

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF PUBLIC SERVICE )  
COMPANY OF NEW MEXICO'S )  
APPLICATION FOR A CERTIFICATE OF )  
PUBLIC CONVENIENCE AND NECESSITY )  
TO PURCHASE, OWN, AND OPERATE )  
TWELVE MEGAWATTS OF BATTERY )  
STORAGE FACILITIES )  
)  
PUBLIC SERVICE COMPANY OF NEW )  
MEXICO, )  
)  
Applicant )  
\_\_\_\_\_ )**

**Case No. 23-00162-UT**

**DIRECT TESTIMONY  
OF  
JASON JONES**

**May 3, 2023**

**NMPRC CASE NO. 23-\_\_\_\_\_ -UT**  
**INDEX TO THE DIRECT TESTIMONY OF**  
**JASON JONES**

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

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PNM Exhibit JJ-1	Statement of Qualifications
PNM Exhibit JJ-2	2021 Request for Proposal
PNM Exhibit JJ-3	Non-Confidential Powin Equipment Purchase Agreement for BESS System (South Valley)
PNM Exhibit JJ-4	Non-Confidential Powin Equipment Purchase Agreement for BESS System (Rio Del Oro)

Self-Verification

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1

**I. INTRODUCTION AND PURPOSE**

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

3 **A.** My name is Jason Jones. I am the Director of Generation Engineering for Public  
4 Service Company of New Mexico ("PNM"). My address is 2401 Aztec Rd, NE,  
5 Albuquerque, New Mexico 87101.

6

7 **Q. WHAT ARE YOUR DUTIES AS DIRECTOR OF GENERATION**  
8 **ENGINEERING, AND HAVE YOU PREPARED A STATEMENT OF**  
9 **YOUR QUALIFICATIONS?**

10 **A.** My duties as Director of Generation Engineering include responsibility for  
11 overseeing engineering and other technical aspects concerning PNM's electric  
12 generation portfolio. I have prepared a Statement of Qualifications which is  
13 attached as PNM Exhibit JJ-1.

14

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

16 **A.** My testimony addresses: 1) the background and description of PNM's proposed 12  
17 MW battery energy storage system project ("BESS Project"); 2) the contracting  
18 strategy and request for proposal process for the BESS Project; 3) the estimated  
19 capital costs and timing of the BESS Project; and 4) the BESS Project design  
20 benefits. My testimony also addresses how the BESS Project meets certain statutory  
21 criteria for approval of a certificate of public convenience and necessity ("CCN")

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1 for an energy storage system under Section 62-9-1(D) of the Public Utility Act  
2 (“PUA”).

3

4 **II. PROJECT BACKGROUND AND DESCRIPTION**

5

6 **Q. PLEASE DESCRIBE THE BESS PROJECT.**

7 **A.** This project includes the acquisition, installation, and operation of two 6 MW 4-  
8 hour Lithium Iron Phosphate (“LFP”) battery energy storage systems (“BESS”) on  
9 two distribution feeders co-located at two existing, PNM-owned solar generation  
10 sites. The feeders and location sites are further described by PNM witness Warner.

11

12 **Q. WHEN WILL THE BESS PROJECT BE OPERATIONAL AND WHAT IS**  
13 **ITS ANTICIPATED USEFUL LIFE?**

14 **A.** The BESS Project is scheduled to become commercially operational and begin  
15 serving customers in June 2024, assuming Commission approval by December  
16 2023. The Project has an expected service life of twenty years.

17

18 **Q. WHY IS PNM PURSUING UTILITY-OWNED BATTERY STORAGE FOR**  
19 **USE ON ITS DISTRIBUTION SYSTEM?**

20 **A.** From a generation perspective, energy storage technologies play an essential role  
21 in safely and effectively integrating carbon-free generation resources like solar and  
22 wind by adding operational flexibility. This flexibility, when applied to its

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1 distribution system, will allow PNM to provide ancillary services, minimize the  
2 curtailment of renewable energy, and provide fast response times for both power  
3 supply and grid management needs. Dispatchable BESS resources enable PNM to  
4 incorporate and manage increased Variable Energy Resources (“VER”), such as  
5 wind and solar, on its system. Furthermore, the implementation of this project  
6 serves to relieve congestion on existing distribution feeders and facilitates the  
7 growth of residential solar and storage installations, as described in PNM witness  
8 Warner’s testimony. Utility ownership allows PNM the greatest amount of  
9 flexibility in prioritizing how to use the BESS under dynamic system operating  
10 conditions as well as for economic dispatch of solar generation.

11  
12 **Q. WHAT ROLE DOES THE BESS PROJECT PLAY IN PNM'S BESS**  
13 **STRATEGY FOR ITS DISTRIBUTION SYSTEM?**

14 **A.** This project, involving two solar sites, represents an initial demonstration of the  
15 value and benefits of a BESS system when added to distribution level feeders.  
16 BESS may be deployed in modular increments to facilitate shorter construction and  
17 in-service lead times. Five additional PNM-owned solar sites interconnected on  
18 the distribution system have been evaluated for additional BESS installations. The  
19 evaluation indicated positive local and system benefits. The installation of this  
20 initial project at two sites will allow PNM to gain valuable experience and  
21 knowledge when developing future BESS projects at other sites.

22

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1   **Q.   HOW WILL PNM ENSURE THAT BESS DEPLOYMENT WILL BE**  
2       **SAFE?**

3   **A.**   Today’s BESS technology is generally safe, but PNM acknowledges that battery  
4       storage projects can present some risk of fire. These fires have typically originated  
5       due to 1) battery design or chemistry, 2) battery manufacturing, and 3) battery  
6       installation and operation. The BESS battery cells manufactured by the selected  
7       supplier, Powin Energy, LLC (“Powin”), have not experienced fires with their  
8       design. One reason is these batteries work on a LFP based chemistry. The LFP  
9       cells do not suffer from the problem of thermal runaway like lithium-ion batteries  
10      that are manufactured of other materials do. LFP cells have achieved the highest  
11      standard in product safety, meaning the batteries do not need additional fire-proof  
12      barriers and fire-retardant materials added to the module design to be safely  
13      installed and utilized. Powin oversees the installation of their batteries. The use of  
14      a vertically integrated, purpose-built, engineered system designed and assembled  
15      by a single equipment provider helps ensure safe installation, which also helps  
16      mitigate potential fire exposures.

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**III. THE BESS PROJECT PROCUREMENT PROCESS**

**Q. WHAT CONTRACTING STRUCTURE IS PNM USING FOR THE BESS PROJECT?**

**A.** For purposes of the BESS Project, PNM is using an Engineer Procure Construction Management (“EPCM”) contract structure which uses multiple prime contractors. In this contracting approach, PNM has engaged, and will engage, different contractors for different phases of the project. PNM hired Burns & McDonnell Engineering Co. (“Burns & McDonnell”) to serve as engineer to develop an initial conceptual design and total project cost estimate for the BESS Project. The selection of Burns & McDonnell for this scope of work is based upon their significant experience with energy storage projects as addressed by PNM witness Lucas McIntosh.

As discussed in more detail below, PNM procured the energy storage equipment, including related software and hardware, from Powin through a competitive request for proposal (“RFP”) process.

PNM is in the process of issuing an RFP for a construction contract for construction tasks, including related plant facilities and equipment needed to install and connect the BESS at the existing PNM sites. The construction contract will be awarded after the submittal of this application, and nearer to the commencement of on-site

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1 construction. Depending on the CCN approval process, PNM anticipates awarding  
2 the construction contract by the end of the fourth quarter of 2023.

3

4 **Q. WHY WAS THE EPCM CONTRACTING STRUCTURE CHOSEN FOR**  
5 **THE BESS PROJECT?**

6 A. This contracting structure for the BESS Project is based on the realities of the  
7 battery storage market. Market demand for energy storage has increased  
8 significantly in recent years resulting in substantial uncertainty and variability in  
9 the cost and timelines of energy storage projects. LFP battery cost escalation and  
10 supply chain issues have resulted in battery suppliers generally being unwilling to  
11 quote firm equipment pricing for any extended period (i.e., more than 15 days). In  
12 addition, battery storage suppliers and engineering, procurement, and construction  
13 (“EPC”) contractors are now adding increased margin and contingency costs to  
14 offset these market risks. These market conditions have led to a seller’s market in  
15 which the battery suppliers are less willing to focus on smaller energy storage  
16 projects such as this BESS Project, and less willing to support repeated bidding  
17 processes in favor of spending time on larger, more profitable project  
18 implementations.

