

Indicative Model HCE Solar + Storage Energy Purchase Agreement

SOLAR GENERATING AND BATTERY STORAGE

ENERGY PURCHASE AGREEMENT

BETWEEN

**Holy Cross Electric Association, d/b/a Holy
Cross Energy**

AND

[REDACTED]

- [date] -

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Disclaimers

PPA Structure.

Note: This indicative PPA structure is designed for a Solar Generating and Battery Storage Energy Purchase Agreement. A final form of PPA will be developed and amended as necessary to accommodate attributes of resource offers that are selected as a part of HCE's resource solicitation process and associated RFP. For example, further modifications may be necessary depending on whether the offered resource will interconnect with the HCE distribution system or the bulk electric transmission system. Small PV-only resources (e.g. less than 1 MW in size) offered in response to the RFP may be allowed to execute a simplified version of a PPA, at HCE's discretion. Also, this PPA framework would be modified to remove storage references for resource transactions without battery storage.

Participating loads.

Note: HCE may accommodate modifications to this PPA that provide preferential allocation of RECs to a participating load due to an investment in the project. Details about HCE's preferred structure are located in Exhibit S

**SOLAR GENERATING AND BATTERY STORAGE
ENERGY PURCHASE AGREEMENT
BETWEEN
Holy Cross Electric Association
AND
[REDACTED], LLC**

This Solar Generating and Battery [REDACTED] Energy Purchase Agreement (this “PPA”) is made as of this [REDACTED] day of [REDACTED], 20[REDACTED], by and between (i) Holy Cross Electric Association, d/b/a Holy Cross Energy, a Colorado cooperative corporation with a principal place of business at 3799 Highway 82, Glenwood Springs, CO 81601 (“Company”), and (ii) [REDACTED], LLC, a [REDACTED] with a principal place of business at [REDACTED] (“Seller”). Company and Seller are hereinafter referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS Seller desires to develop, design, construct, interconnect, own, operate and maintain the Facility as defined herein; and

WHEREAS Seller desires to sell and deliver, and Company desires to accept and receive, certain products and services generated, stored and/or delivered from the Facility to the Point of Delivery at the prices and on the terms and conditions set forth in this PPA.

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

Article 1 - Rules of Interpretation

1.1 Interpretation.

(A) Capitalized terms listed in this PPA shall have the meanings set forth in Exhibit A - Definitions or as otherwise defined in this PPA, whether in the singular or the plural or in the present or past tense. Words not otherwise defined in this PPA shall (i) have meanings as commonly used in the English language, (ii) be given their generally accepted meaning consistent with Good Utility Practice, and (iii) be given their well known and generally accepted technical or trade meanings.

(B) The following rules of interpretation shall apply: (1) The masculine shall include the feminine and neuter; (2) references to “Articles,” “Sections” or “Exhibits” shall be to articles, sections, or exhibits of this PPA except as the context may otherwise require; (3) all Exhibits are incorporated into this PPA (*provided, however*, that in the event of a conflict with the terms of this PPA, the PPA shall control); and (4) use of the words “include” or “including” or similar words shall be interpreted as “include without limitation” or “including, without limitation.”

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

1.2 Interpretation with Other Agreements.

(A) This PPA does not provide Seller authorization to interconnect the Facility or inject power into HCE's System. Seller shall contract for interconnection services in accordance with HCE's Interconnection Agreement. Seller acknowledges that the Interconnection Agreement is/will be a separate contract and that a separate, executed Interconnection Agreement with HCE will be deemed a condition precedent to the effectiveness of this PPA for any resources which tie to the HCE distribution delivery system. Resources which interconnect with the bulk electric transmission system shall conform to any applicable interconnection requirements established pursuant to the Transmission Tariff.

(B) Unless HCE shall otherwise agree, Seller shall purchase from HCE all energy required to serve the Seller's on-site electrical requirements ("House Power"), exclusive of Station Use, pursuant to HCE's applicable tariff.

1.3 Good Faith and Fair Dealing. The Parties shall act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this PPA. Unless expressly provided otherwise in this PPA, (a) when this PPA specifically references the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, and (b) wherever this PPA specifically gives a Party a right to determine, require, specify or take similar action with respect to a matter, such determination, requirement, specification or similar action shall be Commercially Reasonable.

Article 2 - Term and Termination

This PPA shall become effective as of the date of its execution, and shall remain in full force and effect until 11:59 pm on the last Day of the calendar month during which occurs the []th anniversary of the Commercial Operation Date (the "Scheduled Termination Date"), subject to early termination as provided in this PPA. Applicable provisions of this PPA shall continue in effect after termination to the extent necessary to (i) provide for final billings, payments and adjustments, (ii) enforce or complete the duties, obligations or responsibilities of the Parties (including under Section 12.1(B)-(D), Section 12.2(C), Section 12.3(B)-(C), Article 13 and Article 17 below, and (iii) address any remedies or indemnifications arising prior to termination.

Article 3 - Facility Description

3.1 Description. Seller shall construct, interconnect, own, operate, and maintain the Facility, as further described in Exhibit C – Facility Description and Site Maps. A scaled map that identifies the Site, the location of the Facility, the Solar Units, the Battery Units, the Interconnection Point and Interconnection Facilities, the Point of Delivery, the Battery Storage System Metering Point, and other important facilities, is included in Exhibit C – Facility Description and Site Maps.

3.2 General Design of the Facility.

(A) Seller shall design, construct, operate and maintain the Facility according to Good Utility Practices and the Interconnection Agreement.

(B) The Facility shall include all equipment specified in Exhibit C - Facility Description and Site Maps and otherwise necessary to fulfill Seller's obligations under this PPA, including all equipment necessary (i) to meet the requirements of Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical

Specifications and Exhibit O – Battery Storage System Operating Procedures, and (ii) to interconnect successfully with HCE's System for the delivery of Energy to the Point of Delivery.

(C) The Solar Nameplate Capacity shall be [] MW AC +/- 0.5%. The Battery Storage System Nameplate Capacity shall be [] MW AC. Seller shall certify to Company the final actual Solar Nameplate Capacity and Battery Storage System Nameplate Capacity promptly following COD. [The interconnection capacity for the Facility shall be [] MW, which shall be set forth in the Interconnection Agreement.] [*to be included if the interconnection capacity is larger than the Nameplate Capacity*]

Article 4 - Implementation

4.1 Project Development.

(A) Seller shall enter into and perform at its expense all contracts required for (i) the engineering, procurement, construction, acquisition, manufacture, delivery and installation of the Facility, and (ii) the generation, storage and delivery of Energy from the Facility to the Point of Delivery (generally, the "Construction Contracts") with qualified and experienced contractors. Upon written request by Company, Seller shall provide copies of any or all Construction Contracts to Company. All Construction Contracts obtained by Company shall be deemed Confidential Information subject to Section 20.18 below.

(B) In its efforts to achieve COD, Seller shall use Commercially Reasonable Efforts to achieve the milestones set forth in Exhibit B – Construction Milestones, and shall notify Company promptly following achievement of each such milestone.

(C) Prior to the Commercial Operation Date, Seller shall (i) submit monthly progress reports to Company in a form agreed by the Parties, advising Company of the current status of each Construction Milestone, any significant developments or delays (along with an action plan for making up delays), and Seller's best estimate of the Commercial Operation Date; (ii) provide copies of reports submitted to the Facility Lender relating to status, progress and development of the Facility, and (iii) invite Company to participate in monthly meetings to discuss the progress reports, answer questions, and assess the schedule. Seller shall make all relevant counterparties under the Construction Contracts available to Company, upon request, in order to keep Company fully informed on the status of development.

(D) Upon request, Company shall have the right to monitor the construction, start-up, testing, and operation of the Facility at the Site to verify compliance with this PPA, *provided, however*, that Company shall comply with all of Seller's applicable safety and health rules and requirements.

(E) Neither Company's review of Construction Contracts and Seller's reports, nor its discussions with Seller and its contractors, nor its monitoring of development and construction of the Facility, shall be construed as endorsement by Company of the design, engineering, construction or testing thereof nor as any express or implied warranty as to the performance, safety, durability, or reliability of the Facility.

4.2 Environmental Matters.

(A) No later than 60 Days following HCE BOARD OF DIRECTORS Approval, Seller shall complete and provide to Company a comprehensive independent

“Phase I” environmental investigation of the Site or its equivalent (including associated raw data, if requested by Company). Seller shall notify Company promptly (i) if (and to what extent) any Environmental Contamination on the Site will preclude or interfere with Seller’s ability to perform its obligations under this PPA, and (ii) Seller’s plan for remediation thereof that would allow Seller to perform this PPA as and when due. The Phase I report delivered to Company under this paragraph shall be deemed Confidential Information for purposes of Section 20.18.

(B) Throughout the Term, Seller promptly shall

1. disclose to Company and remediate, at Seller’s sole cost and expense, any Environmental Contamination identified at the Site;

2. provide to Company copies of any further environmental assessments or investigations of the Site (including associated raw data, if requested by Company); and

3. disclose to Company the existence of any enforcement, legal, or regulatory action or proceeding relating to any alleged presence of Environmental Contamination and/or the alleged violation of any Applicable Law related to the protection of endangered, migratory or other protected species.

(C) For purposes hereof:

1. “Environmental Contamination” means the introduction or presence of Hazardous Materials at such levels, quantities or location, or of such form or character, that (i) requires remediation under Applicable Law, (ii) present a material risk that the Site will not be available or usable for the purposes contemplated by this PPA, and/or (iii) will preclude or interfere with Seller’s ability to perform its obligations under this PPA as and when due.

2. “Hazardous Materials” means any substance, material, gas, or particulate matter that is regulated by any Governmental Authority as an environmental pollutant or dangerous to public health, public welfare, or the natural environment (including protection of non-human forms of life, land, water, groundwater, and air), including any material or substance that is (i) defined as “toxic,” “polluting,” “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “solid waste” or “restricted hazardous waste” under any provision of local, state, or federal law; (ii) petroleum, including any fraction, derivative or additive; (iii) asbestos; (iv) polychlorinated biphenyls; (v) radioactive material; (vi) designated as a “hazardous substance” pursuant to the Clean Water Act, 33 U.S.C. §1251 *et seq.* (33 U.S.C. §1251); (vii) defined as a “hazardous waste” pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6901); (viii) defined as a “hazardous substance” pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.* (42 U.S.C. §9601); (ix) defined as a “chemical substance” under the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.* (15 U.S.C. §2601); or (x) defined as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §136 *et seq.* (7 U.S.C. §136).

4.3 Permits.

(A) Seller shall obtain and pay for all Permits necessary or advisable

under Good Utility Practice for the construction, ownership, operation and maintenance of the Facility and the generation and delivery of the output from the Facility to Company. Seller shall keep Company informed as to the status of its permitting efforts and shall provide Company the opportunity to review and comment on major applications for draft and final Permits. Seller shall promptly inform Company of (i) any Permits that Seller is unable to obtain, which are delayed, limited, suspended, terminated or otherwise constrained, along with a statement of whether and to what extent this circumstance may limit or preclude Seller's ability to perform under this PPA, and (ii) Seller's plan to overcome such issue(s) to allow Seller to perform this PPA as and when due. Company shall have the right to inspect and obtain copies of all Permits held by Seller.

(B) Seller represents and warrants to Company that, except for those Permits identified in Exhibit F - Seller's Needed Permits (each of which Seller anticipates will be obtained by Seller in the ordinary course of business), all Permits and other actions required or recommended by applicable Governmental Authorities to authorize Seller's execution, delivery and performance of this PPA have been duly obtained and are in full force and effect.

(C) Throughout the Term, Seller shall promptly disclose to Company the existence of any enforcement, legal, or regulatory action or proceeding relating to the alleged violation of any Permit held by Seller, which proceeding (if successful) could materially interfere with Seller's performance of this PPA.

(D) For purposes hereof, "Permits" means all applicable construction, land use, air quality, emissions control, environmental, protected species, and other permits, licenses and approvals from any Governmental Authority for construction, ownership, operation and maintenance of the Facility and the generation and delivery of Energy therefrom.

4.4 Safety Requirements; Governmental Inspections. Seller shall, and shall cause its Affiliates and contractors to, design and construct the Facility and conduct all work or cause all work in connection therewith to be conducted in accordance with the Safety Requirements. Seller shall, and shall cause its Affiliates and contractors to, take all actions to comply with the Safety Requirements. Seller shall notify Company (i) sufficiently in advance of any known upcoming significant inspections by any Governmental Authority relating to the Facility, to allow Company the opportunity to attend, and (ii) promptly after any unscheduled or impromptu inspection with a description of the nature and outcome of such inspection.

4.5 Commercial Operation.

(A) Seller shall cause COD to occur no later than [REDACTED], 20 [REDACTED] (the "Target COD"). Company shall not be obligated to accept and establish a Commercial Operation Date earlier than [REDACTED], 20 [REDACTED] (***insert date that is 90 days prior to Target COD***).

(B) Seller shall notify Company of the date on which Seller believes the Facility has achieved Commercial Operation (a "COD Notice"). A COD Notice shall include all necessary supporting documentation of the satisfaction or occurrence of all COD Conditions. Company shall have ten (10) Business Days to review a COD Notice and raise any Commercially Reasonable objection to Seller's satisfaction of any of the COD Conditions, *provided, however*, that Seller's COD Notice shall be deemed accepted by Company if Company fails to object within such time period. Seller may notify

Company of completion of one or more COD Conditions on an individual and incremental basis prior to COD, *provided, however*, that Company shall in all cases have up to ten (10) Business Days to review and object to each such notice.

(C) For purposes hereof:

1. the “Commercial Operation Date” or “COD” means 12:01 am on the Day ten (10) Business Days following the date on which Company receives Seller’s COD Notice, without valid objection thereto by Company; and

2. the “COD Conditions” are:

(a) an officer of Seller, authorized to bind Seller and who is familiar with the Facility, has provided written confirmation that (1) all necessary and material Permits have been obtained and are in full force and effect, (2) Seller is in compliance

with this PPA in all material respects, (3) Seller has made all necessary arrangements to obtain and pay the Local Provider for House Power, and (4) the Facility is available to commence normal operations in accordance with Seller’s operating agreements, Construction Contracts, and applicable manufacturers’ warranties;

(b) Seller has proven to Company’s reasonable satisfaction that (1) Seller and HCE have signed the Interconnection Agreement, and Seller has received no notice of breach thereof from HCE, (2) the Facility is interconnected to HCE’s System, has been fully tested, has achieved initial synchronization, and has been successfully operated at a generation level acceptable to the HCE, without experiencing any abnormal or unsafe operating conditions on any interconnected system, and (3) Seller has made all other arrangements necessary to deliver Energy from the Facility to the Point of Delivery during the Term;

(c) Seller has obtained and provided to Company an independent registered professional engineer’s certification stating that the Facility has been completed in all material respects, except for “punch list” items that do not have a Material Adverse Effect on the ability of the Facility to operate for its intended purpose;

(d) Seller has provided to Company either the certifications required by 4 CCR 723-3668 or successor rule requiring Seller to provide certain certifications to Company prior to achieving commercial operation or suitable evidence that the Facility is exempt from such rule;

(e) Seller has demonstrated the reliability of the Facility’s communications systems and AGC interface with Company’s EMCC, and the capability of the Facility to receive and respond to signals from Company’s SCADA System;

(f) Seller has successfully completed a Commercial Operation Test in accordance with Section 5.6(A) and Exhibit M – Battery Storage System Testing Protocols.

(g) Solar Units comprising at least ninety-five percent (95%) of the Solar Nameplate Capacity planned for the Facility, and associated equipment sufficient to allow such Solar Units to generate and deliver Renewable Energy to the Point of Delivery, have been installed and become operable.

(h) Seller has filed a self-certification with FERC establishing Qualified Resource (“QF”) status with FERC and provided evidence of such certification to HCE.

(D) For purposes hereof, the first “Commercial Operation Year” shall mean the period starting at 12:01 a.m. on the Commercial Operation Date and ending at 11:59 pm on the last Day of the calendar month in which the first anniversary of COD occurs, and each successive “Commercial Operation Year” shall mean the 12-month period following the prior Commercial Operation Year. The applicable Committed Energy amount and the Annual Throughput Limit [*bid-specific -- may be n/a*] for the first Commercial Operation Year shall be prorated to reflect the number of Days by which the first Commercial Operation Year exceeds three hundred sixty-five (365) Days.

4.6 Test Energy.

(A) Seller shall provide Company with the information necessary to have the Facility registered with HCE for inclusion in any generation modeling maintained by the bulk transmission system operating authority, sufficiently in advance to allow the Facility to be registered in such model at least four months prior to generating any Test Energy. Company shall cooperate reasonably to assist in the registration of the Facility to allow generation of Test Energy.

(B) Seller shall coordinate the production and delivery of Test Energy with Company, with not less than seven (7) Business Days’ prior notice, or such other Commercially Reasonable prior notice as Company may reasonably request.

(C) For purposes hereof, “Test Energy” means Renewable Energy generated by the Facility prior to COD, required to satisfy the COD Conditions.

Article 5 - Delivery and Testing

5.1 Arrangements.

(A) Seller shall be responsible for arranging, maintaining and paying the costs associated with the interconnection of the Facility to the Point of Delivery on HCE’s System. HCE will fund the delivery system upgrade costs after the Point of Delivery. Seller shall comply with the HCE’s requirements for interconnection.

(B) Seller hereby authorizes Company to contact, discuss and obtain information concerning the Facility and Interconnection Facilities directly with/from the bulk transmission system operating authority. Promptly upon request by Company, Seller shall confirm such authorization in writing to the HCE and any applicable transmission owners in such form as may be requested by Company or the bulk transmission system owners and operating authority.

(C) To the extent required, Company shall arrange and be responsible for scheduling and transmission services at and beyond the Point of Delivery. To the extent applicable, Company shall be the market participant for the Facility, as defined by the bulk transmission system operating authority.

(D) Seller shall, if applicable, be responsible for any bulk transmission system interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver, on a firm transmission service basis, Energy from the Facility to the Point of Delivery. Company shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to transmit and deliver Energy beyond the Point of Delivery.

5.2 Charging Requirements

(A) Company shall be responsible for arranging, managing, purchasing, and scheduling all of the Charging Energy for the Battery Storage System in accordance with the terms of Section 7.3 and Exhibit O – Battery Storage System Operating Procedures. Seller will be responsible for delivery of Solar Charging Energy from the Solar Facility to the Battery Storage System. Company shall deliver Grid Charging Energy to the Point of Delivery, and Seller shall be responsible for accepting and transferring Grid Charging Energy from the Point of Delivery to the Battery Storage System. Seller shall be responsible for delivering all Discharging Energy up to the Point of Delivery. Company shall be responsible for accepting and transferring all Discharging Energy at and from the Point of Delivery.

(B) Seller shall take any and all action necessary to allow the delivery of Charging Energy to the Battery Storage System in order to deliver Energy in accordance with the terms of this PPA, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Point of Delivery to the Battery Storage System and receive any such Charging Energy at the Point of Delivery.

(C) Except with respect to the establishment of the ability to deliver Charging Energy to the Battery Storage System, Company shall be responsible for the costs associated with supplying and delivering any Grid Charging Energy to the Point of Delivery; *provided*, that (i) Seller shall be responsible for certain costs arising out of a Seller Initiated Test as set forth in Section 5.6 and (ii) Seller shall be responsible for charging the Battery Storage System from Renewable Energy generated by the Solar Facility to the extent Seller is directed to do so by Company.

(D) [During the Compliance Period, the Battery Storage System shall only be charged using Solar Charging Energy.] ***bid-specific -- may be n/a***

(E) [The Battery Storage System may not be, and Company shall not issue any instruction, order, Dispatch Notice or other communication requesting or requiring the Battery Storage System to be, charged, discharged or operated in any manner which results in an amount of Energy discharged by the Battery Storage System in any given Commercial Operation Year which exceeds the Annual Throughput Limit, except to the extent provided in accordance with Section 8.5.] ***bid-specific -- may be n/a***

5.3 Market Changes.

(A) If at any time during the Term, the facilities at the Point of Delivery cease to be a part of HCE's delivery system, the Parties shall cooperate in good faith to facilitate the delivery of Energy from the Point of Delivery to Company's load, at the least possible cost to the Parties, consistent with this PPA to the extent possible.

(B) If at any time during the Term, the bulk transmission system operator, the ERO or any other Governmental Authority with jurisdiction imposes an organized market or Company elects to join a regional transmission organization or participate in an organized market that changes the manner in which the Facility is scheduled and dispatched, the Parties shall cooperate in good faith to change their protocols for operation of the Facility accordingly, at the least possible cost to the Parties, consistent with this PPA to the extent possible.

(C) In the event that improvements to the Facility or other expenditures by Seller are necessary to comply with this Section 5.3, which expenditures must be capitalized by Seller under generally accepted accounting principles consistently applied, Company shall reimburse Seller one percent (1%) of such expenditures per month, beginning with the first month following substantial completion of such expenditures and ending upon the earlier to occur of (i) the 100th month following the start of such reimbursements, and (ii) the end of the Term of this PPA.

5.4 Communication Protocols. The Parties shall agree to the communication protocols outlined in Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications to facilitate the exchange of information between the Parties. Each Party may update its contact information set forth in Exhibit D – Notices and Contact Information from time to time by notifying the other Party in writing.

5.5 Electric Metering Devices.

(A) All Electric Metering Devices used to measure Energy shall be owned, installed, and maintained in accordance with the Interconnection Agreement.

1. Meter readings will be adjusted to reflect losses from the Electric Metering Devices to the Point of Delivery in accordance with applicable manufacturers' parameters or as otherwise agreed by the Parties.

2. HCE shall configure Electric Metering Devices in a manner that enables separate, bi-directional (as applicable) meter readings for all Energy transmitted between, or at, the following points as set forth in Exhibit C - Facility Description and Site Maps:

- a. Facility and the Point of Delivery;
- b. To and from the Battery Storage System Electric Metering Device;
and
- c. Solar Units and the Point of Delivery

3. HCE shall separately configure Electric Metering Devices, installed in accordance with and conforming to the HCE's electrical service and tariff requirements, as necessary, to separately account for all House Power.

4. Seller shall arrange any necessary authorization to provide Company access to all Electric Metering Devices for purposes related to this PPA, and Company shall be present at any time when such Electric Metering Devices are to be inspected, tested or adjusted.

(B) Either Party may elect to install and maintain, at its own expense, backup metering devices ("Back-Up Metering"), *provided, however*, that the specifications, installation and testing of any such Back-Up Metering shall be consistent with the requirements for the Electric Metering Devices. Upon written request from the other Party, the installing Party shall test the Back-Up Metering. The actual cost of any such test shall be borne by the Party requesting the test, unless, upon such test, Back-Up Metering is inaccurate by more than one percent (1%), in which case the cost of the retest shall be borne by the installing Party. If requested in writing, the installing Party shall provide copies of any inspection or testing reports to the requesting Party.

(C) If an Electric Metering Device or Back-Up Metering fails to register, or if the measurement is inaccurate by more than one percent (1%), an adjustment shall be made correcting all measurements as follows:

1. If the Electric Metering Device is found to be defective or inaccurate, the Parties shall use Back-Up Metering, if installed, to determine the amount of such inaccuracy, *provided, however*, that Back-Up Metering has been tested and maintained and adjusted for losses on the same basis as the Electric Metering Device. If Back-Up Metering is not installed, or Back-Up Metering is also found to be inaccurate by more than one percent, the Parties shall use the best available information for the period of inaccuracy, adjusted for losses to the Point of Delivery in accordance with applicable manufacturers' parameters or as otherwise agreed by the Parties.

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

3. To the extent that an adjustment period covers a period of deliveries for which payment has already been made by Company, Company shall use the corrected measurements as determined in accordance with this Article 5 to re-compute the amount due for the period of the inaccuracy and shall subtract or add the previous payments made by Company for this period from such re-computed amount. The net difference shall be reflected as an adjustment on the next regular invoice in accordance with Article 9.

5.6 Battery Storage System Testing.

(A) Prior to the Commercial Operation Date, Seller shall schedule and successfully complete a "Commercial Operation Test" in accordance with Exhibit M – Battery Storage System Testing Protocols.

(B) On an annual basis during the Delivery Period, upon seven (7) days prior notice to Company, Seller shall schedule and complete a "Periodic Test" in accordance with Exhibit M – Battery Storage System Testing Protocols. In addition, either Party shall have the right to require a retest at any time if such Party reasonably believes that the actual Performance Criteria has varied materially from the results of the most recent Tests. Such retest shall be scheduled as soon as is reasonably practicable for the Parties consistent with Good Utility Practice. Any such retest shall be deemed a Seller Initiated Test, as defined in Section 5.6(D), except to the extent that such discretionary testing is conducted during a day in which Company has dispatched the Facility, in which case such Test shall be deemed to be a Company Dispatched Test, as defined in Section 5.6(D).

(C) If Seller fails any Periodic Test, then Seller shall be required to commence repairs in accordance with Section 10.3.

