$ _____
f. Test Energy	_____	x	_____	=	\$ _____
g. Shortfall/Replacement Cost (from page 2B-2)					\$ _____
h. Storage Product (MW)	_____	x	_____	=	\$ _____
i. Total Product Payment (a+b+c+d+e+f+g+h)					\$ _____

¹ Excluding Provisional Energy and Test Energy

EXHIBIT 2B

FORM OF MONTHLY ENERGY INVOICE

j. Adjustments (+/-) \$ _____

TOTAL AMOUNT DUE (i + j) \$ _____

PAYMENT DUE DATE NO LATER THAN: _____

EXHIBIT 2B

FORM OF MONTHLY ENERGY INVOICE

REPLACEMENT COST CALCULATION – For Billing Period: _____

Full Requirements Period

a. Full Requirements Period Product _____ kWh
b. Excused Product _____ kWh
c. Difference (a – b) _____ kWh
d. 98% of Difference (0.98 * c) _____ kWh
e. Delivered Amount _____ kWh

Shortfall (Y/N)? _____

f. Shortfall Amount (max d – e or zero) _____ kWh

Replacement Cost Calculation

g. Average Market Price _____ \$/MWh
h. Full Requirements Period Product Rate _____ \$/MWh
i. Difference (max g – h or zero) _____ \$/MWh

j. Replacement Cost (f * i) \$ _____

REPLACEMENT COST CALCULATION – For Billing Period: _____

Dispatchable Period

k. Dispatchable Period Product _____ kWh
l. Excused Product _____ kWh
m. Difference (l – m) _____ kWh
n. 90% of Difference (0.90 * n) _____ kWh

o. Delivered Amount _____ kWh

p. Shortfall (Y/N)? _____

q. Shortfall Amount (max o – p or zero) _____ kWh

Replacement Cost Calculation

r. Average Dispatchable Mead _____ \$/MWh
s. Dispatchable Period Product Rate _____ \$/MWh
t. Difference (max r – s or zero) _____ \$/MWh

u. Replacement Cost (q * t) \$ _____

EXHIBIT 2B

FORM OF MONTHLY ENERGY INVOICE DETAIL

Date	Hour Ending	On- Peak/ Off- Peak	Supply Amount	Total Delivered Amount	Base Product Amount	Product Rate	Full Requirements Period Delivered Amount	Un-Dispatched Amount	Base Product Cost	Excess Energy	Maximum Amount Energy	Excused Product	Reason for Excused Product
	0100												
	0200												
	0300												
	0400												
	0500												
	0600												
	0700												
	0800												
	0900												
	1000												
	1100												
	1200												
	1300												
	1400												
	1500												
	1600												
	1700												
	1800												
	1900												
	2000												
	2100												
	2200												
	2300												
	2400												
	Total On-Peak:												
	Total Off-Peak:												
	TOTAL:												

EXHIBIT 2C

FORM OF PC REPLACEMENT INVOICE

Buyer Letterhead

Facility: _____
Facility ID: _____

Date: _____
Contract Year(s): _____
Invoice Number: _____
Payment Due Date: _____

Contract Year Data

PCs

a. Yearly PC Amount

b. Delivered PCs

PCs associated with Excused Product

c. Planned Outage

d. Force Majeure

e. Emergencies (as applicable)

f. Curtailed Product

g. Un-Dispatched Amount

h. Excused Product (c + d + e + f + g)

i. PC Shortfall Amount (a – b – h)

PC REPLACEMENT CALCULATION

j. PC Replacement Rate

\$ _____

k. PC REPLACEMENT COSTS (i * j)

\$ _____

EXHIBIT 3A

DESCRIPTION OF PROJECT SITE

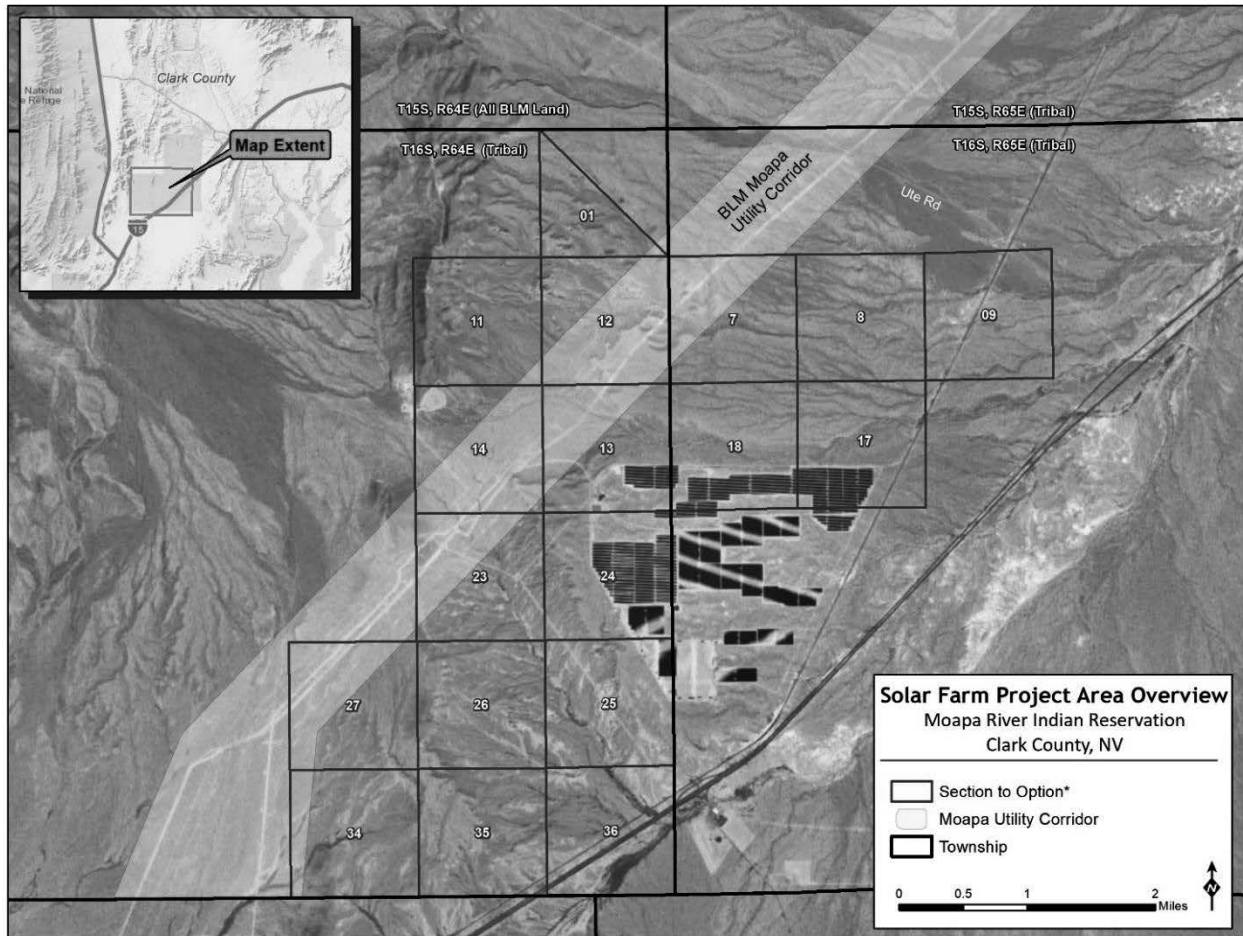
Portions of Sections 1, 11, 12, 14, 23, 24, 25, 26, 27, 34, 35, and 36, Township 16S, Range 64E, Mount Diablo Base and Meridian.

Supplier shall have the one-time right, exercisable at any time prior to achieving Project Milestone 2(G), to revise the description of the Project Site by adding some or all of the land described below, so long as Supplier demonstrates to Buyer's reasonable satisfaction that it has control of such land and gives Buyer not less than thirty (30) days notice to perform due diligence on and approve such additional land, such approval not to be unreasonably delayed or withheld. Buyer shall respond with its approval or rejection of the proposed change in the Project Site (including, if a rejection, the reasons therefor) no later than thirty (30) days after delivery of Supplier's notice.

Portions of Section 13, , Township 16S, Range 64E, Mount Diablo Base and Meridian and Sections 7, 8, 9, 17, and 18, Township 16S, Range 65E, Mount Diablo Base and Meridian

EXHIBIT 3B

MAP DEPICTING PROJECT SITE



* Optioned land only includes portions of Sections that are unencumbered. Optioned land does not include portions of Sections within the BLM Moapa Utility Corridor. Portions of optioned Sections north of the BLM Moapa Utility Corridor are available only if this land is not developed for Eagle Shadow Mountain 1.

EXHIBIT 4

NOTICES, BILLING AND PAYMENT INSTRUCTIONS

SUPPLIER:

300MS 8ME LLC

Contact	Mailing Address	Phone	E-mail
<u>CONTRACT REPRESENTATIVE:</u>			

Prior to Commercial Operation Date:

Jason Moretz, PhD Senior Director, Development	4370 Town Center Blvd., Suite 110 El Dorado Hills, CA 95762	916.719.4334	jmoretz@8minutenergy.com
Michael Healy Director Origination	5455 Wilshire Blvd., Suite 2010 Los Angeles, CA 90036	323.382.8331	mhealy@8minutenergy.com

From and after Commercial Operation Date:

8minutenergy Contract Manager	4370 Town Center Blvd., Suite 110 El Dorado Hills, CA 95762	916.608.9060	ppacm@8minutenergy.com
Jason Moretz, PhD Senior Director, Development	4370 Town Center Blvd., Suite 110 El Dorado Hills, CA 95762	916.719.4334	jmoretz@8minutenergy.com

OPERATING REPRESENTATIVE:

Prior to Commercial Operation Date:

Jason Moretz, PhD Senior Director, Development	4370 Town Center Blvd., Suite 110 El Dorado Hills, CA 95762	916.719.4334	jmoretz@8minutenergy.com
Ben New VP, Construction	250 Sutter Street, Suite 600, San Francisco, CA 94108	415.271.1234	bnew@8minutenergy.com

From and after Commercial Operation Date:

Leigh Zanone Director, Operations and Asset Management	4370 Town Center Blvd., Suite 110 El Dorado Hills, CA 95762	916.260.1712	lzanone@8minutenergy.com
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CHARGING AND DISCHARGING NOTICE COMMUNICATIONS:

Leigh Zanone Director, Operations and Asset Management	4370 Town Center Blvd., Suite 110 El Dorado Hills, CA 95762	916.260.1712	lzanone@8minutenergy.com
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OPERATING NOTIFICATIONS:

[To be provided prior to start of construction]