19

20

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1 **Q. HOW HAS PNM RESPONDED TO THESE MARKET CONDITIONS IN**  
2 **DEVELOPING THE BESS PROJECT?**

3 **A.** The uncertainty in market conditions, extended energy storage equipment lead  
4 times, and the unwillingness of battery equipment suppliers to quote firm  
5 equipment pricing for any extended periods of time without such pricing being  
6 subject to a market index have all required PNM to address these changing  
7 conditions in its sourcing and procurement approach. In this market environment,  
8 the EPCM approach has advantages because PNM can control the project risks,  
9 manage the project uncertainties, and direct the equipment selection, project  
10 schedule, and overall design of the project. PNM determined that the most effective  
11 way to timely implement the BESS Project was to directly negotiate and procure  
12 the BESS equipment as owner-furnished equipment in an effort to lock down the  
13 equipment pricing and to reserve manufacturing “slots” to secure the desired project  
14 in-service dates. To facilitate this, on March 9, 2023, PNM entered into a Limited  
15 Notice to Proceed with Powin and paid \$5.32 million in order to provide certainty  
16 for its customers on the pricing, availability, and schedule of the BESS Project  
17 equipment. Locking down the BESS Project cost and schedule by contracting  
18 directly to purchase the equipment has helped to mitigate the risks of contractor  
19 markups and other contingencies that PNM and other utilities have been facing  
20 when planning and developing BESS installations.

21

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1 PNM anticipates the need to provide vendors and developers with similar up-front  
2 payments to secure pricing and equipment availability in the foreseeable future,  
3 which supports the request in PNM witness Fenton’s testimony for approval within  
4 a six-month period going forward.

5  
6 **Q. PLEASE DESCRIBE THE RFP PROCESS AND TIMELINE FOR THE**  
7 **BESS PROJECT.**

8 **A.** An RFP was initially issued on October 14, 2021, for up to seven energy storage  
9 sites with a desired in-service date prior to the summer of 2023. A copy of the 2021  
10 RFP is attached as PNM Exhibit JJ-2. The RFP received limited proposals from  
11 three bidders involving varying scopes of supply, with two bidders offering BESS  
12 equipment only, and the third bidder offering a full EPC scope. Proposals were  
13 thoroughly evaluated through the end of 2021, and the process was temporarily  
14 placed on hold due to ongoing challenges and uncertainties associated with the  
15 effects of the COVID-19 pandemic and market conditions. This temporary hold  
16 allowed PNM to re-evaluate the procurement activities and ensure that a reasonable  
17 and viable project implementation approach and schedule could be accomplished.

18  
19 During the summer of 2022, the RFP process was re-initiated, and the prior bidders  
20 were re-engaged for the BESS installations to be in-service by the summer of 2024.  
21 Re-engaging the bidders allowed PNM to take into consideration the market

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1 conditions, long lead times required for battery equipment, and the need to procure  
2 the BESS equipment now for a 2024 in-service date.

3

4 **Q. PLEASE DESCRIBE THE RFP BID EVALUATION PROCESS.**

5 **A.** PNM performed a thorough evaluation process, including issuance of bid  
6 clarification questions, preparation of a bid comparison document, and comparison  
7 of lifecycle costs of the batteries, including not only capital costs, but also costs for  
8 preventative maintenance, capacity maintenance, and overall lifecycle operation  
9 and maintenance costs. The evaluation also compared the proposed technologies'  
10 performance and operational flexibility characteristics. Following this evaluation  
11 process, PNM selected Powin as the supplier of the BESS equipment for the BESS  
12 Project as the bidder that represented the lowest evaluated cost from the RFP  
13 evaluation that also confirmed the ability to supply the BESS equipment within the  
14 required timeframe. PNM then proceeded with the negotiation of energy storage  
15 equipment from Powin.

16

17 **Q. DID PNM HAVE ANY OUTSIDE EXPERT ASSISTANCE IN THE**  
18 **PROCUREMENT PROCESS?**

19 **A.** Yes. To gain an industry-wide perspective of battery energy storage procurements,  
20 PNM engaged the assistance of Roger Nagel, PE, of Aion Energy LLC (“Aion”)  
21 for the commercial review and evaluation of the BESS proposals. PNM also  
22 engaged HDR Engineering, Inc. (“HDR”) for the technical specification and

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1 technical evaluation of the proposals. Both Aion and HDR were involved in  
2 negotiating the BESS Agreements with Powin.

3

4 **Q. PLEASE DESCRIBE THE BESS PROJECT COSTS.**

5 **A.** The estimated cost for the BESS Project, including engineering, materials,  
6 construction, loads, and tax, is shown in PNM Table JJ-1 below.

7

**PNM Table JJ-1 – BESS Project Costs**

BESS Equipment	\$ 17,738,685.84
Construction	\$ 2,778,000.00
Project Management and Engineering	\$ 2,132,000.00
Taxes, Loads & AFUDC	\$ 3,195,444.16
Total Estimated Cost	\$ 25,844,130.00

8

9 The project costs do not include any additional percentages for contingencies.

10

11 **Q. HOW DO THESE COSTS COMPARE WITH THE ESTIMATED COST OF**  
12 **THE BESS PROJECT AS SUBMITTED IN CASE NO. 22-00270-UT?**

13 **A.** Project costs in this filing are higher than the costs reflected for this project in  
14 PNM’s pending general rate case. Project estimates when the rate case was prepared  
15 in mid-2022 were based on available information at that time. Costs have since  
16 increased which resulted in the actual contracted-for BESS system price to be  
17 higher than the rate case estimate. BESS system pricing has experienced a period  
18 of rapid escalation due to macroeconomic trends, including the increased demand  
19 for battery cells for electric vehicles, increased demand for BESS systems caused

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1 by incentives found in the Inflation Reduction Act, and reduced availability of raw  
2 materials such as lithium carbonate, graphite, and organic electrolyte used in  
3 manufacturing battery cells. Other factors contributing to increased costs include  
4 supply chain disruptions and impacts from inflation. The actual costs for the BESS  
5 Equipment can be seen in the Equipment Purchase Agreements with Powin  
6 (“Powin Agreements”) attached as PNM Exhibits JJ-3 and JJ-4.

7

8 **Q. HOW DID PNM DEVELOP THE REMAINING ESTIMATED**  
9 **ENGINEERING AND CONSTRUCTION COSTS?**

10 **A.** PNM engaged Burns & McDonnell to develop a cost estimate for the engineering,  
11 construction, and oversight of the BESS Project. This cost estimate is discussed in  
12 detail by PNM witness Lucas McIntosh.

13

14 **Q. HOW DID PNM DETERMINE THE ESTIMATE FOR TAXES, LOAD, AND**  
15 **AFUDC?**

16 **A.** PNM applied the applicable New Mexico Gross Receipts Tax rates for the locations  
17 of the selected sites within Bernalillo and Valencia Counties. The AFUDC was  
18 estimated based upon a 6% interest rate as applied to the Powin Agreements cash  
19 flow, combined with the expected engineering, construction, and load cost cash  
20 flow over the project duration of 15 months (from Limited Notice to Proceed for  
21 the BESS equipment to commercial operation). Administrative and General loads

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1 applied to this project are consistent with PNM's current forecasts for  
2 administrative expenses.

3

4 **Q. WHAT IS PNM'S LEVEL OF CONFIDENCE IN THE ACCURACY OF**  
5 **THE OVERALL COST ESTIMATE FOR THE BESS PROJECT?**

6 **A.** PNM is reasonably confident in the accuracy of the total project cost estimate based  
7 upon the fact that the largest component of the project costs, the battery energy  
8 storage equipment, has been finalized in the Powin Agreements, which have locked  
9 in the pricing and delivery schedule of this equipment. This represents  
10 approximately seventy percent of the total project costs.

11

12 Furthermore, PNM engaged Burns & McDonnell to estimate the remainder of the  
13 engineering and construction costs to develop a total project cost estimate for the  
14 BESS Project. Burns & McDonnell brings an industry-wide perspective with  
15 significant industry experience of over 100,000-megawatt hours of battery storage  
16 projects. PNM has relied on their expertise in developing reasonable estimates for  
17 the engineering, construction, and oversight components of the BESS Project.  
18 Additionally, much of the required site infrastructure for a battery system  
19 installation is already existing because the BESS Project batteries will be co-located  
20 at two existing PNM solar facilities and necessary site due diligence has already  
21 been completed. Based on the foregoing, PNM does not expect there to be material

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1           variability from the costs as presented. Any differences are likely to be the result  
2           of construction industry market conditions.