(D) Seller may also conduct other discretionary tests, at times and for durations reasonably agreed to by Company, that Seller deems necessary for purposes of reliably operating the Facility or for re-performing a required Test. If such discretionary testing is conducted during a day in which Company has dispatched the Facility being tested (“Company Dispatched Test”), Seller shall not be obligated to pay for the electricity required to charge the Battery Storage System relating to such Company Dispatched Test of the Battery Storage System, and Battery Energy from the Facility shall be treated as dispatched by Company hereunder. If discretionary testing is conducted during a day in which Company has not dispatched the Facility being tested (“Seller Initiated Test”), then Seller may provide the electricity required to charge the Battery Storage System from the Solar Facility or, after the Compliance Period, Company shall provide all electricity required to charge the Battery Storage System, in each case relating to such Seller Initiated Test of the Facility; provided that to the extent Company provides Grid Charging Energy to Seller in connection with such Test, then Company shall reasonably cooperate with Seller in its efforts to perform the Seller Initiated Test at a time that will mitigate the costs of such Energy (including, if requested by Seller, by providing Seller with projections of the Grid Charging Energy Price for periods during which such price is determined by Company in its sole discretion pursuant to its forecasts or cost estimations), and Seller shall reimburse Company for the cost of such Grid Charging Energy used to charge the Battery Storage System to the extent that it exceeds the Battery Energy discharged by the Battery Storage System during such Seller Initiated Test (based on the Grid Charging Energy Price at the time of charging). Company shall reasonably cooperate with Seller to schedule testing during periods when Company is dispatching the Facility so that such testing will be deemed to be a Company Dispatched Test; provided that Company is not required to use or change its utilization of its owned or controlled assets or market positions to facilitate the characterization of such testing as a Company Dispatched Test. ***Entire section or portions may be n/a depending on resource offer, or if no storage included...bracketed material bid-specific – may be n/a***

Article 6 - Conditions Precedent

6.1 HCE BOARD OF DIRECTORS Approval.

(A) If Company applies for HCE BOARD OF DIRECTORS Approval, Company shall have the right to terminate this PPA, without any further financial or other obligation to Seller as a result of such termination, by notice to Seller

1. at any time within 30 Days following issuance of a written notice by the HCE BOARD OF DIRECTORS rejecting Approval, or granting Approval with conditions unacceptable to Company in its sole discretion;

(B) For purposes of this PPA, “HCE BOARD OF DIRECTORS Approval” means a written resolution of the HCE BOARD OF DIRECTORS making an affirmative determination that the Company may enter into this PPA pursuant to Applicable Law.

6.2 Other Company CPs. *[if any, for example for bulk-system interconnected resources, firm delivery curtailment priority must be established...].*

6.3 Seller CPs. *[if any - bid specific].*

Article 7 - Sale and Purchase

7.1 General Obligation.

(A) Beginning on the Commercial Operation Date, Seller shall generate from the Solar Facility, store in the Battery Storage System, and deliver to the Point of Delivery, and sell to Company, and Company shall receive and purchase at the Point of Delivery, the Energy and other products and services required by this PPA. Seller shall not curtail or interrupt deliveries of Energy to Company for economic reasons of any type.

(B) Title and risk of loss of the products and services transacted by this PPA shall transfer from Seller to Company at the Point of Delivery.

7.2 AGC. Beginning on the Commercial Operation Date, Company shall dispatch the Facility through the EMCC AGC system in accordance with Exhibit I – AGC Protocols; Dispatch And Availability Notices; Data Collection; Technical Specifications. Seller shall ensure that, throughout the Term:

(A) the SCADA signal is capable of functioning on all AGC Set Points within the margin of error specified in the manufacturer's energy set point margin of error; and

(B) the Solar Facility AGC Remote/Local status is in "Remote" set-point control during normal operations.

7.3 Battery Storage System Dispatch.

(A) During each Operating Day, HCE will have the exclusive right to dispatch the Battery Storage System, seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Dispatch Notices to Seller electronically in accordance with the Battery Storage System Operating Procedures and subject to the requirements and limitations set forth in this PPA. Seller shall abide with all dispatch directives from HCE, subject only to Good Utility Practices.

(B) For each Operating Day, Seller shall provide to Company (in accordance with the protocols outlined in Exhibit O – Battery Storage System Operating Procedures and as may be updated by written agreement of the Operating Committee pursuant to Section 10.8) an hourly schedule of the expected availability of the Battery Storage System for such Operating Day, no later than two (2) Business Days before such Operating Day (the "Availability Notice"). Seller must update Company immediately, unless an event or circumstance makes it unsafe to do so, then as soon as practicable, in accordance with the protocols outlined in Exhibit O – Battery Storage System Operating Procedures if the availability of the Battery Storage System for dispatch by Company changes or is likely to change after the Availability Notice is submitted. Seller shall accommodate Company's reasonable requests for changes in the time or form of delivery of the Availability Notices.

7.4 Green Benefits. The Parties acknowledge that existing and future Applicable Laws create significant value in the ownership, use and allocation of Green Benefits. To the full extent allowed by Applicable Law, Seller hereby assigns to Company (and Company shall own and be entitled to claim) all Green Benefits to the extent existing or created during the Term associated with the Facility and the Renewable Energy purchased by Company hereunder, at no additional charge to Company under this PPA.

(A) Seller hereby irrevocably assigns to Company all rights, title and authority for Company to register the Facility as an Eligible Energy Resource and own,

hold and manage the Green Benefits associated with the Facility in Company's own name and to Company's account, including any rights associated with any renewable energy information or tracking system that exists or may be established (including participation in any applicable REC Registration Program) with regard to monitoring, registering, tracking, certifying, and/or trading such Green Benefits. Seller hereby authorizes Company to act as its agent for the purposes of registering the Facility as an Eligible Energy Resource, and tracking, certifying, registering and reporting such Green Benefits. Seller grants to Company full authority to hold, use, sell and/or trade such Green Benefits for its own account in all applicable renewable energy information or tracking systems. Upon the request of Company, at no cost to Company, (i) Seller shall deliver or cause to be delivered to Company appropriate attestations/certifications of Green Benefits, and (ii) Seller shall cooperate with Company's tracking, registration, reporting and certification of Green Benefits.

(B) Prior to the Commercial Operation Date, Seller shall make all applications and/or filings required by Applicable Law for accreditation of Green Benefits and for the assignment of such Green Benefits to Company.

(C) For purposes hereof, "Green Benefits" means existing and future environmental credits, benefits or attributes, emissions reductions and avoidances (including emission rate credits), offsets, allowances and green tags, attributable to the Facility during the Term and/or Renewable Energy sold to Company under this PPA, recognized by Applicable Law, including any rights to compensation therefor. Green Benefits include:

1. Renewable Energy Credits;
2. Avoided emissions of pollutants to the air, soils or waters, such as sulfur oxides (SO_x), nitrogen oxides (NO_x) and carbon monoxide (CO);
3. Avoided emissions of greenhouse gases (such as carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF₆)) that have been or may in the future be determined by the United Nations Intergovernmental Panel on Climate Change or by Applicable Law to contribute to the threat of climate change; and
4. Reporting rights for avoided emissions, such as Green Tag Reporting Rights.

For the avoidance of doubt, Green Benefits exclude: (i) production tax credits, investment tax credits, and other local, state or federal tax credits providing a tax benefit to Seller based on ownership of the Facility or energy production therefrom, including the ITC that may be available to Seller with respect to the Facility under IRC §48, and (ii) depreciation and other tax benefits arising from ownership or operation of the facility.

7.5 Ancillary Services.

(A) Company shall be entitled to, and Seller shall make available to Company, all Ancillary Services associated with the Facility, at no additional charge to Company. Seller shall use Commercially Reasonable Efforts to maximize the Ancillary Services available from the Facility.

(B) Any compensation Seller receives under the Interconnection Agreement or otherwise from third parties for Ancillary Services shall be provided to Company at no additional cost to Company under this PPA. To implement the foregoing, Seller shall credit Company, as a reduction to Seller's monthly invoice or other mutually-agreed mechanism, for any compensation that Seller receives from third parties for Ancillary Services; *provided*, that if a Governmental Authority or the bulk electric transmission system operating authority HCE implements new or revised requirements for generators to create, modify, or supply Ancillary Services, requiring Seller to install additional equipment after the date hereof to meet such requirements, then Seller, after consultation with Company, shall, be allowed to reduce the amount to be credited to Company for Ancillary Services by an amount sufficient to recover the cost of such additional equipment. Any cost not so recovered by Seller in any billing period shall be carried forward as a reduction of the amount of the credit in subsequent billing periods.

(C) For purposes hereof, "Ancillary Services" means ancillary services addressed under the Transmission Tariff from time to time (if any), which are associated, directly or indirectly, with the capacity of the Facility or the generation, storage and/or transmission of Energy from the Facility from time to time, including any rights to compensation therefor. By way of example only, "Ancillary Services" may include capacity or reliability attributes, resource adequacy characteristics, locational benefit attributes, and/or VaR generation.

Article 8 - Payment Calculations

8.1 Payment for Renewable Energy.

(A) Company shall pay Seller a payment rate equal to 70% of the Energy Payment Rate for the first Commercial Operation Year, for all Test Energy delivered to Company.

(B) Subject to reduction as set forth in Section 8.4 and the charge as set forth in Section 8.5, commencing on the Commercial Operation Date, Company shall pay the Energy Payment Rate to Seller for all Renewable Energy delivered by the Facility to the Point of Delivery, up to 115% of the Committed Energy, in each Commercial Operation Year (such payment in any given month, the "Monthly Energy Payment").

(C) The Energy Payment Rate shall be deemed Confidential Information for purposes of Section 20.18 below.

(D) Compensation to Seller may also be subject to a reduction to the Monthly Energy Payment in accordance with Section 8.4.

(E) For purposes of determining the amount of Renewable Energy delivered by Seller to the Point of Delivery hereunder in any given period, Company shall subtract from the total amount of Energy delivered by Seller to the Point of Delivery during such period an amount of Energy equal to the product of (x) all Grid Charging Energy provided by Company during such period multiplied by (y) the tested

Round Trip Efficiency of the Battery Storage System as of the time such Grid Charging Energy was provided by the Company (as determined by the applicable Test that occurred closest to the time of such delivery).

8.2 Excess Energy.

(A) Seller shall notify Company promptly upon Seller's delivery of Renewable Energy hereunder that exceeds 110% of the Committed Energy for a Commercial Operation Year. Within 10 Business Days of any such notice, Company shall elect by notice to Seller either to accept or to decline any Excess Energy generated by the Facility through the balance of such Commercial Operation Year. Failure by Company to deliver such notice shall be deemed an election by Company to decline any Excess Energy for that Commercial Operation Year.

(B) If Company elects to accept Excess Energy, Company shall pay Seller the full Energy Payment Rate for all Excess Energy for the balance of that Commercial Operation Year.

(C) If Company declines Excess Energy, (1) Company's purchases of Renewable Energy with respect to the applicable Commercial Operation Year shall cease when Renewable Energy generated by the Facility and delivered to the Point of Delivery reaches 115% of the Committed Energy for such Commercial Operation Year, and (2) Seller shall have the right to sell such Excess Energy (including associated RECs) to one or more third parties until the earlier of (x) the end of the applicable Commercial Operation Year and (y) written notice is provided by Company that it will resume payments hereunder for such Renewable Energy at the Energy Payment Rate, after which the Parties' obligations shall resume pursuant to this PPA. Seller shall be solely responsible for all costs and logistics associated with such third-party sales, including arranging transmission service and delivery at no cost to Company. For the avoidance of doubt, Company shall continue to have the exclusive right to control the dispatch of the Battery Storage System (including to charge the Battery Storage System with Grid Charging Energy, and dispatch such Battery Energy), regardless of whether Company declines Excess Energy.

(D) [During the Compliance Period, if (i) the Renewable Energy generated by the Facility and delivered to the Point of Delivery exceeds 115% of the Committed Energy in a Commercial Operation Year, (ii) the Energy discharged by the Battery Storage System in such Commercial Operation Year is less than the Annual Throughput Limit for such Commercial Operation Year, and (iii) Company has elected not to purchase Excess Energy in accordance with Section 8.2(C) for such Commercial Operation Year, then Seller shall provide, subject to the Battery Storage System Operating Procedures, Solar Charging Energy from the Solar Facility to the Battery Storage System at no additional charge to Company in an amount not to exceed the amount required for Company to reach the Annual Throughput Limit for such Commercial Operation Year]. Seller shall have the right to sell any Excess Energy [in excess of the amount required for Company to reach the Annual Throughput Limit] (including associated RECs) to one or more third parties until the earlier of (x) the end of the applicable Commercial Operation Year and (y) written notice is provided by Company that it will resume payments hereunder for such Renewable Energy at the

Energy Payment Rate, after which the Parties' obligations shall resume pursuant to this PPA.] **bid-specific -- may be n/a**

(E) For purposes hereof, "Excess Energy" means all Renewable Energy generated by the Facility in any Commercial Operation Year (including any Compensable Curtailment Energy) in excess of 115% of the Committed Energy for such Commercial Operation Year, measured at the Point of Delivery.

8.3 Curtailment.

(A) Company or the bulk transmission system operating authority may require Seller, by telephonic communication or through use of the AGC Set-Point or other commercially reasonable means agreed upon by the Parties, to curtail the delivery of Energy to Company from the Facility, for any reason and in Company's sole discretion. Seller shall promptly comply with each such notification.

(B) For purposes hereof:

1. "Compensable Curtailment" means a curtailment of generation or delivery of Renewable Energy following COD arising out of the following (and only the following):

- i. a curtailment of the Facility by Company under Section 8.3(A);
- ii. Company's scheduling and other market participation activities, including any energy offer made by Company with respect to the Facility, economic curtailments and curtailments caused by negative LMP;
- iii. an election by Company to utilize non-firm transmission service to transmit Renewable Energy from the Point of Delivery to its load, and such non-firm transmission service is restricted or reduced by the applicable transmission service provider, except as provided in paragraph 2(iii) below; or

2. "Non-Compensable Curtailment" means any curtailment of the output of the Facility other than a Compensable Curtailment. By way of example only, Non-Compensable Curtailments include curtailments of generation or delivery of Renewable Energy arising out of:

- (i) any action by the the bulk electric transmission system operating authority, including any declaration of an Emergency Condition or Force Majeure under and as defined in the Interconnection Agreement;

- (ii) the restriction or reduction of firm transmission service by the applicable transmission provider;
- (iii) the restriction or reduction of non-firm transmission service by the applicable transmission service provider to the extent such restriction or reduction would also have been imposed even if firm transmission service had been in place;
- (iv) planned or unplanned maintenance outages on any part of the transmission system or the HCE distribution system or any testing of the transmission or HCE distribution system, only to the extent that such maintenance outages or testing of the transmission system results in a curtailment to the output of the Facility;
- (v) [the lack of available transmission from the Facility to the Point of Delivery] **if applicable for bulk electric interconnected resources...**
- (vi) Seller's failure to maintain in full force and effect any Permit to own, operate and/or maintain the Facility;
- (vii) a civil, regulatory or criminal proceeding for the protection of endangered, migratory or other protected species;
- (viii) Seller's failure to abide by the AGC Protocols, or a failure of the Facility to respond to AGC instructions from the EMCC; or
- (ix) [MW]h per Commercial Operation Year of otherwise Compensable Curtailment Energy that may be applied at the election of Company without compensation to Seller.] **bid-specific -- may be n/a**

3. "Compensable Curtailment Energy" means, with respect to any period of Compensable Curtailment, (i) the Potential Energy of the Facility for such period, subject to the *proviso* in Section 8.1(B), (ii) less the Renewable Energy actually generated by the Facility and delivered to Company at the Point of Delivery or to the Battery Storage System (if any), during such period. For purposes of determining Compensable Curtailment Energy, the amount of Potential Energy at any given time shall be calculated using the best-available data and methods to determine an accurate representation of the amount of curtailed Renewable Energy:

a. To the extent available, the Parties shall use Seller's real time Park Potential communicated to Company through the SCADA System as the proxy for Potential Energy, except to the extent that Park Potential is demonstrated not to accurately reflect the Potential Energy (plus or minus 2% average error for non-curtailment periods).

b. During those periods of time when the Park Potential is unavailable or does not accurately represent Potential Energy, the Parties shall use

the best available data obtained through Commercially Reasonable methods to determine the Potential Energy.

(C) No payment shall be due to Seller from Company for Renewable Energy curtailed as a consequence of any Non-Compensable Curtailment, or for Compensable Curtailment Energy prior to COD.

(D) For all Compensable Curtailments following COD, Company shall pay to Seller (i) all amounts that Seller would have received from Company under this PPA had the resulting Compensable Curtailment Energy actually been delivered.

8.4 Monthly Energy Payment Reduction.

(A) For each month of the Delivery Period, the Monthly Energy Payment may be reduced by the Round Trip Efficiency Adjustment and the Guaranteed Storage Availability Payment Adjustment based on Section 8.4(B) and Section 8.4(C).

(B) The Monthly Energy Payment shall be reduced by the Round Trip Efficiency Adjustment based on the then-applicable Guaranteed Round Trip Efficiency, as follows:

1. The “Round Trip Efficiency Adjustment” or “RTE_{Adj}” for each month is given by:

If $RTE < RTE_G$, then $RTE_{Adj} =$

$$[1 - (RTE / RTE_G)] \times (MWh_{ActualGrid} \times EPR)$$

where:

RTE = the Round Trip Efficiency as determined by the most recently completed Test.

RTE_G = the then-applicable Guaranteed Round Trip Efficiency, as identified in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels

$MWh_{ActualGrid}$ = the amount of Grid Charging Energy delivered to Company at the Point of Delivery for the affected month

EPR = the Energy Payment Rate expressed in Dollars per MWh for the Commercial Operation Year

Exhibit R – Example Adjustment Calculations sets forth the sample calculations for the Round Trip Efficiency Adjustment.

(C) For each month of the Delivery Period, Seller shall either (i) achieve an Equivalent Availability Factor of not less than 97% (“Guaranteed Storage Availability”) or (ii) pay, or incur a reduction in the Monthly Energy Payments for such month equal to, the Guaranteed Storage Availability Payment Adjustment, as calculated below. Any

Guaranteed Storage Availability Payment Adjustment, if applicable, shall be reflected in the Monthly Energy Payment for such month; provided, that if the Monthly Energy Payment is less than the Guaranteed Storage Availability Payment Adjustment for such month, the difference shall be due and payable no later than thirty (30) Business Days after receipt by Seller of Company's billing statement for such month, pursuant to Section 9.1(B).

"Availability Percentage" means, during any given Outage, the percentage obtained by dividing the maximum power output that could be provided during such Outage for [()] hours (assuming that the Battery Storage System was charged up to its maximum available Storage Capacity during such Outage) as reported by the SCADA System in accordance with Exhibit O – Battery Storage System Operating Procedures, by the Guaranteed Maximum Discharging Rate.

"Equivalent Availability Factor" of the Battery Storage System shall be calculated as follows: $(\text{Hours} - \text{Total Equivalent Forced Outage Hours} - \text{Total Equivalent Planned Outage Hours}) / (\text{Hours} - \text{Total Equivalent Planned Outage Hours})$.

"Equivalent Outage Hours" (Planned or Forced) means, for any Outage, the product of (x) the number of hours during such Outage multiplied by (y) one minus the Availability Percentage during such Outage.

"Guaranteed Storage Availability Payment Adjustment" means, for each month during the Delivery Period, an amount equal to the Battery Payment Rate x Committed Energy for the applicable month x (the Guaranteed Storage Availability (as a percentage) minus the Equivalent Availability Factor (as a percentage)); *provided*, that in any given month, the Guaranteed Storage Availability Payment Adjustment shall not exceed the Guaranteed Storage Availability Payment Adjustment Cap.

"Guaranteed Storage Availability Payment Adjustment Cap" = Committed Energy x (Battery Payment Rate) for the applicable month.

"Hours" means, for each month during the Delivery Period, the total number of hours in such month.

"Total Equivalent Forced Outage Hours" means the sum of the number of Equivalent Outage Hours during Battery Storage System Forced Outages during the applicable month.

"Total Equivalent Planned Outage Hours" means the sum of the number of Equivalent Outage Hours during Battery Storage System Planned Outages during the applicable month.

Exhibit R – Example Adjustment Calculations sets forth the sample calculations for the Guaranteed Storage Availability Payment Adjustment.

8.5 [Excess Throughput Charge.

(A) Company shall pay Seller a payment equal to [] for each MWh of Energy discharged by the Battery Storage System above the Annual Throughput Limit in any given Commercial Operation Year[, up to but not exceeding the sum of the Annual Throughput Limit plus the Excess Throughput Limit in any given Commercial Operation Year]. For purposes of determining the amount of Energy discharged by the Battery Storage System in any given Commercial Operation Year, any Energy discharged by the Battery Storage System during a Seller Initiated Test or a Periodic Test shall be excluded.] **bid-specific -- may be n/a**

8.6 [Annual Throughput Limit Banking and Borrowing.

(A) If, in any Commercial Operation Year, Company has not used all of the Annual Throughput Limit for such Commercial Operation Year, then [] MWh of the unused Annual Throughput Limit for such Commercial Operation Year shall be added to the Annual Throughput Limit for the subsequent Commercial Operation Year.

(B) If, in any Commercial Operation Year, Company has used all of the Annual Throughput Limit for such Commercial Operation Year, then, for such Commercial Operation year, Company may add up to [] MWh of the Annual Throughput Limit allocated to the subsequent Commercial Operation Year, which use shall reduce the Annual Throughput Limit for the subsequent Commercial Operation Year.] **bid-specific - - may be n/a**

Article 9 - Billing and Payment

9.1 Billing.

(A) The billing period under this PPA shall be the calendar month.

(B) As soon as practicable and in any event within twenty (20) Days after the end of each month, Company shall provide to Seller a statement containing Company's calculation of the amount due to Seller for such month, including the applicable billing parameters based upon Company's reading of the Electric Metering Devices consistent with Section 5.5.

(C) No later than fifteen (15) Business Days following receipt of Company's billing statement, Seller shall submit an invoice to Company in a form and by a method to be agreed by the Parties, showing the amount due Seller for the relevant month, specifying the products and services provided, all billing parameters, rates and factors, and any other data relevant to the calculation of payments due to Seller. Such invoice shall include an explanation of any items in dispute, as well as all supporting documentation upon which Seller relies.

9.2 Payment. All payments shall be remitted via check or electronic funds transfer, as designated by the owed Party, on or before the fifteenth (15th) Business Day

following receipt of the invoice. Remittances received by mail will be considered to have been paid when due if the postmark indicates the payment was mailed on or before the fifteenth (15th) Business Day following receipt of the billing invoice.

(A) If a payment is late, a late payment charge shall be applied to the unpaid balance for the number of Days payment was late and shall be added to the next billing statement. Late payment charges shall include interest calculated using the prime rate of interest as published on the date of the invoice in *The Wall Street Journal* (or, if unavailable, an equivalent publication on or about that date).

(B) Company at any time may offset against amounts owed to Seller, any liquidated amounts, accrued damages and other payments, and undisputed billing errors and adjustments, which are owed by Seller to Company.

(C) Seller and Company may and shall net their obligations to each other under this PPA, and payment of the net amount shall discharge all mutual undisputed obligations between the Parties.

9.3 Billing Disputes. Either Party may dispute invoiced amounts pursuant to Section 13.1, but shall pay to the other Party at least the portion of invoiced amounts that is not disputed, on or before the invoice due date. When the billing dispute is resolved, the owing Party shall pay the amount owed within five (5) Business Days of the date of such resolution, with late payment interest charges calculated on the amount owed in accordance with Section 9.2(A).

Article 10 - Operations and Maintenance

10.1 Operation and Administration.

(A) Seller shall staff, control, and operate the Facility consistent with Good Utility Practices, Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications, Exhibit O – Battery Storage System Operating Procedures, and this PPA. Personnel of Seller shall be available 24x7 via telephone or other electronic means with (i) the capability of remotely starting, operating and stopping the Facility within ten (10) minutes, and (ii) the ability to be present at the Site within 30 minutes, subject to the Safety Requirements.

(B) Seller shall comply with Good Utility Practices, the requirements of all Governmental Authorities and all reasonable requirements of Company in the operation of the Facility. By way of example only, Seller shall perform all capacity testing of the Facility and related reporting, as and when required by Governmental Authorities. Any such testing shall be deemed to be a Seller Initiated Test.

(C) Seller shall provide to Company a day-ahead availability forecast in accordance with Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications, Exhibit O – Battery Storage System Operating Procedures, and any other reporting requirements required for compliance with NERC reliability standards. Company shall forward Seller's forecast to the applicable local reliability coordinator on Seller's behalf, *provided, however*, that Seller shall remain responsible to ensure the timeliness and accuracy of forecasts and any changes to the

real-time or forecast availability of the Facility. If and to the extent that the ERO modifies the forecasting or other reporting requirements imposed on Company or the Facility, Seller shall timely provide required data to Company or the ERO, as applicable.

(D) Seller shall, and shall cause its Affiliates and contractors to operate, and maintain the Facility and conduct all work or cause all work in connection therewith to be conducted in accordance with the Safety Requirements. Seller shall, and shall cause its Affiliates and contractors to, take all actions to comply with the Safety Requirements.

10.2 Facility Maintenance.

(A) Seller shall maintain the Facility in accordance with Good Utility Practice. Seller shall coordinate its regular maintenance requirements for the Facility with Company ("Maintenance Schedules"). Maintenance Schedules, including planned outages of the Facility (including any Battery Storage System Planned Outages), shall be provided to Company in writing and sufficiently in advance for Commercially Reasonable review, and shall be subject to Company's Commercially Reasonable approval. Seller shall coordinate with Company on the timing and duration of planned outages. Company has the right to not permit a planned outage if it conflicts with the requirement of the ERO or if the ERO rejects the planned outage request.

(B) Seller shall minimize the amount of scheduled maintenance during the months of January, February, June, July, August, September and December to the maximum extent consistent with Good Utility Practices. Seller shall coordinate with Company on the timing and duration of planned outages of the Facility (including any Battery Storage System Planned Outages).

(C) When Forced Outages occur, Seller shall notify Company's EMCC of the existence, nature, start time, and expected duration of the Forced Outage as soon as practical, but in no event later than one hour after the Forced Outage occurs. Seller shall immediately inform Company's EMCC of changes in the expected duration of the Forced Outage except to the extent relieved of this obligation by Company's EMCC with respect thereto.