Prescheduling

Real-Time

Monthly Checkout

EXHIBIT 4

NOTICES, BILLING AND PAYMENT INSTRUCTIONS

INVOICES:

ap@8minutenergy.com
cc: cm@8minutenergy.com

PAYMENT INSTRUCTIONS

8minutenergy US Solar, LLC
Bank Name: Wells Fargo
Bank, N.A.
Routing Number: 121000248
Account: 4066482027
Address: 45 Fremont Street
Floor 7, San Francisco, CA
94105
Ref: 300MS 8ME LLC

BUYER: NV ENERGY

Nevada Power Company d/b/a NV Energy

Contact	Phone	E-mail
CONTRACT REPRESENTATIVE:		
Manager, Energy Supply Contract Management 6226 W Sahara Ave, M/S 26A Las Vegas, NV 89146	702/402-5667	ContractManagement@nvenergy.com
<u>OPERATING REPRESENTATIVES</u>		
<u>Scheduling</u>		
- Portfolio Analytics-NPC (Normal Business Hours)	702/402-2882	PortfolioAnalytics@nvenergy.com
- Portfolio Analytics-SPPC (Normal Business Hours)	702/402-2884	PortfolioAnalytics@nvenergy.com
- Generation Dispatch (Control Area Operations)	702/402-7111	Sysopr@nvenergy.com
- Daily Availability Notice-NPC (Spreadsheet)	702/402-2882	PortfolioAnalytics@nvenergy.com
- Daily Availability Notice-SPPC (Spreadsheet)	702/402-2884	PortfolioAnalytics@nvenergy.com
<u>Emergencies (including Force Majeure)</u>		
- Grid Reliability	775/834-4216	Grid_Reliability@nvenergy.com
- Portfolio Analytics	702/402-1954	PortfolioAnalytics@nvenergy.com
<u>Planned Outages-NPC</u>	702/402-6602	escoc@nvenergy.com
<u>Planned Outages-SPPC</u>	775/834-4716	escoc@nvenergy.com
<u>Metering-NPC</u>	702/402-6110	NPCMeterOps@nvenergy.com
<u>Metering-SPPC</u>	775/834-7156	Electric_Meter_Ops_North@nvenergy.com

INVOICES

Energy Supply Contract Management 6226 W Sahara Ave, M/S 26A Las Vegas, NV 89146	702/402-5667	ContractManagement@nvenergy.com
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EXHIBIT 4

NOTICES, BILLING AND PAYMENT INSTRUCTIONS

CC all invoices to:

Fuel & Purchased Power Accounting
6100 Neil Road, M/S S2A20
Reno, NV 89511

775/834-6281

cmcelwee@nvenergy.com

“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

One-line diagram of the Facility, which indicates the Delivery Point and the ownership and the location of Meters, including the Storage Facility Metering Point, to replace the attached when Facility design, including metering system design, has been completed.²

² NTD: Exhibit 5 to reflect Meters at the Delivery Point and at the Storage Facility Metering Point, as well as at such other points as may be necessary to facilitate calculation of payments under this Agreement.

EXHIBIT 6

PROJECT MILESTONE SCHEDULE

1. All time periods are in months after the last day of the month in which the PUCN Approval Date occurs (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 and Buyer shall agree on the Storage Operating Procedures in Exhibit 24, the protocol for determining DAR in Exhibit 16, and related quantities, and the Backcasting Tool in Exhibit 28.

Completion Date: the later of: (i) twelve (12) months AA or (ii) September 30, 2020.

Documentation: Supplier and Buyer will agree on any revisions or updates to the DAR protocol attached to the Agreement as Exhibit 16, the Storage Operating Procedures attached to the Agreement as Exhibit 24, and the Backcasting Tool attached to the Agreement as Exhibit 28. When such revisions or updates are agreed, they will supersede the prior version of the applicable Exhibit.

- B) Project Milestone: Supplier shall obtain all Required Facility Documents to construct the Facility.

Completion Date: the later of: (i) twenty-four (24) months AA or (ii) August 31, 2022.

Documentation: Supplier shall provide Buyer with an officer’s certificate from an authorized representative of Supplier certifying that the Required Facility Documents to construct the Facility as listed in Exhibit 12 have been obtained and shall provide a copy of such documents to Buyer, together with the metering system design for the Facility (submitted for Buyer’s approval in accordance with Section 7.1) and a completed construction level drawings version of Exhibit 14.

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

Completion Date: the later of: (i) thirty-one (31) months AA or (ii) March 31, 2023.

Documentation: Supplier shall provide Buyer with documentation that the major equipment (including modules, step-up and medium voltage transformers and inverters) has been delivered to the Project Site.

- D) Project Milestone: Supplier shall obtain the Required Facility Documents to operate (but not achieve Commercial Operation) the Facility, including registration with PC Administrator.

Completion Date: the later of: (i) thirty-four (34) months AA or (ii) June 15, 2023.

EXHIBIT 6

PROJECT MILESTONE SCHEDULE

Documentation: Supplier shall provide Buyer with an officer's certificate from an authorized representative of Supplier certifying that Required Facility Documents to operate (but not achieve Commercial Operation) the Facility as listed in Exhibit 12 have been obtained, together with reasonable documentation evidencing registration with PC Administrator and shall provide a copy of such documents to Buyer.

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

Completion Date: the later of: (i) thirty-four (34) months AA or (ii) June 15, 2023.

Documentation: Buyer's Meters shall record Energy being delivered from the Generating Facility to Buyer and the Storage Facility and Discharging Energy being delivered from the Storage Facility to Buyer, and Supplier provides written notice to Buyer that the Facility satisfies the definition of Operation Date.

CRITICAL PROJECT MILESTONES

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

Completion Date: the later of: (i) thirty-one (31) months AA or March 31, 2023.

Documentation: Supplier shall provide Buyer with an officer's certificate from an authorized Representative of Supplier certifying that debt and equity financing arrangements have been executed for funding of 100% of the construction financing of the Facility.

- G) 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: the later of: (i) thirty-one (31) months AA or March 31, 2023.

Documentation: Supplier shall provide Buyer a copy of 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, as well as an ALTA Survey for the Project Site. Supplier shall provide Buyer with a copy of the Construction Contract.

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

Completion Date: the later of (i) the 1st day of the month following thirty-six (36) months AA or (ii) September 1, 2023 ("Commercial Operation Deadline"), subject to extension by payment of Daily Delay Damages as provided in the Agreement.

EXHIBIT 6

PROJECT MILESTONE SCHEDULE

Documentation: Supplier provides certifications required by Section 8.3.2 to Buyer.

EXHIBIT 7

PERFORMANCE TESTS

1. Performance tests required by the Construction Contract to establish Commercial Operation.
2. Such other tests as may be required by Law.

EXHIBIT 8

FORM OF AVAILABILITY NOTICE

Unit Name	Date	Measure	HE 01	HE 02	HE 03	HE 04	HE 05	HE 06	HE 07	HE 08	HE 09	HE 10	HE 11	HE 12	HE 13	HE 14	HE 15	HE 16	HE 17	HE 18	HE 19	HE 20	HE 21	HE 22	HE 23	HE 24
	Day 1	BaseMW																								
	Day 2	BaseMW																								
	Day 3	BaseMW																								
	Day 1	Max Capability																								
	Day 2	Max Capability																								
	Day 3	Max Capability																								
	Day 1	Min Capability																								
	Day 2	Min Capability																								
	Day 3	Min Capability																								
	Day 1	Min Capability																								
	Day 2	Min Capability																								
	Day 3	Min Capability																								

Note: Form of Availability Notice to be provided by Buyer to Supplier in Excel format. The format of the form may not be changed, except by Buyer.³

Date For Notice: _____

Supplier: _____

³ NTD: Exhibit 8 to accommodate relevant information with respect to the Storage Facility.

EXHIBIT 8

FORM OF AVAILABILITY NOTICE

Name of Suppliers Representative: _____

Buyer: _____ Nevada Power Company

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	

Include other considerations current or anticipated events potentially impacting the Generating Facility's ability to produce the Delivered Amount or Ancillary Services including any Supplier plans to charge the battery.

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.

EXHIBIT 10

SUPPLIER'S REQUIRED REGULATORY APPROVALS

1. Renewable Energy System certification as specified in WREGIS.
2. PUCN Approval of this Agreement.
3. Although obtaining EWG status is not a Seller 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.
4. 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.
5. Approval by U.S. Bureau of Land Management of a right of way grant
6. PUCN Utility Environmental Protection Act (UEPA) Permit
7. Approval by the U.S. Department of the Interior, Bureau of Indian Affairs of the solar energy ground lease
8. ESA Section 7 consultation with U.S. Fish and Wildlife Service
9. Consultation with State Historic Preservation Office under Section 106 of National Historic Preservation Act
10. Clark County Special Use Permit, if applicable
11. California Energy Commission Pre-Certification and Certification as an "eligible renewable energy resource" (within 180 days after Commercial Operation)

EXHIBIT 11

TECHNICAL SPECIFICATIONS

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

EXHIBIT 12

REQUIRED FACILITY DOCUMENTS

Construction Documents

1. Construction Contract(s)
2. Supplier's Required Regulatory Approvals listed as items 5, 6, 7, 8, 9 and 10 (if applicable) on Exhibit 10
3. This Agreement

Operating Documents

1. Supplier's Required Regulatory Approvals listed as items 1, 2, 3, 4 and 11 on Exhibit 10
2. Shared Facilities Agreements, as applicable
3. Operating and Maintenance Agreement
4. Interconnection Agreement
5. Western Renewable Energy Generation Information System (WREGIS), registrations, including as a Nevada Renewable Energy System, as applicable.
6. U.S. Energy Information Administration, filing of Forms 860 and 923.
7. Transmission Provider's permission to operate.

EXHIBIT 13A

DISPATCH AVAILABILITY AMOUNT

The Dispatch Availability Amount shall be the Energy amounts for each Delivery Hour that shall be made available by Supplier to Buyer, pursuant to this Agreement, as specified by each value in the table below.⁴ Amounts below are averages. Actual hourly production is expected to vary based on daily conditions. Contractual production obligations and limits apply over an entire Dispatchable Period or Full Requirements Period, as applicable.