3  
4   **Q.   WHAT IF THE ACTUAL COSTS EXCEED THE ESTIMATED AMOUNTS**  
5   **PRESENTED IN YOUR TESTIMONY?**

6   **A.**   As discussed by PNM witness Mark Fenton, PNM would follow the Commission’s  
7           Cost Overrun Rule as it applies to any excess over the \$25.8 million cost estimate  
8           in this case.

9  
10 **Q.   DOES THE COST ESTIMATE IN PNM TABLE JJ-1 TAKE INTO**  
11 **ACCOUNT ANY AVAILABLE TAX CREDITS?**

12 **A.**   No. The cost estimate reflects unsubsidized costs. Under the recently enacted  
13           Inflation Reduction Act, the BESS Project could potentially qualify for an  
14           investment tax credit of up to 30% (not including bonus credits) of the qualifying  
15           costs associated with the project. PNM is structuring the BESS Project so that it  
16           could qualify for the investment tax credit; this includes requirements for paying  
17           the prevailing wage in the construction and maintenance of the project. However,  
18           PNM cannot presently determine whether and how much of an investment tax  
19           credit it will ultimately be eligible for. As discussed by PNM witness Mark Fenton,  
20           any benefits from the tax credit will be provided to PNM’s customers and would  
21           be addressed by PNM in a general rate case.

22

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1 **Q. ARE THERE CONCERNS WITH THE PROJECT EXECUTION**  
2 **SCHEDULE?**

3 **A.** There are always concerns with completing projects on schedule in today's  
4 environment. The timing of regulatory approval and lingering global supply chain  
5 issues are the largest risks to the project execution schedule. However, because the  
6 Powin Agreements include a fixed delivery schedule, these risks for the major  
7 equipment supply are currently mitigated to the extent possible. Additionally,  
8 because the BESS Project is utility-owned and will be located on existing PNM  
9 sites, the project does not have the risks seen by third-party developers associated  
10 with site developments, including acquiring interconnection rights or land  
11 easements.

12

13 **Q. PLEASE PROVIDE SOME ADDITIONAL BACKGROUND ON POWIN AS**  
14 **THE VENDOR FOR THE BESS EQUIPMENT.**

15 **A.** Headquartered in Tualatin, Oregon, Powin was founded in 1989 as a high-quality,  
16 high-volume contract manufacturing company with a large supplier network and  
17 relationship base in Asia and North America. Powin's business model spans from  
18 battery cell procurement through project operation and allows the company to  
19 control the full integration of its systems, closely manage assembly costs, control  
20 quality, and have certainty around supply chain. Powin's battery energy storage  
21 systems are vertically integrated and purpose-built for utility-scale, commercial and  
22 industrial, and microgrid applications. In 2020, the company established its Powin



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1 Battery Lab at its engineering headquarters. This battery testing facility is designed  
2 to characterize and validate battery components from cell to system. Powin  
3 indicates that it has built over 2.5 GWh of energy storage systems, has 3.5 GWh  
4 under construction, and an additional 11 GWh under contract globally.

5

6 **Q. PLEASE GENERALLY DESCRIBE THE TERMS OF THE POWIN**  
7 **AGREEMENTS.**

8 **A.** The Powin Agreements are fixed price, equipment supply agreements with a  
9 defined payment and delivery schedule, which includes the estimated shipment  
10 costs to the project sites. The Powin Agreements include provisions for technical  
11 field support during equipment receiving and construction as well as for the  
12 commissioning services to be performed by Powin.

13

14 **Q. PLEASE HIGHLIGHT THE CONTRACTUAL PROTECTIONS IN THE**  
15 **POWIN AGREEMENTS.**

16 **A.** The Powin Agreements include several provisions to help protect PNM customers.  
17 The Powin Agreements include liquidated damages for delays in equipment  
18 delivery as well as for delays in Powin's completion of BESS equipment  
19 commissioning activities. The Powin Agreements include an initial performance  
20 guarantee for contracted energy in MWh, contracted power in MW, contracted  
21 energy storage duration, and electrical conversion efficiency. An extended  
22 performance guarantee is also included for BESS system capacity through its

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1           anticipated 20-year life based on actual operation. The Powin Agreements also  
2           include a 36-month limited commercial warranty on eligible portions of the Powin  
3           scope of supply. In addition, the agreements include conditions of default along  
4           with associated termination rights, including a termination for convenience right on  
5           behalf of PNM.

6  
7           **Q.    ARE THE POWIN AGREEMENTS THE RESULT OF A COMPETITIVE**  
8           **BIDDING PROCESS AND IS THE COST OF THE BESS PROJECT**  
9           **REASONABLE?**

10          **A.**    Yes. While the response to the RFP drew a limited number of bids, in an effort to  
11          ensure a competitive bidding process, PNM also repeatedly engaged with multiple  
12          BESS equipment suppliers, by reaching out for quote refreshes from those suppliers  
13          willing to participate in this procurement process. PNM also reached out to industry  
14          counterparts to leverage their experience and knowledge, relied on outside  
15          consultants for their industry expertise, and requested justification of changes to  
16          and characteristics of bidder proposals in conjunction with ongoing market  
17          conditions. As noted above, a competitive bidding process will also be  
18          implemented for the construction aspects of the project. PNM has determined that  
19          the cost of the BESS Project, in comparison to other bids received in response to  
20          this competitive bidding process, as well as costs and cost escalations experienced  
21          and resulting from other PNM-contracted energy storage agreements, is reasonable  
22          and competitive.

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1 **Q. ARE THE NON-PRICING TERMS OF THE POWIN AGREEMENTS**  
2 **REASONABLE AND IN ACCORD WITH INDUSTRY STANDARDS FOR**  
3 **SUCH CONTRACTS?**

4 **A.** Yes. In addition to what is described above, the non-pricing terms are typical of  
5 similar equipment procurement contracts with a suitable scope of work and division  
6 of responsibilities defined. The conditions surrounding delivery of equipment with  
7 transfer of title and risk of loss upon offloading of equipment as well as the  
8 conditions of transfer of responsibilities from and to PNM and Powin from site  
9 receipt, through installation, to commissioning, and ultimately to final acceptance  
10 are well-defined with clear expectations and checklists in place for each transfer.  
11 The conditions surrounding project team notifications, change orders, dispute  
12 resolution, payment terms and late payments, *force majeure*, and confidentiality are  
13 also reasonable and typical for similar contracts.

14

15 **Q. WHEN IS THE ANTICIPATED DELIVERY DATE OF THE BESS**  
16 **EQUIPMENT PURCHASED FROM POWIN?**

17 **A.** Deliveries of the various BESS system components are scheduled to be staggered  
18 from March 27, 2024, through May 29, 2024, to facilitate the sequence of project  
19 construction activities.

20

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1 **Q. ONCE THE BESS EQUIPMENT IS DELIVERED, HOW WILL IT BE**  
2 **INTERCONNECTED TO PNM'S SYSTEM AT THE TWO SPECIFIED**  
3 **LOCATIONS?**

4 **A.** The output of the BESS system will pass through the system inverters to convert  
5 the DC power to AC power. It will subsequently pass-through medium voltage  
6 transformers to step the output voltage up to 12.47 kV. At this voltage, the BESS  
7 system will be tied into the existing solar generation pad-mounted switch, also at  
8 12.47 kV, prior to the output being delivered to the existing site interconnection.  
9 As a result, there are no material modifications to the physical infrastructure  
10 associated with the project site interconnection with PNM's electrical grid. A  
11 separate, bi-directional electrical meter will be provided to monitor and measure  
12 the output and charging energy associated with the BESS installation.

13  
14 **Q. WHAT IS THE PROCESS AND TIMING FOR THE RFP FOR THE**  
15 **CONSTRUCTION PHASE OF THE BESS PROJECT?**

16 **A.** PNM expects to issue the RFP for construction services within the second quarter  
17 of 2023 with the intent to award this contract before the end of 2023. This timing  
18 supports the proposed construction schedule and mitigates uncertainty concerning  
19 costs and scheduling, as well as potential additional premiums associated with early  
20 contracting in current market conditions. The RFP will be issued to multiple  
21 contractors via a competitive bid process.

22

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1 **Q. ARE THERE ANY ADDITIONAL APPROVALS OR PERMITS**  
2 **REQUIRED TO CONSTRUCT AND OPERATE THE BESS PROJECT?**

3 **A.** As the project will be constructed on PNM property within the existing fence line,  
4 the only potential required permits would be fugitive dust air permits for dust  
5 control during project construction. In addition, PNM will meet with the local fire  
6 marshals to discuss and establish required safety protocols and procedures  
7 associated with potential emergency conditions.