10.3 Repair Obligations.

(A) In the event that:

1. an equipment failure (regardless of when such equipment failure occurs, but excluding any equipment failure for which a Successful Repair has already been demonstrated) with respect to the Battery Storage System results in the Battery Storage System failing the Test set forth in Exhibit M – Battery Storage System Testing Protocols for Grid Charging Capability or being otherwise incapable of charging from the grid [(in each case, after the Compliance Period)], or results in (i) the Minimum Charging Time in excess of 115% of the Guaranteed Minimum Charging Time, (ii) the Maximum Charging Rate less than 85% of the Guaranteed Maximum Charging Rate, (iii) the Minimum Discharging Time in excess of 115% of the Guaranteed Minimum Discharging Time, (iv) the Maximum Discharging Rate less than 85% of the Guaranteed

Maximum Discharging Rate, (v) the Response Time in excess of 115% of the Guaranteed Response Time, or (vi) the Storage Capacity less than 85% of the Guaranteed Storage Capacity, respectively; ***bracketed material bid-specific – may be n/a***

2. a Test demonstrates that any of the Performance Criteria do not meet the levels required to pass such Test in accordance with Exhibit M – Battery Storage System Testing Protocols;

then Seller shall repair the Battery Storage System in accordance with Good Utility Practice and the procedure set forth in this Section 10.3. Within fourteen (14) days of any such failure, Seller shall demonstrate such remedy to the reasonable satisfaction of Company (a “Successful Repair”) or present to Company a description of the reason for the failure and a plan and schedule for a Successful Repair (the “Repair Plan”).

(B) If Company reasonably disagrees with Seller’s Repair Plan, Company may, at its expense, hire an Independent Engineer approved by Seller (such approval not to be unreasonably withheld) to perform an on-site assessment of the situation and make recommendations for completing a Successful Repair. Upon two (2) Business Days’ notice by Company, Seller shall grant the Independent Engineer and Company personnel access to the Battery Storage System and all relevant information including log books, maintenance records and reports, and other applicable materials. If, after seven (7) days of the delivery to Seller of such engineering report, Seller fails, in any material respect to meet the recommendations set forth in such report (as such recommendations may be updated from time to time by the Independent Engineer) for the Successful Repair, or make sufficient progress in effecting same consistent with Good Utility Practice, in each case as determined and reported by the Independent Engineer, Seller shall be in breach of this Section 10.3.

10.4 Books and Records.

(A) Seller shall maintain an accurate and up-to-date operating log at the Facility, in electronic format, with records of production for each clock hour; changes in operating status; Forced Outages; information required by Governmental Authorities in the prescribed format; and other information reasonably requested by Company.

(B) Seller and Company shall each keep complete and accurate records and all other data required by each of them for the purposes of proper administration of this PPA, including metering, billing and payment records, and such records as may be required by Governmental Authorities. Originals or copies of all Operating Records shall be maintained at the Site or such other Colorado location as may be specified by Seller from time to time. Company may examine and make copies of such Operating Records from time to time upon request, during normal business hours.

10.5 Access to Facility. Representatives of Company shall have access to the Facility from time to time, on Commercially Reasonable prior notice, to read meters, perform inspections and take such other actions as may be appropriate to facilitate Company’s performance of this PPA. While at the Facility, such representatives shall

observe Seller's standard safety precautions and shall conduct themselves in a manner that will not interfere with operation of the Facility.

10.6 Real Time Data.

(A) Seller shall communicate all data necessary for Company to integrate the Facility into Company's EMCC in real time through the Facility's SCADA System in accordance with Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications, and subject to Exhibit O – Battery Storage System Operating Procedures. Seller shall maintain the Facility's SCADA System so that it is capable of interfacing with and reacting to Company's AGC Set-Point and responding to signals from Company's EMCC in accordance with the AGC Protocols, subject to Exhibit O – Battery Storage System Operating Procedures.

(B) Seller shall use Commercially Reasonable Efforts to correct the representation of the real time Park Potential of the Facility when Company communicates to Seller a measured difference of plus or minus two percent between the metered Renewable Energy and Park Potential, during periods when generation is not curtailed.

(C) From and after the Commercial Operation Date, Seller shall provide Company, at Seller's expense, real time performance and meteorological data for all Solar Units and meteorological monitors at the Facility in accordance with Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications for the Term of this PPA. Seller shall maintain Seller-owned data collection systems that are compatible with Company's PI System. Seller shall ensure that real time communications capabilities are available and maintained for transmission to Company's PI System. Seller shall ensure that all meteorological equipment at a minimum meets the specifications set forth in Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications. Company shall have the right to disclose data gathered through Company's PI System publicly; *provided, however*, that such data is (i) masked to obscure the origin of the data and (ii) aggregated so that the data cannot be correlated and used by competitors of Seller and/or the supplier of the Solar Units, except as otherwise provided in Section 20.18.

10.7 Accreditation. Seller shall perform from time to time, at its expense, any reporting and testing (including capacity testing) of the Facility required by Governmental Authorities.

10.8 Operating Committee and Operating Procedures.

(A) Company and Seller shall each appoint one representative and one alternate representative to act as the Operating Committee in matters relating to the Parties' performance obligations under this PPA and to develop operating arrangements for the generation, delivery, dispatch, and receipt of Energy from the Facility. The Parties' initial representatives on the Operating Committee are set forth in Exhibit D – Notices and Contact Information.

(B) The Operating Committee will finalize mutually agreeable written Battery Storage System Operating Procedures for the Solar Facility and the Battery Storage System that are consistent with the requirements of this PPA, including Section

5.2 and Exhibit O – Battery Storage System Operating Procedures in order to address administrative matters such as: day-to-day communications; key personnel; operations-center interface; metering, telemetering, telecommunications, and data acquisition procedures; operations and maintenance scheduling and reporting; reports; operations log; testing procedures; and such other matters as may be mutually agreed upon by the Operating Committee. For the avoidance of doubt, Company (or its representative on the Operating Committee) shall have no obligation to agree to operational limitations except for those set forth in Part I of Exhibit O – Battery Storage System Operating Procedures.

(C) The Operating Committee shall review the requirements for AGC and data collection from time to time after the date hereof and may agree on modifications thereto to the extent necessary or convenient for operation of the Facility in accordance with this PPA.

(D) The Operating Committee shall have authority to act in all technical and day-to-day operational matters relating to performance of this PPA and to attempt to resolve potential disputes, provided, however, that except as explicitly provided herein, the Operating Committee shall have no authority to amend or waive any provision of this PPA, including any provision included within Exhibit O – Battery Storage System Operating Procedures.

Article 11 - Security for Performance

11.1 Security Fund.

(A) During the Term of this PPA, Seller shall fund and maintain security in favor of Company, at Seller's expense, to secure Seller's obligations to Company under this PPA (the "Security Fund"), in accordance with this Article 11.

(B) Seller shall establish and fund the Security Fund in the amount of *[insert \$125/kW x (Solar Nameplate Capacity kW + Battery Storage System Nameplate Capacity kW)]*, no later than 30 Days following the date of the execution of this PPA. Within 5 Business Days following COD, the amount of the Security Fund shall be reduced to *[insert \$75/kW x (Solar Nameplate Capacity kW + Battery Storage System Nameplate Capacity kW)]*.

(C) Without notice to Seller, Company may draw from the Security Fund such amounts as are necessary to recover amounts owing to Company pursuant to this PPA, including any Liquidated Delay Damages, Actual Damages, liquidated damages for failure to achieve COD, and any amounts for which Company is entitled to indemnification under this PPA. Company may, in its sole discretion, draw all or any part of such amounts from any form of security to the extent available pursuant to this Article 11 and in any sequence Company may select. Company's failure or delay to draw any amount from the Security Fund in any instance shall not prejudice Company's rights to subsequently recover such amount from the Security Fund or in any other manner.

(D) Company shall notify Seller within five (5) Business Days following any draw on the Security Fund by Company, including the amount thereof and the basis therefor.

11.2 Replenishment. Seller shall replenish the Security Fund to the applicable levels set forth in Section 11.1(B) within fifteen (15) Business Days after Company makes a draw on the Security Fund; *provided*, following COD such replenishment shall not exceed the amount remaining under the Damage Cap (as provided in Section 12.4(A)). Notwithstanding the foregoing, within fifteen (15) Business Days after Company makes a draw on the Security Fund associated with the damages described in Section 12.4(B), Seller shall replenish all amounts drawn from the Security Fund.

11.3 Form.

(A) The Security Fund may be in the form of an irrevocable standby letter of credit substantially in the form of Exhibit G – Form of Letter of Credit (a “Letter of Credit”) from a financial institution acceptable to Company (“Issuer”).

1. The Issuer of the Letter of Credit shall have and maintain a Credit Rating equivalent to A- (or better) by Standard & Poor’s and A3 (or better) from Moody’s. If such Credit Rating is A- or A3, the Issuer must not be on credit watch by any rating agency.

2. The Letter of Credit must be for a minimum term of three hundred sixty (360) Days. Seller shall give Company at least thirty (30) Days advance notice prior to any expiration or earlier termination of the Letter of Credit. Seller shall cause the renewal or extension of the Letter of Credit for additional consecutive terms of three hundred sixty (360) Days or more (or, if shorter, the remainder of the Term) more than thirty (30) Days prior to each expiration date of the security. If the Letter of Credit is not renewed or extended at least thirty (30) Days prior to its expiration date or otherwise is terminated early, Company shall have the right to draw immediately upon the Letter of Credit and to place the amounts so drawn, at Seller’s cost and with Seller’s funds, in an Escrow Account in accordance with paragraph (B) below, until and unless Seller provides a substitute form of security meeting the requirements of this Section 11.3.

(B) The Security Fund may be in the form of U.S. currency deposited into an escrow account with a state- or federally-chartered commercial bank with an office in the State of Colorado, with net assets of at least \$1 billion (the “Escrow Account”).

1. The Escrow Account shall be governed by an escrow agreement in a form mutually satisfactory to Seller, Company and the escrow agent, provided that (a) Company shall hold a first and exclusive perfected security interest in the funds in the Escrow Account, (b) Company shall be permitted unilaterally to draw down any amount therein, regardless of any protest by Seller or any other party liable thereon (*provided* that nothing in the escrow agreement shall preclude any protest against Company by Seller, following any draw, that such draw did not comply with this PPA), and (c) Seller shall pay all fees and expenses of the escrow agent.

2. Funds held in the Escrow Account may be invested as Seller may direct in any of the following:

- a money-market fund sponsored by the escrow agent;
- U.S. treasury obligations with a maturity of ninety (90) Days or less;
- commercial paper rated “A” or better, with a maturity of ninety (90) days or less; and
- other liquid investment-grade investments with maturities of three months or less, approved by Company in advance (such approval not to be unreasonably withheld or delayed).

3. All investment income on the Escrow Account shall be taxable to, and accrue for the benefit of, Seller. After the Commercial Operation Date, periodic sweeps by Seller for recovery of interest earned by the escrowed funds shall be allowed, and, at any time the balance in the Escrow Account exceeds the required amount of security, the escrow agent may remit any excess to Seller.

(C) Following COD, the Security Fund may consist of a guaranty substantially in the form of Exhibit H – Form of Guaranty, from a parent or other guarantor (“Guarantor”) with a minimum of net worth of at least \$250,000,000 and an Investment Grade Credit Rating (and if such Credit Rating is exactly equivalent to BBB- (S&P) / Baa3 (Moody’s), the Guarantor must not be on credit watch by any rating agency). If the Credit Rating of the Guarantor is downgraded below Investment Grade, put on credit watch, or an event occurs that (in the reasonable determination of Company) portends a Material Adverse Effect in the creditworthiness of the Guarantor, then Company may require Seller to convert the guaranty to a Security Fund instrument meeting the criteria set forth in either paragraph (A) or paragraph (B) above no later than 10 Days after notice from Company.

(D) Upon request by Seller, Company shall negotiate in good faith immaterial changes to Exhibit G – Form of Letter of Credit and/or Exhibit H – Form of Guaranty, provided that Seller shall pay or reimburse Company for the incremental direct expenses (including the fees and expenses of counsel) incurred by Company in connection therewith.

(E) Seller may change the form of the Security Fund at any time and from time to time upon Commercially Reasonable prior notice to Company, *provided, however*, that the Security Fund must at all times satisfy the requirements of this Article 11.

11.4 Replacement. In the event that the Security Fund ever fails to comply with the requirements of this Article 11 or Company determines in a Commercially Reasonable manner that an event has occurred or circumstances have developed that threaten to cause the Security Fund to fail to comply with the requirements of this Article 11 (e.g. a Guarantor is placed on negative credit watch by a rating agency), Seller shall

be required to replace the Security Fund with security in compliance with Section 11.3 within five (5) Days following notice thereof from Company.

11.5 Survival. The Security Fund shall survive termination of this PPA to be available to pay any amounts owed to Company arising prior to or upon termination. Promptly following (i) the end of the Term and the completion of all of Seller's obligations under this PPA, or (ii) termination of this PPA for any reason prior to the Scheduled Termination Date, Company shall determine the amount, if any, owed by Seller for any obligations or damages arising out of this PPA. Company may draw such amount and shall release the balance of the Security Fund (including any accumulated interest, if applicable) to Seller.

11.6 Expenses. Seller shall reimburse Company for its direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the preparation, negotiation, execution and/or release (including making a draw of funds) of the Security Fund under this Article 11.

Article 12 - Default and Remedies

12.1 Default by Seller: General

(A) Events. Any of the following events shall constitute a default by Seller under this PPA. If no cure period is provided below, such default shall be deemed an Event of Default by Seller immediately upon its occurrence. If a cure period is provided below, such default shall mature into an Event of Default if not cured within the indicated cure period, subject to Section 13.3 below.

1. Seller's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for Seller or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of sixty (60) Days from inception.

Cure Period: None.

2. Seller's authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against Seller without such authorization, application or consent, which proceedings remain undismissed or unstayed for 60 Days from its inception or which result in adjudication of bankruptcy or insolvency within such time.

Cure Period: None.

3. Seller's assignment of this PPA, the Facility or any Change of Control, not permitted by Section 19.1.

Cure Period: None.

4. Any representation or warranty by Seller in this PPA that has a Material Adverse Effect on Seller's ability to perform this PPA is proven to have been false in any material respect when made.

Cure Period: None.

5. Seller's failure to establish and maintain the Security Fund as and in the amounts required under Article 11.

Cure Period: Five (5) Business Days after Company provides notice of Seller's failure.

6. Seller's failure to obtain and maintain insurance in scope and amounts required under Article 16.

Cure Period: Five (5) Business Days after Company provides notice of Seller's failure.

7. Seller's failure to make any payment to Company as and when required by this PPA, including Liquidated Delay Damages, Actual Damages, and any required indemnification.

Cure Period: Ten (10) Business Days after the date Seller receives notice from Company that the amount is overdue.

8. Any representation or warranty by Seller in this PPA that has a Material Adverse Effect on Seller's ability to perform this PPA ceases to remain true during the Term, other than due to a change of law.

Cure Period: Thirty (30) Days after Company provides notice of such breach.

9. A breach by Seller, of the Interconnection Agreement, which breach materially interferes with Seller's delivery of Energy to the Point of Delivery, Company's ability to accept Energy at the Point of Delivery, Company's ability to transmit Energy beyond the Point of Delivery, and/or otherwise has a Material Adverse Effect on Company.

Cure Period: Thirty (30) Days from the breach or the cure period allowed by the Interconnection Agreement (whichever is longer).

10. Beginning with the second Commercial Operation Year, Seller's failure to deliver to Company at least eighty-five percent (85%) of the Committed Energy for such Commercial Operation Year. For purposes of establishing a default by Seller under this paragraph, the Committed Energy shall be adjusted as provided in Exhibit Q – Methodology for Adjusting Committed Energy.

Cure Period: Seller shall be deemed to have cured this default if, in the following Commercial Operation Year, Seller delivers to Company at least ninety-five (95%) of the Committed Energy for such Commercial Operation Year (again as adjusted

pursuant to Exhibit Q – Methodology for Adjusting Committed Energy).

11. Seller starts-up, operates, charges, or discharges or permits or causes any third party (including Seller's designated operator) to start-up, operate, charge or discharge any Battery Storage System other than as specifically permitted under this PPA.

Cure Period: None.

12. Seller intentionally or knowingly delivers, or attempts to deliver, Energy for sale under this PPA that was not associated with or stored by the Facility.

Cure Period: None.

13. The average Equivalent Availability Factor of the Facility is less than ninety percent (90%) on average for a Commercial Operation Year.

Cure Period: Seller shall be deemed to have cured this default if the average Equivalent Availability Factor of the Battery Storage System is at least ninety percent (90%) for the subsequent Commercial Operation Year.

14. The Round Trip Efficiency derived from a Test is less than 90% of the then-applicable Guaranteed Round Trip Efficiency.

Cure Period: Seller shall be deemed to have cured this default if, within 30 days, Seller completes a Test demonstrating that the Round Trip Efficiency is at least equal to 90% of the then-applicable Guaranteed Round Trip Efficiency.

15. Seller's failure to complete a Successful Repair in accordance with Section 10.3.

Cure Period: Seller shall be deemed to have cured this default if, within [30] days, Seller completes a Successful Repair.

16. The failure by Seller to perform or observe any other material obligation to Company under this PPA, unexcused by Force Majeure (other than failure to achieve COD, which is addressed in Section 12.2 below).

Cure Period: Thirty (30) Days after notice thereof shall have been given by Company; *provided*, that if such default is not reasonably capable of cure within such thirty (30) Day period, Seller shall have such additional period of time (not to exceed ninety (90) Days in any event) as is reasonably necessary for cure, so long as Seller initiates cure within such thirty (30) Day period and diligently prosecutes the cure to conclusion thereafter.

17. Seller removes from the Site equipment upon which the Commercial Operation Test has been based, except for the purposes of replacement,

refurbishment, repair or maintenance, and the equipment is not returned within five (5) days after notice from Company.

Cure Period: None

18. Seller makes any material misrepresentation or omission in any report (including any status report, logs, and reports required under Section 4.1, Section 5.5, Section 10.4, Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications, and Exhibit M – Battery Storage System Testing Protocols) required to be made or furnished by Seller pursuant to this PPA.

Cure Period: Five (5) Days after notice from Company.

19. Subject to Section 7.3, Seller makes any material misrepresentation or omission in any Availability Notice.

Cure Period: None.

(B) Remedies for Default. In connection with any default by Seller under this Section 12.1 (whether or not cured by Seller), Company may

1. Seek Actual Damages in such amounts and on such basis for the default as authorized by this PPA;
2. Offset against any payments due to Seller, any Actual Damages and other amounts due from Seller; and/or
3. Draw any Actual Damages and other amounts due from Seller, from the Security Fund.

(C) Termination for Event of Default. Upon and at any time following an Event of Default by Seller under this Section 12.1, in addition to its rights under Section 12.1(B) above, Company may terminate this PPA immediately upon notice to Seller, without penalty or further obligation to Seller. In connection with any such termination, Company may collect from Seller (subject to the Damage Cap) all Actual Damages arising from such Event of Default through the Scheduled Termination Date.

(D) Specific Performance. In addition to the other remedies specified herein, upon any Event of Default of Seller under this Section 12.1, Company may elect to treat this PPA as being in full force and effect and Company shall have the right to specific performance.

12.2 Default by Seller: Failure to Achieve COD.

(A) COD Delay. Seller shall be in default under this PPA if the Facility fails to achieve COD by the Target COD (“COD Delay”). Seller shall be liable to pay [insert \$250/MW x (Solar Nameplate Capacity MW + Battery Storage System Nameplate Capacity MW)] per Day (“Liquidated Delay Damages”) to Company as a liquidated damage and not a penalty, in lieu of Actual Damages, for any COD Delay. Except as provided in Section 12.2(C) below, the payment of Liquidated Delay Damages shall be Company’s sole and exclusive remedy for a COD Delay. Liquidated

Delay Damages shall begin to accrue on the Day after the Target COD (as it may be extended due to Force Majeure) until the first to occur of COD or termination of this PPA pursuant to Section 12.2(C) below.

(B) Cure. Seller shall have a cure period of 45 days for its failure to achieve Commercial Operation by the Target COD, *provided, however*, that if during such period Seller provides a written opinion from a mutually-agreeable Independent Engineer that COD can reasonably be achieved within an additional 45 Day period, then the cure period shall be 90 Days after the Target COD to achieve Commercial Operation. The payment of accrued Liquidated Delay Damages shall be a condition to any such cure.

(C) Termination. Failure to cure a COD Delay within the applicable cure period set forth in Section 12.2(B) shall be an Event of Default by Seller. Upon such an Event of Default, Company may (i) terminate this PPA immediately upon notice to Seller, without penalty or further obligation to Seller except as to costs and balances incurred prior to the effective date of such termination, and (ii) in connection therewith, in addition to accrued Liquidated Delay Damages but in lieu of Actual Damages for the balance of the Term, collect from Seller liquidated damages therefor in the amount of *[insert \$100/kW x (Solar Nameplate Capacity kW + Battery Storage System Nameplate Capacity kW)]*.

12.3 Default by Company.

(A) Events. Any of the following events shall constitute a default by Company under this PPA. If no cure period is provided below, such default shall be deemed an Event of Default by Company immediately upon its occurrence. If a cure period is provided below, such default shall mature into an Event of Default if not cured within the indicated cure period, subject to Section 13.3 below.

1. Company's application for, or consent (by admission of material allegations of a petition or otherwise) to, the appointment of a receiver, trustee or liquidator for Company or for all or substantially all of its assets, or its authorization of such application or consent, or the commencement of any proceedings seeking such appointment without such authorization, consent or application, which proceedings continue undismissed or unstayed for a period of 60 Days from inception.

Cure Period: None.

2. Company's authorization or filing of a voluntary petition in bankruptcy or application for or consent (by admission of material allegations of a petition or otherwise) to the application of any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction or the institution of such proceedings against Company without such authorization, application or consent, which proceedings remain undismissed or unstayed for sixty (60) Days from its inception or which result in adjudication of bankruptcy or insolvency within such time.

Cure Period: None.

3. Company's assignment of this PPA, not permitted by Section 19.2.

Cure Period: None.

4. Any representation or warranty by Company in this PPA that has a Material Adverse Effect on Company's ability to perform this PPA is proven to have been false in any material respect when made.

Cure Period: None.

5. Company's failure to make any payment to Seller as and when required by this PPA, including invoiced amounts, Actual Damages and any required indemnification.

Cure Period: Ten (10) Business Days after the date Company receives notice from Seller that the amount is overdue.

6. Any representation or warranty by Company in this PPA that has a Material Adverse Effect on Company's ability to perform this PPA ceases to remain true during the Term, other than due to a change of law.

Cure Period: Thirty (30) Days after Seller provides notice of such breach.

7. The failure by Company to perform or observe any other material obligation to Seller under this PPA, unexcused by Force Majeure.

Cure Period: Thirty (30) Days after notice thereof shall have been given by Seller; *provided*, that if such default is not reasonably capable of cure within such thirty (30) Day period, Company shall have such additional period of time (not to exceed one-hundred twenty (120) Days in any event) as is reasonably necessary for cure, so long as Company initiates cure within such thirty (30) Day period and diligently prosecutes the cure to conclusion thereafter.

(B) Remedies for Default. In connection with any default by Company (whether or not cured by Company), Seller may

1. Seek Actual Damages in such amounts and on such basis for the default as authorized by this PPA; and/or
2. Offset against any payments due to Company, any Actual Damages and other amounts due from Company.

(C) Termination for Event of Default. Upon an Event of Default by Company, in addition to its rights under Section 12.3(B) above, Seller may terminate this PPA immediately upon notice to Company, without penalty or further obligation to Company, and in connection therewith, collect from Company all Actual Damages arising from such Event of Default through the Scheduled Termination Date.

12.4 Limitations on Damages.

(A) Except as otherwise provided in Section 12.4(B), Seller's aggregate financial liability to Company for Actual Damages following COD shall not exceed *[insert \$75/kW x (Solar Nameplate Capacity + Battery Storage System Nameplate Capacity)]* (the "Damage Cap"). If at any time following COD, Company incurs damages in excess of the Damage Cap that Seller does not pay when billed by Company, Company shall have the right to terminate this PPA upon notice to Seller, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

(B) Actual Damages payable by Seller arising out of any of the following events shall not be subject to the Damage Cap and shall not be credited against the Damage Cap:

1. damage to Company-owned facilities proximately caused by negligence, breach of this PPA or other misconduct by Seller, its directors, officers, employees and agents;
2. Seller's intentional misrepresentation or intentional misconduct in connection with this PPA or the operation of the Facility;
3. the sale or diversion by Seller to a third party of any Energy from the Facility, excluding sales of Excess Energy under Section 8.2 and any sales in mitigation of damages;
4. Seller's failure (i) to maintain insurance coverages in the types and amounts required by this PPA or (ii) to apply any insurance proceeds as required by Section 16.5;
5. any claim for indemnification under this PPA;
6. any Environmental Contamination caused by Seller; or
7. damages incurred by Company in connection with any bankruptcy or insolvency proceeding involving Seller, including Company's loss of the benefit of its bargain due to rejection or other termination of this PPA in such proceeding.

(C) The Parties confirm that the express remedies and measures of damages provided in this PPA satisfy the essential purposes hereof. If no remedy or measure of damages is expressly herein provided, the obligor's liability shall be limited to all direct damages proximately caused by such default ("Actual Damages") incurred by the non-defaulting Party, provided that if Seller is the defaulting Party, Actual Damages recoverable by Company hereunder may include Replacement Power Costs. **Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary, special, treble, equitable or indirect damages, lost profits or other business interruption damages regardless of whether the relevant cause of action arises from statute, in tort or contract** (except to the extent expressly provided herein); *provided, however*, that if either Party is held liable to a third party for such damages and the Party held liable for such damages is entitled to indemnification from the other Party hereto, the indemnifying Party shall be liable for, and obligated to reimburse the indemnified Party for all such damages.