Hour Ending	MWh	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
0100	Off-Peak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0200		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0300		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0400		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
0500		0.0	0.0	0.0	0.0	1.1	4.1	0.1	0.0	0.0	0.0	0.0	0.0
0600		0.0	0.0	0.3	24.8	106.4	142.1	82.7	39.9	8.8	0.0	0.0	0.0
0700	On Peak	0.0	5.9	80.5	203.8	264.5	289.0	262.9	241.0	191.7	84.8	15.5	0.1
0800		65.6	152.4	241.4	272.2	273.9	293.7	268.7	277.0	283.3	261.6	175.9	80.3
0900		234.5	241.7	261.5	287.0	286.3	295.9	274.0	285.2	282.5	270.3	257.1	248.6
1000		250.9	251.1	276.7	289.1	292.9	298.9	285.7	287.4	288.0	279.0	265.7	252.8
1100		239.1	264.5	285.5	290.8	296.4	240.7	220.0	233.4	292.7	284.8	254.1	229.4
1200		229.0	270.3	287.6	289.3	293.6	244.7	226.6	235.1	294.6	283.1	252.6	216.1
1300		234.0	270.3	288.4	288.1	298.2	244.9	227.7	238.4	284.8	270.4	254.7	212.4
1400		253.7	270.0	285.4	283.9	289.6	241.6	225.5	237.3	281.0	271.8	264.1	226.2
1500		261.0	269.4	272.5	273.3	291.8	275.6	243.9	239.4	287.8	266.7	278.1	215.0
1600		197.5	242.4	254.0	245.4	276.3	288.5	279.3	261.1	287.3	232.0	147.8	97.4
1700		23.6	97.3	191.2	234.9	276.8	195.0	195.0	195.0	199.5	52.7	3.6	1.0
1800		0.0	1.3	22.6	67.0	151.0	195.0	195.0	195.0	22.6	0.0	0.0	0.0
1900		0.0	0.0	0.0	0.0	7.7	195.0	195.0	195.0	0.0	0.0	0.0	0.0
2000		0.0	0.0	0.0	0.0	0.0	195.0	195.0	195.0	0.0	0.0	0.0	0.0
2100		0.0	0.0	0.0	0.0	0.0	195.0	195.0	195.0	0.0	0.0	0.0	0.0
2200		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2300	Off-Peak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
2400		0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Daily Supply Amount (MWh)		1,989	2,337	2,748	3,050	3,406	3,835	3,572	3,550	3,005	2,557	2,169	1,779
Daily On-Peak Supply Amount (MWh)		1,989	2,337	2,747	3,025	3,299	3,689	3,489	3,510	2,996	2,557	2,169	1,779
Monthly Supply Amount (MWh)		61,655	65,423	85,178	91,491	105,600	115,042	110,734	110,056	90,138	79,276	65,076	55,161
Annual Supply Amount (MWh)		1,034,831											
Maximum Amount (MW)		300											

⁴ NTD: The Monthly Supply Amount and the Annual Supply Amount for February shown above represent a non-leap year.

EXHIBIT 13B

PERFORMANCE PERIODS

(Dispatchable Period, Full Requirements Period and Full Requirements Period Product)

The Dispatchable Period, the Full Requirements Period and the Full Requirements Period Product⁵ are identified in the table below. Actual hourly production is expected to vary Contractual production obligations and limits apply over an entire Dispatchable Period or Full Requirements Period, as applicable.

Hour Ending	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
0100	Dispatchable Period											
0200												
0300												
0400												
0500												
0600												
0700												
0800												
0900												
1000												
1100												
1200												
1300												
1400												
1500												
1600												
1700												
1800												
1900												
2000												
2100												
2200												
2300												
2400												
Full Requirements Period Product (annual total):						89,700*						

* Actual hourly production expected to vary

⁵ The hourly megawatt values stated in this table are for illustrative purposes only, which represents the estimated hourly Energy deliveries during the hours of the Full Requirements Period. Supplier shall be required to deliver a total quantity of megawatts during the Full Requirements Period, which is the sum of the megawatts delivered during all hours of the Full Requirements Period, the Full Requirements Period Product.

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.

EXHIBIT 15

**OPERATIONS 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

DISPATCHABLE ACCURACY RATE

This is a draft protocol. The Parties shall negotiate in good faith and agree to a common understanding of the below protocol by Milestone 2(A) on Exhibit 6.

For purposes of determining the accuracy of the Generating Facility's response to being dispatched by the Buyer, the ability of the Generating Facility to timely reach output levels sent by the Energy Management System to the Generating Facility's Automatic Generation Control system will be tracked at five minute intervals.

1. For those periods during the Dispatchable Period when Buyer's Energy Management System is sending the Generating Facility a dispatch command, the Generating Facility's Dispatchable Accuracy Rate will be calculated as follows:
 - a. Determine the absolute value of the difference between the set-point sent by Buyer's Energy Management System (which shall not exceed the instantaneous maximum capability of the Generating Facility as communicated electronically from Supplier to Buyer) to the Generating Facility's Automatic Generation Control and the Generating Facility's instantaneous actual power output of the Facility, as recorded and tracked at five minute intervals by Buyer using the Generating Facility Meter (or, if applicable, Supplier's check meters); During an interval that includes a ramp from one setpoint to another, the comparison described in Section 1a will be made between the average of the start and finish output levels sent by Buyer's Energy Management System (which shall not exceed the instantaneous maximum capability of the Generating Facility) to the Facility's Automatic Generation Control and the Delivered Amount (excluding any Buyer Charging Energy delivered to the Storage Facility Metering Point);
 - b. Divide this difference by the set-point sent by the Buyer's Energy Management System;
 - c. Subtract this quotient from one (1.00).

For example: If Automatic Generation Control signal was 50MW and Generating Facility's instantaneous actual power output was 48MW. Therefore⁶: a. = 2, b. = $2/50=0.04$, c. = $1.0-0.04 = 0.96$, which expressed as a percentage is 96%.

2. Each calendar month, the Generating Facility's average Dispatchable Accuracy Rate will be calculated as follows:
 - a. Sum the absolute value of each recorded five minute interval difference between the set-point sent by the EMS to the Generating Facility's AGC and the actual output of the Facility as described above. The actual Delivered Amount shall be recorded starting 12 seconds after the new AGC setpoint is received. The actual Delivered Amount shall be expressed in MWh and compared to the MWh of the setpoint during the five minute period;
 - b. Sum each five minute recorded set-point sent by the EMS to the Generating Facility's AGC;
 - c. Divide the summed difference by the summed of all five minute set-points sent by the Generating Facility's EMS to the Generating Facility's AGC in the month;
 - d. Subtract this quotient from one (1.00) and multiply by one hundred percent (100%);
 - e. This difference represents the Generating Facility's average Dispatchable Accuracy Rate for the calendar month.
3. Real-Time and/or Instantaneous Availability of Supplier's Generating Facility
 - a. On an ongoing basis, the Generating Facility will provide real-time, instantaneous availability levels of minimum real power that could be generated at the referenced meter (pMinimum) and maximum real power that could be generated at the referenced meter (pMaximum). The pMinimum and pMaximum shall be reported at least once per six seconds as an estimated forecast.
 - b.. Power set-point instructions from Buyer's EMS to the Generating Facility's AGC will recognize and obey real-time, instantaneous pMinimum and pMaximum availability levels, and any other constraints which are caused due to real-time weather conditions.

⁶ Where a, b and c represent the above concepts.

EXHIBIT 16

DISPATCHABLE ACCURACY RATE

- c. The Dispatchable Accuracy Rate will therefore be an indication of how the Generating Facility performed relative to its real-time or instantaneous capabilities as a result of existing weather and site conditions.
 - d. The Generating Facility shall have SCADA setpoints to generate either at the maximum available power according to weather conditions or a separate mode of operation wherein the Generating Facility regulates to a specific output level "setpoint" sent by the Buyer's Automatic Generation Control system.
4. The difference between the setpoint sent by the Buyer's Energy Management System and the Delivered Amount from the Facility shall be considered zero for purposes of calculating the Dispatchable Accuracy Rate under the following conditions:
- i. Those periods in which the Generating Facility is in a planned outage or affected by a forced outage or Force Majeure, Emergency, Transmission Provider Instructions or curtailment and therefore unable to follow dispatch orders shall be excluded for calculation of Dispatchable Accuracy Rate.
 - ii. Those periods when the Buyer's Energy Management System is not sending the Generating Facility a dispatch command
 - iii. The actual available solar generation is less than the estimated pMaximum forecast during the five minute setpoint.
 - iv. The 12 seconds following the receipt of an AGC signal for required response time of the Facility.
 - v. Those periods when the ramp rate of the Buyer's AGC exceeds 10% per minute of the Expected Nameplate Capacity Rating as reported in Exhibit 1, 5.(b)(ii) during the 5 minute dispatch period.
 - vi. The referenced meter is the Delivery Point for the Generating Facility's AGC setpoint but the Storage Facility is given a charge/discharge notice.
 - vii. Frequency response, Volt-Watt or other operating setpoints are triggered that require the Storage Facility to charge or discharge something other than the AGC setpoint.

EXHIBIT 17

FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT

[Name of Issuing Bank]
[Address of Issuing Bank]
[City, State of Issuing Bank]

Letter Of Credit No. [_____]
Irrevocable Standby Letter Of Credit

Date of Issue: [_____] , 20__

Stated Expiration Date: [_____]

Applicant:
[Name and address]
[_____]
[_____]

Stated Amount: USD \$[_____]

Beneficiary:
[Name and address]
[_____]
[_____]

Credit Available With: [_____]

EXHIBIT 17

FORM OF LETTER OF CREDIT

Ladies and Gentlemen:

At the request and for the account of [] (the "Applicant"), we hereby establish in favor of Nevada Power Company ("Beneficiary") for the aggregate amount not to exceed [] million United States Dollars (\$[]), in connection with the Long Term Renewable Power Purchase Agreement dated as of [] (as amended, restated, amended and restated or otherwise modified, the "Agreement"), by and between the Applicant and Beneficiary this Irrevocable Standby Letter of Credit no. [] (this "Letter of Credit") expiring on [date not earlier than 364 days from issuance] (the "Stated Expiration Date").

We irrevocably authorize you to draw on this Letter of Credit, in accordance with the terms and conditions hereinafter set forth, in any amount up to the full Available Amount (as defined below) available against presentation of a dated drawing request drawn on [***Name of Issuing Bank***] manually signed by a purported authorized representative of a Beneficiary completed in the form of Annex 1 hereto (a "Drawing Request"). Partial drawings and multiple drawings are allowed under this Letter of Credit. Each Drawing Request honored by us shall immediately reduce the amount available to be drawn hereunder by the amount of the payment made in satisfaction of such Drawing Request (each, an "Automatic Reduction").

On any given date, the Stated Amount (as set forth on the first page of this Letter of Credit) minus any Automatic Reductions plus any amounts increased pursuant to the terms and conditions hereto shall be the aggregate amount available hereunder (the "Available Amount").