8  
9 **Q. WHAT IS PNM'S ESTIMATE FOR THE ANNUAL OPERATING AND**  
10 **MAINTENANCE EXPENSE FOR THE BESS PROJECT?**

11 **A.** A long-term service agreement (“LTSA”) for the two-site project for the first year  
12 of operation is valued at \$72,000, which includes preventative maintenance, remote  
13 operation center support, and spare parts management. PNM is also investigating  
14 self-performing some of this work to provide cost savings to PNM’s customers  
15 where possible. In addition to these costs, PNM may also incur future costs to  
16 maintain or augment the capacity of the system as needed to offset normal battery  
17 cell degradation over time.

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**IV. PUBLIC INTEREST AND CCN CRITERIA**

**Q. HOW DOES THE BESS PROJECT SERVE THE PUBLIC INTEREST?**

**A.** The BESS Project serves the public interest in several respects. The system benefits include the following:

1) The BESS Project mitigates operational issues caused by high solar generation by adding energy storage capacity to PNM's system. This energy storage capacity enables the ability to balance the system in times of high solar output and provide energy to the system during times of high demand. This project's ability to provide firm energy during peak load helps PNM meet capacity margin requirements. By increasing system capacity, the BESS Project helps to meet some of the system's forecasted needs of additional bulk transmission level and distribution level capacity resources. Recent costs for adding capacity to PNM's system in the form of fixed capacity agreements range from \$7.46/kW-month to \$9.97/kW-month for 4-hour duration BESS systems. Based on this pricing, the BESS Project is expected to add roughly \$18 million worth of fixed capacity to PNM customers over the life of the BESS Project, assuming \$8/kW-month and normal battery degradation.

2) The BESS Project mitigates operational issues caused by high solar generation by shifting energy from solar peak to net demand peak (arbitrage). PNM customers will benefit from wholesale pricing differences that exist between solar peak and net demand peak, because the BESS will charge at solar peak hours when the price

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1 is low and return the energy to the system at net demand peak hours when the price  
2 is high. Based on historical Locational Marginal Pricing data trends of the  
3 wholesale electricity market, the Burns & McDonnell report projects the arbitrage  
4 value for a 4-hour duration battery to add up to \$10 million of additional cost  
5 savings over the life of the project. This benefit satisfies Section 62-9-1(D)(6) of  
6 the Public Utility Act.

7

8 3) Charging to the BESS system is expected to occur at times when renewable  
9 production is at its greatest. With the additional load from charging the BESS,  
10 renewable generators will be less at risk for curtailment. With no other system  
11 changes, this project is expected to reduce renewable curtailments up to 3750  
12 MWh/year.

13

14 4) As outlined in the question below, installation of this system is expected to help  
15 lower system-wide emissions.

16

17 5) As a dispatchable resource, the BESS Project can also add the system benefit of  
18 operational flexibility to help optimize grid operation, and potentially provide  
19 ancillary services such as frequency regulation, spinning/non-spinning reserves,  
20 and for resource adequacy. This BESS system can be charged or dispatched to the  
21 distribution feeder or to the transmission system as necessary.

22

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1           6) As discussed in more detail by PNM witness Warner, the BESS Project will  
2           help mitigate localized feeder issues caused by solar saturation on two of PNM's  
3           distribution feeders which will improve system reliability as well as allow the  
4           greater use of distributed generation.

5

6   **Q.    WILL THE BESS PROJECT REDUCE THE USE OF FOSSIL FUELS FOR**  
7   **MEETING DEMAND DURING PEAK LOAD PERIODS AS REQUIRED**  
8   **UNDER SECTION 62-9-1(D)(2) OF THE PUBLIC UTILITY ACT?**

9   **A.**   Yes. The BESS project, in conjunction with BESS system charging energy  
10   delivered from PNM's renewable generation portfolio, will be able to reduce the  
11   use of fossil fuels for meeting peak system demands. Energy produced by  
12   renewable resources that is stored in the BESS system during off-peak load periods  
13   will be able to be discharged flexibly and rapidly during the peak load periods and  
14   after peak solar generation hours. The ability to store energy can reduce  
15   curtailments of solar production, thus reducing and offsetting the historical  
16   dependency on, and dispatch of, fossil fueled generation. A project this size is  
17   expected to offset up to 3,500 tons of CO2 per year.

18

19   **Q    WILL THE BESS PROJECT REDUCE GREENHOUSE GASES AND**  
20   **OTHER AIR POLLUTANTS DURING POWER GENERATION AS**  
21   **REQUIRED BY SECTION 62-9-1(D)(5) OF THE PUBLIC UTILITY ACT?**



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1    **A.**    Yes. Because the BESS Project does not generate greenhouse gases or other air  
2           pollutants and because the BESS Project will offset fossil fueled generation as  
3           described above by storing and subsequently discharging energy produced by  
4           renewable resources, the BESS Project will reduce greenhouse gas and other air  
5           pollutant production. As noted above, historical support of peak loads after the  
6           daily peak solar generation hours has been served by thermal resources. This  
7           project will offset this fossil generation with renewable energy stored from off-peak  
8           periods.

9

10   **Q.    IS THE BESS PROJECT THE MOST COST EFFECTIVE AMONG**  
11       **FEASIBLE ALTERNATIVES AS REQUIRED UNDER SECTION 62-9-**  
12       **1(D)(7)?**

13   **A.**    Yes. Considering the value identified in this testimony as well as those outlined in  
14           PNM witness Warner’s testimony, it is the most cost-effective for the functions that  
15           it is performing and the benefits that it is providing. This is the only feasible  
16           alternative that provides a timely resolution for PNM’s overloaded distribution  
17           feeders. In addition, the BESS Project is, and will continue to be, the product of  
18           competitive bid processes and will utilize existing site infrastructure and electrical  
19           interconnections to minimize costs. All of these factors, combined with the  
20           potential to receive investment tax credit as well as the direct purchase of the BESS  
21           equipment by PNM and the direct management by PNM of the LTSA program to

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1           avoid contractor or developer procurement risk markups and return expectations,  
2           make this the most cost-effective alternative.

3

4

**V. CONCLUSION**

5

6   **Q. PLEASE SUMMARIZE THE CONCLUSIONS YOU PRESENT.**

7   A. The EPCM utility ownership decision is a reasonable and practical response to  
8       current market conditions, which leverages existing site locations with PNM’s solar  
9       facilities and results in a cost-effective project for customers. My testimony  
10      demonstrates that PNM undertook a reasonable and thorough competitive selection  
11      process in choosing to purchase the BESS equipment from Powin. The review  
12      process was supported by PNM’s consultants, who are industry experts with  
13      experience in resource acquisition and engineering, design, and procurement  
14      processes, including for energy storage systems. The manufacturer has a track  
15      record of safety, and the battery technology has reduced risks for fire. Installation  
16      of the BESS Project improves system performance and will help reduce greenhouse  
17      gases and help mitigate potential system curtailments. The Commission should  
18      approve PNM’s request to construct, own and operate the BESS Project.

19

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

21   A. Yes it does.

*GCG#530825*

# PNM Exhibit JJ-1

Is contained in the following 1 page.

## **JASON E JONES: EDUCATIONAL AND PROFESSIONAL SUMMARY**

**Name:** Jason E Jones

**Address:** Public Service Company of New Mexico  
MSZ120  
2401 Aztec Rd. NE  
Albuquerque, New Mexico 87101

**Position:** Director, Generation Engineering

**Education:** Bachelor of Science, Mechanical Engineering, University of Utah, 2000  
Master of Business Administration, Southern Utah University, 2023

**Certifications:** Professional Engineer, Colorado License Number PE 0044325

**Employment:** Public Service Company of New Mexico, Albuquerque, NM  
Director, Generation Engineering (2018- present)  
Engineering Manager (2014-2018)  
Staff Engineer (2011-2014)

Arizona Public Service, Waterflow, NM  
Staff Engineer (2006-2011)

Puget Sound Naval Shipyard, Bremerton, WA  
Nuclear Test Engineer (2000-2006)

# PNM Exhibit JJ-2

Is contained in the following 12 pages.