(D) To the extent damages required to be paid hereunder are liquidated, the Parties acknowledge that actual damages would be substantial but difficult or impossible to determine, that otherwise obtaining an adequate remedy is inconvenient, and that the liquidated damages constitute a reasonable approximation of the harm or loss.

12.5 Step-In Rights.

(A) Upon the occurrence of a default by Seller following COD that could be cured by Company's possession of the Facility, Company shall have the right, but not the obligation, to assume control and operate the Facility as agent for Seller (whether voluntary or involuntary) in accordance with Seller's rights, obligations, and interest under this PPA ("Step-In Rights"). Company shall give Seller and the Facility Lender at least ten (10) Days' notice in advance of exercising Company's Step-In Rights. Exercise of Step-In Rights *per se* shall not be deemed to cure the associated default, and shall not preclude or limit Company's right to exercise its other remedies against Seller under this PPA.

(B) Seller irrevocably appoints Company as Seller's attorney-in-fact for the exclusive purpose of executing such documents and taking such other actions as Company may reasonably deem necessary, appropriate or prudent to implement its Step-In Rights.

(C) Company acknowledges that Company may be required and shall relinquish or delay exercise of its Step-In Rights in the event that the Facility Lender elects to appoint a receiver, foreclose and/or otherwise obtain possession of the Facility under the Financing Documents. Seller shall not grant any person, other than the Facility Lender, a right to possess, assume control of, or operate the Facility in derogation of Company's Step-In Rights.

(D) Seller shall reimburse Company for its expenses and costs (including the fees and expenses of counsel) incurred by Company in connection with exercising its Step-In Rights ("Step-In Costs").

(E) During the period of Company's exercise of its Step-In Rights:

1. Company shall implement its Step-In Rights and operate the Facility in conformance with Good Utility Practice.

2. Company shall perform Seller's obligations in a manner consistent with Seller's duties under this PPA.

3. Seller shall retain legal title to and ownership of the Facility.

4. Seller shall make available at the Facility all documents, contracts, books, manuals, reports, and records required for Company to construct, operate, and maintain the Facility.

5. Seller shall give Company, its employees and contractors, unrestricted access to the Site and the Facility.

6. Seller shall cooperate in the implementation of Company's Step-In Rights.

7. Company shall devote the Energy generated and delivered from the Facility during such period towards satisfaction of Seller's obligations hereunder.

(F) During the period of Company's exercise of its Step-In Rights, Company shall purchase the Energy from the Facility as provided herein; *provided* that Company may withhold its Step-In Costs from payments due to Seller hereunder. In the event that net revenues due to Seller are insufficient to cover such Step-In Costs, Company may draw upon the Security Fund to cover such Step-In Costs.

(G) Company may relinquish its Step-In Rights at any time, on at least fifteen (15) Days' notice to Seller and the Facility Lender. Company shall relinquish its Step-In Rights on the earliest of (i) termination of this PPA, or (ii) Seller's cure of the default that led to exercise of Company's Step-In Rights within the applicable cure period set forth herein.

(H) This Section 12.5 shall be specifically enforceable by Company, without bond and without the need to prove irreparable harm.

(I) Exercise of its Step-In Rights shall not constitute an assumption by Company of any liability of Seller.

12.6 Bankruptcy. This PPA grants each Party the contractual right to "cause the liquidation, termination or acceleration" of the transactions within the meaning of Sections 556, 560 and 561 of the U.S. Bankruptcy Code, as they may be amended superseded or replaced from time to time. Upon a bankruptcy, a non-defaulting Party shall be entitled to exercise its rights and remedies under this PPA in accordance with the safe harbor provisions of the Bankruptcy Code set forth in, *inter alia*, Sections 362(b)(6), 362(b)(17), 362(b)(27), 362(o), 546(e), 548(d)(2), 556, 560 and 561, as they may be amended, superseded or replaced from time to time.

12.7 Cumulative Remedies. Except as explicitly provided to the contrary in this PPA, each right or remedy of the Parties provided for in this PPA shall be cumulative of and shall be in addition to every other right or remedy provided for in this PPA, and the exercise of one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any other rights or remedies provided for herein

12.8 Duty to Mitigate. Each Party shall use Commercially Reasonable Efforts to mitigate any damages it may incur as a result of a default by the other Party under this PPA.

Article 13 - Dispute Resolution

13.1 Negotiation

(A) In the event of any dispute arising under or associated with the Parties' performance of this PPA (a "Dispute"), within ten (10) Business Days following notice by either Party (a "Dispute Notice"), (i) each Party shall appoint a representative,

and (ii) the representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. Any Dispute that is mutually agreed by the Parties (each acting in its sole and complete discretion) to involve engineering, construction or technical matters as the sole or primary area of disagreement between the Parties shall be deemed to be a "Technical Dispute" (each, a "Technical Dispute"). The Parties agree that the technical expert for purposes of resolving any Technical Disputes shall be a mutually-agreeable Independent Engineer, the costs and expenses for which will be shared equally by the Parties. The Independent Engineer may, if he or she deems it appropriate, hold a hearing on the subject of the Technical Dispute and shall, upon the request of either Party, meet with the Parties or their representatives with respect to such Technical Dispute within three (3) Business Days of the request for such meeting. The Independent Engineer shall render a decision solely resolving the Technical Dispute within five (5) Business Days of the meeting with the Parties or their representatives or hearing (if any), or such longer period as the Parties and the Independent Engineer may agree. The decision of the Independent Engineer shall be advisory rather than final and binding on the Parties.

(B) In the event the Parties' representatives cannot resolve the Dispute, or if either Party is not satisfied with the resolution of the Technical Dispute by the Independent Engineer, within thirty (30) Days after the first meeting, either Party may request that consideration and resolution of the Dispute be transferred to senior management. Within ten (10) Days following such a request, each Party shall submit a written summary of the Dispute describing the issues and claims to a senior officer of each Party designated to address the Dispute. Within ten (10) Business Days after receipt of each Party's Dispute summaries, the designated senior managers for both Parties shall negotiate in good faith to resolve the Dispute. If such senior managers are unable to resolve the Dispute thereafter, either Party may seek available legal remedies, subject to Sections 13.3 and 19.3.

13.2 Time Bar. If no Dispute Notice has been issued within eighteen (18) months following the occurrence of events or circumstances giving rise to the Dispute (regardless of the actual knowledge of either Party of such events and circumstances), all claims related to such Dispute (including any allegations of billing errors) shall be deemed waived and the aggrieved Party shall thereafter be barred from proceeding thereon.

13.3 No Termination Pending Dispute Resolution. Notwithstanding Section 12.1 or Section 12.3 to the contrary:

(A) An Event of Default shall not be deemed to have occurred (and hence neither Party may terminate this PPA) for failure by the other Party to pay any amount(s) allegedly due totaling less than \$100,000, if (1) such amount(s) are disputed in good faith, (2) the Party alleged to owe such amount(s) promptly commences and diligently pursues resolution of the Dispute pursuant to Section 13.1, and (3) the owed amount (if any) is paid within ten (10) Business Days after all dispute resolution mechanisms are completed with respect thereto.

(B) An Event of Default by Seller shall not be deemed to have occurred (and hence Company may not terminate this PPA) for failure by Seller to pay any amount(s) allegedly due totaling \$100,000 or more, if

1. such amount(s) are disputed by Seller in good faith;
2. Seller promptly commences and diligently pursues resolution of the Dispute pursuant to Section 13.1;
3. Seller either holds an Investment Grade Credit Rating, or posts cash collateral to secure its obligations (if any) with respect to the disputed amount(s), in an amount equal to the amount(s) in dispute, under a mutually agreeable third-party escrow agreement, in addition to the Security Fund; and
4. the owed amount (if any) is paid by Seller within ten (10) Business Days after all dispute resolution mechanisms are completed with respect thereto.

(C) An Event of Default by Company shall not be deemed to have occurred (and hence Seller may not terminate this PPA) for failure by Company to pay any amount(s) allegedly due totaling \$100,000 or more, if

1. such amount(s) are disputed by Company in good faith;
2. Company promptly commences and diligently pursues resolution of the Dispute pursuant to Section 13.1;
3. Company maintains creditworthiness as evidenced by the following metrics from its annual financial statements *[insert key financial ratios here]*, or posts cash collateral to secure its obligations (if any) with respect to the disputed amount(s), in an amount equal to the amount(s) in dispute, under a mutually agreeable third-party escrow and account control agreement; and
4. the owed amount (if any) is paid by Company within ten (10) Business Days after all dispute resolution mechanisms are completed with respect thereto.

13.4 Governing Law. The interpretation and performance of this PPA and all actions related hereto (whether sounding in contract, tort or otherwise), shall be governed and construed in accordance with the laws of the State of Colorado, exclusive of conflict of laws principles.

13.5 Venue. The Parties submit to the exclusive jurisdiction of the state courts of the State of Colorado for purposes of resolving any Dispute hereunder, except as provided in Section 19.3 Venue for any court proceedings shall lie exclusively in the Colorado District Court for the City and County of Denver or, if such court is jurisdictionally unavailable, then the U.S. District Court for the District of Colorado.

13.6 Waiver of Jury Trial. **Seller and Company each hereby knowingly, voluntarily and intentionally waive any rights they may have to a trial by jury** in respect of any litigation based hereon, or arising out of, under, or in connection with, this PPA or any course of conduct, course of dealing, statements (whether oral or written) or actions of Seller and Company related hereto and expressly agree to have any Disputes

be adjudicated by a judge of the court having jurisdiction, without a jury, subject only to Section 19.3.

Article 14 - Force Majeure

14.1 Definition. For purposes hereof, “Force Majeure” means an event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) was not anticipated as of the date of this PPA, (ii) is not within the control of or the result of the fault or negligence of the Party claiming excuse, and (iii) which by exercise of due diligence and foresight could not reasonably have been avoided; *provided, however*, that Force Majeure shall not include:

- a. inability, or excess cost, to procure any equipment necessary to perform this PPA;
- b. acts or omissions of a third party (including vendors and contractors to Seller), unless such acts or omissions are themselves excused by reason of Force Majeure;
- c. failure of Seller to timely to apply for, or diligently pursue, the Permits identified in Exhibit F – Seller’s Needed Permits hereto;
- d. mechanical or equipment breakdown or inability to operate, attributable to circumstances occurring within design criteria and normal operating tolerances of similar equipment;
- e. Environmental Contamination at the Site;
- f. changes in market conditions;
- g. changes of law; or
- h. labor strikes, slowdowns, work stoppages, or other labor disruptions.

By way of example only, “Force Majeure” includes any delay or failure by HCE to perform its obligations under the Interconnection Agreement.

14.2 Applicability of Force Majeure. A Party shall be relieved of its obligations to perform this PPA and shall not be considered to be in default with respect to any obligation under this PPA if and to the extent such Party is prevented from fulfilling such obligation by Force Majeure, *provided, however*, that: (i) such Party gives prompt notice describing the circumstances and impact of the Force Majeure; (ii) the relief from its obligations sought by such Party is of no greater scope and of no longer duration than is required by the Force Majeure; (iii) such Party proceeds with due diligence to overcome the Force Majeure and resumes performance of its obligations under this PPA as soon as practicable thereafter; and (iv) such Party provides notice upon conclusion of the Force Majeure.

14.3 Limitations on Effect of Force Majeure.

(A) Force Majeure shall only relieve a Party of such obligations as are actually precluded by the Force Majeure.

(B) In no event will the existence of Force Majeure affect the Energy Payment Rate or extend this PPA beyond its stated Term.

(C) If Force Majeure affecting Seller continues for a period of ninety (90) consecutive Days or any one-hundred fifty (150) non-consecutive Days (with respect to Force Majeure occurring prior to COD) or for a period of one-hundred eighty (180) consecutive Days or any two-hundred seventy (270) non-consecutive Days (with respect to Force Majeure occurring after COD), Company may, at any time following the end of such period, terminate this PPA upon notice to Seller, without further obligation by either Party except as to costs and balances incurred prior to the effective date of such termination.

14.4 Battery Storage System Force Majeure. During any period that the Force Majeure Percentage (Battery Storage System) is greater than the Force Majeure Percentage (Solar Facility), the Energy Payment Rate shall be reduced by the Force Majeure Battery Only Amount.

Article 15 - Representations, Warranties and Covenants

Each Party hereby represents and warrants to the other as follows, which representations and warranties shall be deemed to be repeated, if applicable, by each Party throughout the Term:

(A) Such Party is a valid separate legal entity, duly organized, validly existing and in good standing under Applicable Law. It is qualified to do business in the State in which the Facility is located and each other jurisdiction where the failure to so qualify would have a Material Adverse Effect on the business or financial condition of the other Party. It has all requisite power and authority to conduct its business, to own its properties, and to execute, deliver, and perform its obligations under this PPA.

(B) The Party's execution, delivery, and performance of all of its obligations under this PPA have been duly authorized by all necessary organizational action, and do not and will not:

1. require any consent or approval by any governing corporate or management body, other than that which has been obtained and is in full force and effect (evidence of which shall be delivered to the other Party upon its request);

2. violate any Applicable Law, the violation of which could have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA;

3. result in a breach or constitute a default under the representing Party's formation documents, bylaws or equivalent, or under any agreement relating to its management or affairs, any indenture or loan or credit agreement, or any other agreement, lease, or instrument to which it is a party or by which it or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a Material Adverse Effect on the representing Party's ability to perform its obligations under this PPA; or

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

(C) This PPA is a valid and binding obligation of the representing Party.

(D) The execution and performance of this PPA will not conflict with or constitute a breach or default under any contract or agreement of any kind to which the representing Party is a party or any judgment, order, or Applicable Law, applicable to it or its business.

Article 16 - Insurance

16.1 Evidence of Insurance. No later than commencement of construction and thereafter at least five Days prior to each applicable expiration date, Seller shall provide Company with two copies of insurance certificates acceptable to Company evidencing that insurance coverages for the Facility are in force and in compliance with the specifications for insurance coverage set forth in Exhibit E – Insurance Coverage to this PPA. Such certificates shall

(A) name Company as an additional insured (except workers' compensation);

(B) provide that Company shall receive thirty (30) Days prior written notice of non-renewal, or cancellation of, or significant modification to any of the corresponding policies (except that such notice may be ten (10) Days for non-payment of premiums);

(C) provide a waiver of any rights of subrogation against Company, its Affiliates and their officers, directors, agents, subcontractors, and employees; and

(D) indicate that the "Commercial General Liability" policy has been endorsed as described above.

16.2 Policy Requirements. All policies shall be written with insurers with an AM Best rating of at least A-VII or a Standard & Poor's rating of at least A. All policies shall be written on an occurrence basis, except as provided in Section 16.4. All policies shall contain an endorsement that Seller's policy shall be primary in all instances regardless

of like coverages, if any, carried by Company. Seller may satisfy its insurance requirements using any reasonable combination of primary and secondary coverage.

16.3 No Implied Limitation. Seller's liability under this PPA is not limited to the amount of insurance coverage required herein.

16.4 Term and Modification of Insurance.

(A) All insurance required under this PPA shall cover occurrences during the Term and for a period of two years after the Term. In the event that any insurance as required herein is commercially available only on a "claims-made" basis, such insurance shall provide for a retroactive date not later than the date of this PPA and such insurance shall be maintained by Seller for a minimum of six years after the Term.

(B) Company shall have the right, at times deemed appropriate to Company during the Term, to request Seller to modify the insurance minimum limits specified in Exhibit E – Insurance Coverage in order to maintain Commercially Reasonable coverage amounts. Seller shall make Commercially Reasonable Efforts to comply with any such request.

(C) If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide notice to Company, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type, geographic location and capacity. Upon receipt of such notice, Seller shall use Commercially Reasonable Efforts to obtain other insurance that would provide comparable protection against the risk to be insured.

16.5 Application of Proceeds. Except to the extent otherwise required by the Financing Documents, Seller shall apply any casualty insurance proceeds to reconstruction of the Facility following any material casualty to the Facility that occurs more than eighteen (18) months prior to the Scheduled Termination Date.

Article 17 - Indemnity

17.1 Indemnification: General. Each Party (the "Indemnifying Party") shall indemnify, defend and hold the other Party (the "Indemnified Party") harmless from and against all claims, demands, lawsuits (including citizen suits), losses, liabilities, fines, penalties, and expenses (including attorneys' fees) (generally, "Losses"), to the extent caused by

- a default under this PPA (including any breach by Seller of the Safety Requirements) by the Indemnifying Party;
- a violation or alleged violation of Applicable Laws by the Indemnifying Party; and
- the negligence, intentional acts and other misconduct of the directors, officers, employees, or agents of the Indemnifying Party.

17.2 Indemnification: Environmental. Seller shall indemnify, defend and hold Company harmless from and against all Losses arising out of any claim by any Governmental Authority or other third party alleging Environmental Contamination at the Site and/or illegal disposal of Hazardous Materials off-Site, regardless of merit and regardless of Seller's responsibility therefor.

17.3 Indemnification: House Power. If Seller obtains House Power from a self-generation source other than the Facility, Seller shall: (i) provide evidence reasonably satisfactory to Company that it is permitted to do so under Applicable Law, and (ii) shall indemnify, defend and hold Company harmless from and against all claims, demands, lawsuits (including citizen suits), losses, liabilities, fines, penalties, and expenses (including attorneys' fees) that may result therefrom.

17.4 Limitations.

(A) The foregoing indemnification obligations shall apply notwithstanding any contributory misconduct of the Indemnified Party, but the Indemnifying Party's liability to indemnify the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party's misconduct caused the damages.

(B) Neither Party shall be indemnified for Losses resulting from the sole negligence or willful misconduct of the directors, officers, employees, or agents of such Party.

(C) These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy. Nothing in this Article 17 shall enlarge or relieve Seller or Company of any liability to the other for any breach of this PPA.

17.5 Procedures.

(A) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall provide notice thereof to the Indemnifying Party; *provided* that a delay in providing such notice shall limit the obligations of the Indemnifying Party only to the extent that such delay actually prejudices the ability of the Indemnifying Party to contest the claim or defend the proceeding.

(B) The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, if the defendants in any such action include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall reasonably conclude that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense.

(C) If an Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may contest, settle, or pay such claim at

the expense of the Indemnifying Party, *provided, however, that* settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or otherwise warrants settlement.

17.6 Amounts Owed. In the event that a Party is obligated for indemnification under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a Commercially Reasonable Effort by the Indemnified Party to obtain such insurance proceeds.

Article 18 - Lender Provisions

18.1 Accommodation of Facility Lender.

(A) Company shall provide such consents to collateral assignment, certifications, representations, estoppels, information or other documents, as may be reasonably requested by Seller in connection with the financing of the Facility consistent with the terms set forth in Exhibit K – Lender Consent Provisions (generally, a "Lender Consent"), *provided, however,* that in providing a Lender Consent, Company shall have no obligation to

1. modify the terms of this PPA;
2. provide any consent or enter into any agreement that has a Material Adverse Effect on any of Company's rights, benefits, risks, or obligations under this PPA;
3. transfer or release any property or property interests of Company;
4. release or subordinate (or cause the release or subordination) of any lien on any property of Company for the benefit of Seller or the Facility Lender; or
5. permit any lien to be placed on property of Company.

(B) Seller shall reimburse, or shall cause the Facility Lender to reimburse, Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in the preparation, negotiation, execution and/or delivery of each Lender Consent and any documents requested by Seller or the Facility Lender pursuant to this Section 18.1.

18.2 Notices.

(A) Seller shall provide Company with a notice identifying the Facility Lender and providing appropriate contact information for the Facility Lender. Following receipt of such notice, Company shall provide to the Facility Lender a copy of each notice of alleged default delivered to Seller under Section 12.1 or Section 12.2, and Company will accept a cure thereof performed by the Facility Lender, so long as the cure is accomplished within the applicable cure period set forth in this PPA or the relevant Lender Consent.

(B) Within ten (10) Days following Seller's receipt of each notice of default or Facility Lender's intent to exercise any remedies under the Financing Documents, Seller shall deliver a copy of such notice to Company.

Article 19 - Assignment

19.1 Assignment by Seller.

(A) Seller shall not sell, exchange or otherwise transfer the Facility or any material portion thereof to any third party, nor shall Seller undergo any Change of Control (whether voluntary or by operation of law), absent the prior written consent of Company, which shall not be unreasonably withheld or delayed. Company shall have no obligation to provide any consent under this Section unless

1. Seller has complied with Sections 19.3 and 19.4 if and as applicable;
2. Seller has provided to Company such information concerning the transferee's direct and indirect ownership as Company reasonably requests;
3. the transferee has substantial experience in the operation of power generation facilities akin to the Facility, either directly, through its affiliates or through a Qualified Operator;
4. the transferee (together with its parents and affiliates) enjoys an Investment Grade Credit Rating or other creditworthiness satisfactory to Company;
5. Seller has provided to Company at least thirty (30) Days' prior notice of the transaction; and
6. Seller pays or reimburses Company for the direct expenses (including the fees and expenses of counsel) incurred by Company in connection with the transaction.

(B) Any Change of Control or sale, transfer, or assignment of any interest in the Facility effected without fulfilling the requirements of this PPA shall be null, void and a breach of this PPA.

(C) Seller shall assign this PPA to any successor owner of the Facility, and shall cause such successor to assume all obligations of Seller (accrued and prospective) hereunder via a writing reasonably satisfactory to Company. Seller also may assign this PPA for collateral purposes to any Facility Lender, and may subcontract some or all of its duties under this PPA, upon notice to but without the consent of Company

(D) Except as permitted in this Section 19.1, Seller may not assign this PPA or any portion hereof. No assignment shall relieve Seller of its obligations under this PPA, nor impair any security posted by Seller unless such security is replaced in accordance with Article 11. Before this PPA is assigned by Seller, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

19.2 Assignment by Company.

(A) Company may assign this PPA to any Affiliate, or to any successor that provides retail electric service in all or substantially all of Company's service territory and is subject to rate and quality of service regulation under the jurisdiction of the HCE BOARD OF DIRECTORS. Any other assignment of this PPA by Company shall require the prior written consent of Seller, not to be unreasonably withheld or delayed.

(B) If an assignee of Company enjoys a creditworthiness assurance equal to or better than HCE's creditworthiness as of the date of assignment, Seller shall release Company from its obligations hereunder if so requested by Company. Except for the foregoing, no assignment shall relieve Company of its obligations under this PPA.

(C) Any assignee of Company shall assume all obligations of Company (accrued and prospective) hereunder via a writing reasonably satisfactory to Seller. Before this PPA is assigned by Company, the assignee must first obtain such approvals as may be required by all applicable Governmental Authorities.

19.3 ROFO. ***[Note to Seller: This section could be replaced with an HCE option to purchase by HCE as of a certain date after COD, e.g. at the start of year 7...]***

(A) At any time after the Commercial Operation Date,

(1) if Seller proposes to sell the Facility to an unaffiliated third party, Seller shall first offer to sell the Facility to Company via notice to Company,

(2) if Seller's parent proposes to sell a majority of the equity interests in Seller to an unaffiliated third party, Seller shall cause its parent first to offer to sell such equity interests to Company via notice to Company, and

(3) if Seller's parent owns no assets other than its equity interests in Seller and the parent of Seller's parent proposes to sell a majority of the equity interests in Seller's parent to an unaffiliated third party, Seller shall cause its parent's parent first to offer to sell such equity interests to Company via notice to Company

(in each case, a "ROFO Notice"). Any ROFO Notice shall describe the proposed transaction, including the minimum price, status of title to the Site, liabilities to be assumed and other terms which Seller or its relevant parent (as applicable) is willing to accept to proceed with the contemplated transaction. The contents of a ROFO Notice shall be deemed Confidential Information for purposes of Section 20.18 below.

(B) Following issuance of a ROFO Notice, Seller shall allow Company 60 Days to investigate the proposed transaction and conduct due diligence. Due diligence shall include such physical inspections, surveys and operating tests of the Facility and the Site, such reviews of Seller's contracts, books and records, and interviews of such personnel, as Company may reasonably request. All information obtained by Company from such investigations shall be deemed Confidential

Information subject to Section 20.18 below. Within such 60-Day period, Company may elect to purchase the Facility or the relevant equity interests (as applicable) on substantially the same terms as set forth in the ROFO Notice. If Company fails to notify Seller of Company's election within such 60-Day period, Company shall be deemed to have rejected the transaction.

(C) If Company elects to purchase the Facility or the specified equity interests (as applicable), the Parties shall negotiate and execute a definitive contract for the transaction (a "PSA"). The PSA shall include the price and other terms set forth in the ROFO Notice and such other terms as are set forth in Exhibit L – PSA Provisions. In the event that the Parties cannot agree on the final form of PSA, (i) the issue shall be submitted to "baseball" arbitration in Denver, Colorado before one arbitrator appointed by the Arbitration Service, i.e. each Party shall submit to the arbitrator a form of proposed PSA, and the arbitrator shall be required to select one of the two forms to be used as the PSA in the transaction, without compromise, as the arbitral award, (ii) the period for closing of the transaction shall be extended for the period required to complete arbitration, and (iii) the Party whose form PSA is rejected shall pay the fees and costs of the Arbitration Service.

(D) If Company rejects the transaction described in a ROFO Notice, Seller shall have the right to sell the Facility (or Seller's relevant parent shall have the right to sell the specified equity interests, as applicable) on terms not more favorable to Seller or its parent vs. the terms set forth in the ROFO Notice, at any time within the twelve-month period following issuance of the ROFO Notice. If Seller or its relevant parent fails to close a transaction on such terms within such twelve (12)-month period, any sale of the Facility or equity interests in Seller shall again be subject to this Section 19.3.

(E) This Section 19.3 shall be specifically enforceable by Company, without bond and without the need to prove irreparable harm.

(F) Seller shall cooperate in all respects reasonably necessary for Company to exercise its ROFO rights, and shall operate the Facility in the ordinary course of business following the date of issuance of a ROFO Notice.