Drawing Requests and all communications with respect to this Letter of Credit shall be in writing, addressed or presented in person to us at: [***Address of Issuing Bank***], Attn: [], referencing this Letter of Credit No. []. In addition, presentation of a Drawing Request may also be made by facsimile transmission to [***Fax number of Issuing Bank***], or such other facsimile number identified by us in a written notice to you. To the extent a Drawing Request is made by facsimile transmission, you must (i) provide telephone notification to us at [***Telephone number of Issuing Bank***] prior to or simultaneously with the sending of such facsimile transmission and (ii) send the original of such Drawing Request to us by overnight courier, at the same address provided above; provided, however, that our receipt of such telephone notice or original documents shall not be a condition to payment hereunder. Presentation of the original of this Letter of Credit shall only be required for any drawing of the entire Available Amount.

If a Drawing Request is presented in compliance with the terms of this Letter of Credit to us at such address or facsimile number by 11:00 a.m., New York City time, on any Business Day (as defined below), payment will be made not later than the close of business, New York City time, on such Business Day and if such Drawing Request is so presented to us after 11:00 a.m., New York City time, on any Business Day, payment will be made on the following Business Day not later than the close of business, New York City time on such following Business Day. Payment under this Letter of Credit shall be made in immediately available funds by wire transfer to such account as specified in the Drawing Request.

EXHIBIT 17

FORM OF LETTER OF CREDIT

As used in this Letter of Credit, “Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required by Law to remain closed in the State of New York.

This Letter of Credit shall expire on the earliest to occur of (1) our receipt of written confirmation from a Beneficiary authorizing us to cancel this Letter of Credit accompanied by the original of this Letter of Credit; (2) the close of business, New York time, on the date (the “Early Expiration Date”) specified in a notice of early expiration in the form of Annex 2 hereto sent by us to the Beneficiary and the Applicant by courier, mail delivery or delivery in person or facsimile transmission and stating that this Letter of Credit shall terminate on such date, which date shall be no less than thirty (30) days after the date of such notice, with the Beneficiary remaining authorized to draw on us prior to such Early Expiration Date in accordance with the terms hereof; or (3) the Stated Expiration Date. It is a condition of this letter of credit that it shall be deemed automatically extended without an amendment for periods of one (1) year each beginning on the present expiry date hereof and upon each anniversary of such date, unless at least thirty (30) days prior to any such expiry date we have sent you written notice (the “Notice of Non-Renewal”) by certified mail or overnight courier service that we elect not to permit this Letter of Credit to be so extended beyond, and will expire on its then current expiry date. No presentation made under this Letter of Credit after such expiry date will be honored. To the extent a Notice of Non-Renewal has been provided to the Beneficiary and Applicant in accordance herewith, the Beneficiary are authorized to draw on us up to, in the aggregate, the full Available Amount of this Letter of Credit, by presentation to us, in the manner and at the address specified in the third preceding paragraph, of a Drawing Request completed in the form of Annex 1 hereto and sent and purportedly signed by a Beneficiary’s authorized representative.

This Letter of Credit is effective immediately.

In the event that a Drawing Request fails to comply with the terms of this Letter of Credit, we shall provide the Beneficiary prompt notice of same stating the reasons therefor and shall upon receipt of a Beneficiary’s instructions, hold any nonconforming Drawing Request and other documents at your disposal or return any non-conforming Drawing Request and other documents to the Beneficiary at the addresses set forth above by delivery in person or facsimile transmission. Upon being notified that the drawing was not effected in compliance with this Letter of Credit, a Beneficiary may attempt to correct such non-complying Drawing Request in accordance with the terms of this Letter of Credit.

This Letter of Credit sets forth in full the terms of our undertaking and this undertaking shall not in any way be modified, amended, limited or amplified by reference to any document, instrument or agreement referred to herein, and any such reference shall not be deemed to incorporate herein by reference any document, instrument, or agreement except for Drawing Requests and certificates. The foregoing notwithstanding, this Letter of Credit is subject to the rules of the “International Standby Practices 1998, International Chamber of Commerce, Publication No. 590” published by the Institute of International Banking Law and Practice (“ISP 98”) and, as to matters not governed by ISP 98, shall be governed by and construed in accordance with the Laws of the State of New York.

EXHIBIT 17

FORM OF LETTER OF CREDIT

This Letter of Credit is transferable, only in its entirety and not in part, upon presentation to us, at our presentation office specified herein, of a signed transfer certificate in the form of Annex 3 accompanied by this original Letter of Credit and all amendments, if any, in which a Beneficiary irrevocably transfers to its successor or assign all of its rights hereunder, whereupon we will either issue a substitute letter of credit to such successor or assign or endorse such transfer on the reverse of this Letter of Credit. Transfers to designated foreign nationals are not permitted as being contrary to the U.S. Treasury Department or Foreign Assets Controls Regulations.

Any voluntary reduction hereunder shall be in the form of Annex 4 hereto.

All banking charges are for the account of the Applicant. All transfer fees are for the account of the Beneficiary.

All Drawing Requests under this Letter of Credit must bear the clause: "Drawn under [*Name of Issuing Bank*], Letter of Credit Number [] dated []."

This Letter of Credit shall not be amended except with the written concurrence of [*Name of Issuing Bank*], the Applicant and the Beneficiary.

We hereby engage with you that a Drawing Request drawn strictly in compliance with the terms of this Letter of Credit and any amendments thereto shall be honored.

We irrevocably agree with you that any legal action or proceeding with respect to this Letter of Credit shall be brought in the courts of the State of New York in the County of New York or of the United States of America in the Southern District of New York. You and we irrevocably submit to the nonexclusive jurisdiction of such courts solely for the purposes of this Letter of Credit. You and we hereby waive to the fullest extent permitted by Law any objection either of us may now or hereafter have to the laying of venue in any such action or proceeding in any such court.

[*Name of Issuing Bank*]

Authorized signature

EXHIBIT 17

FORM OF LETTER OF CREDIT

ANNEX 1

[Letterhead of a Beneficiary]

Drawn under [insert name of Issuing Bank],
Letter of Credit Number [_____] dated [_____]

DRAWING REQUEST

[Date]

[name and address of Issuing Bank]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of a Beneficiary hereby draws on [insert name of Issuing Bank], Irrevocable Standby Letter of Credit No. [_____] (the “Letter of Credit”) dated [_____] issued by you in favor of us. Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

In connection with this drawing, we hereby certify that:

A) This drawing in the amount of US\$_____ is being made pursuant to the Letter of Credit;

[Use one or more of the following forms of paragraph B, as applicable, and include in this Drawing Request]

B-1) Beneficiary is authorized to make a drawing under this Letter of Credit in accordance with the terms of the Agreement applicable to Beneficiary.

or

B-2) The Letter of Credit will expire within thirty (30) days of the date of this Drawing Request pursuant to a Notice of Non-Renewal and the Applicant has failed to provide a replacement letter of credit from an acceptable credit provider and satisfying the requirements of the Agreement applicable to Beneficiary;

or

B-3) [insert name of Issuing Bank] has delivered an Early Expiration Notice and such Early Expiration Notice has not been rescinded and the Applicant has not replaced the Letter of Credit;

; and

C) You are directed to make payment of the requested drawing to:

EXHIBIT 17

FORM OF LETTER OF CREDIT

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on
this ____ day of _____.

[Beneficiary]

By: _____

Name:

Title:

EXHIBIT 17

FORM OF LETTER OF CREDIT

ANNEX 2
NOTICE OF EARLY EXPIRATION

[Date]

[Beneficiary name and address]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [] (the "Letter of Credit") dated [] issued by [Issuing Bank] in favor of [] (the "Beneficiary"). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

This constitutes our notice to you pursuant to the Letter of Credit that the Letter of Credit shall terminate on _____, ____ [*insert a date which is thirty (30) or more days after the date of this notice of early expiration*] (the "Early Expiration Date").

Pursuant to the terms of the Letter of Credit, the Beneficiary is authorized to draw (pursuant to one or more drawings), prior to the Early Expiration Date, on the Letter of Credit in an aggregate amount that does not exceed the then Available Amount (as defined in the Letter of Credit).

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this ____ day of _____.

[ISSUING BANK]

By: _____

Name:

Title:

cc:

[Applicant name and address]

EXHIBIT 17

FORM OF LETTER OF CREDIT

ANNEX 3

REQUEST FOR TRANSFER OF LETTER OF CREDIT IN ITS ENTIRETY

[Name of Issuing Bank],

Date: _____

[Address]

[City, State]

Attn: Trade Services Department

Re: [Name of Issuing Bank], Irrevocable Standby Letter of Credit No. [_____]

For value received, the undersigned beneficiary hereby irrevocably transfers to:

NAME OF TRANSFEREE

ADDRESS OF TRANSFEREE

CITY, STATE/COUNTRY ZIP

(hereinafter, the “transferee”) all rights of the undersigned beneficiary to draw under above letter of credit, in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary hereof, including sole rights relating to any amendments, whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original of such Letter of Credit and all amendments, if any, is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

In payment of your transfer commission in amount equal to a minimum of \$[_____] and maximum of \$[_____].

Select one of the following:

____ we enclose a cashier's/certified check

____ we have wired funds to you through _____ bank

____ we authorize you to debit our account # _____ with you, and in addition thereto, we agree to pay you on demand any expenses which may be incurred by you in connection with this transfer

EXHIBIT 17

FORM OF LETTER OF CREDIT

We certify that this transfer request is not in violation of any federal or state laws and further confirm our understanding that the execution of this transfer request by you is subject to compliance with all legal requirements and related procedures implemented by your bank under applicable laws of the United States of America [and the jurisdiction of Issuing Bank].

Very truly yours,

[BENEFICIARY NAME]

Authorized Signature

The signature(s) of _____ with title(s) as stated conforms to those on file with us; are authorized for the execution of such instrument; and the beneficiary has been approved under our bank's Customer Identification Program. Further, pursuant to Section 326 of the USA Patriot Act and the applicable regulations promulgated thereunder, we represent and warrant that the undersigned bank: (i) is subject to a rule implementing the anti-money laundering compliance program requirements of 31 U.S.C. section 5318(h); (ii) is regulated by a Federal functional regulator [as such term is defined in 31 C.F.R. section 103.120(a)(2)]; and (iii) has a Customer Identification Program that fully complies with the requirements of the regulations.

(Signature of Authenticating Bank)

(Name of Bank)

(Printed Name/Title)

(Date)

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this ____ day of _____.