## **Public Service Company of New Mexico (Hereinafter “Company”)**

<b>Project</b> <b>REVISION 001 - PNM 2023 BESS Resources RFP</b>	<b>Date RFP Re-Issued</b> November 5, 2021
<b>Revision consists of: Extension of COD, Modified Schedule and New Proposal Due date</b>	<b>Date Supplier Proposal Due</b> Prior to but no later than November 11 <sup>th</sup> , 2021

### **RFP Attachments**

Appendix F – Technical Specification

Section 2 – Summary of Work

Section 26 – Performance Requirements - BESS

Section 37 – Battery Energy Storage Systems

Appendix F-1 – BESS Sites

Bid Forms

Attachment D – Proposal Form

Attachment E-1 – Commercial Clarifications & Exceptions

Attachment E-2 – Technical Clarifications & Exceptions

Attachment H - Milestone Payment Schedule

Attachment I - Cancellation Schedule

Attachment J-1 BESS Data Sheets

Attachment K - Technical Submittal Checklist

## **I. RFP CONDITIONS**

Responses to Request for Proposals and/or Request for Quotes (“Response(s)”) must be submitted using the Jaggaer Sourcing Platform. By submitting a proposal, Supplier is (i) acknowledging that all Buyer Attachments, Q&A Board posts, and RFP description and all other attachments and instructions, have been thoroughly reviewed and Supplier is familiar with and complies with all the RFP conditions and requirements; (ii) making a firm offer to purchase, manufacture and/or provide the equipment or materials described in the RFP, and to provide all Services described in the RFP as applicable; (iii) agreeing that Company may, in its sole discretion, accept or reject, in whole or in part, any or all Responses for any reason at any time after submittal; (iv) agreeing that Company has sole discretion in selecting a buyer, manufacturer or vendor for the equipment or materials or provider of Services; (v) agreeing that Company may, in its sole discretion, discontinue negotiations at any time prior to execution of the agreement that covers the purchase or sale of the equipment and/or materials or for the performance of Services; (vi) acknowledging Supplier’s understanding that Company may be required to disclose all or part of any Proposal and related information and materials in the context of a legal or administrative proceeding or as otherwise required by law; and (vii) certifying that the individual submitting the Proposal is duly authorized to legally bind the Supplier.

This RFP is not a contract, nor an offer. Suppliers responding to this RFP receive no rights as a result of the response whatsoever. Company may accept other than the lowest priced Proposal, accept or reject any Proposal in whole or in part, or reject all Proposals with or without notice or reasons, and if no Proposal is accepted, may abandon the work or have the work performed in another manner as Company may elect. Company reserves the right to discontinue negotiations at any time prior to the signing of a definitive contract for any or no reason. All costs incurred by Company and the Supplier as a result of this RFP will be paid by the party incurring the expense. Company will not reimburse any of the Supplier’s costs associated with responding to this RFP.

To the extent that Supplier already has a master agreement in place with Company, Supplier acknowledges and agrees that the confidentiality language in the master agreement takes precedence and applies to all information shared with and work performed by Supplier, including but not limited to the work contemplated by the RFP. To the extent that Supplier does not have a master agreement in place with Company, but already has a non-disclosure agreement in place with Company that covers the RFP activities or executes one as further outlined in Section IV. Instructions to Suppliers, Supplier acknowledges and agrees that the terms and conditions in said non-disclosure agreement applies to all information shared with and work performed by Supplier relative to this RFP.

The contract awarded as a result of this RFP, shall be the sole and entire agreement between Company and Supplier. Any terms conflicting with, or in addition to the RFP conditions are considered rejected unless agreed to in writing by Company.

Suppliers responding to this RFP hereby certify that all services, goods including equipment, firmware, software, or any component thereof quoted or proposed are in compliance with any and all laws, statutes, acts, constitutions, ordinances, rules, regulations, orders, decrees, injunctions, licenses, permits, consents, approvals, authorizations, agreements or regulations of any federal, state, tribal or local government, department, office, agency, board or commission having jurisdiction over the Company, Supplier, sub-contractors, the work site or any portion of the goods or services.

Company reserves the right to award any and all Services, goods, and/or assets detailed in this RFP on a local, regional, national or international basis. Company also reserves the right to award none of the Services, goods, and/or assets if it so elects, and/or reserves the right to purchase products and services from other suppliers. Company is therefore under no obligation to buy exclusively from the Supplier who is awarded the contract.

Further, this RFP and your Response will be the basis for and will be incorporated into the contract (which, if applicable, is included in this RFP) between Company and the successful Supplier(s). If included, Supplier is asked to review the enclosed Company standard contract and provide comment to the terms and conditions with your RFP Response. Supplier should redline the attached Agreement Draft if they object to any of the terms and conditions. Do not sign the contract at this time. Responses submitted in support of the RFP shall represent a firm offer to contract. Each representation of fact and promise of future performance therein will be incorporated into the contract as a warranty or covenant. Any statement of fact or promise of future performance that is not intended by the Supplier as a warranty or covenant should be clearly identified.

On July 21, 2016, the Federal Energy Regulatory Commission (FERC) directed the North American Electric Reliability Corporation (NERC) to develop or modify necessary Reliability Standards, to address concerns that relate to supply chain risk management for industrial control system (ICS) hardware and software, as well as computing and networking services associated with Bulk Electric System (BES) operations. In October of 2018, FERC approved the Reliability Standard CIP-013-1, which is effective Oct. 1, 2020. The purpose of this standard is to assess and mitigate cyber security risks to the reliable operation of the BES, by implementing security controls for supply chain risk management of BES Cyber Systems. As part of that assessment process, Supplier is asked to (1) review the Supply Chain Cyber Security Risk Management exhibit included in the agreement templates posted in Jaggaer and redline it if they object to any clauses in the exhibit and (2) complete the supplier risk security mandatory questions in the Jaggaer RFP event. If Supplier is selected as a finalist for this RFP, Supplier will be required to complete a more comprehensive risk security questionnaire.

During the bidding period, Supplier's point of contact will be limited to the contact(s) provided in this RFP in the Supply Chain, Sourcing Department via the Jaggaer platform. Any contact regarding this bid with Company associates other than the Supply Chain, Sourcing Contact may be grounds to disqualify your proposal. Any verbal statements regarding this RFP by any persons other than this point of contact should not be relied upon. Suppliers shall submit any questions regarding the event through this RFP's Jaggaer platform Q&A section. Every effort will be made to respond to your questions within two business days of receipt or as indicated otherwise but no questions will be answered if they are received after the date specified as the deadline for questions in the RFP's schedule. Company, at its option, might choose to share any questions and corresponding responses with all Suppliers if it deems that the additional information will provide further clarification to the RFP requirements. Questions that Supplier believes to be commercially sensitive or confidential must be individually marked as "Confidential". Questions marked "Confidential" will not be shared with other Suppliers unless Company determines that the question is a general, non-sensitive technical or commercial

question. If answers and related documentation posted in the Q&A Board are considered a material change to the RFP requirements or Scope of Work, these will be identified as amendments to this RFP.

Use of Company Logos. The Company name and logo signify the well-known brand image of Company and therefore are invaluable assets. To properly protect this brand image, you may use the Company trade name in your Response to this RFP, but DO NOT use the Company name with the logo, or the logo alone, anywhere in your Proposal.

Suppliers may propose alternatives to what is being requested in the RFP only after providing a bid for what has been outlined in the RFP. Suppliers may submit one or more alternative Responses in addition to a response conforming to the requirements specified in this RFP. Any alternative Responses must be clearly identified and separate from the original Response and must be prepared using the same format specified in this RFP, including the completion of all bid forms associated with the alternative. The supplier will assume full responsibility to demonstrate that the alternative will meet or exceed Company's expectations.

This RFP and its contents will always remain the property of Company. All Responses and related content and materials, once delivered, become the property of Company.

Suppliers are not permitted to make any public announcement or release any information regarding this RFP. Company may at its sole discretion and upon prior written approval, authorize Supplier to issue a news release. Failure to conform to the required format or meet deadlines will result in disqualification from the bid process. The Supplier will be notified of the disqualification and their proposal will not be considered.

Responses may be withdrawn at any time prior to the event close date via the withdraw and decline options within the RFP Jaggaer system.

Supplier agrees to carry and maintain in effect commercial general liability, or the equivalent, commercial auto liability, worker's compensation, employer's liability insurance, technology errors and omissions, and products liability insurance, and other coverages as noted and required in this RFP. Supplier agrees to ultimately provide a Certificate of Insurance (ACORD form) naming Public Service Company of New Mexico as additional insured and a waiver of subrogation for each policy. If required by the Supply Chain Sourcing Contact, suppliers will be required to provide such proof of insurance, even if Supplier's current insurance levels do not meet these requirements. Any insurance variations from the proposed Agreement Draft are subject to PNM's Risk review and approval.