19.4 PFT.

(A) Seller shall give Company at least ninety (90) Days' prior notice (a "PFT Notice") of any Pending Facility Transaction that does not otherwise trigger Company's ROFO rights under Section 19.3, in order to provide Company with an opportunity to discuss and negotiate with Seller the possible sale of the Facility to Company. Any PFT Notice shall include a fair summary of Seller's plans with respect to the Facility in connection with the proposed Pending Facility Transaction, to the extent then known by Seller. The contents of a PFT Notice shall be deemed Confidential Information for purposes of Section 20.18 below.

(B) Seller shall have no obligation to sell nor shall Company have any obligation to purchase the Facility, following any PFT Notice. Issuance of a PFT Notice shall not relieve Seller of its obligation to offer a ROFO to Company if and when

applicable pursuant to Section 19.3. In the event that the transaction giving rise to the PFT Notice has not been completed within twelve (12) months following a PFT Notice, Seller shall be required to resubmit a PFT Notice for such transaction.

(C) Any breach of this Section 19.4 shall entitle Company to liquidated damages from Seller in the amount of [*insert \$5/kW x (Solar Nameplate Capacity kW + Battery Storage System Nameplate Capacity kW)*].

(D) For purposes hereof, a "Pending Facility Transaction" or "PFT" means:

1. any Change of Control of Seller;
2. the issuance by Seller or any of its Affiliates of a request for proposals or the response by Seller or any of its Affiliates to a request for proposal or similar process (e.g., auction) for the purchase or sale to any unaffiliated third party of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility;
3. the commencement by Seller or any of its Affiliates of substantive negotiations with any unaffiliated third party with respect to the sale of any equity interests in Seller or the Facility, or any group(s) of assets or equity interests that includes the Facility; or
4. the execution by Seller or any of its Affiliates of any letter of intent, memorandum of understanding or similar document, whether or not legally binding, which contemplates the sale or lease to an unaffiliated third party of any equity interests in Seller or the Facility or any group(s) of assets or equity interests that includes the Facility; *provided, however*, that a PFT does not include (i) any financing or refinancing of the Facility Debt, (ii) any transaction among Affiliates of Seller, and/or (iii) any transaction for which Seller offers ROFO rights to Company under Section 19.3.

Article 20 - Miscellaneous

20.1 Notices.

(A) Notices required by this PPA shall be in writing and addressed to the other Party at the addresses noted in Exhibit D – Notices and Contact Information, as either Party updates such addresses from time to time by notice to the other Party. Notices shall be deemed effective when receipt is acknowledged in writing by the counterparty (or absent such acknowledgement, when delivered via third-party messenger or via FedEx or other reputable overnight courier service). Any notice shall be deemed to have been received by the close of the Business Day on which it was delivered. Real-time or routine communications concerning Facility operations shall be exempt from this Section 20.1(A).

(B) The Parties recognize the need for accurate communications between them. Each Party consents to the recording of telephone conversations between their employees and representatives, related to the performance and administration of this PPA.

20.2 Taxes and Tax Incentives.

(A) Company shall purchase all Energy on a wholesale basis, for resale to Company's retail customers and, if applicable, wholesale customers. Company shall obtain and provide Seller with any certificates required by any Governmental Authority or otherwise reasonably requested by Seller to evidence that the deliveries of Energy hereunder are sales for resale.

(B) As between the Parties, Company shall be solely responsible for the payment of (1) any sales, use or equivalent taxes imposed by Governmental Authorities, whether now in existence or hereafter enacted, on the purchase of Energy hereunder at the Point of Delivery, and (2) any taxes imposed by Governmental Authorities, whether now in existence or hereafter enacted, on the transmission of Energy beyond the Point of Delivery.

(C) Subject to Section 20.2(B), Seller shall be solely responsible for any and all present and future taxes and other impositions of Governmental Authorities relating to the construction, ownership or leasing, operation or maintenance of the Facility and the Site (including *ad valorem* taxes on the Facility and the Site), and any taxes imposed prior to the Point of Delivery with respect to the products and services to be sold and delivered to Company hereunder, whether calculated based upon cost, value, labor, capital, production, savings, green attributes or other parameters. Seller's prices under Article 8 are inclusive of such taxes and impositions during the Term, and Seller assumes the risk of changes in such taxes after the date hereof.

(D) The Parties shall cooperate to minimize tax exposure, *provided, however,* that neither Party shall be obligated to incur any financial burden to reduce taxes for which the other Party is responsible hereunder.

20.3 Applicable Laws. Each Party shall comply with all Applicable Laws (including the Transmission Tariff obligations imposed by the Bulk Electric System Operating Authority), except for any non-compliance that (individually or in the aggregate) could not reasonably be expected to have a Material Adverse Effect on the other Party or on such Party's ability to perform this PPA.

(A) As applicable, each Party shall give all required notices, shall procure and maintain all Permits necessary for performance of this PPA, and shall pay its respective charges and fees in connection therewith.

(B) Each Party shall promptly disclose to the other Party, any violation of any Applicable Laws arising out of the Facility and/or performance of this PPA.

(C) Upon permanent cessation of generation from the Facility, Seller shall decommission and remove the Facility and remediate the Site as, if and when required by Applicable Laws.

(D) Seller acknowledges Company is subject to Applicable Laws regarding equal employment opportunity and affirmative action, including 41 C.F.R. § 60-1.4(a)(1-7). Such Applicable Laws may also be applicable to Seller as a subcontractor to Company. All such Applicable Laws shall be deemed to be incorporated herein as required by Applicable Law.

(E) Each Party assumes the risk of changes in Applicable Laws following the date hereof, that affect such Party's costs of ownership and operation of its assets, and its performance of this PPA, except as otherwise specifically set forth herein.

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

20.5 Rate Changes.

(A) The terms and conditions and the rates for service specified in this PPA shall remain in effect for the Term hereof. Neither Party shall seek (nor support any third party seeking) any prospective or retroactive change to the rates or terms of service under this PPA pursuant to Section 205, 206 or 306 of the Federal Power Act.

(B) The standard of review for changes to this PPA whether proposed by a Party, a non-party, or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (aka the "Mobile-Sierra doctrine"), as interpreted in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1*, 128 S. Ct. 2733 (2008).

20.6 Certifications. Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available personnel and records relating to the Facility to the extent that the requesting Party requires the same in order to fulfill any regulatory reporting requirements, or to assist the requesting Party in litigation.

20.7 Disclaimer of Third Party Beneficiaries. In executing this PPA, Company does not and does not intend to extend its credit or financial support for the benefit of any Facility Lender or any other third party transacting with Seller. Nothing in this PPA shall be construed to create any duty to, or standard of care with reference to, or any liability to, any person not a party to this PPA.

20.8 Relationship of the Parties.

(A) This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties, nor to impose any partnership obligation or

liability upon either Party. Except as specifically provided for in this PPA to the contrary, neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

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

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

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

20.11 Complete Agreement; Amendments. The terms and provisions contained in this PPA constitute the entire agreement between Company and Seller with respect to the Facility and shall supersede all previous communications, representations, or agreements, either verbal or written, between Company and Seller with respect to the sale of Energy from the Facility. Any amendment of this PPA, or any waiver of any provision hereof, shall be evidenced by a writing signed by the Parties to be bound thereby.

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

20.13 Binding Effect. This PPA is binding upon and shall inure to the benefit of the Parties hereto and their respective successors, legal representatives, and assigns.

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

20.15 Counterparts. This PPA may be executed in counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

20.16 Press Release. Upon the request of either Party, the Parties shall develop a mutually agreed joint press release to be issued describing the location, size and nature of the Facility, the term of this PPA, and other relevant factual information about the relationship.

20.17 Exhibits. Either Party may change the information in Exhibit D – Notices and Contact Information at any time by notice without the approval of the other Party. All other Exhibits may be changed to the extent allowed by specific provisions of this PPA or with the mutual consent of both Parties.

20.18 Confidentiality.

(A) For purposes hereof, "Confidential Information" means

1. information specifically designated as Confidential Information in this PPA; and

2. written information delivered by one Party to the other from time to time during the Term, which information is labeled prominently as "Confidential," "Proprietary" or the like and specifically references this PPA, *provided, however*, that "Confidential Information" shall not include information that:

- (a) is publicly available as of the date hereof, or becomes publicly available during the Term through no fault of the recipient Party;
- (b) can be documented was independently developed by the recipient Party; and/or
- (c) is disclosed to the recipient Party from an ultimate source other than the protected Party, without breach of this PPA by the recipient Party.

(B) The recipient Party shall (i) maintain the confidentiality of all Confidential Information of the protected Party, using the same degree of care used by the recipient Party to protect its own Confidential Information (and in any event not less than a reasonable degree of care), and (ii) shall use Confidential Information only in connection with its performance of this PPA. Confidential Information may be disclosed by the recipient Party to its agents, employees, directors, officers, consultants, auditors, lenders and equity investors, subject to their acceptance of the obligations of confidentiality imposed hereby and for whose violations of this Section 20.18 the recipient Party shall be responsible.

(C) In the event that Confidential Information is disclosed to the HCE BOARD OF DIRECTORS, its staff, intervenors or consumer counsel in any regulatory or administrative proceedings before the HCE BOARD OF DIRECTORS, the disclosing Party shall submit such Confidential information in accordance with applicable HCE BOARD OF DIRECTORS confidentiality rules and procedures. In the event that Confidential Information must otherwise be disclosed by Applicable Law (e.g. pursuant to subpoena or civil discovery), the Party required to make disclosure shall

notify the protected Party sufficiently in advance to allow the protected Party a reasonable opportunity to obtain a protective order or seek other remedies, prior to disclosure by the recipient Party.

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IN WITNESS WHEREOF, the Parties have executed this PPA as of the date first set forth above.

Seller:

_____ [LLC]

By: _____

[NAME]

[TITLE]

Company:

Holy Cross Electric Association,

By: _____

[NAME]

[TITLE]

Authorized signatory for Holy Cross Electric Association

EXHIBIT A DEFINITIONS

The following terms shall have the meanings set forth herein:

“Actual Damages” shall have the meaning set forth in Section 12.4(C).

“Affiliate” of any designated person or entity means any person or entity that directly or indirectly controls, is under the control of, or is under common control with, the designated person or entity by the power to direct or cause the direction of the management of the policies of designated person or entity, whether through ownership interest, by contract or otherwise.

“AGC” or “Automatic Generation Control” means the equipment and capability of an electric generation facility automatically to adjust the generation quantity within the applicable Balancing Authority with the purpose of interchange balancing and specifically, the Facility’s capability of accepting an AGC Set-Point electronically, and the automatic adjustment and regulation of the Facility’s Energy production via the SCADA System.

“AGC Protocols” means the protocols for AGC included in Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications, as such protocols may be modified from time to time in accordance with Section 10.8.

“AGC Remote/Local” means a handshake electronic signal sent from the Facility to the EMCC AGC system, and from the EMCC AGC system to the Facility, indicating the Facility is receiving AGC Set-Point locally (from the Facility) or remotely (EMCC AGC system) and is following that AGC Set-Point.

“AGC Set-Point” means the Company-generated analog or digital signal sent by the SCADA System to the Facility, representing the quantity of Energy to be generated by the Facility or stored by the Battery Storage System. The AGC Set- Point is calculated by the EMCC AGC system and communicated electronically to the Facility via the SCADA System.

“Annual Throughput Limit” means [_____] MWh.] ***bid-specific -- may be n/a***

“Applicable Law” means all laws, statutes, treaties, codes, ordinances, regulations, standards, certificates, orders, licenses and permits of any Governmental Authority that are applicable to a Party, the business of a Party or the Facility, now in effect or hereafter enacted, including amendments to or interpretations of any of the foregoing by a Governmental Authority having jurisdiction, and all applicable judicial, administrative, arbitration and regulatory decrees, judgments, injunctions, writs, orders, awards and/or like actions, including, for the avoidance of doubt, electrical, building, fire, zoning, environmental, and occupational health and safety requirements.

“Arbitration Service” means American Arbitration Association (aka AAA).

“Availability” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Availability Notice” shall have the meaning set forth in Section 7.3(B).

“Back-Up Metering” shall have the meaning set forth in Section 5.5(B).

“Balancing Authority” means the system of electrical generation, distribution and transmission facilities within which generation is regulated in order to maintain balance between generation and load and match interchange schedules with other such systems.

“Battery Energy” means all electrical energy stored and discharged by the Battery Storage System during the Term.

“Battery Payment Rate” is as set forth on Exhibit J – Energy Payment Rate and Committed Energy.

“Battery Storage System” means that portion of the Facility that is required to store energy using the Battery Units, including, without limitation, step-up transformers, output breakers, facilities necessary to connect to the Interconnection Point, protective and associated equipment, improvements, and other tangible and intangible assets, contract rights, Permits, easements, rights of way, surface use agreements and other interests or rights in real estate, owned or used for construction, operation, maintenance, generation and delivery of the foregoing.

“Battery Storage System Electric Metering Devices” means revenue quality meters, metering equipment and/or data processing equipment used to measure, record and transmit data with respect to the Charging Energy delivered to and the Discharging Energy delivered from the Battery Storage System, including metering current transformers and metering voltage transformers. The Battery Storage System Electric Metering Devices must transmit to Company five-minute revenue quality meter data. All Charging Energy and Discharging Energy values measured by the Battery Storage System Electric Metering Devices will be normalized for electrical losses between the Battery Storage System Electric Metering Devices and the Point of Delivery.

“Battery Storage System Forced Outage” means any Outage of the Battery Storage System that is not an Excused Outage.

“Battery Storage System Metering Point” means, with respect to Charging Energy, the point at the Battery Storage System set forth in Exhibit C – Facility Description and Site Maps.

“Battery Storage System Nameplate Capacity” means the designed maximum capacity of the Battery Storage System expressed in MWs and calculated by dividing the MWhs of energy the Battery Storage System is designed to store, divided by the number of hours the Battery Storage System is designed to discharge at full output, as

designated by the manufacturer, as measured at the Interconnection Point, as set forth in Section 3.2.

“Battery Storage System Operating Procedures” means those procedures applicable to the operation of the Battery Storage System, as developed by the Operating Committee in accordance with the procedure, and subject to the requirements, set forth in Exhibit O – Battery Storage System Operating Procedures.

“Battery Storage System Planned Outage” means a planned removal from service of the Battery Storage System, or some part thereof constituting not less than ten percent (10%) of the Battery Storage System Nameplate Capacity, that is required for inspection, or routine, preventive or corrective maintenance; provided that Battery Storage System Planned Outages during any Commercial Operation Year may not exceed ninety-six (96) hours.

“Battery Units” means the batteries, power electronic systems, enclosures and other equipment necessary for the Battery Storage System to store electricity at the Site and transmit such electricity upon command. The manufacturer and model number of the Battery Units will be identified on Exhibit C – Facility Description and Site Maps.

“Bulk Electric System Operating Authority” means collectively those entities owning and/or operating the interconnected transmission system applicable to Seller and the Facility pursuant to a Transmission Tariff, including (i) Holy Cross Electric Association operating under and in accordance with its Integrated Transmission System Tariff or distribution system delivery service capability, and (ii) all entity(ies) responsible under the Interconnection Agreement for providing the transmission lines, any Interconnection Facilities and other equipment and facilities with which the Facility interconnects at the Interconnection Point and transmission system, as applicable.

“Business Day” means any Day that is not a Saturday, a Sunday, or a NERC recognized holiday.

“Company Dispatched Test” shall have the meaning set forth in Section 5.6(A).

“Change of Control” means the occurrence of any one of the following events with respect to Seller or any direct or indirect owner of a majority of the ownership interests in Seller: (a) a transfer of a majority of the ownership interests in Seller or such owner; (b) any consolidation or merger of Seller or such owner in which Seller or such owner, as the case may be, is not the continuing or surviving entity; or (c) a sale or conveyance of any direct or indirect ownership interest in Seller following which [] (“Ultimate Parent”) is no longer the direct or indirect owner of at least 50% of the ownership interests of Seller, *provided, however*, that a Change of Control shall not be deemed to have occurred as a result of:

- (i) transactions exclusively among Affiliates of Seller;
- (ii) any exercise by the Facility Lender of its rights and remedies under the Financing Documents;
- (iii) a change of control of Ultimate Parent; or

- (iv) any change of economic and/or voting rights triggered in Seller's organizational documents arising from a tax-equity financing of the Facility.

"Charging Energy" means all Solar Charging Energy and Grid Charging Energy.

Under no circumstances does Charging Energy include House Power. "COD Conditions" means all of the requirements that must be satisfied by Seller as a prerequisite to achieving Commercial Operation. The COD Conditions are set forth in Section 4.5.

"Commercial Operation" means the period beginning on the Commercial Operation Date and continuing through the balance of the Term of this PPA.

"Commercial Operation Date" or "COD" shall have the meaning set forth in Section 4.5.

"Commercial Operation Test" means the commercial operation test described in Exhibit M – Battery Storage System Testing Protocols.

"Commercial Operation Year" shall have the meaning set forth in Section 4.5(D).

"Commercially Reasonable" or "Commercially Reasonable Efforts" means, with respect to any action to be taken or attempted by a Party under this PPA, the level of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action at a reasonable cost; (b) is consistent with Good Utility Practices; (c) is consistent with the terms in this PPA; and (d) takes into consideration the amount of advance notice required to take such action, the duration and type of action, and the competitive environment in which such action occurs.

"Committed Energy" from the Solar Facility for each Commercial Operation Year is set forth on Exhibit J – Energy Payment Rate and Committed Energy hereto. The amount of Committed Energy shall be deemed Confidential Information for purposes of Section 20.18.

"Company Dispatched Test" shall have the meaning set forth in Section 5.6(D).

"Compensable Curtailment" shall have the meaning set forth in Section 8.3(B)(1).

"Compensable Curtailment Energy" shall have the meaning set forth in Section 8.3(B)(3).

["Compliance Period" means the date commencing on the date hereof and ending on the date that is five (5) years and ninety (90) days after the Battery Storage Systems achieved Commercial Operation, during which period the Battery Storage System (i) must be charged exclusively with Solar Charging Energy and (ii) may not be charged with any Grid Charging Energy.] **bid-specific -- may be n/a**

"Confidential Information" shall have the meaning set forth in Section 20.18(A).

“Construction Contracts” shall have the meaning set forth in Section 4.1(A).

“Construction Milestones” means the dates set forth in Exhibit B – Construction Milestones.

“Credit Rating” of Seller means the lowest rating assigned to such person or entity’s long-term debt or deposit obligations (unenhanced by third- party support) by Standard & Poor’s and Moody’s. If such person or entity has no outstanding long-term debt or deposit obligations, or if no rating is assigned to such obligations, “Credit Rating” shall mean the lowest general corporate credit rating or long-term issuer rating assigned to such person or entity by Standard & Poor’s or Moody’s.

“Damage Cap” shall have the meaning set forth in Section 12.4.

“Day” means a calendar day.

“Delivery Period” shall be the period during which Energy is available to Company, commencing at 12:01 am on the Commercial Operation Date and continuing until midnight on the Scheduled Termination Date, subject to early termination as provided in this PPA.

“Discharging Energy” means all Solar Discharging Energy and Grid Discharging Energy.

“Dispatch Notice” means the operating instruction, and any subsequent updates, given by Company to Seller, directing the Battery Storage System to charge at a specified megawatt input or discharge at a specified megawatt output. Dispatch Notices may be communicated electronically, via facsimile, telephonically or other verbal means. 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 Company and Seller upon request.

“Dispute” shall have the meaning set forth in Article 13.

“Electric Metering Devices” means revenue quality meters, metering equipment and/or data processing equipment used to measure, record and transmit data with respect to the output of Energy from the Facility, including metering current transformers and metering voltage transformers. The Electric Metering Devices must transmit to Company five-minute revenue quality meter data. Electric Metering Devices shall include Battery Storage System Electric Metering Devices.

“Eligible Energy Resource” means any generation resource eligible to be certified as a Qualifying Facility pursuant to the Public Utilities Regulatory Policy Act (“PURPA”) and eligible to be certified to generate, claim, own or use Renewable Energy Credits and green tags pursuant to the protocols and procedures developed and approved by applicable Government Authorities for the REC Registration Program.

“Emergency” means any event or occurrence during the Term that results in the declaration of an Emergency Condition under and as defined in the Interconnection Agreement.

“Energy” means all Renewable Energy and any other electrical energy stored and discharged by the Battery Storage System during the Term.

“Energy Markets Control Center” or “EMCC” means Company's representatives responsible for dispatch of the Facility.

“Energy Payment Rate” shall have the meaning set forth in Exhibit J – Energy Payment Rate and Committed Energy.

“Energy Resource Interconnection Service” means the type of interconnection service which allows Seller to connect the Facility to the transmission or distribution system, as applicable, as an “Energy Resource” as defined by the Transmission Tariff, and be eligible to deliver the Facility’s output using the existing firm or non-firm capacity on the transmission system on an as-available basis. [*if needed, applicable if the resource interconnects with the bulk electric transmission system...*]

“Environmental Contamination” shall have the meaning set forth in Section 4.2.

“Equivalent Availability Factor” shall have the meaning set forth in Section 8.4(C).

“Equivalent Outage Hours” shall have the meaning set forth in Section 8.4(C).

“ERO” means the Electric Reliability Organization certified by FERC pursuant to Section 215 of the Federal Power Act, or any successor organization. The certified ERO as of the date of this PPA is the Western Electricity Coordinating Council (WECC).

“Event of Default” shall have the meaning set forth in Article 12.

“Excess Energy” shall have the meaning set forth in Section 8.2.

[“Excess Throughput Limit” means [] MWh.] ***bid-specific -- may be n/a***

“Excused Outage” means any Outage of the Battery Storage System resulting from: (i) a Battery Storage System Planned Outage; (ii) a Compensable Curtailment; (iii) a Non-Compensable Curtailment; (iv) Force Majeure or Emergency; (v) a breach of this Agreement by Company; (vi) insufficient solar irradiance or insufficient stored energy not caused by any act or omission of Seller; (vii) an Outage resulting from a request by Company; (viii) any Outage where Seller failed to comply with a dispatch that was not in accordance with the Battery Storage System Operating Procedures.

“Facility” means the Solar Facility, Battery Storage System, and all equipment necessary to interconnect to HCE’s System, all as further described in Exhibit C – Facility Description and Site Maps, including Seller’s rights to the Site and all of the following: the Solar Units, the Battery Units, buildings, generators, step-up transformers, output breakers, facilities necessary to connect to the Interconnection Point, protective and associated equipment, improvements, and other tangible and intangible assets, contract rights, Permits, easements, rights of way, surface use agreements and other interests or rights in real estate, owned or

used for construction, operation, maintenance, generation and delivery of the capacity and energy subject to this PPA.

“Facility Debt” means the obligations of Seller or its Affiliates to any lender or tax equity investor pursuant to the Financing Documents, including principal of, premium and interest on indebtedness, fees, expenses or penalties, amounts due upon acceleration, prepayment or restructuring, swap or interest rate hedging breakage costs and any fees or interest due with respect to any of the foregoing.

“Facility Lender” means, collectively, any lenders or tax equity investors providing Facility Debt, including any successors or assigns thereof.

“Federal Power Act” means the provisions of 16 U.S.C. §791(A) *et seq.* and amendments or supplements thereto.

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

“Financing Documents” means the loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements and other documents relating to the development, bridge, construction or permanent debt financing and/or tax equity financing for the Facility, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with development, construction, ownership, leasing, operation or maintenance of the Facility.

“Force Majeure” shall have the meaning set forth in Section 14.1.

“Force Majeure Battery Only Amount” means the Battery Payment Rate multiplied by the Force Majeure Battery Only Percentage.

“Force Majeure Battery Only Percentage” means the amount by which the Force Majeure Percentage (Battery Storage System) exceeds the Force Majeure Percentage (Solar Facility), expressed as a percentage.

“Force Majeure Percentage (Battery Storage System)” means, at any time that a Force Majeure has occurred with respect to the Battery Storage System, the percentage of the Battery Storage System that is not available as a result of such Force Majeure at such time.

“Force Majeure Percentage (Solar Facility)” means, at any time that a Force Majeure has occurred with respect to the Solar Facility, the percentage of the Solar Facility that is not capable of producing Renewable Energy as a result of such Force Majeure at such time.

“Forced Outage” means any condition at the Facility that requires the immediate and unplanned removal of at least ten percent of the capacity of the Solar Facility or the Battery Storage System from service, or that results in a material deviation from the Guaranteed Performance identified in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels, another outage state, or a reserve shutdown state, resulting from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to abnormal Facility conditions or alarms.

“Good Utility Practices” means the practices, methods, standards and acts engaged in or approved by a significant portion of the applicable segment of the electric power generation industry pertaining to facilities of the type, similar size and location to the Facility that, at a particular time, in the exercise of Commercially Reasonable judgment, in light of the facts that are known (or reasonably should have been known) at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with Applicable Law, Permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy, and expedition. Good Utility Practices is not limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods, standards and acts generally acceptable or approved by a significant portion of the applicable segment of the electric power generation industry in the relevant region, during the relevant period.

“Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; and/or any court or governmental tribunal. By way of example only, “Governmental Authorities” include NERC, the ERO, the Market Operator (if any), the HCE BOARD OF DIRECTORS, and FERC, and successor organizations.

“Grid Charging Capability” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Grid Charging Energy” means energy withdrawn from HCE’s electrical system and delivered at the Point of Delivery used to charge the Battery Storage System and discharged at a later time.

“Grid Charging Energy Price” means the applicable price per MWh as determined by Company in its sole discretion pursuant to its cost calculator or, if Company has joined a regional transmission organization or is participating in an organized market for which nodal prices can be determined, the applicable nodal price per MWh as determined by Company in its sole discretion.