[Beneficiary name]

By: _____

Name:

Title:

cc:

[insert name and address of Transferee]

[insert name and address of Applicant]

EXHIBIT 17

FORM OF LETTER OF CREDIT

ANNEX 4
VOLUNTARY REDUCTION REQUEST CERTIFICATE
[Date]

[insert name of Issuing Bank]
[insert address of Issuing Bank]

Ladies and Gentlemen:

Reference is made to that Irrevocable Standby Letter of Credit No. [_____] (the “Letter of Credit”) dated [_____] issued by you in favor of [_____] (the “Beneficiary”). Any capitalized term used herein and not defined herein shall have its respective meaning as set forth in the Letter of Credit.

The undersigned, a duly authorized representative of the Beneficiary, having been so directed by [_____] (the “Applicant”), hereby requests that the Stated Amount (as such term is defined in the Letter of Credit) of the Letter of Credit be reduced by U.S.\$[_____] to U.S.\$[_____].

We hereby certify that the undersigned is a duly authorized representative of the Beneficiary.

IN WITNESS WHEREOF, the undersigned has executed and delivered this request on this ____ day of _____.

[Beneficiary name]

By: _____
Name:
Title:

cc:

[Applicant name and address]

EXHIBIT 18

YEARLY PC AMOUNT

Yearly PC Amount	1,014,929 MWh
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EXHIBIT 19

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 solar-powered electric generating facility [and integrated 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 a direct or indirect 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 Power Purchase 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, terminate or suspend its performance under the PPA, (ii) 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, or (iii) enter into any material amendment or modification of the PPA.

(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 later of any applicable cure period under the PPA or fifteen (15) Business Days from the date notice of default or breach is delivered to Administrative Agent 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 sixty (60) 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 but not to exceed one hundred eighty (180) days. NVE consents to the transfer of Borrower's interest under the PPA to the Administrative Agent or 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 the Administrative Agent or 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" means a Person that is at least as financially and operationally qualified as

FORM OF LENDERS CONSENT

Borrower and, at a minimum, has a tangible net worth of at least seven million five hundred thousand dollars (\$7,500,000) 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 utility-scale photovoltaic solar generating plants similar to the Generating Facility and has experience operating a utility-scale integrated storage facility of similar technology to the Facility.

(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 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 as may be mutually agreed if 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 and Operating Security required under the PPA. 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. 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 Borrower) shall be released from any further liability thereunder accruing from and after the date of such assignment.

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

EXHIBIT 19

FORM OF LENDERS CONSENT

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) (i) neither NVE nor, to NVE's actual knowledge, any other party to the PPA, is in default of any of its obligations thereunder; (ii) NVE and, to NVE's actual knowledge, Borrower has complied with all conditions precedent to the effectiveness of its obligations under the PPA; (iii) to NVE's actual knowledge, 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; and (iv) the PPA has not been amended, modified or supplemented in any manner except as set forth herein and in the recitals hereto; and

(G) NVE has no notice of, and has not consented to, any previous assignment by Borrower of all or any part of its rights 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 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:

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FORM OF LENDERS CONSENT

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. CONFIRMATION, TERMINATION, AMENDMENT AND GOVERNING LAW

NVE agrees to confirm its continuing obligation hereunder in writing upon the reasonable request of (and at the expense of) Borrower, Administrative Agent, the Lenders, a tax equity investor or any of their respective successors, transferees or assigns. NVE also agrees to deliver an estoppel in favor of a tax equity investor covering the matters in Section 2. 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 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.

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FORM OF LENDERS CONSENT

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: _____
Title: _____

_____,
a _____

By: _____
Name: _____
Title: _____

EXHIBIT 19

FORM OF LENDERS CONSENT

_____,
as Administrative Agent for the Lenders

[Borrower]

By: _____

Name: _____

Title: _____

EXHIBIT 20

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 Renewable Power Purchase 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. The aggregate liability of Guarantor under this Guaranty shall not at any time exceed *[insert required amount of Development Security or Operating Security, as applicable]*. 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

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FORM OF GUARANTEE

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

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(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

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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.

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(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 Days (being a day on which clearing banks are generally open for business in the jurisdiction of

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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 Agreement and (y) claims arising out of Subsidiary's fraud or willful misconduct, under no

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circumstances will Guarantor's aggregate liability hereunder exceed the amount set forth in Section 2(a) hereof.

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

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(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.]

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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:

EXHIBIT 21

WORK SITE AGREEMENT

[See Attached.]

WORK SITE AGREEMENT
Eagle Shadow Mountain 2 Solar Farm

1. INITIAL PROVISIONS

- 1.1. This Work Site Agreement (“Agreement”) is entered into by 300MS 8me LLC (referred to as “Supplier” in the Power Purchase Agreement and referred to herein as “Owner”), and IBEW Local Unions 357 and 396 (IBEW) and the Laborer’s Union Local 872 (“Laborer’s”), (“the Unions”). Further this Agreement is subject to the Tribal Employment Rights Ordinance incorporated herein by this reference and attached as Exhibit ____.
- 1.2. The NV Energy Eagle Shadow Mountain 2 Solar Farm (the "Project") will provide 300 MW as a solar PV renewable power plant located in Southern Nevada. This location is known as the “Project Site”. The Project is owned by 300MS 8me LLC. Owner and NV Energy are parties to that certain Long Term Renewable Power Purchase Agreement dated [____, 2019] (the “PPA”), and this Agreement has been attached to the PPA as Exhibit 21. 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 Fall 2018 Renewable Energy Request for Proposals issued by NV Energy on October 16, 2018 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 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. If PUCN Approval for the Project is not obtained as outlined in the PPA, 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.
- 2.3. 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. LABORERS Work includes unloading, layout and stringing of all post and piles, all bolting and assembly of all rakes, trays, tables and tilt mechanisms including torque tubes for the Solar arrays. not including electrical components, electrical devices, PV

panels, cartridges, or other pre-fabricated assemblies containing electrical or generating components of the system. All trash removal and consolidation from outside of the arrays, including trashing out and cleanup of solar site by hand, including operation of equipment utilized for this operation. All hand work associated with civil and excavation operations. Pouring, mudcutting and vibrating concrete and footings, does not include substation and transmission line work. any stormdrain, riprap, gabion and rock baskets. All fencing and tortoise fence, environmental swipps and straw waddles. this does not include the installation of electrical raceways (conduit, etc.) or direct buried cable.

- 2.5. 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.
- 2.6. 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.
- 2.7. 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.
- 2.8. 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.
- 2.9. Covered Work does not include operations or maintenance work.

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 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, 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. Employees performing Laborers Covered Work shall, at a minimum, receive wages and benefits as specified in Attachment D and any contractual increases every July 1st. per the MLA

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. The Unions shall have a right to appoint a job steward per the appropriate MLA.
- 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.
- 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, the Owner or Employers 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.
- 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 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.
- 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: cm@8minutenergy.com

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.
- 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 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 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.
- 10.12. Should the PPA expire or terminate pursuant to its own terms, then this Agreement shall automatically and immediately terminate and shall have no further force or effect.

To Owner:

300MS 8me LLC

Attn: Contracts Manager

4370 Town Center Blvd., Suite 110 [Company]

El Dorado Hills, CA 95762 [Address]

Email: cm@8minutenergy.com [City, State, Zip]

Phone: +1 (916) 608-9060 [Email]

To the Unions:

[Name]

[Title]

[Address]

[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

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

[Owner Company]



By: [Name] Thomas Buttgenbach

Its: [Title] President

[IBEW LOCAL 357]



By: [Name]

Its: [Title]

[IBEW LOCAL 396]



By: [Name] JESSE NEWMAN

Its: [Title] BUSINESS MANAGER/FS

[LABORERS LOCAL #872]



By: [Name]

Its: [Title] BM/ST

ATTACHMENT A
AGREEMENT TO BE BOUND

Eagle Shadow Mountain 2 Solar Farm

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)

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).

ATTACHMENT C

IBEW 357 NV Energy Eagle Shadow Mountain 2 Solar Farm Project Helper Rates

	Check	H&W	DFW	B-Plan	JATC	LMCC *	NLMCC	NEBF 3%	CAF 0.2%	Total
Helper										

* 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].

ATTACHMENT D

Laborer's 872 Eagle Shadow Mountain 2 Solar Farm Project Rates

Local 872 Apprenticeship and Training Hourly Wage and Fringe Benefit Rates

Rates Effective July 1, 2018 – June 30, 2019

Pre-Apprentice

Group I Wage Rate @ 45%.....	\$12.44
Health & Welfare @ 100%.....	\$ 6.70
DC Pension Plan.....	\$ 1.00
Training	\$ 1.80
Vacation @ 45%.....	\$ 1.35*
Supplemental Dues @ 100%..	\$ 2.04 *
Total Fringes.....	\$12.89
Total Package.....	\$25.33

1st

500 Hours (50% Apprentice)

Group I Wage Rate @ 50%.....	\$13.82
Health & Welfare @100%.....	\$ 6.70
Vacation @ 50%.....	\$ 3.54 *
Pension A @ 50%	\$ 6.60
DC Pension Plan.....	\$ 1.00
Training.....	\$ 1.30
GAF/CAF/IAF.....	\$ 0.15
Total Fringes.....	\$ 19.29
Total Package.....	\$ 33.11

Health & Welfare @ 100%.....	\$ 6.77
Vacation @ 90%.....	\$ 4.74*
Pension A @ %.....	\$ 11.88
DC Pension Plan	\$ 1.00
Training.....	\$ 1.30
GAF/CAF/IAF.....	\$ 0.15
Total Fringes.....	\$ 25.77
Total Package.....	\$ 50.65

2nd

500 Hours (60% Apprentice)

Group I Wage Rate @ 60%.....	\$ 16.59
Health & Welfare @100%.....	\$ 6.70
Vacation @ 60%	\$ 3.84 *
Pension A @ 60%	\$ 7.92
DC Pension Plan	\$ 1.00
Training.....	\$ 1.30
GAF/CAF/IAF.....	\$ 0.15
Total Fringes.....	\$ 20.91
Total Package.....	\$ 37.05

Note: This is a summary sheet only. For all other rates, premiums and benefits, see the Laborers Local #872 Collective Bargaining Agreement, which shall govern in the event of a conflict.