Supplier will be furnishing goods and/or performing services resulting from this RFP as an independent contractor, and no principal-agent or employer-employee relationship or partnership or joint venture with each other shall be created between Company and Supplier, Supplier's employees, or Supplier's agents. Furthermore, Supplier, its employees and agents shall not hold themselves out as employees or agents of Company.

Supplier represents to Company that it is properly equipped, organized, staffed, financed, experienced, qualified, insured, and licensed to perform the work as specified in this RFP.



## II. CORPORATE BACKGROUND

Public Service Company of New Mexico (“PNM”) is a wholly owned subsidiary of PNM Resources, Inc. (NYSE: PNM) based in Albuquerque, N.M. PNM is an electric utility that provides generation, transmission, and distribution service. PNM’s retail service territory covers a large area of north central New Mexico, including the cities of Albuquerque, Rio Rancho, and Santa Fe and most of the area around the Rio Grande valley, from Belen to Santa Fe. Other communities served include Lordsburg, Silver City, Deming, Alamogordo, Ruidoso, Tularosa, Clayton, and Las Vegas. PNM also serves several New Mexico pueblos, tribes and nations and numerous unincorporated areas. In total, PNM serves about 530,000 electricity customers statewide.

PNM currently produces nearly 50 percent carbon free energy and has committed to being 100 percent carbon free by 2040, five years ahead of the state’s legislated date of 2045, as provided in the Renewable Energy Act, NMSA 1978, §§ 62-16-1 to -10 (“REA”). This commitment will involve PNM’s implementation of a combination of energy generation, storage, demand-side and energy efficiency resources over the next 20 years.

## III. PROJECT SCOPE, PROJECT REQUIREMENTS AND MANDATORY PROJECT INFORMATION.

### a. Scope of Work

This RFP is part of a solicitation process for the purpose of acquiring Lithium Ion battery energy storage systems (BESS) to help serve PNM’s forecast system needs before July 1, 2023. PNM is targeting the acquisition of 40 MW of storage capacity for its New Mexico portfolio. The RFP is to bid an integrated equipment package meeting the requirements described herein for installation on multiple PNM controlled solar PV sites. Energy storage technologies play an important role in managing carbon-free resource integration including but not limited to offering flexibility and short lead times for construction as well as the abilities to provide ancillary services, manage curtailment, and provide fast response times. These resources improve the ability of PNM’s system to incorporate and manage increased VER technologies.

PNM is seeking 40 MW of storage capacity across seven (7) existing Solar PV sites. The table below provides information on the available sites. BESS capacity added shall be a minimum of 5 MW per site, shall not exceed the SGIA limited indicated for each site, and shall not exceed 40 MW in aggregate. Suppliers are advised that equipment is needed for operation at the project site(s) by July 1, 2023 and therefore equipment would need to be delivered by the Supplier to each project site no later than March 1, 2023.

Site	Site	SGIA Limit (MW)	County	Latitude	Longitude	Address
1	South Valley Solar	10.0	Bernalillo	34.9861	-106.7361	55 North Navajo Loop, Rio Communities, NM 87002
2	Rio Rancho Solar Energy Center	10.0	Bernalillo	35.1048	-106.4824	9954 Paseo Del Volcan SW, Rio Rancho, NM 87114
3	Rio Del Oro Solar Energy Center	10.2	Valencia	34.6920	-106.6880	665 Manzano Expy., Belen, NM 87002
4	Santolina Solar	11.0	Bernalillo	35.0297	-106.8555	6000 Shelly Drive SW, Albuquerque, NM 87151
5	Sandoval County Solar Energy Center	9.0	Sandoval	35.2836	-106.8128	1501 Encino Drive, Rio Rancho, 87124 NM
6	Manzano Solar	9.0	Valencia	34.7467	-106.6544	100 Bonita Vista, Los Lunas, NM 87031
7	Santa Fe Solar	10.0	Santa Fe	35.5878	-106.0609	6060 Douglas Road SW., Albuquerque, NM 87121

PNM will consider equipment only and/or complete turnkey EPC installation offers (at the Supplier’s option) at the project sites.

BESS equipment would be installed by others at the above listed solar sites located in PNM service territory. Existing sites include solar arrays, electrical enclosures, internal access roadways, site perimeter fencing as well as available open areas for installation of BESS equipment. Each solar site interconnects to the local transmission provider's distribution system at 12.47 kV.

BESS equipment and the installed project as a whole shall be capable of both full load and idle operation over an ambient temperature range of -20F to 110F with the full range of relative humidity.

### ***b. Site Specifications***

Suppliers shall reference Appendix F-1 for site specific data applicable to each of the solar PV sites.

### ***c. Proposal Requirements***

Supplier shall include the following in any Proposal submitted:

- (1) The firm-fixed price amount being offered.
  - (i) Any Gross Receipts Tax and State Sales Tax that will be charged to Company must be listed separately.
- (2) The signature, name and title of a person *authorized* to submit the Proposal on behalf of the Supplier.
  - (i) If a partnership is submitting the Proposal, the Proposal must be signed by a member having authority to bind the partnership and must identify whether the signing member is a "General Partner" or a "Limited Partner."
  - (ii) If an individual is submitting the Proposal, the Proposal must be signed by that individual and must identify whether the individual is "Doing Business As" another name or is a "Sole Owner."
- (3) If any part of performance of the Services requires one or more contractor's licenses under New Mexico law, a copy of Supplier's current, valid contractor license(s) issued by the New Mexico Construction Industries Division must be submitted as part of Supplier's Proposal. See Section 60-13-12(B) NMSA 1978<sup>1</sup>.
- (4) If any part of the performance of the Services requires a professional engineering license in one or more engineering disciplines pursuant to New Mexico law, a copy of Supplier's current, valid professional engineering license(s), issued by the New Mexico Board of Licensure for Professional Engineers and Professional Surveyors must be submitted as part of Supplier's Proposal.<sup>2</sup>
- (5) The following items:

\_\_\_ Certificate of Insurance (ACORD form including the appropriate party as additional insured and a waiver of subrogation for each policy per the attached agreement) including the following minimum insurance levels, if checked:

---

<sup>1</sup> It is the obligation of Supplier to determine whether a contractor's license is required and to ensure that Supplier is in possession of such license at the time it submits its Proposal, as required by New Mexico law, including but not limited to Section 60-13-3 and Section 60-13-12 NMSA 1978. Further information regarding classification of licenses in New Mexico is set forth in the New Mexico Administrative Code at Section 14.6.6.1, and additional information may be obtained from the New Mexico Construction Industries Division - <http://www.rld.state.nm.us/construction/>.

<sup>2</sup> It is the obligation of Supplier to determine whether a professional engineering license in one or more disciplines is required to perform the Services and to ensure that Supplier is in possession of such license at the time it submits its Proposal. New Mexico Administrative Code Rule 16.39.3.12. See also, generally, Sections 61-23-1 through 61-23-24 NMSA 1978 and New Mexico Administrative Code Title 16, Chapter 39, Part 3. Additional information may be obtained directly from the New Mexico Board of Licensure for Professional Engineers and Professional Surveyors - <http://www.sblpes.state.nm.us>.

- \_ Workers Compensation Insurance \$1,000,000
- \_ Commercial General Liability Insurance \$1,000,000 per occurrence and \$2,000,000 general aggregate
- \_ Owners and Contractors Protective Liability Insurance \$1,000,000
- \_ Commercial Automobile Liability Insurance \$1,000,000
- \_ Excess Liability Insurance \$10,000,000
- \_ Professional Liability Insurance \$1,000,000
- \_ Property Insurance
  