“Grid Discharging Energy” means Grid Charging Energy discharged by the Battery Storage System and delivered to the Point of Delivery.

“Guaranteed Maximum Charging Rate” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Guaranteed Maximum Discharging Rate” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Guaranteed Minimum Charging Time” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Guaranteed Minimum Discharging Time” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Guaranteed Performance” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Guaranteed Response Time” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Guaranteed Round Trip Efficiency” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Guaranteed Storage Availability” shall have the meaning set forth in Section 8.4(C).

“Guaranteed Storage Availability Payment Adjustment” shall have the meaning set forth in Section 8.4(C).

“Guaranteed Storage Availability Payment Adjustment Cap” shall have the meaning set forth in Section 8.4(C).

“Guaranteed Storage Capacity” shall have the meaning set forth in Exhibit M-1 – Battery Storage System Guaranteed Performance Levels.

“Hours” shall have the meaning set forth in Section 8.4(C).

“House Power” shall have the meaning set forth in Section 1.2(B).

“Independent Engineer” means a qualified and independent third party engineering firm.

“Interconnection Agreement” means the separate contract for interconnection of the Facility to HCE’s System, as such agreement may be amended from time to time. For purposes of this PPA, the Interconnection Agreement shall be interpreted to include any third party facility construction agreement or other agreement required by HCE to interconnect the Facility in accordance with the Transmission Tariff or requirements imposed by the Bulk Electric System Operating Authority. For the avoidance of doubt, “Interconnection Agreement” excludes any temporary or provisional interconnection agreement or any

agreement where the Transmission Provider or Bulk Electric System Operating Authority may limit the operational output of the Facility.

“Interconnection Facilities” means those facilities designated in the Interconnection Agreement for the direct purpose of interconnecting the Facility at the Interconnection Point, along with any easements, rights of way, surface use agreements and other interests or rights in real estate reasonably necessary for the construction, operation and maintenance of such facilities, whether owned by Seller, HCE or another entity. This equipment is conceptually depicted in Exhibit C – Facility Description and Site Maps to this PPA.

“Interconnection Point” means the physical point within the operational authority of HCE as specific in the Interconnection Agreement at which electrical interconnection is made between the Facility and HCE’s System in accordance with the Interconnection Agreement.

“Investment Grade” means a Credit Rating of both (a) Baa3 or higher by Moody’s, and (b) BBB- or higher by Standard & Poor’s.

“kW” means kilowatt, and “kWh” means kilowatt hour.

“Lender Consent” shall have the meaning set forth in Section 18.1.

“Liquidated Delay Damages” shall have the meaning set forth in Section 12.2.

“Maintenance Schedule” shall have the meaning set forth in Section 10.2.

“Market Operator” means the entity that instructs market participants and/or generators to regulate generation assets (including the Facility) within any energy market in which Company participates, based on price-based offer curves for the purpose of matching generation output to system load demand while maintaining bulk electric system reliability.

“Material Adverse Effect” means any effect (or effects taken together) that is materially adverse to the present or future business, operations, assets, liabilities, properties, results in operations or condition (financial or otherwise), prospects, or property of a Party, its business, or this PPA.

“Maximum Charging Rate” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Maximum Discharging Rate” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Minimum Charging Time” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Minimum Discharging Time” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Monthly Energy Payment” shall have the meaning set forth in Section 8.1(B).

“MW” means megawatt or one thousand kW, and “MWh” means megawatt hours.

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

“Non-Compensable Curtailment” shall have the meaning set forth in Section 8.3(B).

“Operating Committee” means representative(s) each from Company and Seller, pursuant to Section 10.8.

“Operating Day” means a day within the Delivery Period on which the Battery Storage System operates.

“Operating Records” means all agreements associated with the Facility, operating logs, blueprints for construction, operating manuals, all warranties on equipment, and all documents, whether in printed or electronic format, that Seller uses or maintains for the operation of the Facility.

“Outage” means any period during which the capacity of the Battery Storage System is unavailable for any reason as reported by the SCADA system in accordance with Exhibit O – Battery Storage System Operating Procedures.

“Park Potential” means the number of MW that depicts Seller’s real time calculation of the Potential Energy capable of being provided by the Solar Facility to Company at the Point of Delivery. Park Potential shall be calculated using the best-available data obtained through Commercially Reasonable methods; and shall be dependent upon measured solar irradiance, power curves, Solar Unit availability, and derate(s) and transmission line losses, and any other adjustment necessary to accurately reflect the Potential Energy at the Point of Delivery; and, at any given moment in time, may not exceed the Solar Nameplate Capacity. Park Potential should be provided to Company in real time through Company’s SCADA System in accordance with the AGC Protocols.

“Party” and “Parties” shall have the meanings set forth in the introductory paragraph.

“Pending Facility Transaction” or “PFT” shall have the meaning set forth in Section 19.4.

“Performance Criteria” means the performance test elements set forth in Exhibit M – Battery Storage System Testing Protocols.

“Periodic Test” shall have the meaning set forth in Section 5.6(B).

“PFT Notice” shall have the meaning set forth in Section 19.4.

“PI System” means the “plant information” system for the Facility.

“Point of Delivery” means the physical point at which (i) Seller makes available and delivers to Company the Energy being provided by Seller to Company under this PPA and (ii) Company makes available and delivers to Seller the Grid Charging Energy being provided by Company to Seller under this PPA. The Point of Delivery is specified in Exhibit C – Facility Description and Site Maps to this PPA.

“Potential Energy” for any period of time means the MWh of Renewable Energy that the Facility is actually capable of delivering to the Point of Delivery by virtue of the Park Potential during such period; provided, that for the avoidance of doubt, the maximum net instantaneous output that the Solar Facility shall be deemed to be able to deliver to the Point of Delivery for purposes of determining the Potential Energy shall not exceed the Solar Nameplate Capacity.

“HCE BOARD OF DIRECTORS” means the HCE Board of Directors, acting as regulator for HCE under its board of directors resolution to exempt itself from regulation under the Colorado Public Utilities Commission or any successor agency.

“HCE BOARD OF DIRECTORS Approval” shall have the meaning set forth in Section 6.1(D).

“Qualified Operator” means an operator of solar generation facilities that has sufficient experience to successfully operate the Facility, including (a) a minimum of three (3) years’ experience in the solar energy generation and operation business, and owns, controls or operates (or has owned, controlled or operated) a minimum of 300 MW of solar energy generation capacity in aggregate, and (b) a minimum of one (1) year of experience in the battery energy storage business, and owns, controls or operates a minimum of 20 MW and 40 MWh of battery energy storage capacity in aggregate with at least one facility that has at least 5 MW and 10 MWh of battery energy storage capacity. [**Note – HCE may relax this requirement at its discretion...**]

“Ramp Rate” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“REC Registration Program” means the applicable State, regional, or federal program established to register Eligible Energy Resources such as the Facility, and create and certify RECs arising from energy generated from such Resources, including any rights associated with any renewable energy information or tracking system that exists or may be established by Applicable Law with regard to monitoring, registering, tracking, certifying, or trading such credits. For purposes of this PPA, the REC Registration program shall mean the Western Renewable Energy Generation Information System (WREGIS).

“Renewable Energy” means all electric energy generated by the Solar Facility and delivered to Company at the Point of Delivery or to the Battery Storage System Metering Point during the Term, including all Test Energy and any Excess Energy purchased by Company. The term Renewable Energy shall be deemed to include all RECs associated with such electric energy.

“Renewable Energy Credits” or “RECs” means the right to all non-energy and environmental attributes (including economic, carbon and pollutant-related tags and credits, benefits, avoided or reduced emissions reductions, offsets, emission rate reductions, tags and allowances, howsoever titled) attributable to the capacity available and/or energy generated by the Solar Facility, including environmental air quality credits, tags and allowances created by Applicable Law by virtue of the Solar Facility’s environmentally favorable or renewable characteristics or attributes. “RECs” includes but is not necessarily limited to rights eligible for registration, trading and/or use under the REC Registration Program. In Colorado, “REC” shall include renewable energy credits as defined and used in Colorado’s Renewable Energy Standard, 4 CCR 723-3650 *et seq.*

“Repair Plan” shall have the meaning set forth in Section 10.3(A).

“Replacement Power Costs” for any period mean the costs incurred by Company to replace the products and services which Seller was required to provide under this PPA (but failed to so provide) during such period, less the sum of any payments from Company to Seller under this PPA that were eliminated with respect to such period as a result of such failure. Replacement Power Costs shall be determined on an hourly basis and shall equal the sum of the following for each hour where the following calculation achieves a positive number:

Hourly Replacement Power Costs = (A + B + C + D) – E, where

“A” = the product of (x) the number of MW of lost capacity, derived by subtracting the number of MW of capacity of the Facility that qualifies for capacity credit actually made available to Company from the amount of qualifying capacity associated with the entire Facility, and (y) the applicable market price for capacity made available to Company’s system, for such hour;

“B” = the price paid by Company for the MWh of energy purchased by Company to replace the Energy that was not delivered under this PPA during such hour;

“C” = the product of (x) the number of MWh of energy purchased by Company with respect to such hour, to replace the Energy that was not delivered under this PPA, and (y) the actual cost of registered RECs for that number of MWh, for such hour;

“D” = the actual cost of transmission, Ancillary Services, fuel and fuel transportation, other incremental costs, and any related penalties that could not be avoided or mitigated, and transaction charges to deliver reasonably available energy to Company in amounts equal to the number of MWh for which Replacement Power Costs are owed; and

“E” = the sum of all payments avoided by Company as a result of Seller’s breach, for such hour, including avoided payments under Article 8.

“Response Time” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“ROFO” and “ROFO Notice” shall have the meanings set forth in Section 19.3.

“Round Trip Efficiency” or “RTE” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Round Trip Efficiency Adjustment” shall have the meaning set forth in Section 8.4.

“Safety Requirements” means those requirements set forth in Exhibit P – Safety Requirements, in addition to any other safety-related practices required by Applicable Law and Good Utility Practice.

“SCADA” means supervisory control and data acquisition.

“Scheduled Termination Date” shall have the meaning set forth in Article 2.

“Security Fund” shall have the meaning set forth in Section 11.1.

“Seller Initiated Test” shall have the meaning set forth in Section 5.6(A).

“Site” means the parcel of real property on which the Facility will be located, including any easements, rights of way, surface use agreements and other interests or rights in real estate necessary for the construction, operation and maintenance of the Facility. The Site is more specifically described in Exhibit C – Facility Description and Site Maps to this PPA.

“Solar Charging Energy” means the electric energy used to charge the Battery Storage System that is supplied by the output of the Solar Facility.

“Solar Discharging Energy” means Renewable Energy discharged by the Battery Storage System, less transformation and transmission losses, if any, and delivered to the Point of Delivery.

“Solar Facility” means that portion of the Facility that is required to generate Renewable Energy using the Solar Units, including, without limitation, generators, step-up transformers, output breakers, facilities necessary to connect the Solar Facility to the Interconnection Point, protective and associated equipment, improvements, and other tangible and intangible assets, contract rights, Permits, easements, rights of way, surface use agreements and other interests or rights in real estate, owned or used for construction, operation, maintenance, generation and delivery of the foregoing.

“Solar Nameplate Capacity” of the Solar Facility means the sum of the designed maximum outputs of each Solar Unit comprising the Solar Facility, as designated by the manufacturer, as measured at the Interconnection Point, as set forth in Section 3.2.

“Solar Units” means the photovoltaic arrays, mirrors, lenses, tracking devices and other equipment necessary for the Solar Facility to collect sunlight at the Site and convert it into electricity or thermal energy. The manufacturer and model number of the Solar Units will be identified on Exhibit C – Facility Description and Site Maps.

“State of Charge” or “SOC” means the amount of electric energy in a Battery Unit expressed as a percent of the Storage Capacity.

“Step-In Costs” shall have the meaning set forth in Section 12.5.

“Step-In Rights” shall have the meaning set forth in Section 12.5.

“Storage Capacity” shall have the meaning set forth in Exhibit M – Battery Storage System Testing Protocols.

“Successful Remedy” shall have the meaning set forth in Section 10.3(A).

“Target COD” shall have the meaning set forth in Section 4.5(A).

“Technical Dispute” shall have the meaning set forth in Section 13.1(A).

“Term” means the period of time during which this PPA remains in full force and effect, as further defined in Article 2.

“Test” shall have the meaning set forth in the first paragraph of Exhibit M – Battery Storage System Testing Protocols.

“Total Equivalent Forced Outage Hours” shall have the meaning set forth in Section 8.4(C).

“Total Equivalent Planned Outage Hours” shall have the meaning set forth in Section 8.4(C).

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

“Transmission Tariff” means the applicable Open Access Transmission Tariff of the Transmission Authority or HCE, as amended from time to time, as applicable

* * * * *

EXHIBIT B
CONSTRUCTION MILESTONES

Construction

<u>Milestone</u>	<u>Outcome</u>
<i>[Date]</i>	Seller and all required counterparties shall have executed such Construction Contracts as are needed to construct the Facility.
<i>[Date]</i>	Seller and HCE shall have executed the Interconnection Agreement.
<i>[Date]</i>	Seller shall have achieved closing on financing for the Facility or provided Company with proof of financial capability to construct the Facility.
<i>[Date]</i>	Commencement of construction of the Facility.
<i>[Date]</i>	Procurement of Battery Units.
<i>[Date]</i>	Seller shall have laid the foundation for all Facility buildings, generating facilities and step-up transformation facilities.
<i>[Date]</i>	The Solar Units, step-up transformer, and Battery Units shall have been delivered and installed at the Site.
<i>[Date]</i>	Seller's Interconnection Facilities shall have been constructed, and such facilities are capable of being energized.
<i>[Date]</i>	Start-up testing of the Facility commences.
<i>[Date]</i>	Seller shall make all applications and/or filings required by Applicable Law for REC accreditation and for the assignment of such RECs to Company.

EXHIBIT C
FACILITY DESCRIPTION AND SITE MAPS

[This Exhibit shall include a description of the Facility and all material components thereof, including map, aerial pictures, one-line diagram, Point of Delivery and (if different) the Interconnection Point as well as the manufacturer and model numbers of the Battery Units and the Solar Units.]

The Facility shall be located on the Site and shall be identified as Seller's [REDACTED] Generation Facility. Maps and one-line diagrams of the Facility and associated equipment are included as part of this Exhibit, as may be updated from time to time.

The address of the Facility is [REDACTED].

The Facility and the Battery Storage System must include the following specific components:

- * major equipment including PV modules, batteries, and inverters;
- * have the panel space and 125VDC battery supplied voltage necessary to accommodate the metering, telemetering and communications equipment required by the PPA;
- * communication circuits from the Facility to the EMCC for the purpose of telemetering, supervisory control/data acquisition, and voice communications as required by Company;
- * equipment and software necessary to receive, accept and react to an AGC signal from the Company's SCADA System and to comply with the AGC Protocols as further specified on Exhibit I - AGC Protocols; Dispatch and Availability Notices; Data Collection; Technical Specifications;
- * ramping capability, voltage control (on and off peak) and frequency control pursuant to NERC guidelines/requirements.
- * capability of sending real time data and OPC interface to Company's PI System;
- * a Point of Delivery located at [REDACTED];

The proposed Facility includes the components that are equivalent to, or better than, the following:

[Additional Bid Specific information to be added]

Illustrative diagram indicating required metering locations, alternative schematic and system designs may be accommodated as applicable...

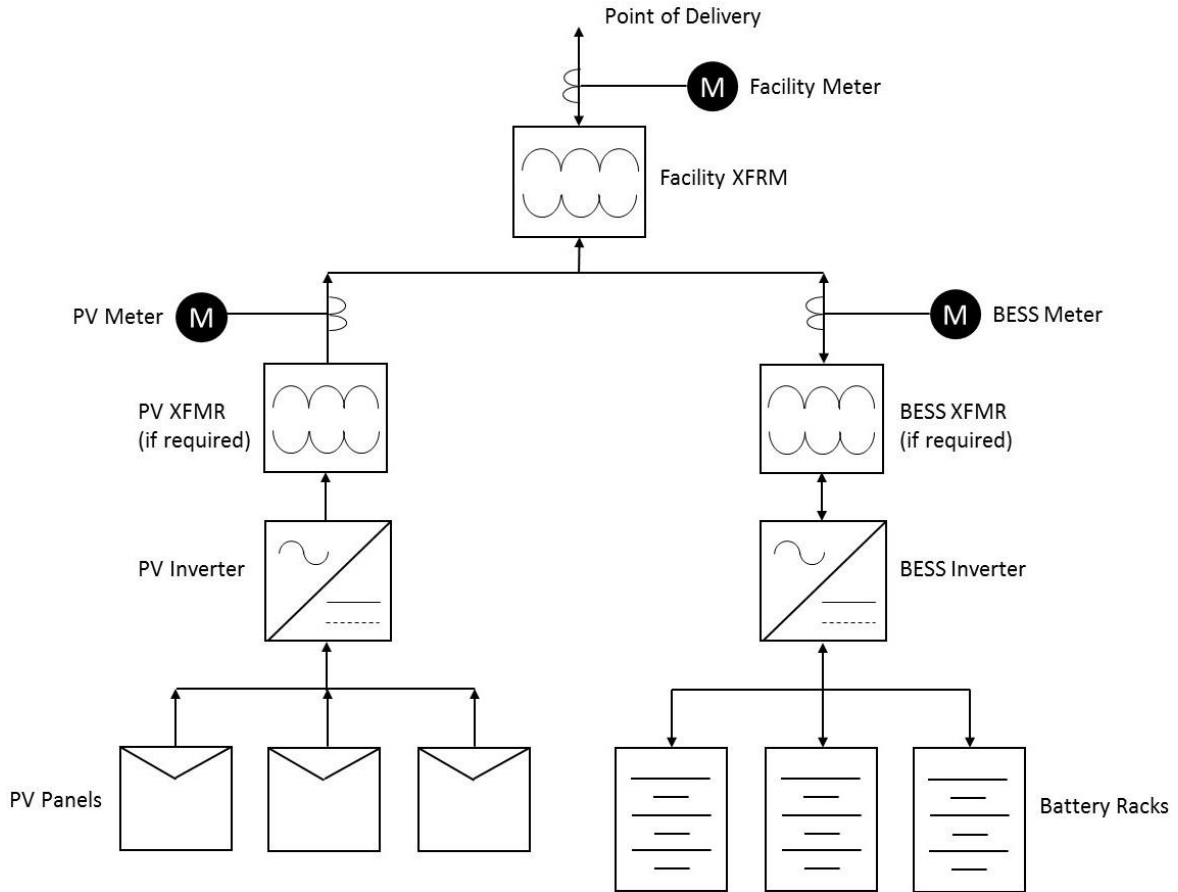


EXHIBIT D
NOTICES AND CONTACT INFORMATION

<u>Company</u>	<u>Seller</u>
<p>Notices:</p> <p>_____</p> <p>Supervisor, Resource Planning & Rates Holy Cross Energy. [address], CO 81601</p> <p><i>with a cc to:</i></p> <p>_____</p>	<p>Notices:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p><i>with a cc to:</i></p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Operating Committee Representative:</p> <p>_____</p> <p>Supervisor, Resource Planning & Rates Holy Cross Energy. [address], CO 81601</p> <p>Alternate:</p> <p>_____</p>	<p>Operating Committee Representative:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Alternate:</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Real-Time Contact Information</p> <p><u>EMCC</u> (24 hour coverage): Phone: 970-nnn-nnnn E-mail: _____@holycrossenergy.com</p> <p><u>Transmission Ops:</u> Phone: E-mail: _____@nnn.com</p>	<p>Real-Time Contact Information</p> <p><u>[Operations Command Center]</u> (24 hour coverage): Phone: _____ E-mail: _____</p>

EXHIBIT E
INSURANCE COVERAGE

Type of Insurance	Minimum Limits of Coverage
Commercial General Liability (CGL) and commercial umbrella	\$11,000,000 combined single limit each occurrence and the aggregate, where applicable. If CGL insurance contains a general aggregate limit, it shall apply separately to the Facility.

CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products/completed operations, contracts, property damage, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract), all with limits as specified above. CGL insurance shall include ISO endorsement CG 24 17 (or an equivalent endorsement) which modifies the definition of "Insured contract" to eliminate the exclusion of easement or license agreements in connection with construction or demolition operations on or within 50 feet of a railroad. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for liability arising from explosion, collapse, or underground property damage.

Company shall be included as an insured under the CGL policy, using ISO additional insured endorsement CG 20 10 (or a substitute providing equivalent coverage), and under the commercial umbrella insurance. The commercial umbrella insurance shall provide coverage over the top of the CGL insurance, the Business Automobile Liability insurance, and the Employers Liability insurance. The CGL and commercial umbrella insurance to be obtained by or on behalf of Seller shall be endorsed as follows:

Such insurance as afforded by this policy for the benefit of Company shall be primary as respects any claims, losses, damages, expenses, or liabilities arising out of this PPA, and insured hereunder, and any insurance carried by Company shall be excess of and noncontributing with insurance afforded by this policy.

Business Automobile Liability	\$2,000,000 combined single limit (each accident), including all Owned, Non-Owned, Hired and Leased Autos.
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Business Automobile Liability insurance shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability

coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01.

Workers Compensation	Statutory Requirements. Seller may comply with these requirements through the use of a qualified self-insurance plan.
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[Exhibit E - continued]

Type of Insurance	Minimum Limits of Coverage
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Employers Liability	\$2,000,000 each accident for bodily injury by accident, or \$2,000,000 each employee for bodily injury by disease.
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Builder's Risk	Replacement value of the Facility.
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Builder's Risk insurance, or an installation floater, shall include coverage for earthquake and flood, collapse, faulty workmanship, materials and design, testing of machinery or equipment, freezing or changes in temperature, debris removal, and partial occupancy.

Environmental Impairment Liability	\$5,000,000 each occurrence.
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All-Risk Property insurance covering physical loss or damage to the Facility	Full replacement value of the Facility. A deductible may be carried which deductible shall be the absolute responsibility of Seller.
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All-Risk Property insurance shall include: (i) coverage for fire, flood, wind and storm, tornado and earthquake with respect to facilities similar in construction, location and occupancy to the Facility, with sublimits of no less than \$10,000,000 each for flood and earthquake; and (ii) Boiler and Machinery insurance covering all objects customarily subject to such insurance, including boilers and turbines, in an amount equal to their full replacement value.

Business Interruption insurance	Amount required to cover Seller's continuing or increased expenses, resulting from full interruption, for a period of 12 calendar months.
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Business Interruption insurance shall cover loss of revenues or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered under Property insurance as set forth above, to the extent available on Commercially Reasonable terms as determined by Company, subject to a Commercially Reasonable deductible that shall be the responsibility of Seller. Notwithstanding any other provision of this PPA, Seller shall not be required to have Business Interruption insurance until the Commercial Operation Date.

EXHIBIT F
SELLER'S NEEDED PERMITS

Bid Specific

EXHIBIT G
FORM OF LETTER OF CREDIT

[LETTERHEAD OF ISSUING BANK]

Irrevocable Standby Letter of Credit Date of Issuance: _____
No: _____
Beneficiary: Holy Cross Electric Initial Expiration Date: [Must be at least
Association one year after date of issuance]
Applicant:

As the Issuing Bank ("Issuer"), we, [Name of Issuing Bank], hereby establish this irrevocable Standby Letter of Credit No. (this "Letter of Credit") in favor of the above-named beneficiary ("Beneficiary") for the account of the above-named applicant ("Applicant") in the amount of US\$_____ (_____ Million U.S. Dollars).

Beneficiary may draw all or any portion of this Letter of Credit at any time and from time to time, and Issuer will make funds immediately available to Beneficiary upon presentation of Beneficiary's draft(s) at sight in substantially the form attached hereto as Exhibit "A" ("Sight Draft"), drawn on Issuer and accompanied by this Letter of Credit. All Sight Drafts must be signed on behalf of Beneficiary, and the signator must indicate his or her title or other official capacity. No other documents will be required to be presented. Issuer will effect payment under this Letter of Credit within twenty- four (24) hours after presentment of any Sight Draft. Payment shall be made in U.S. Dollars with Issuer's own funds in immediately available funds.

Issuer will honor any Sight Draft presented in substantial compliance with the terms of this Letter of Credit at the Issuer's letterhead office, the office located at _____ or any other full service office of the Issuer on or before the above-stated expiration date, as such expiration date may be extended hereunder. Partial and multiple draws and presentations are permitted on any number of occasions. Following any partial draw, Issuer will endorse this Letter of Credit and return the original to Beneficiary.

This Letter of Credit is issued pursuant to the provisions of that certain Solar Generating and Battery Storage Energy Purchase Agreement between Beneficiary and Applicant dated as of _____, 20__ (as the same may have been or may be amended from time to time, the "PPA"). Notwithstanding any reference in this Letter of Credit to the PPA or any other documents, instruments or agreements, or references in the PPA or any other documents, instruments or agreements to this Letter of Credit, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit will be automatically extended each year without amendment for a period of one (1) year from the expiration date hereof, as extended, unless at least

thirty (30) days prior to the expiration date, Issuer notifies Beneficiary by registered or certified mail that it elects not to extend this Letter of Credit for such additional period. Notice of non-extension will be given by Issuer to Beneficiary at Beneficiary's address set forth herein or at such other address as Beneficiary may designate to Issuer in writing at Issuer's letterhead address.

This Letter of Credit is freely transferable by Beneficiary in whole or in part, and the number of transfers is unlimited. Issuer shall effect any transfers immediately upon presentation to Issuer of this Letter of Credit and a completed written transfer request substantially in the form attached hereto as Exhibit "B." Such transfer will be effected at no cost to Beneficiary. Any transfer fees assessed by Issuer will be payable solely by Applicant, and the payment of any transfer fees will not be a condition to the validity or effectiveness of the transfer of this Letter of Credit.