Contributions marked with () shall be applied toward the vacation fund, taxed and then deducted accordingly.*

2nd 1000 Hours (70% Apprentice)

Group I Wage Rate @70%	\$19.35
Health & Welfare @ 100%.....	\$ 6.70
Vacation @ 70%.....	\$ 4.14 *
Pension A @ 70%	\$ 9.24
DC Pension Plan.....	\$ 1.00
Training.....	\$ 1.30
GAF/CAF/IAF	\$ 0.15
Total Fringes.....	\$ 22.53
Total Package.....	\$ 41.88

*Zone Pay: 0-50 miles = Free
Over 50 miles at \$3.75 per hour, including Laughlin, NV*

3rd 1000 Hours (80% Apprentice)

Group I Wage Rate @80%	\$ 22.12
Health & Welfare @ 100%.....	\$ 6.70
Vacation @ 80%.....	\$ 4.44 *
Pension A @ 80%	\$ 10.56
DC Pension Plan	\$ 1.00
Training.....	\$ 1.30
GAF/CAF/IAF	\$ 0.15
Total Fringes.....	\$ 24.15
Total Package.....	\$ 46.27

4th 1000 Hours (90% Apprentice)

Group I Wage Rate @ 90%.....	\$ 24.88
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**Local 872, Hourly Wage and Fringe Benefit Rates
Rates Effective July 1, 2018 – June 30, 2019**

<u>Classification</u>	<u>Base Rate</u>	<u>Classification</u>	<u>Base Rate</u>
Group I	\$27.65	Group V	\$28.15
Group IA	\$26.15	Group VII	\$27.96 *
Group II	\$27.86	Flagperson	\$26.15
Group III	\$27.96 1	Watchmen/Shop Maintenance	\$24.65
Group III-A	\$28.46	Certified Welder	\$28.65
Group IV	\$28.05		

* \$ 0.50 per hour above Group III wage rate when wearing protective suit or respirator.

Contribution Rates for the above Classifications:

Pension Plan A.....	\$13.20
DC Pension Plan.....	\$ 1.00
Health Welfare.....	\$ 6.70
Vacation.....	\$ 5.04 **
Training	\$.85
GAF/CAF/IA.....	\$.15
Total Fringes.....	\$26.94

A **Foreman** shall be paid at a rate of \$3.00 per hour more than the highest laborers' wage classification supervised.
A **General Foreman** shall be paid at the rate of \$3.00 per hour more than the highest laborers' wage classification supervised.

The above (**) contributions shall be applied toward the vacation fund, taxed and then deducted accordingly.

Zone Pay: 0-50 miles = free Over 50 miles at \$3.75 per hour, including Laughlin, NV.

**ARTICLE XIX
MONETARY INCREASES/ALLOCATIONS**

MONETARY INCREASES 5 YEAR AGREEMENT:

The following increases become effective on the dates specified below. Page 36 of the Laborers Master Agreement.

JULY 1, 2018 - \$2.10 Per Hour
JULY 1, 2019 - \$2.10 Per Hour
JULY 1, 2020 - \$2.10 Per Hour
JULY 1, 2021 - \$2.10 Per Hour
JULY 1, 2022 - \$2.10 Per Hour

EXHIBIT 22

REACTIVE CAPABILITY CURVES

Reactive Power Capbability Curve for 300 MW Solar Plant

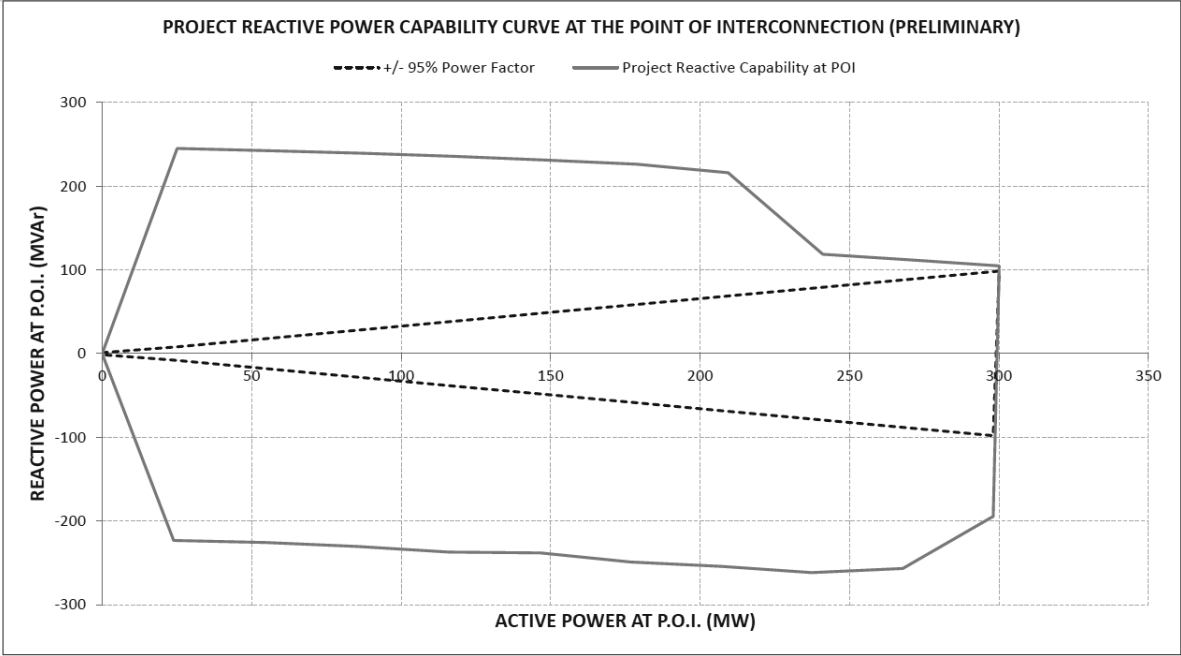


EXHIBIT 23

APPROVED VENDORS LIST

[To be provided by Buyer]

EXHIBIT 24

STORAGE OPERATING PROCEDURES

This is the initial draft of operating guidelines of the Generating Facility and Storage Facility described in the Agreement. The main operations are broken into two parts: (1) forecasting the output of the Generating Facility and (2) Charging Notice and Discharging Notice. Final Operating Procedures for the Generating Facility and the Storage Facility will be mutually developed and agreed upon by no later than Milestone 2(A) on Exhibit 6. The procedures will be periodically reviewed to optimize operations for both parties. Parties shall cooperate to integrate the systems and controls necessary to implement the Operating Procedures.

I. Forecasting

- A. Supplier will provide to Buyer a 7-day hourly rolling availability forecast, the Availability Notice, for the entire potential output of the solar resource, which can be delivered to the Delivery Point or the Storage Facility Metering Point and which incorporates the following information:
 - 1) Supplier's optimal charging schedule, including charging window and hourly charging rate;
 - 2) hourly maximum charging rate availability of the Storage Facility;
 - 3) hourly minimum charging rate availability of the Storage Facility; and
 - 4) current status of the Storage Facility, expressed in a percentage of total battery available for discharge or state of charge;
- B. Planned and forced outage notification and scheduling shall be via the Availability Notice. Additionally, in the event of a forced outage, Supplier shall notify the appropriate NV Energy personnel of forced outage and expected return to service.

II. Charging Notices and Discharging Notices

- A. A Discharging Notice will be delivered to the Supplier in conjunction with each Charging Notice
- B. Buyer will provide to Supplier, per the Western Electricity Coordinating Council ("WECC") pre-scheduling calendar, a forecasted Charging Notice and Discharging Notice. The Charging and Discharging Notice will incorporate Supplier's solar resource availability per Supplier's 7-day hourly rolling forecast.
- C. For the Charging component of the Charging and Discharging Notice, Buyer shall provide Supplier with the following information:
 - 1) the hours in which Supplier shall charge the Storage Facility;
 - 2) the Stored Energy Level the Supplier shall charge the Storage Facility to, by the end of the last hour in which Supplier shall charge the Storage Facility.
 - 3) Buyer, whenever feasible, will utilize Supplier's provided optimal charging window identified in section I.A.1.
- D. The assumed behavior of the Storage Facility during periods of time when the Buyer has not scheduled a Charging Notice or a Discharging Notice is to minimize parasitic losses. The Storage Facility shall report a state of "connected" and other states such as

EXHIBIT 24

STORAGE OPERATING PROCEDURES

disconnected/stopped or off. In each state the Storage Facility shall report time from the current state until it can reach a “connected” state.

- E. Delivered Amounts delivered to the Storage Facility Metering Point during the months other than June, July and August shall include energy used to charge or to be available to charge and shall be metered at the Storage Facility Metering Point. Charging Notices shall take such requirements into account. Energy used to charge the Storage Facility includes resistive losses, pumps, power conversion system, transformers, battery management systems, and thermal regulation. No Load Losses from the Storage Facility shall be deducted from the Delivered Amount when the Storage Facility is not in a “connected” state. The No Load Losses shall be metered upon commissioning as the average losses during a [XX] hour period after the Storage Facility has been disconnected without a Charge Notice or Discharge Notice for a prior 24 hours. The details of a No Load Losses test shall be agreed to by the Buyer and Supplier as part of the final Operating Procedures.
- F. For the Discharging Notice, Buyer shall provide Supplier with the following information:
 - 1) the hours in which the Supplier shall discharge the Storage Facility;
 - 2) the energy discharged in each hour the Supplier shall discharge the Storage Facility.
- G. In addition to the Buyer providing the Storage Facility with Charge or Discharge Notices the Facility shall have a mode available for the Buyer to enable in which the Buyer sends an AGC setpoint to the combined solar and storage Facility. In this mode of operation the Charge or Discharge Notice shall equal the AGC signal minus the solar generation. In this mode the Facility shall provide the following information:
 - 1. The real-time, instantaneous available levels of minimum real power that could be generated at the Delivery Point meter (“pMinimum”) and maximum real power that could be generated at the Delivery Point meter (“pMaximum”). The reported pMinimum and pMaximum shall be the power range that the combined facility could output with the combined output of the Generating Facility and the Storage Facility. The pMinimum and pMaximum shall be reported at least once per six seconds as an estimated forecast.
 - 2. The pMinimum and pMaximum shall consider the Storage Facility constraints of available power (MW), available energy (MWh), state of charged energy and contracted Equivalent Cycles.
- H. All Charging Notices and Discharging Notices shall be consistent with the operating limitations of the Facility as set forth on Exhibit 1.
- I. The Parties shall agree on a SCADA communications protocol and information model for the Storage Facility control (such as DNP3) as part of the final Operating Procedures.

III. Modifications to the Charging and Discharging Notices

EXHIBIT 24

STORAGE OPERATING PROCEDURES

- 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 a real-time software application which allows Buyer to access the status of the Storage Facility, as well the current forecasts of PV generation.
- 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:
 - 1) either through a software application which allows Buyer to directly adjust the charge or discharge status of the Storage Facility, including the rate of charge or discharge of the Storage Facility; or
 - 2) 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; or
 - 3) through a software application which allows for real-time communication, such as Microsoft Lync, Skype for Business, etc. to request adjustments to the charge or discharge status of the Storage Facility, including the rate of charge or discharge of the Storage Facility.
 - 4) A real time dispatch signal will be the primary control of the 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 not be consistent with the operating limitations of the Facility or with 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 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 and Discharging notice.
 - 3) any adjustments necessary to future charge or discharge schedules contained in Buyer's Charging 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

The Supplier will deliver the Discharging Energy to the point of delivery in response to:

- 1. Primarily with a real time dispatch command Per section III above
- 2. Or an automated, scheduled Discharge Notice per section II.D above as a backup.