- \_ Technology Errors and Omissions Insurance

## IV. INSTRUCTIONS TO SUPPLIERS

### A. RFP Responses

1. Supplier's Response and associated documentation must be received by Company according to the requirements described herein.
  - a. Supplier agrees to comply with any postings or notices located at Company's premises regarding safety or security.
  - b. Supplier Risk Security Screening Questions  
The Supplier Risk Security Screening Questions included in the mandatory Questions section of the RFP's Event in Jaggaer will serve to eliminate high risk vendors from consideration in the RFP process. If Supplier answers 'YES' to questions 1 or 2, no further consideration will be given. If Supplier answers 'YES' to question 3, risk will be assessed and may result in disqualification of consideration. If Supplier answers 'NO' to questions 4-9, no further consideration will be given unless Supplier provides evidence or attestation of plans to remediate such deficiencies.
  - c. Responses to this RFP should include the following:
    - Detailed response to the appropriate questions and statements as included in this RFP that will clarify Supplier's understanding and ability to meet the requirements. Detailed explanation of Suppliers assumptions or conditions as imposed on or in the RFP Responses.
    - Agreement with terms and conditions of the agreement template enclosed hereto or list of revisions or exceptions.
      - Note- Three types of agreement templates have been included in the RFP Event: Construction Services, Engineering, Procurement and Construction (EPC) and Equipment with Services Annex. Depending on the structure of your proposal, please select and submit the appropriate template as indicated in Section VII of this RFP.
    - Supplier's proposal pricing to include all costs associated with the scope of Services, including:
      - equipment and material supply
      - licensing
      - training
      - implementation
      - support services required to meet Company's need dates and functional and technical criteria.
    - Optional diagrams or other attachments that will help clarify the Supplier's proposal if or as needed.
    - Suppliers may propose alternatives to what is being asked for in the RFP only after providing a bid for what has been outlined in the RFP.
    - For Equipment Supply Proposals
      - Attachment D – Proposal Form
      - Attachment E-1 – Commercial Clarifications & Exceptions
      - Attachment E-2 – Technical Clarifications & Exceptions
      - Attachment H - Milestone Payment Schedule
      - Attachment I - Cancellation Schedule
      - Attachment J-1 Battery Data Sheets
      - Attachment K - Technical Submittal Checklist
      - Description of the Respondent
      - Financial Information / Credit Quality
      - Exceptions / Red-Line Markup to the form Contract (provide in original, native file formats with tracked changes)
      - Identification of all Pricing Terms
      - Project / Equipment Description
      - Experience / Similar Projects
      - Exceptions / Red-Line Markup to Appendix F – Section 26 – Performance Requirements - BESS
      - Capacity Maintenance Agreement Proposal
      - Field Service Labor Rate Schedule
    - For EPC Proposals

- Attachment D – Proposal Form
  - Attachment E-1 – Commercial Clarifications & Exceptions
  - Attachment E-2 – Technical Clarifications & Exceptions
  - Attachment H - Milestone Payment Schedule
  - Attachment I - Cancellation Schedule
  - Attachment J-1 Battery Data Sheets
  - Attachment K - Technical Submittal Checklist
  - Description of the Respondent
  - Financial Information / Credit Quality
  - Exceptions / Red-Line Markup to the form Contract (provide in original, native file formats with tracked changes)
  - Identification of all Pricing Terms
  - EPC Contractor Rate Schedule (engineering, construction, field labor, and equipment)
  - Required Licenses
  - Project / Equipment Description
  - EPC Experience / Similar Projects
  - Key Project Personnel
  - Corporate Environmental, Health, and OSHA Safety Records for the last three years
  - Project Implementation Schedule
  - Exceptions / Red-Line Markup to Appendix F – Section 26 – Performance Requirements - BESS
  - Capacity Maintenance Agreement Proposal
2. The original Response and all written copies must be signed by a person in Supplier’s organization authorized to bind the company and needs to be submitted to the Jaggaer system. Include the address and phone number of the respective person.
3. Supplier’s interface with the Jaggaer system is briefly summarized as follows:
- Supplier’s executed non-disclosure agreement must be submitted to PNM in the NDA module. Supplier must click on “Submit” to fully transfer the NDA and make it retrievable by PNM. The NDA module must be utilized exclusively to submit the NDA. Once the uploaded NDA is fully verified for completeness, Supplier will be granted access to the RFP’s event where additional Bid Documents will be accessed and proposals must be submitted on the Response Due Date.
  - Once access is granted to the RFP’s event, all bid documents provided by PNM can be found under “Settings and Content” and in the “Buyer Attachments” folder.
  - All Supplier communications and notifications must be submitted to PNM as a private message utilizing the option “Ask a Question” under the respective event’s Q&A Board unless otherwise indicated by PNM’s Sourcing team.
  - PNM will respond to all Supplier questions and notifications as a private response within the Q&A Board.
  - Suppliers must submit their full Proposal and related documents by the Response Due Date under “Settings and Content” and in the “Vendor Attachments” folder. Supplier must click on “Submit” to fully transfer the Proposal’s documents and make them retrievable by PNM. Not being in “Submitted status” on or prior to the event closure date (Response Due Date), will prevent Supplier from communicating via the Q&A Board.

## V. RFP TIMELINE

<b>RFP is re -issued to Suppliers</b>	<b>November 5, 2021</b>
<b>Response Due Date</b>	<b>No later than November 11, 2021</b>
<b>Successful Bid Announced</b>	<b>TBD</b>
<b>Contract Execution</b>	<b>End of November</b>
<b>Equipment delivered to solar site(s)</b>	<b>March 1, 2023</b>
<b>Commercial Operation Date</b>	<b>July 1, 2023</b>

Note: The due date of the Supplier’s RFP Response must be adhered to strictly. Failure to conform to the required format or failure to meet deadlines may result in disqualification from the bid process. Each party to this RFP recognizes and confirms their previously executed non-disclosure agreement.

## VI. PROPOSALS

### A. Business Proposal

	<b>Question</b>	<b>Response/Comments</b>
<b>Supplier Information</b>		
1	Please provide a brief history about your BESS program, including the number of years of existence in this area.	
2	Supplier should include in the response a statement to confirm that the company is a legal entity authorized to enter into an agreement with Company, and that Supplier shall make no attempt to induce any other person or company to submit or not submit a proposal.	
3	Please include in your response the names and titles of officers authorized to execute contracts with Company.	
4	Is your firm licensed in New Mexico? If yes, please specify the type(s) of license(s) held that are relevant to the Services and the license number(s) associated with the license(s).	
5	Provide with your response a list of technical/professional contacts within your team? Will these contacts be available to answer questions?	
6	If applicable, what are your maintenance/support options (include locations)?	
7	How many customers do you have using the specified BESS?	
8	Please include in your response the following information: <ul style="list-style-type: none"> <li><input type="checkbox"/> D&amp;B (Dun &amp; Bradstreet) Number</li> <li><input type="checkbox"/> Address of your Corporate Headquarters.</li> <li><input type="checkbox"/> Address of your local support offices (or address of the office which will support Company).</li> </ul> Complete sales/support contact list.	
9	Does your organization have a program in place for minimizing waste, recycling used materials or reusing materials that would otherwise be disposed (such as vendor returns for refurbishment)? If so, please provide an overview of your efforts.	

10	Does your organization utilize energy efficiency measures in its operations? This can include energy efficient devices, sleep-mode equipment, off-peak usage, building efficiency or other measures. If so, please describe your efforts.	
11	Does the supplier have a current MSA with PNM?	
12	Provide information on any lawsuits or arbitration brought against your company for this program within the past five years, including complaint and status or resolution.	
13	Can the supplier deliver equipment before March 1, 2023? Please explain.	
14	Can the Project meet COD of July 1, 2023? Please explain.	
15	What is the latest date required for a PO to meet the equipment delivery date of March 1, 2023 and/or a COD of July 1, 2023?	
16	State the number of employees that will be dedicated to implementation for this project, should a contract be awarded.	
17	Does your company adhere to any quality standards? Provide a list of those standards and the mechanisms in place to assure quality, especially as related to this request.	
18	Does your company have a written environmental policy or statement of commitment to environmental stewardship? If so, please provide the document or link.	
19	Describe your company's diversity program, including how small and/or diverse businesses are selected.	
20	Is the energy storage capacity proposed less than or equal to the SGIA (MW) limit in the site location table above, and duration of at least 4 hours? Please specify capacities per site.	
21	Is the equipment designed for outdoor installation in vendor provided enclosure(s)?	
22	Is equipment commercially viable, maintainable and considered mature technology? Provide equipment information and data sheets.	
23	Is the proposal a completely integrated package capable of being dispatched by PNM? Explain.	
24	Does the battery have a minimum rate of charge equivalent to its rate of discharge?	
25	What is the annual equivalent full charge and discharge cycle limit?	
26	Although there is a limit to annual equivalent cycles, PNM desired the amount of cycles per day shall not be limited. What are the daily cycle restrictions. If any, for this equipment?	
27	What is the expected life-term (in cycles) of the equipment?	
28	Are the batteries dispatchable across the entire operating range?	
29	Are the control systems in place with the ability to respond to dispatch and disconnection signals that originate remotely from PNM operations centers?	
30	All equipment shall operate in parallel with existing solar PV system at the existing distribution system connection	

	at 12.47 kV. Please explain if your equipment meets this requirement.	
31	Please verify that the BESS equipment shall be configured for remote control and monitoring and shall not require any on-site operations staff.	
32	What is the ESS roundtrip efficiency along with any applicable degradation forecasts for the expected life of the project?	
33	What is the guaranteed system latency?	
34	What is the Guaranteed Frequency Response Capability of Guaranteed P <sub>MAX</sub> /0.1Hz?	