Issuer waives any rights it may have, at law or otherwise, to subrogate to any claims which Beneficiary may have against Applicant or Applicant may have against Beneficiary.

This Letter of Credit is subject to the uniform customs and practice for documentary credits (2007 Revision), International Chamber of Commerce publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. With respect to Article 14(b) of the UCP, Issuer shall have a reasonable amount of time, not to exceed three (3) banking days following the date of Issuer's receipt of documents from Beneficiary (to the extent required herein), to examine the documents and determine whether to take up or refuse the documents and to inform Beneficiary accordingly.

In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control that interrupts Issuer's business and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

ISSUER:

By: _____
Authorized Signature

EXHIBIT "A"
TO LETTER OF CREDIT

SIGHT DRAFT

Draft Number _____
\$ _____

At sight, pay to the order of [Name of Beneficiary to be inserted], the amount of USD \$ _____ (_____ and 00/100ths U.S. Dollars).

Value received and charged to the account of: [Name of Issuer and address].
Drawn under [Name of Issuer to be inserted] Standby Letter of Credit No.
_____.

Dated: _____

Holy Cross Electric Association

By: _____
[name and title]

Account: [Applicant to be inserted]

EXHIBIT "B"
TO LETTER OF CREDIT

FORM OF TRANSFER REQUEST

Irrevocable Standby Letter of Credit No. _____

Current Beneficiary:

Applicant:

To: [Name of Issuer] ("Issuer")

The undersigned, as the current "Beneficiary" of the above-referenced Letter of Credit, hereby requests that you reissue the Letter of Credit in favor of the transferee named below [insert transferee name and address below]:

From and after the date this transfer request is delivered to Issuer, the transferee shall be the "Beneficiary" under the Letter of Credit for all purposes and shall be entitled to exercise and enjoy all of the rights, privileges and benefits thereof.

Dated: _____

Holy Cross Electric Association

By: _____

Name: _____

Title: _____

[Notary Acknowledgement]

To be signed by a person purporting to be an authorized representative of Beneficiary and indicating his or her title or other official capacity, and acknowledged by a notary public.

EXHIBIT H
FORM OF GUARANTY

GUARANTY

This Guaranty is executed and delivered as of this _____ day of _____, 20_ by _____, a _____ [corporation] ("Guarantor"), in favor of Holy Cross Electric Association ("Company"), in connection with the performance by _____, a _____ [limited liability company] ("Seller") of a Solar Generating and Battery Storage Energy Purchase Agreement dated _____, 20____ between Seller and Company (the "PPA").

- RECITALS -

A. Seller proposes to construct, own and operate a solar power electric generation and Battery Storage System having a Solar Nameplate Capacity of approximately _____ MW and a Battery Storage System Nameplate Capacity of approximately _____ MW located in _____ County, _____ (the "Facility").

B. Seller and Company have entered into the PPA for the purchase and sale of electrical energy from the Facility on the terms and conditions set forth therein.

C. Seller is controlled by Guarantor. Guarantor expects to derive substantial benefits from the performance of the PPA by Seller and Company. To induce Company to enter into and continue the PPA and to consummate the purchase and sale of electrical energy contemplated by the PPA, Guarantor has agreed to guarantee the obligations of Seller as provided in this Guaranty.

NOW, THEREFORE, in consideration of the foregoing, Guarantor agrees as follows:

- AGREEMENT -

1. Guaranty. Subject to the provisions of this Guaranty, Guarantor hereby absolutely, irrevocably, unconditionally, and fully guarantees to Company the due, prompt, and complete observance, performance, and discharge of each and every payment obligation of Seller under the PPA, whether incurred before or after the date of delivery of this Guaranty (the "Obligations"). This is a guaranty of payment, not of collection, and as such, Company shall not be required to institute, pursue, or exhaust any remedies against Seller before instituting suit, obtaining judgment, and executing thereon against Guarantor under this Guaranty. This Guaranty shall survive termination of the PPA to the extent necessary to enforce and complete the rights, duties and obligations of Company and Seller thereunder.

2 Maximum Liability. Notwithstanding anything herein to the contrary, Guarantor's maximum liability under this Guaranty shall be limited to _____ dollars (US\$_) plus costs of collection under Section 10 below.

3 Rights of Company. Guarantor hereby grants to Company, in Company's discretion and without the need to notify or obtain any consent from Guarantor, and without termination, impairment, or any other effect upon Guarantor's duties hereunder, the power and authority from time to time:

(a) to renew, compromise, extend, accelerate, or otherwise change, substitute, supersede, or terminate the terms of performance of any of the Obligations, in each case in accordance with the PPA;

(b) to grant any indulgences, forbearances, and waivers, on one or more occasions, for any length of time, with respect to Seller's performance of any of the Obligations; and

(c) to accept collateral, further guaranties, and/or other security for the Obligations, and, if so accepted, then to impair, exhaust, exchange, enforce, waive, or release any such security.

4 Performance. If any of the Obligations are not performed according to the tenor thereof, and any applicable notice and cure period provided by the PPA has expired ("Default"), Guarantor shall immediately upon receipt of written demand by Company (a) perform or cause Seller to perform the Obligation in Default, and (b) pay, reimburse, and indemnify Company against any liabilities, damages, and related costs (including attorneys' fees) incurred by Company as a result thereof, all in such manner and at such times as Company may reasonably direct.

5 Satisfaction. Satisfaction by Guarantor of any duty hereunder incident to a particular Default or the occurrence of any other Default shall not discharge Guarantor except with respect to the Default satisfied, it being the intent of Guarantor that this Guaranty be continuing until such time as all of the Obligations have irrevocably been discharged in full, at which time this Guaranty shall automatically terminate. If at any time the performance of any Obligation by Seller or Guarantor is rescinded or voided under the federal Bankruptcy Code or otherwise, then Guarantor's duties hereunder shall continue and be deemed to have been automatically reinstated, restored, and continued with respect to that Obligation, as though the performance of that Obligation had never occurred, regardless of whether this Guaranty otherwise had terminated or would have been terminated following or as a result of that performance.

6 Notice of Acceptance. Guarantor waives and acknowledges notice of acceptance of this Guaranty by Company.

7 Waivers by Guarantor. Guarantor hereby waives and agrees not to assert or take advantage of:

(a) all set-offs, counterclaims, and, subject to Section 4 above, all presentments, demands for performance, notices of non-performance, protests, and notices of every kind that may be required by Applicable Laws;

(b) any right to require Company to proceed against Seller or any other person, or to require Company first to exhaust any remedies against Seller or any other person, before proceeding against Guarantor hereunder;

(c) any defense based upon an election of remedies by Company;

(d) any duty of Company to protect or not impair any security for the Obligations;

(e) the benefit of any laws limiting the liability of a surety;

(f) any duty of Company to disclose to Guarantor any facts concerning Seller, the PPA or the Facility, or any other circumstances, that would or allegedly would increase the risk to Guarantor under this Guaranty, whether now known or hereafter learned by Company, it being understood that Guarantor is capable of and assumes the responsibility for being and remaining informed as to all such facts and circumstances; and

(g) until all Obligations in Default have been fully paid and/or performed, any rights of subrogation, contribution, reimbursement, indemnification, or other rights of payment or recovery for any payment or performance by it hereunder. For the avoidance of doubt, if any amount is paid to Guarantor in violation of this provision, such amount shall be held by Guarantor for the benefit of, and promptly paid to, Company.

8 Cumulative Remedies. The rights and remedies of Company hereunder shall be cumulative and not alternative to any other rights, powers, and remedies that Company may have at law, in equity, or under the PPA. The obligations of Guarantor hereunder are independent of those of Seller and shall survive unaffected by the bankruptcy of Seller. Company need not join Seller in any action against Guarantor to preserve its rights set forth herein.

9 Representations and Warranties. Guarantor represents and warrants to Company as follows:

(a) Guarantor is a corporation, duly organized, validly existing, and in good standing under the laws of the state of its incorporation. Seller is a direct or indirect wholly-owned subsidiary of Guarantor. Guarantor has all necessary corporate power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty has been duly and validly authorized by all corporate proceedings of Guarantor and is not in violation of any law, judgment of court or government agency . This Guaranty has been

duly and validly executed and delivered by Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.

10. Collection Costs. Guarantor shall pay to Company, upon demand, and in addition to the maximum liability set forth in Section 2 hereof, all reasonable attorneys' fees and other expenses which Company may expend or incur in enforcing the Obligations against Seller and/or enforcing this Guaranty against Guarantor, whether or not suit is filed, including, without limitation, all attorneys' fees, and other expenses incurred by Company in connection with any insolvency, bankruptcy, reorganization, arrangement, or other similar proceedings involving Seller that in any way affect the exercise by Company of its rights and remedies hereunder.

11. Severability. Should any one or more provisions of this Guaranty be determined to be illegal or unenforceable, all other provisions nevertheless shall be effective.

12. Waiver or Amendment. No provision of this Guaranty or right of Company hereunder can be waived, nor can Guarantor be released from Guarantor's duties hereunder, except by a writing duly executed by Company. This Guaranty may not be modified, amended, revised, revoked, terminated, changed, or varied in any way whatsoever except by the express terms of a writing duly executed by Company.

13. Successors and Assigns. This Guaranty shall inure to the benefit of and bind the successors and assigns of Company and Guarantor.

14. Governing Law. This Guaranty shall be governed by and construed in accordance with the law of the State of *[insert home state of Company]* without regard to the principles of conflicts of law thereof. Venue for any dispute hereunder shall be as set forth in Section 13.5 of the PPA.

15. Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given (and shall be deemed to have been duly given upon receipt) by delivery in the manner contemplated by the PPA, addressed as follows:

(a) if to Company: as provided in the PPA

(b) if to Guarantor: _____

Attn:

with a copy to: _____

Attn:

EXHIBIT I

AGC PROTOCOLS; DISPATCH AND AVAILABILITY NOTICES; DATA COLLECTION; TECHNICAL SPECIFICATIONS

AGC

1. **AGC Communications between Company and Seller.** Company will receive and send AGC Set-Point and related data over a secure analog or digital line. The data points covered under this PPA, as described below, may overlap data requirements for HCE's applicable forecasting group.

<u>Facility</u>			
<u>Description</u>	<u>Units</u>	<u>Description</u>	<u>Units</u>
Actual Real Power	MW	AGC Set-Point (echo)	MW
Actual Reactive Power	MVar	Actual Real Power	MW
Average Voltage (at high voltage interconnection)	kV	Park Potential	MW
		Actual Reactive Power	MVar
		AGC Status	Remote/Local

2. **Response times and limitations of Facility in regards to AGC.** The following protocols outline the expectations for responding to the AGC Set-Point. Except in the case of the frequency changes, these protocols will be generally bound by the manufacturers' specifications for the equipment that Seller has chosen for the Solar Facility.

a. Allowable Variances in Excess of AGC Set-Point. Once the Solar Facility has reached the AGC Set-Point, Solar Facility output may not exceed the AGC Set-Point by more than 2% on average as measured during a 5-minute period.

b. Range of AGC Set-Point. The range of set-point values can be between 0% and 100% of Park Potential.

3. **Backup Communications.** In the event of an AGC failure, Company and Seller shall communicate via telephone in order to correct the failure.

DATA COLLECTION

The Solar Facility shall include at least [four (4)] ***[final number depends on size of facility]*** meteorological stations. Not later than the Commercial Operation Date, Seller shall deliver to Company a report showing (i) manufacturer, model and year of all panels, inverters and meteorological instrumentation, and (ii) the latitude and longitude of the center of the solar panels for every inverter and every meteorological station. Beginning upon COD, Seller shall

transmit and provide to Company the real-time data set forth below, refreshed as frequently as allowed by the SCADA System, not to exceed sixty (60) second intervals:

- A. Two (2) data points from each inverter:
 - 1. Inverter generation (kW)
 - 2. Inverter availability

- B. Four (4) data points from each meteorological station:
 - 1. Global horizontal irradiance (solar intensity)
 - 2. Temperature
 - 3. Barometric pressure
 - 4. Plane-of-array irradiance (POA) (W/m²)

Seller shall provide a map and key for each inverter sufficient to allow Company to correlate the data received through Company's data historian system to each individual inverter.

FORECASTING REQUIREMENTS

a. The Solar Facility availability forecast shall be posted at 4:00 AM two (2) Business Days prior to the applicable Day, and shall be applicable through the end of such Day. For example, on Monday, an availability forecast is required for Wednesday (midnight to midnight). On Tuesday, the forecast for Thursday, Wednesday the forecast for Friday, and so on. The forecast shall be submitted through an availability forecast system as specified by Company to Seller. Prior to the Commercial Operation Date, Company shall provide Seller with the information necessary for Seller to access the chosen availability forecast system.

b. If any events or circumstances reduce the forecasted availability of the Solar Facility by 10% or more (or the current requirements of the applicable ERO if less than 10%), such reduction shall be (1) communicated to the real-time operator via telephone with (2) an immediate update to the availability forecast in the availability forecast system.

* * * * *

EXHIBIT J

ENERGY PAYMENT RATE AND COMMITTED ENERGY

This Exhibit J sets forth the applicable rates for energy and the Committed Energy.

This entire Exhibit shall be deemed Confidential Information subject to Section 20.18.

PART I. APPLICABLE PAYMENT RATES AND COMMITTED ENERGY

Commercial Operation Year (Year)	Committed Energy (MWh)	Energy Payment Rate (\$/MWh)	Battery Payment Rate (\$/MWh)
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

EXHIBIT K
LENDER CONSENT PROVISIONS

In the event Seller collaterally assigns its rights hereunder to a Facility Lender as security, any related Lender Consent will contain provisions substantially as follows:

1. Seller and Company will neither modify nor terminate the PPA in any material respect, without the prior written consent of the Facility Lender.
2. The Facility Lender shall have the right, but no obligation, to do any act required to be performed by Seller under the PPA, and any such act performed by the Facility Lender shall be as effective to prevent or cure a default as if done by Seller itself.
3. If Company becomes entitled to terminate the PPA due to an Event of Default by Seller, Company shall not terminate the PPA unless it has first given notice of such Event of Default to the Facility Lender and has given the Facility Lender the same cure period afforded to Seller under Article 12 of the PPA, plus an additional 30 Days beyond Seller's cure period to cure such Event of Default; *provided, however*, that if the Facility Lender requires possession of the Facility in order to cure the Event of Default, and if the Facility Lender diligently seeks possession, the Facility Lender's additional 30-Day cure period shall not begin until foreclosure is completed, a receiver is appointed, any bankruptcy stay is removed, or possession is otherwise obtained by or on behalf of the Facility Lender.
4. The Facility Lender shall provide to Company a copy of any notices of default and/or intent to exercise remedies delivered to Seller under the Financing Documents.
5. Upon any foreclosure, deed-in-lieu or other exercise of the rights and remedies of the Facility Lender that results in a successor owner or operator of the Facility, the Facility Lender shall require and cause the successor (i) to assume all of Seller's prospective obligations under the PPA, (ii) to cure any then-existing defaults by Seller that are capable of cure by performance or the payment of money damages, (iii) to have substantial experience in the operation of power generation facilities akin to the Facility, either directly, through its affiliates or through an operator acceptable to Company, and (iv) to enjoy (together with its parents and affiliates) an Investment Grade Credit Rating or other creditworthiness satisfactory to Company. Except for the foregoing, the Facility Lender shall not be obligated to perform or be liable for any obligation of Seller under the PPA.
6. Upon any rejection or other termination of the PPA in connection with any bankruptcy or insolvency of Seller, the Facility Lender (or its successor) and Company shall enter into a new power purchase agreement on the same terms and conditions as the PPA and for the period that would have been remaining under the PPA but for such termination.

* * * * *

EXHIBIT L
PSA PROVISIONS

Any PSA executed to implement exercise of Company's ROFO rights will include provisions substantially as follows:

1. The PSA shall close on such Business Day as may be specified by Company, not more than 180 Days following execution of the PSA (or such longer period as may be required for the HCE BOARD OF DIRECTORS to act thereon).

2. Seller shall operate the Facility, and both Parties shall perform the PPA, in the ordinary course of business pending closing of the PSA.

3. Seller shall convey the Facility to Company via special warranty deed, free and clear of all mortgages, deeds of trust, UCC-1s, and other liens materially adverse to Company's ownership and operation thereof.

4. All revenues and expenses of the Facility shall be prorated as of the date of closing.

5. Seller shall provide customary comprehensive representations, warranties and indemnities to Company regarding its legal right to execute and perform the PSA, and regarding title, physical condition, vendors, employees, operations, finances, contracts, maintenance and other relevant matters pertaining to the Facility, unqualified by its knowledge but subject to such factual exceptions as Seller may disclose. Absent fraud, Seller's liability for breach of such reps and warranties shall not exceed 100% of the purchase price. Seller's post-closing obligations shall be secured by a suitable combination of hold-back escrow, letter of credit and/or guaranty from a creditworthy affiliate.

6. Company shall provide customary representations and warranties to Seller regarding its capacity and legal right to execute and perform the PSA, unqualified by its knowledge.

7. Company shall assume all material contracts of Seller related to the Facility that are reviewed and approved by Company (such approval not to be unreasonably withheld) during the due diligence period.

8. Company's obligation to close shall be conditioned upon (i) approval by the HCE BOARD OF DIRECTORS, (ii) counterparty consent under all material contracts requiring such consent, (iii) receipt by Company of all Permits needed to own and operate the Facility, and (iv) no material casualty or condemnation of the Facility prior to closing.

9. Company shall have the right of specific performance, without the need to post bond or prove irreparable harm from Seller's failure to close. Venue for any dispute under the PSA shall be the State District Court for the County in which the Facility is located.

10. Such other terms as may then be standard in the market.

EXHIBIT M
BATTERY STORAGE SYSTEM TESTING PROTOCOLS

This Exhibit M sets forth the Performance Criteria and protocols for any testing of the Battery Storage System under this PPA. The Commercial Operation Test, Periodic Test, and other discretionary testing identified in Section 5.6 are sometimes referred to in this Exhibit individually as a “Test” and jointly as the “Tests.”

PART I. GENERAL.

The Tests shall be conducted in accordance with Good Utility Practices and the provisions of this Exhibit M.

PART II. REQUIREMENTS APPLICABLE TO THE TESTS.

A. Required Performance Criteria.

Tests conducted pursuant to this Exhibit M shall include the following elements (unless Company otherwise agrees in writing in its sole discretion):

- “Availability” is defined as the ability of the system to receive and respond to signals from the EMCC. This value is calculated as the ratio of time the system can function as described to total time within the annual measured period, calculated as a percentage. Availability is not negatively impacted by outages beyond the control of the vendor, including:
 - i. any Outage where Seller failed to comply with a Dispatch Notice that was not in accordance with the Battery Storage System Operating Procedures;
 - ii. a Compensable Curtailment;
 - iii. a Non-Compensable Curtailment;
 - iv. Force Majeure;
 - v. a breach of this Agreement by Company that prohibits the ability of the system to receive and respond to signals from the EMCC; or
 - vi. insufficient solar irradiance or insufficient stored energy not caused by any act or omission of Seller.
- “Enterprise Wide Information System” (“EWIS”) means the Company supplied PI Servers and software used by the Battery Storage System to record historical operations parameters or compatible replacement.
- “Battery Management System” or “BMS” is defined as the electronic control and communication system that manages and protects the Battery Storage System.
- “Grid Charging Capability” means the ability for the Battery Storage System to charge and store Grid Charging Energy delivered from an offsite source by HCE’s electrical system.

- “Storage Capacity” is defined as the rated amount of energy that the Battery Storage System can hold, measured in MWh and measured at the Point of Delivery.
- “Self-Discharge Rate” is defined as the loss of charge of the Battery Storage System while idle.
- “Minimum Charging Time” is defined as the amount of time between a measurement of 0% State of Charge (SOC) to reaching full Storage Capacity (expressed in units of time).
- “Minimum Discharging Time” is defined as the amount of time between full Storage Capacity to reaching a measurement of 0% SOC (expressed in units of time).
- “Maximum Charging Rate” is defined as the maximum rate of charging (expressed in MW).
- “Maximum Discharging Rate” is defined as the maximum rate of discharging (expressed in MW).
- “Performance Test” means the Maximum Charging Rate, Maximum Discharging Rate, Minimum Discharging Time, Minimum Charging Time, Storage Capacity, and Round Trip Efficiency of the Battery Storage System tests.
- “Round Trip Efficiency” is defined as the amount of Battery Energy discharged by the Battery Storage System relative to the amount of Charging Energy, measured at the Battery Storage System Electric Metering Device, over a defined test period.
- “Ramp Rate” shall have the meaning set forth in the Transmission Tariff.
- “Response Time” is defined as the amount of time for the Battery Storage System to dispatch instructions from Company’s SCADA.

B. Test Parameters.

During any Performance Test, at a minimum, the following parameters shall be measured and recorded simultaneously for the Battery Storage System at the level of granularity necessary to assess the measured criteria and at least every four (4) seconds:

- (i) Time;
- (ii) Net electrical energy output to the Point of Delivery (kWh);
- (iii) Net electrical energy input from the Point of Delivery (kWh);

- (iv) Reactive power (VARs);
- (v) State of Charge (%);

During any Performance Test, at a minimum, the following parameters shall be measured and recorded simultaneously for the Battery Storage System at least every thirty (30) minutes:

- (i) Relative humidity (%);
- (ii) Ambient temperature (°F); and
- (iii) Average battery temperature (°F).

C. Performance Test Showing. Seller must demonstrate to Company's reasonable satisfaction, that the Battery Storage System:

- (i) is capable of storing and delivering the MW and MWh amount identified by Seller as the maximum rated power and energy;
- (ii) can deliver full rated power (MW) to the Point of Delivery for two (2) consecutive hours, totalling to the Storage Capacity, inclusive of identified Round Trip Efficiency losses.

APPENDIX A: All identified Exhibit M-1 required performance levels are met.

D. Performance Test Conditions.

- (i) At all times during a Test, the Battery Storage System, including all auxiliary equipment, shall be operated in compliance with the Test Plan, Good Utility Practices and all operating protocols and conditions recommended, required, or established by the manufacturer.
- (ii) Company in its sole discretion may elect to shorten the run periods or waive a particular portion of a Test at any time. Such election or waiver during one Test does not shorten any run period or waive any portion of any subsequent Test.
- (iii) Expected Test Conditions.
 - a. When the Battery Storage System is charged exclusively with Renewable Energy, the Test should be conducted under full sun (>500W/m²) and stable sky conditions, generally between the hours of 10:00 am and 2:00 pm Mountain Standard Time (MST). Test condition timing may be modified to a schedule appropriate for the ratio of sizing between the Battery Storage System and the Solar Facility.

- (3) If such conditions are not available on the scheduled day of the Test, then the Test will be postponed until the earlier of the date on which such

conditions exist or three (3) Business Days following the originally scheduled date of the Test.

- i. If such conditions are not available within three (3) Business Days of the originally scheduled date of the Test, then the Parties shall reasonably cooperate to schedule testing as soon as practicable under stable sky conditions with a minimum irradiance of 200W/m².
 - b. If the Battery Storage System is charged with Charging Energy that includes Grid Charging Energy, the Test may be conducted under any sky conditions.
- (iv) Abnormal Conditions. If abnormal operating conditions occur during a Test, Company may postpone or reschedule all or part of such Test in its reasonable discretion in accordance with PART II.F. or PART II.G., below.
 - (v) Applicable Laws. The Battery Storage System shall be operated in compliance with all Applicable Laws, including those governing safety, noise, air, and water emissions during any Test.
 - (vi) Instrumentation and Metering. Seller shall provide all instrumentation, metering, and data collection equipment required to perform the Test. Class 0.2S or Class 0.5S meters should be used to verify performance of the Battery Storage System during any Test. Seller shall calibrate or cause to be calibrated all such instrumentation, metering, and data collection equipment no more than three (3) months prior to the date of the Test, if appropriate to the tool type. Copies of all calibration sheets shall be provided to Company at least five (5) Business Days prior to the Test.

Permanently installed instruments shall include but not be limited to revenue metering devices located in the switchyard where the Facility is located.

- E. Test Records. Seller shall provide all records associated with PART II.A. through PART II.D. with the Final Report described below in PART II.H. The records shall include copies of the raw data taken during the Test. This information will be provided in a format reasonably acceptable to Company. Collectively, the records and data provided with the Final Report shall be "Test Records".
- F. Incomplete Test. If any Test is not completed in accordance herewith, Company may in its sole discretion: (i) accept the Test results up to the time the Test stopped (other than in the case such Test is a Commercial Operation Test); (ii) require that the portion of the Test not completed, be completed within a reasonable specified time period; or (iii) require that the Test be entirely repeated. Notwithstanding the above, if Seller is unable to complete a Test due to a Seller's Force Majeure or the actions or inactions of Company, Seller shall be permitted to reconduct

such Test as a Seller Initiated Test under Section 5.6(D) on dates and at times reasonably acceptable to Company.

- G. Retest. After the successful completion of a Test, Seller has the right, for any reason, to conduct a retest at Seller's sole expense, including the cost of charging the Battery Storage System.

If the Test Records provided by Seller to Company in accordance with PART II.E. are not in accord with the records and notes of the Company representative who attended such Test on Company's behalf, Company may require the Test to be repeated or conducted by Company or a testing firm of Company's choice and attended by Seller's representatives. If the retest determines that the Test Records provided by Seller to Company are correct, then such retest will be deemed to be a Company Dispatched Test. If the retest determines that the Test Records provided by Seller to Company are incorrect, then such retest will be deemed to be a Seller Initiated Test.

The records from any retest shall be used to determine Battery Storage System performance as of the date of the original Test being repeated.

- H. Final Report. Within fifteen (15) Business Days after the completion of a Test (including a retest), Seller shall prepare and submit to Company a written report of the Test in a format reasonably acceptable to Company.