EXHIBIT 24

STORAGE OPERATING PROCEDURES

The total discharged energy in real time will be limited to the Stored Energy Level of the Storage Facility and to the available power rating of the Generating Facility.

If a Discharging Notice is not scheduled, not dispatched or cancelled and the Stored Energy Level requested from the Charging Notice exceeds XX% of the Maximum Stored Energy Level for greater than X days the Supplier shall request to schedule a discharge in order to return the Storage Facility to this percentage of Maximum Stored Energy Level after the XX day. The Parties will agree to the above numerical values for XX % of Maximum Stored Energy Level, X days and XX day as part of the final Operating Procedures.

V. Measurement and Verification

Buyer will also have real time access to view the Supplier's Energy Management system and data historian that will monitor the Storage Facility's state of health metrics as well usage metrics such as Equivalent Cycles to date. In accordance to Exhibit 1 Buyer will be allowed to use 273 Equivalent Cycles per year during the months of January through May and September through December. Buyer will be able to monitor the amount of cycles that have occurred over the life of the project on a real-time basis. As soon as the Storage Facility meets the cycle limit, the supplier will no longer be able to execute Charge and Discharges for that year.

VI. Scheduling Reports

Supplier will send out a daily report to the Buyer so they may transmit to other parties. The report will include at a minimum the following day's Charging Notice and Discharging Notice as well as forecasted Energy Generation, including the forecasted output of the solar facility in so much as it is reduced by charging the Storage Facility.

EXHIBIT 25

STORAGE CAPACITY TESTS

This is the initial draft of the Storage Capacity Tests described in the Agreement. The Parties will mutually develop and agree on the final Storage Capacity Test procedures consistent with Good Utility Practice by no later than twenty-four (24) months after the Effective Date. The procedures will be periodically reviewed to optimize operations for both parties.

Upon no less than [ten (10) Business Days] prior notice to Buyer, and at any time up until the Commercial Operation Date, Supplier shall schedule and complete a Storage Capacity Test to determine the Storage Contract Capacity of the Storage Facility for the first Contract Year. The Storage Capacity Test shall require the Supplier to maintain Discharging Energy from the Storage Facility for four consecutive (4) hours and the Storage Contract Capacity in megawatts (MW) shall be determined as the quotient of the aggregate quantity of Discharging Energy (MWh) at the end of the four (4) hour test period, as measured at the Delivery Point, divided by four (4).

Thereafter, at least once per Contract Year within the first quarter of each Contract Year, upon no less than five (5) 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 up to three (3) retests 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). Except for establishing the Storage Contract Capacity prior to the Commercial Operation Date, the Supplier may with Buyer's approval, fulfill the requirement to conduct a Storage Capacity Test by use of operational data from a Meter.

No later than ten (10) 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 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;
- 2) Beginning at a time set by the Buyer between sunset and midnight of the same day the Supplier will set the Storage Facility to discharge at the power rate of the Contracted discharge capacity at Point of Delivery. The Storage Facility shall continue the discharge setpoint for a duration of four (4) full and consecutive hours;
- 3) Supplier will add the quantity of MWh produced at the Delivery Point by the Storage Facility for each of the four (4) full and consecutive hours to produce a sum quantity of MWh for the four (4) hour full discharge of the Storage Facility;

EXHIBIT 25

STORAGE CAPACITY TESTS

4) 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

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

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

Storage Contract Capacity = 25 MW

EXHIBIT 26

STORAGE AVAILABILITY LIQUIDATED DAMAGES

Availability Liquidated Damages

For the months of January through May and September through December, the Availability Liquidated Damages, if any, in Month_m if the Monthly Storage Availability is less than the Guaranteed Storage Availability shall be calculated as follows:

$$\text{Availability Liquidated Damages}_{\text{sm}} = .98 * \text{Undischarged Energy Price}_{\text{m}} * \text{Undischarged Energy}_{\text{m}}$$

Where:

$$\text{Availability Liquidated Damages}_{\text{sm}} = \text{Availability Liquidated Damages in Summer Month m (in \$)}$$

$$\text{Undischarged Energy Price}_{\text{m}} = \text{simple average of Mead for the hours correlating to the day or days that the Storage Facility was unavailable in the applicable month m (in \$/MWh)}$$

$$\text{Undischarged Energy}_{\text{m}} = \text{The total amount of Discharging Energy in the applicable month m that Buyer could have scheduled and received at the Delivery Point pursuant to Section 14.3 from the Storage Project (assuming one cycle per day) but was unable to schedule and receive because the Storage Project was out of service, in whole or in part, or otherwise not performing in accordance with the operational requirements specified in Exhibits 1 and 24 for reasons other than Force Majeure, Emergency, Transmission Provider Instructions, Planned Outage, curtailment by Buyer, or Buyer's failure to perform its obligations hereunder, such amount of Discharging Energy to be reasonably determined by Supplier (i) during the period the Storage Project was out of service, in whole or in part, or otherwise not performing in accordance with the operational requirements specified in Exhibits 1 and 24 and (ii) consistent with the Operating Procedures and operational requirements specified in Exhibits 1 and 24 (in MWh).}$$

$$\text{Storage Capacity at Point of Delivery}_{\text{m}} = \text{the Storage Capacity at Point of Delivery from Exhibit 1, Section 8.c, multiplied by the number of days in Month}_{\text{m}}.$$

$$\text{Monthly Storage Availability} = \frac{(\text{Storage Capacity at Point of Delivery}_{\text{m}}) - (\text{Undischarged Energy}_{\text{m}})}{(\text{Storage Capacity at Point of Delivery}_{\text{m}})}$$

EXHIBIT 27

PURCHASE OPTION MINIMUM PRICE CALCULATION

The minimum purchase option price for the Facility specified in clause (ii) of Section 6.2, and clause (ii) of Section 6.3 is equal to the sum of:

- (1) The amount necessary for Supplier and its Affiliates to pay off and fully retire any obligations to or investment by Supplier's Lenders with respect to the Facility, including, without limitation, all outstanding principal, interest, premium, fees, expenses or penalties due upon acceleration or such payment, all swap or interest rate hedging breakage and payoff amounts, all retirement, redemption or liquidation payments, and all fees, interest or expenses with respect to any of the foregoing; and
- (2) The amount necessary to cause the direct and indirect owners of Supplier (other than Supplier's Lenders) to earn the lifetime return on their overall investment in the Facility and Supplier on the basis of which their investment was made, after taking into account all fees, interest or expenses with respect to any of the foregoing. For the purposes of calculating the minimum purchase price, prior to the Commercial Operation Date, Supplier shall provide Buyer the target lifetime return assumed by Supplier's direct and indirect owners, which target return will be reflected by a single metric, such as pre-tax internal rate of return, after-tax internal rate of return, average cash on cash return or a multiple of invested capital, and a certificate from an independent appraiser confirming the reasonableness of such lifetime return. Notwithstanding the above, such return shall not include any financial obligations not for the construction or operation of the Facility or not otherwise related directly to the Facility and for the benefit of the Facility.

EXHIBIT 28

BACKCASTING TOOL

Final procedures for backcasting shall be mutually developed based on industry standard methodologies and agreed upon no later than 18 months of the effective date. This Exhibit 28 shall be replaced when finalized by the Parties by the date set forth in Exhibit 6, Milestone 2(A).

Backcasting shall be utilized to model the Generating Facility's solar generation capability, based on various site conditions and operating parameters. The main concepts of backcasting are broken into two parts: Resource-Adjusted Backcast Amount and Availability Backcast Amount. Both concepts are aimed at quantifying what the Generating Facility's solar generation capability, in cases where the actual solar output was dispatched lower than the Generating Facility's full capacity at the given time.

The Parties will cooperate to integrate the systems and controls necessary to implement backcasting. The backcasting tool will be periodically reviewed to optimize operations, administrative efficiency and accuracy for the benefit of both parties.

I. Backcasting Base Model

Backcasting assessment shall fundamentally be based on the representative design model of the physical built plant (the "Backcasting Base Model"). The Backcasting Base Model shall be established based on the following and shall be provided to Buyer prior to the Commercial Operation Date:

- A. As built designs
- B. Generation Facility planned degradation (as identified in Section 3.8 of the Agreement)
- C. All applicable losses to the Delivery Point including transformation and transmission losses from the PV array to point of delivery;

II. Backcasting Tool

The Backcasting Base Model shall be utilized by associating independent variables which can be measured onsite (primarily, but not limited to, irradiance, cell temperature and soiling) to the dependent variable of the capacity output of the plant at a given time. This association will be established by Generating Facility performance testing completed by the Commercial Operation Date. Such association of the independent variables shall be periodically calibrated with actual measurements taken from the Generation Facility for accuracy to account for effects such as, but not limited to, seasonality and sun angle.

A. The backcasting tool will, in general, consist of a set calculations established by the Backcasting Base Model based on industry standard methodologies (such as ASTM E2824-13 or similar) and a mix of inputs to those calculations that include, but are not limited to, technical assumptions, real-time instrument measurements, historic instrument measurements, and data reported by Supplier, including but not limited to:

- 1. Measured onsite plane of array (POA) irradiance;
- 2. Measured module temperature;
- 3. Measured onsite soiling conditions;
- 4. Equipment ratings, site controller and any AGC set-point limitations at the Delivery Point;
- 5. Measurement uncertainties of equipment;

EXHIBIT 28

BACKCASTING TOOL

6. Minimum irradiance threshold conditions;
7. Any non-production hours or standby loads;
8. Downtime/Planned Outages;
9. Forced and maintenance outages
10. Forced and maintenance derating of the Generating Facility

B. The backcasting tool outputs the hypothetical capacity of the Generating Facility under certain site conditions and Generating Facility operational status. Those outputs are then used throughout this Agreement to determine payments, shortfalls, dispatchability limits and damages (e.g. Un-Dispatched Amounts, Excused Product, etc.).

1. **Resource-Adjusted Backcast Amount** means an amount determined by the backcasting analysis that takes into account measured site conditions impacting the solar resource, but assumes 100% mechanical availability of the Generating Facility. The Resource-Adjusted Backcast Amount will at least consider adjustments for Section II.A.1. through Section II.A.7. above. For avoidance of doubt, the Resource-Adjusted Backcast Amount shall not be greater than the Maximum Amount. The energy impact at Delivery Point due to soiling shall allow for adjustments up to 2% annually within the Resource-Adjusted Backcast Amount. Detailed procedures to be finalized between parties in accordance with this Exhibit 28 and shall:
 - a. Utilize measured soiling conditions from soiling stations onsite
 - b. Incorporate the measured soiling condition throughout the year within the backcasting model on the DC side of the system
 - c. Each year, compare the annual total energy of the Resource-Adjusted Backcast Amount to backcasted amount without any soiling adjustment included. If the resulting soiling adjustment represents less than a 2% annual impact on energy, then there shall be no further change to the Resource-Adjusted Backcast Amount for the given year.
 - d. In the event that the soiling adjustment represents more than a 2% annual impact in energy compared to the non-soiling adjusted backcasted amount, the Resource-Adjusted Backcast Amount shall be increased by the difference between the actual soiling adjustment minus 2% .
2. **Availability Backcast Amount** means an amount determined by a backcasting analysis that takes into account both measured site conditions and availability of the Generating Facility where availability, in this context, refers to the status of the Generating Facility's mechanical and electrical systems and equipment (e.g. operational capability of inverters, converters, transformers, etc.) The Availability Backcast Amount differs from the Resource-Adjusted Backcast Amount by the amount of capacity lost due to these systems and equipment being impaired for any reason (breakdowns, malfunctions or removed from service for forced outage,

EXHIBIT 28

BACKCASTING TOOL

maintenance outage or planned outage) and at least includes all applicable adjustments in Section II.A above.

Supplier shall provide Buyer its calculations and include all relevant back-up data and other information reasonably requested by Buyer.

If the Parties disagree on the calculation of the Resource Adjusted Backcast Amount or Availability Backcast Amount, then the Backcast Amount will be determined through the Dispute resolution provisions of Article 21.

REN-6-SBS (b)

Technical Appendix REN-6-SBS (b)

Summary of the Nevada Administrative Code sections applicable to Southern Bighorn Solar Farm.

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) require that the Companies provide specific information regarding new renewable energy contracts for which they are seeking approval. The information responsive to NAC 704.8885 and 704.8887 is set forth below:

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 renewable energy contract or energy efficiency contract by calculating the levelized market price for the electricity.

The Levelized Cost of Energy (“LCOE”) for the contract is \$36.86/megawatt-hour (“MWh”) including network upgrade costs. The rate is for the purchase of energy and portfolio credits (“PCs”) at a blended rate, as well as the use and maintenance associated with the battery energy storage system.

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 project is being proposed as part of the third amendment to the Companies’ 2018 triennial integrated resource plan to increase its supply of electricity.

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.

The price for renewable energy and PCs set forth in this contract is \$22.32/MWh with no escalation except during the hours ending 1700 through 2100 in June, July and August when the price for renewable energy and PCs is \$145.08/MWh with no escalation.

The price for the storage portion of the PPA is included in the base rate above for the term of 25 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.

The technology that the Southern Bighorn Solar project utilizes creates zero air emissions. When compared to a modern gas-fired combined cycle unit, the emissions avoided are shown in the table below.

Avoided Air Emissions [tons] ¹					
Project	S02	CO	VOC	NOX	PM
Southern Bighorn Solar	2.09	4.88	0.10	22.50	7.68

¹ Avoided Emissions derived from average heat rate for a state of the art combined cycle unit. This is a conservative assumption as avoided emissions are likely to be from higher heat rate market purchases or from older, less efficient units.

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.

According to the developer, the net economic impact of the project includes:

- A temporary increase in workforce during the construction phase of the facility of an estimated 590 positions;*
- A permanent long-term increase in the workforce for the operation and maintenance of the facility of an estimated 12 positions at an estimated average salary of \$80,000 annually, and a total payroll of \$24.0 million over 25 years; and,*
- The environmental benefit will be a reduction in air emissions as shown in the table above.*

NAC 704.8887(2)(e) addresses any economic benefits that might inure to any sector of the economy of this State.

The economic benefits of the project include increased 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.

Commission approval of the PPA will increase the diversity of energy sources used to generate electricity that is consumed in Nevada. The portfolio of renewable energy will increase with a commensurate decrease in reliance on fossil fuel generation.

NAC 704.8887(2)(g) addresses the diversity of energy suppliers generating or selling electricity in this State.

300MS 8me LLC is a U.S.-based company, headquartered in El Dorado Hills, CA. Its parent company, 8minutenergy Renewables LLC, is the largest independent solar power developer in the US.

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.

The agreement has a low starting price with no escalation over the term of the contract. The price is therefore known through the term of the contract and is not subject to fuel risk.

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 9/1/2023.

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.

The agreement permits Nevada Power Company ("NPC") the flexibility to economically dispatch the facility. During the peak period hours ending 1700 through 2100 in June, July and August, the agreement calls for NPC to take all net energy, including any excess energy and PCs generated by the facility. Curtailment or re-dispatch of up to 100 percent of the expected output can be ordered by the transmission provider, electric system authority, or market operator. NPC has no obligation to pay for generation in excess of the maximum amount. Excess energy is paid for at fifty percent (50%) of the applicable product rate. NPC has flexibility

in operation of the battery storage system which can be dispatched at the discretion of the Company.

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.

The System Impact Study (“SIS”) for this project has been completed. The study did not identify any negative impacts to NPC’s transmission grid that could not be mitigated by the transmission system additions proposed in the study. The project generates electricity which will provide benefits to the transmission grid by providing real and reactive power at the point of interconnection. See Technical Appendix TRAN-2 for information on the SIS.

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.

When compared to the long-term avoided costs approved by the Commission in Docket No. 18-06003, the blended rate for energy and PCs is lower than the long-term avoided costs in year 2023 and years 2033 through 2048.

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.

The cost of power and PCs delivered from the project are competitive to both the prices NPC pays for its current portfolio of renewable projects and the other compliant bids submitted in the Fall 2018 Renewable Energy RFP.

NAC 704.8885(2)(b) addresses the term of the contract.

The term of the PPA is 25 years, with a storage term of 25 years.

NAC 704.8885(2)(c) addresses the location of the portfolio [renewable] energy system or efficiency measure that is subject to the contract.

The project is located on the Moapa River Indian Reservation in Clark County, Nevada.

NAC 704.8885(2)(d) addresses the use of natural resources by each renewable energy system that is subject to the contract.

The project utilizes irradiance from the sun gathered by solar panels. No water is consumed during the operation of the project other than the occasional cleaning of the panels.

NAC 704.8885(2)(e) addresses the firmness of the electricity to be delivered and the delivery schedule.

The project generates non-firm energy that will be delivered into the utility's grid which will be delivered through firm transmission pursuant to the designation of the facility as a network resource.

NAC 704.8885(2)(f) addresses the delivery point for the electricity.

The generating facility will be interconnected to the existing Reid Gardner 230-kilovolt ("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 scale PV systems such as Boulder Solar I and Techren I. The plant design is proven technology. The storage portion consists of lithium ion battery cells and associated power electronics.

NAC 704.8885(2)(h) addresses the requirements for ancillary services.

Requirements for ancillary services are not affected by the PPA.

NAC 704.8885(2)(i) addresses the unit contingent provisions.

The energy from the facility is contingent upon the availability of the unit. If the unit is not producing within the performance specifications of the PPA, then energy will be replaced from other sources.

NAC 704.8885(2)(j) addresses the system peak capacity requirements of the utility provider.

The power purchase agreement will provide benefits to the system peak capacity requirements of NPC.

NAC 704.8885(2)(k) addresses the requirements for scheduling.

All net energy from the facility will be delivered directly to NPC's electric grid. The facility will be considered a network resource with 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 SIS for this project has been completed. Shared Network Upgrades associated with this project includes the Pecos 230/138-kV Transformer #5. 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 shared Network Upgrades is \$3,670,000.

NAC 704.8885(2)(m) addresses project insurance.

The PPA requires the supplier to provide workers compensation insurance of not less than \$1 million per occurrence, general liability of not less than \$5 million annual aggregate, and automobile liability insurance of at least \$2 million aggregate.

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 energy and PCs. Compensation for an energy shortfall is based upon the difference between the cost of replacement power, as specified in the PPA, and the PPA price. However, should the cost of replacement power be less than the contract price of power from supplier, the replacement cost will be \$0.00. Compensation for a PC shortfall is determined by NPC exercising its reasonable discretion based on the estimated cost of purchasing PCs.

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, as amended.

The generating facility uses renewable solar energy to generate electricity and transmits that energy to NPC. Therefore, the generating facility comports with NRS §§ 704.7815(1)(a) and 704.7815(1)(b).

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.

8minutenergy is one of the largest utility scale solar PV and battery storage developers in the US with its headquarters in California. Since its inception in 2009, the company has developed and signed PPAs on over 1,800 MW of Solar PV projects, and their current solar and storage development pipeline consists of 7,500 MW of various solar PV development stage projects in addition to 1 GW of battery energy storage in development.

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 existing Reid Gardner 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 NPC’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 SIS for this project was issued on January 29, 2019, for interconnection at the Reid Gardner 230-kV Substation and a re-study was completed May 31, 2019. The estimated in-service date is May 1, 2022.

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.

8minutenergy has contracted with environmental consultants to conduct biological and cultural resources surveys which will support the National Environmental Policy Act process with the Bureau of Indian Affairs (“BIA”) and Bureau of Land Management (BLM). 8minutenergy expects the BIA will formally initiate the NEPA process by publishing a Notice of Intent (NOI) in Q4 2019, after which the BIA is anticipated to issue the Final EIS within 365 calendar days from the date of publication of the NOI in the Federal Register.

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.

Permits necessary for the construction and operation of the Southern Bighorn Solar project are listed in Exhibit 10 and Exhibit 12 of the PPA, Technical Appendix REN-6-SBS (a).

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.

Applications required from Federal agencies for the development of the Gemini Solar project are listed in Exhibit 10 and Exhibit 12 of the PPA, Technical Appendix REN-6-SBS (a).

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.

8minutenergy has secured full site control for the Project via a binding option to lease with the Moapa Band of Paiutes executed December 6, 2018. The lease option allows the Project to lease up to 2,600 acres of tribal land within a larger option area of almost 4,000 acres. All lands for the solar energy generation and storage facilities associated with Southern Bighorn Solar are held in trust for the Moapa Band of Paiutes by the BIA. The

gen-tie line is primarily located on tribal trust lands in a designated utility corridor managed by the BLM.

NAC 704.8885(2)(x) addresses whether the utility provider has any economical dispatch rights.

The agreement permits NPC the flexibility to economically dispatch the facility. During the peak period hours ending 1700 through 2100 in June, July and August, the agreement calls for NPC to take all net energy, including any excess energy and PCs generated by the facility.