At a minimum, the report shall include:

- (i) a record of the personnel present during all or any part of the Test, whether serving in an operating, testing, monitoring or other such participatory role;
- (ii) a record verifying that inspections took place and the results were acceptable prior to testing initiation;
- (iii) a record of the test conditions (e.g. weather conditions) and test set up (e.g. equipment type and placement used);
- (iv) a record of any unusual or abnormal conditions or events that occurred during the Test and any actions taken in response thereto;
- (v) the Test Records;
- (vi) the system performance in relation to the Performance Criteria identified in Exhibit M-1, either by direct measurement or via agreed to calculation; and
- (vii) Seller's statement of either Seller's acceptance of the Test or Seller's rejection of the Test results and reason(s) therefore.

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

If Company rejects the results of any Test or retest, or Seller rejects the results of the initial Commercial Operation Test, such Test shall be repeated in accordance with PART II.G.

- I. Company Representative. Company shall be entitled to have at least two (2) representatives from Company and one (1) independent third party witness reasonably acceptable to Seller present to witness each Test and shall be allowed reasonable access to the area from where the plant is being controlled (e.g., plant control room), and reasonable access to inspect the instrumentation necessary for Test data acquisition prior to commencement of any Test, subject to providing reasonable advance notice to Seller and adhering to Seller's safety protocols that have been communicated to Company. Company shall be responsible for all costs, expenses and fees payable or reimbursable to the representative and the third party, if any.

PART III. COMMERCIAL OPERATION TEST.

- A. Test Plan. The Test Plan is provided in PART V Section F and G of this Exhibit M.
- B. Test Dates. Seller shall provide Company with at least seven (7) Business Days' notice of Seller's proposed dates for the Commercial Operation Test. Company shall confirm the dates in writing prior to the first date of the Test.
- C. Costs. Costs for testing are as set forth in Section 5.6. The Commercial Operation Test is a Company Initiated Test.

PART IV. PERIODIC TESTS.

- A. Test Plan. The Test Plan is provided in PART V - Section F of this Exhibit M, unless specified below or the Parties agree otherwise in writing.
- B. Instrumentation and Metering. The Parties shall use the same instrumentation and metering as was used in the Commercial Operation Test, unless the Parties otherwise agree in writing. Company reserves the right, in its sole discretion and at its expense, to install its own back-up instrumentation and metering to verify the results of the periodic tests. If requested in writing, Company shall provide copies of any inspection or testing reports to Seller.
- C. Test Dates. Seller is responsible for scheduling each Periodic Test. The date of any such Test shall be confirmed in writing by Company to Seller prior to the date of the Test. The Parties should attempt but are not required to schedule such Test on days that Company will or is likely to dispatch the Battery Storage System.
- D. Costs. Costs for testing are as set forth in Section 5.6.

PART V. TEST PLAN.

Any Test shall be performed according to the provisions of this Exhibit M, and the Test Plan below.

A. GENERAL:

- (i) This document provides the procedure for Performance Test and evaluation of the Battery Storage System for the Facility. This

document shall be the template to develop the final Performance Test procedures as mutually agreed to between the Parties. The complete final Performance Test procedure shall be submitted sixty (60) Days prior to the test.

- (ii) The sole purpose of the Performance Test will be the determination of Maximum Charging Rate, Maximum Discharging Rate, Minimum Discharging Time, Minimum Charging Time, Storage Capacity, and Round Trip Efficiency of the Battery Storage System for comparison to the Guaranteed Performance values provided in Exhibit M-1. Uncertainties and test tolerance of 0.5% will be applied to any guarantee.
- (iii) Prior to each test, a pre-test meeting shall be held and recorded. The meeting shall review the applicable approved performance test procedure, the applicable requirements of such Performance Test, as well as all instrumentation locations, calibration sheets, and other relevant topics including safety requirements.
- (iv) Data shall be recorded by the SCADA/EWIS system data logging functions. The use of alternative means for data acquisition shall be used only with prior written consent of Seller. Company shall supply all raw data from the SCADA/EWIS system, daily during pre-test activities and during testing phase.
- (v) Prior to the start of testing the Battery Storage System, the control settings (tuning and constants) shall be verified.
- (vi) Any alteration or modifications to test measurement devices, or to the Battery Storage System, which could reasonably be expected to influence the outcome of the applicable Performance Test, shall not be permitted, without prior written consent of Company, and if accepted by Company, shall be fully documented by Seller and Company.

B. RESPONSIBILITIES:

(i) Specific responsibilities for this Performance Test program are as follows:

- a. Seller:
 - i. Perform commissioning.
 - ii. Manage the application of proper commissioning procedures until the Performance Tests have been completed.
 - iii. Support Company with testing and interface with the Utility/ISO as required to schedule and perform testing.
- b. Company:
 - i. Support Seller with testing and interface with the Utility/ISO as required to schedule and perform testing.

- ii. Witness energy testing and/or review test documentation.
 - iii. Provide energy for the Performance Test program.
- C. EQUIPMENT DEFINITION:

The test configuration will consist of the Battery Storage System and its associated equipment.
- D. MEASUREMENTS & INSTRUMENTATION:
 - (i) Instrumentation for the Performance Test will consist of Battery Storage System instruments. Calibration certificates will be provided with the instruments.
 - (ii) The State of Charge during all tests shall be read from the Battery Management System.
 - (iii) The charge rate and discharge rates shall be measured using the Battery Storage System Electric Metering Devices.
 - (iv) For purposes of testing the Round Trip Efficiency and notwithstanding the last sentence of the definition of Battery Storage System Electric Metering Devices, the Charging Energy and Discharging Energy shall be measured by the Battery Storage System Electric Metering Devices without normalizing for electrical losses between the Battery Storage System Electric Metering Devices and the Point of Delivery.
- E. DATA COLLECTION:
 - (i) All measurements of charge rate, discharge rate, input current and voltage, output current and voltage, thermal output, system temperatures, ambient conditions, and other parameters that must be measured shall be collected simultaneously at a temporal resolution applicable to the function of the system application and system metrics to which they are being applied and in accordance with recognized standards applicable to the measurements being taken.
 - (ii) Data scan rate shall be 4 seconds or faster for all tests.
 - (iii) CANCELLATION OR CESSATION OF TESTING UNDER CERTAIN CIRCUMSTANCES
 - a. In connection with any of the acceptance and other testing pursuant to this Agreement, including the Performance Tests, Seller shall each have the unilateral right to cease such tests if Seller determines that a matter or event is occurring that may damage or adversely affect the equipment or system. Seller shall promptly remedy such condition and shall thereafter promptly reschedule the testing.
- F. Test to measure Maximum Charging Rate, Maximum Discharging Rate, Minimum Discharging Time, Minimum Charging Time, Storage Capacity, and Round Trip Efficiency:

- (i) A capacity test shall be performed to determine Maximum Charging Rate, Maximum Discharging Rate, Minimum Discharging Time, Minimum Charging Time, Storage Capacity, and Round Trip Efficiency of the Battery Storage System.
- (ii) The Battery Storage System shall be discharged to 5% SOC and held for a period of 30 minutes.
- (iii) The Battery Storage System shall be discharged to 0% SOC level or to the minimum SOC as quickly as practical.
- (iv) The system shall be left at rest in an active standby state for 120 minutes or time adjusted by Seller based on battery technology.
- (v) The Battery Storage System shall be charged as close to the Guaranteed Maximum Charging Rate specified in Exhibit M-1 as possible (“Maximum Charging Rate”) until the BMS causes the allowable charging rate to be derated to prevent overvoltage. The maximum AC power during this charge cycle shall be recorded and used for satisfaction of the Guaranteed Maximum Charging Rate. The AC energy input **Wh_i**, into the system during system charging and the time until the system begins to limit charging below the Maximum Charging Rate shall be measured and recorded.
- (vi) The Battery Storage System shall be charged to 100% SOC as close to the Maximum Charging Rate as possible subject to the limitation of the BMS. The total AC energy input **Wh_i** (includes the energy at both the Maximum Charging Rate and derated charge rates), into the system during system charging, shall be measured and recorded. The total charging time period until Battery Storage System has charged or taken the Storage Capacity (including the time at both the Maximum Charging Rate and derated charge rates) will be used to determine the Minimum Charging Time.
- (vii) The system shall be left at rest in an active standby state for 120 minutes or time adjusted by Seller based on battery technology.
- (viii) The Battery Storage System shall be discharged as close to the Guaranteed Maximum Discharging Rate specified in Exhibit M-1. The maximum AC power during this discharge cycle shall be recorded and used for satisfaction of the Guaranteed Maximum Discharging Rate. AC energy output **Wh_D** out of the system during system discharging, and the time until the system begins to limit discharge below the Guaranteed Maximum Discharging Rate shall be measured and recorded. The time period until the system has supplied the Guaranteed Storage Capacity will be used for satisfaction of Guaranteed Minimum Discharging Time.
- (ix) The system shall be discharged from the prior level to 0% SOC (or its warranted limits) at a current/voltage limited by the BMS. The total AC energy output from the system **Wh_D** (includes the energy at both the rated and derated discharge rates) shall be measured and recorded during discharge.

- (x) The system shall be left at rest in an active standby state for 120 minutes or time adjusted by Seller based on battery technology.
 - (xi) The reference capacity test value (Storage Capacity) shall be **WhDi** as measured in F.(viii).
 - (xii) The power and times (hours/minutes/seconds) recorded in steps F.(v), F.(vi), and F.(viii) shall be the value used to verify conformance to the Guaranteed Maximum Charging Rate, Guaranteed Maximum Discharging Rate, Guaranteed Minimum Charging Time, and Guaranteed Minimum Discharging Time.
 - (xiii) The total AC energy input **WhI** and the total AC energy output from the system **WhD** recorded in steps F.(vi) and F.(ix) shall be used to determine Round Trip Efficiency for conformance to the Guaranteed Round Trip Efficiency. The Guaranteed Round Trip Efficiency shall be as defined in Part II of this Exhibit M.
- G. Grid Charging Capability Test (During COD Test [and after Compliance Period only] **bid-specific – may be n/a**):
- (i) Modify control system to disable code that prevents grid charging. Note this step must be performed by Seller’s qualified controls programmer.
 - (ii) If SOC is above 80% discharge at a rate specified by Seller until Battery Storage Systems is below 80% SOC.
 - (iii) Record the SOC of the Battery Storage System.
 - (iv) The Battery Storage System shall be charged at the Maximum Charging Rate for 10 minutes during a concurrent time period of generation from the Solar Facility that is less than the Guaranteed Maximum Charging Rate.
 - (v) Following the 10-minute charging period, record the final SOC of the Battery Storage System.
 - (vi) The initial and final SOC of the Battery Storage System recorded in steps G.(iii) and G.(v), the metered value of Solar Facility production, and achieved charging rate shall be used to verify conformance to Grid Charging Capability.
 - (vii) Modify control system to enable code that prevents grid charging. Note this step must be performed by Seller’s qualified controls programmer.

* * * *

EXHIBIT M-1

GUARANTEED PERFORMANCE LEVELS

BATTERY STORAGE SYSTEM GUARANTEED PERFORMANCE LEVELS

This Exhibit M-1 sets forth the guaranteed performance levels ("Guaranteed Performance") for certain Performance Criteria.

Guaranteed Round Trip Efficiency:

The Guaranteed Round Trip Efficiency shall be as set forth in the table below:

Year	RTE
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
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<u>Performance Metric</u>	<u>Guaranteed Level</u>	<u>Point of Measurement</u>
Guaranteed Storage Capacity	[] MWh	Point of Delivery
Self-Discharge Rate	[]/month	Battery Storage System Electric Metering Device
Guaranteed Minimum Charging Time	Storage Capacity in MWh/ [] MW /RTE plus [] minutes (At Maximum Charging Rate)	Battery Storage System Electric Metering Device
Guaranteed Maximum Charging Rate	[] MW	Battery Storage System Electric Metering Device
Guaranteed Minimum Discharging Time	Storage Capacity / [] MW hours plus [] minutes	Battery Storage System Electric Metering Device
Guaranteed Maximum Discharging Rate	[] MW	Battery Storage System Electric Metering Device
Maximum Ramp Rate	[] MW/second	Battery Storage System Electric Metering Device
Guaranteed Response Time	[] seconds	Battery Storage System Electric Metering Device
Grid Charging Capability (During COD Test [and after Compliance Period only] [<i>bid-specific – may be n/a</i>])	Pass	Battery Storage System Electric Metering Device

EXHIBIT N
EXPECTED MONTHLY GENERATION PROFILE

Calendar Month	Percent of Annual Generation
January	__ %
February	__ %
March	__ %
April	__ %
May	__ %
June	__ %
July	__ %
August	__ %
September	__ %
October	__ %
November	__ %
December	__ %
Total	100 %

* * * * *

EXHIBIT O

BATTERY STORAGE SYSTEM OPERATING PROCEDURES

The Battery Storage System Operating Procedures will include the provisions set forth in this Exhibit O – Battery Storage System Operating Procedures. No later than 90 days prior to the Commercial Operation Date, the Operating Committee shall develop the Battery Storage System Operating Procedures in accordance with Section 10.8. The Battery Storage System Operating Procedures can be reviewed annually (date and time to be mutually agreed) to optimize operations for both Parties. Parties shall cooperate to integrate the systems and controls necessary to implement the Battery Storage System Operating Procedures.

I. Operational Limitations:

The operation of the Battery Storage System shall be subject to the following limitations:

- a. If the year-to-date average State of Charge exceeds [50]% at any time during the second half of a Commercial Operation Year, then the maximum allowed State of Charge shall be limited to the State of Charge that, if held for the rest of the Commercial Operation Year, would equal an annual averaged State of Charge of [50]%. If the allowable State of Charge has been limited, the State of Charge limitation will be released once the year-to-date State of Charge is less than [45]%.
- b. Subsequent to any discharge event of greater than [1] MWh, no additional discharge event of greater than [1] MWh shall be permitted until the battery has been idle for at least [1] cumulative (not necessarily consecutive) hours.
- c. The requirements and limitations set forth in Section 5.2(D) of this PPA.

II. Data Points to Be Sent from Seller to Company Via SCADA

The following data points will be transmitted via SCADA from Seller to Company and represent energy storage level data:

Table 1

<u>Energy Storage</u>	
<u>Description</u>	<u>Units</u>
Real Power Set-Point (echo)	MW
Actual Real Power	MW
Actual Reactive Power	MVar

Battery State of Charge	% & MWh
Remaining Throughput (Commercial Operation Year)	MWh
YTD Average SOC (Commercial Operation Year)	%
Maximum Allowable SOC	MWh
Additional Data Points Reserved for Future Use	

The following data points will be transmitted via SCADA from Company to Seller and represent energy storage level data:

Table 2

<u>Energy Storage</u>	
<u>Description</u>	<u>Units</u>
Charge Power Set-Point*	MW
Discharge Power Set-Point*	MW
Duration of Charge/Discharge Set-Point**	minutes
Target State of Charge*	%
Ramp Rate	MW/s
Control Mode (target time or target SOC)	Boolean
Additional Data Points Reserved for Future Use	

* Parties will resolve any conflicts in priority of signal in the Battery Storage System Operating Procedures

**System will observe either time entry or SOC target depending on Control Mode

Data points transmitted via SCADA from Seller to Company are subject to Battery Storage Operating Procedures.

1. **Response times of Battery Storage System.** The Battery Storage System Operating Procedures will include protocols that outline the expectations for responding to the Company's set points.

2. **Backup Communications.** In the event of a communications failure, Company and Seller shall communicate via telephone in order to correct the failure.

III. Forecasting Requirements

- a. The Battery Storage System availability forecast shall be posted at 4:00 AM two (2) Business Days prior to the applicable Day, and shall be applicable

through the end of such Day. For example, on Monday, an availability forecast is required for Wednesday (midnight to midnight). On Tuesday, the forecast for Thursday. On Wednesday, the forecast for Friday, and so on. The forecast shall be submitted through an availability forecast system as specified by Company to Seller. Prior to the Commercial Operation Date, Company shall provide Seller with the information necessary for Seller to access the chosen availability forecast system.

- b. If any events or circumstances reduce the forecasted availability of the Battery Storage System by 10% or more (or the current requirements of the applicable ERO if less than 10%), such reduction shall be (1) communicated to the real-time operator via telephone with (2) an immediate update to the availability forecast in the availability forecast system.

* * * * *

EXHIBIT P

SAFETY REQUIREMENTS

Seller shall design and construct the Facility in compliance with all Applicable Laws and shall ensure the Facility is operated in compliance with Good Utility Practice. Seller shall identify codes and standards that are applicable to the design of the Facility and ensure that upon substantial completion the Facility meets applicable codes and standards. Seller is solely responsible for maintaining the Facility in compliance with all Applicable Laws. Seller will provide Company with an independent registered professional engineer's certification stating that the Facility has been completed in all material respects (including compliance with all Applicable Laws) prior to COD.

Prior to COD, Seller will provide documentation submitted as part of the Adams County permitting process and, if not otherwise submitted as part of such permitting process, the following additional documents:

1. Operations and maintenance documentation, including an operations manual and maintenance manual, and schedule for planned maintenance;
2. Safety procedures for personnel (may be included within the operations or maintenance manual), and supplier safety manual;
3. Training materials for local first responders, identifying known hazards and failure modes, and methods for approach and action, if appropriate;
4. Emergency management plan, including instructions on how to interpret alarms and faults, location of emergency stops, egress pathways, known hazards, and emergency contact information for a subject matter expert who can be available on site within 2 hours; and
5. System drawings and documentation, including all physical, electrical, mechanical, and communications diagrams for all Facility sub-components, to allow for confirmation of claimed safety features including but not limited to, respectively, sufficient spacing, security, and signage; appropriate electrical ratings, grounding, and interconnections; foundations and construction materials; awareness of system operation and alarms; and fault ranges and emergency stops, but excluding any vendor proprietary drawings. As applicable, certifications for all claimed standards compliance should be provided.

* * * * *

EXHIBIT Q

METHODOLOGY FOR ADJUSTING COMMITTED ENERGY

In determining whether a default by Seller has occurred under Section 12.1(A)(10):

A. Periods when the Facility is incapacitated in whole or in part due to Force Majeure shall be excluded from the calculation.

For example, if the Facility is 50% unavailable during the entire month of March 2025 due to Force Majeure, (i) the Committed Energy required from Seller for the relevant Commercial Operation Year shall be reduced by % [*insert March % from Exhibit N – Expected Monthly Generation Profile*], and (ii) the output of the Facility for the month of March shall be excluded in determining the quantity of Renewable Energy delivered by Seller during the relevant Commercial Operation Year.

B. Periods of Non-Compensable Curtailment shall be excluded from the calculation.

For example, if the Facility is off-line for 8 days in October 2027 due to a maintenance outage on the transmission system beyond the Point of Delivery, the Committed Energy required from Seller for the relevant Commercial Operation Year shall be reduced by % [*insert 8/31 x October % from Exhibit N – Expected Monthly Generation Profile*].

C. Energy generation foregone due to Compensable Curtailments shall be deemed to have been delivered to Company.

D. The Committed Energy for the relevant Commercial Operation Year shall be multiplied by the ratio of the actual global horizontal irradiance for such Commercial Operation Year to the annual expected global horizontal irradiance for the Facility. Seller represents and warrants that the annual expected global horizontal irradiance for the Facility is [] kWh/m²/yr (+/- 1%).

For example, if during the sixth Commercial Operation Year, the Facility actually generates MWh of Renewable Energy but the actual solar irradiance for such Commercial Operation Year was kWh/m², the Committed Energy for such Commercial Operation Year (assuming no other adjustments under paragraphs A-C above) shall be reduced from MWh to MWh for purposes of determining a

default by Seller under Section 12.1(A)(10).

The actual solar irradiance for a Commercial Operation Year shall be determined by the pyranometer readings at the Site (or from [*insert alternate – e.g. “NSRDB site at ” or “GeoModel Solar GIS DataBase published by , for ”*], for any periods when the pyranometer at the Site is inoperable). Seller shall provide to Company upon request all pertinent GeoModel SolarGIS data and on-site pyranometer data for any Commercial Operation Year.

EXHIBIT R

EXAMPLE ADJUSTMENT CALCULATIONS

Example of Roundtrip Efficiency Adjustment

Example of Roundtrip Efficiency Adjustment based on the following assumed facts:

- (a) Seller's Guaranteed Roundtrip Efficiency (RTE_G) = 87%.
- (b) Seller's actual roundtrip efficiency as determined by latest test (RTE) = 85%.
- (c) Amount of grid charging delivered to battery storage system metering point for the affected month ($MWh_{ActualGrid}$) = 1,000 MWh.
- (d) Energy Payment Rate (EPR) = \$30/MWh.

Given these assumed facts, Seller calculates the Monthly Energy Payment Reduction due to Company as follows:

Reduction of Monthly Energy Payment

$$\begin{aligned} &= [1 - (RTE / RTE_G)] \times (MWh_{ActualGrid} \times EPR) \\ &= [1 - (85\% / 87\%)] \times (1,000 \text{ MWh} \times \$30/\text{MWh}) \\ &= \$689.66 \end{aligned}$$

Example of Guaranteed Storage Availability Payment Adjustment

Example of Guaranteed Storage Availability Payment Adjustment based on the following assumed facts:

- (a) Seller operates a 100 MW, 4-hour Battery Energy Storage System.
- (b) There are 720 Hours in the given month.
- (c) The Battery Payment Rate in the given Commercial Operation Year is \$15/MWh.
- (d) The Committed Energy for the applicable month is 45,000 MWh.
- (e) The Guaranteed Storage Availability is 97%.
- (f) Seller experiences four (4) outage events in the applicable month.
 - a. Outage Event #1 is a Planned Outage Event which persists for 12 Hours during which 0 MW of capacity is available for 4 Hours.

- b. Outage Event #2 is an unplanned outage which persists for 16 hours during which only 50 MW of capacity is available 4 Hours.
- c. Outage Event #3 is an unplanned outage which persists for 30 hours during which 0 MW of capacity is available for 4 Hours.
- d. Outage Event #4 is an unplanned outage which persists for 20 hours during which 25 MW of capacity is available for 4 hours.

Given these assumed facts, Seller calculates the Guaranteed Storage Availability Payment Adjustment due to Company as follows:

- (a) The Availability Percentage and resulting Equivalent Planned Outage Hours and Equivalent Forced Outage Hours are calculated for each outage as follows:

Outage Event #1:

$$\text{Availability Percentage} = 0 \text{ MW} / 100 \text{ MW} = 0$$

$$\text{Equivalent Planned Outage Hours} = 12 \times (1 - 0) = 12 \text{ Hours}$$

$$\text{Equivalent Forced Outage Hours} = 0 \text{ Hours}$$

Outage Event #2:

$$\text{Availability Percentage} = 50 \text{ MW} / 100 \text{ MW} = 0.5$$

$$\text{Equivalent Planned Outage Hours} = 0 \text{ Hours}$$

$$\text{Equivalent Forced Outage Hours} = 16 \times (1 - 0.5) = 8 \text{ Hours}$$

Outage Event #3:

$$\text{Availability Percentage} = 0 \text{ MW} / 100 \text{ MW} = 0$$

$$\text{Equivalent Planned Outage Hours} = 0 \text{ Hours}$$

$$\text{Equivalent Forced Outage Hours} = 30 \times (1 - 0) = 30 \text{ Hours}$$

Outage Event #4:

$$\text{Availability Percentage} = 25 \text{ MW} / 100 \text{ MW} = 0.25$$

$$\text{Equivalent Planned Outage Hours} = 0 \text{ Hours}$$

$$\text{Equivalent Forced Outage Hours} = 20 \times (1 - 0.25) = 15 \text{ Hours}$$

- (b) The Total Equivalent Planned Outage Hours and Total Equivalent Forced Outage Hours are calculated as follow:

$$\text{Total Equivalent Planned Outage Hours} = 12 + 0 + 0 + 0 = 12 \text{ Hours}$$

Total Equivalent Forced Outage Hours = 0 + 8 + 30 + 15 = 53 Hours

- (c) The Equivalent Availability Factor is calculated as follows:

Equivalent Availability Factor = (Hours – Total Equivalent Forced Outage Hours – Total Equivalent Planned Outage Hours) / (Hours – Total Equivalent Planned Outage Hours)

Equivalent Availability Factor = (720 – 53 – 12) / (720 – 12) = 0.925

- (d) The Guaranteed Storage Availability Payment Adjustment for the applicable month is then calculated as follows:

Guaranteed Storage Availability Payment Adjustment = Battery Payment Rate x Committed Energy for the applicable month x (the Guaranteed Storage Availability (as a percentage) minus the Equivalent Availability Factor (as a percentage));

Guaranteed Storage Availability Payment Adjustment =
\$15/MWh x 45,000 MWh x (.97 – .925) = \$30,37

EXHIBIT S

EXAMPLE STRUCTURE WITH A PARTICIPATING LOAD

Resources submitted to HCE through HCE's resource solicitation process will be evaluated using HCE's bid evaluation criteria as stated in the RFP and may or may not be selected based on HCE's sole discretion.

For selected resources, HCE may modify this PPA to acknowledge an investment from a Holy Cross member who offers an investment in a project through land value or other financial means.

If a member chooses to participate in a project that is selected by HCE, HCE can allocate, or retire RECs on behalf of that member preferentially recognizing their investment in the project. Holy Cross will provide all administrative and accounting services for retiring the RECs through the WREGIS (Western Renewable Energy Generation Information System) platform.

HCE members/hosts with multiple meters across multiple locations can include all of the meters as participating loads in the contract. The retirement of RECs by HCE on behalf of nominated meters will be proportionate to resource output, not to exceed the participating metered retail consumption on an annual basis. The participating meters must be HCE members.

A participating load cannot be allocated RECs in excess of 100% of their combined annual consumption, but a participating load can invest (financially or through providing land) in a project that produces more than 100% of their annual consumption.