**B. Price Proposal**

Supplier shall complete and submit Attachment D – Proposal Form included in the RFP event’s Bid Forms. Other pricing terms shall be identified in Supplier’s proposal as well as in Attachment H - Milestone Payment Schedule and Attachment I - Cancellation Schedule.

**VII. CONTRACT TEMPLATE**

*(Include Company Standard Contract Template)*

The Supplier **MUST** review the terms and conditions of the attached **AGREEMENT DRAFT**.

The Supplier **MUST** redline the attached Agreement Draft if they object to any of the terms and conditions by inserting proposed language changes and the rationale behind the proposed change.

Additionally the Supplier must indicate in Attachment E-1 – Commercial Clarifications & Exceptions any and all objections to the Agreement Draft. If Supplier does not take any exceptions to the Contract template they must enter “no exceptions taken” in Attachment E-1 – Commercial Clarifications & Exceptions.

**VIII. OFFEROR INFORMATION**

Offeror Name:

Address:

Phone:

Fax:

Email:

Signature:

Name:

Title:

Date:





# PNM Exhibit JJ-3

Is contained in the following 233 pages.



# **EQUIPMENT PURCHASE AGREEMENT**

**between**

**PUBLIC SERVICE COMPANY OF NEW MEXICO, as Buyer**

**and**

**POWIN, LLC, as Supplier**

**May 1, 2023**

**SOUTH VALLEY PROJECT**



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\* \* \* \* \*

## EQUIPMENT PURCHASE AGREEMENT

This EQUIPMENT PURCHASE AGREEMENT (this “Contract”) is entered into as of May 1, 2023 (the “Effective Date”) by and between PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (“Buyer”) and POWIN, LLC, a Delaware limited liability company (“Supplier”; together with Buyer, the “Parties”; each a “Party”).

### RECITALS:

WHEREAS, Buyer is developing a distribution feeder energy storage project, the location of which is described in Exhibit A (the “Project”);

WHEREAS, Supplier is a supplier of utility-scale energy storage systems; and

WHEREAS, Buyer wishes to purchase from Supplier, and Supplier wishes to sell to Buyer, an energy storage system for the Project, in accordance with the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **1. Definitions**

The following capitalized terms as used in this Contract shall have the meanings set forth below:

<u>Term</u>	<u>Meaning</u>
“ <u>AAA</u> ”	has the meaning set forth in <u>Section 33(c)</u> .
“ <u>AAA Rules</u> ”	has the meaning set forth in <u>Section 33(c)</u> .
“ <u>Abnormal Weather Condition</u> ”	fog, snow, ice, rain, mud, smoke, smog, excessive heat, storms, wind and similar inclement weather conditions severe enough:  (a) to prohibit or substantially impair use of transportation systems such that a common carrier, acting reasonably, would not use such systems to transport ESS Equipment; or  (b) that (i) safe performance of the scheduled Work is prevented or substantially hindered, or (ii) an experienced supplier, exercising Standards of Practice would, as a matter of safety, refrain from performing comparable work under comparable

conditions.

“Affiliate”

an entity directly, or indirectly controlled by or under common control of a Party. “Control” for this definition (including, with correlative meanings, the terms “controlled by” and “under common control with”), means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise.

“Alternate Delivery Location”

a location to which Buyer directs Delivery to be made by Supplier as described in Section 9(h)(iii), that is (a) not on the Project Site, (b) within twenty-five miles of the Project Site, and (c) accords with the ESS Equipment storage requirements set forth in Exhibit L-1.

“Applicable Codes and Standards”

all national, state, and local engineering, environmental, construction, safety, and electrical generation codes and standards, applicable to the Work.

“Applicable Law(s)”

as amended from time to time, any act, statute, law, regulation, Permit ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) applicable to Supplier, the Project, the Project Site, the ESS Equipment, or the Work; or any similar form of decision, determination, written interpretation or administration of any of the foregoing by any Governmental Authority having jurisdiction over Supplier, Buyer, the Project, the Project Site, or the performance of the Work.

“Backfeed Availability”

Buyer has made available backfeed power, including the ability to export energy from the ESS Equipment (at the ESS’s rated power) to the point of interconnection (or other agreed upon metered location) and to import energy at that same point of interconnection.

“Business Day”

any day other than a Saturday, Sunday, U.S. federal or New Mexico state holiday, or any other day on

which banks are authorized to be closed in Portland, Oregon, or New Mexico.

“Buyer”

has the meaning set forth in the preamble, and includes such entity’s successors and permitted assigns.

“Buyer-Caused Delay”

an actual, material delay in Supplier’s performance of the Work directly resulting from and to the extent of:

- (a) a failure by Buyer or any Buyer Responsible Party to timely perform its obligations required under this Contract, including failure to timely perform its obligations: (i) to procure and maintain all Buyer Permits as and when necessary to not delay the Work, or (ii) in support of Delivery and Commissioning;
- (b) any material act, omission or material breach of this Contract by Buyer or any material act or omission of any Buyer Responsible Party;
- (c) any inaccurate, additional, or changed information from the information provided by Buyer or any Buyer Responsible Party and set forth in the Exhibits as of the Effective Date;
- (d) Soil or Subsurface Conditions;
- (e) [RESERVED];
- (f) Buyer’s failure to timely achieve any Readiness Date or other milestones for which Buyer is the “Responsible Party” in Exhibit D; or
- (g) any other event or circumstance set forth in this Contract as “Buyer-Caused Delay”;

*other than*, in each case, as a result of:

- (i) any actions taken by Buyer pursuant to the express terms and conditions of this Contract to enforce its rights under this Contract in connection with a breach or default by Supplier of its covenants, obligations, representations or warranties



set forth in this Contract;

(ii) a Force Majeure Event; or

(iii) Change in Law.

“Buyer-Furnished Equipment”

The equipment to be provided by Buyer, as set forth in Exhibit S.

“Buyer Event of Default”

has the meaning set forth in Section 19(b)(i).

“Buyer Hazardous Substances”

all Hazardous Substances, other than Supplier Hazardous Substances.

“Buyer Permits”

all Permits relating to the Project, the ESS Equipment and the Work, including those related to the development, construction and operation of the Project, except for Supplier Permits.

“Buyer Requirements”

the agreements setting forth Buyer’s requirements applicable to the Work, copies of which are set forth in Exhibit U.

“Buyer Representative”

Nicholas Pollman

“Buyer Responsible Party”

collectively, Buyer, Buyer’s Affiliates, the Buyer Representative, all Other Contractors and their respective suppliers or subcontractors of any tier, or any person directly employed by any of them for whose acts any of them are liable.

Buyer Responsible Parties exclude Supplier and Subcontractors.

“Buyer Taxes”

has the meaning set forth in Section 8(b)(iii)(B).

“Centipede”

Supplier’s proprietary, fully integrated modular energy storage system, comprised primarily of a Collection Segment(s), Energy Segments, enclosures, hardware and software.

“Change in Law”

after the Effective Date:

- (a) the enactment of a new Applicable Law or Applicable Code and Standard;
- (b) a change in, or repeal of, a then-existing Applicable Law or Applicable Codes and Standards that could not have been anticipated; or
- (c) a change in the interpretation of any Applicable Law or Applicable Code or Standard resulting from a decision of, or ruling by, any Governmental Authority having jurisdiction over Supplier, Buyer, the Project, the Project Site, or the performance of the Work;

*but excluding:*

- (i) any of the foregoing that occurs prior to the Effective Date but the effectiveness of which occurs after the Effective Date; and
- (ii) changes in Applicable Laws with respect to income, profits, assumed profits, capital gains, corporation tax, or turnover taxes.

“Change Order(s)”

a written order issued and signed by Buyer Representative and Supplier Representative adjusting the Work, the Contract Price and/or the Project Schedule, including the Guaranteed Dates, in accordance with Section 16 and documented via the Form of Change Order in Exhibit P.

“Collection Segment”

the component of the Centipede that:

- (a) manages and controls the Energy Segments;
- (b) aggregates DC power and monitors both the grid and its battery decisions on when and where to efficiently dispatch power; and
- (c) houses the AC load panel, HVAC controls, fire panel, networking and communications equipment and controls.

“Collection Segment Delivery LDs”

the liquidated damages applicable to Delivery of the Collection Segments, the value of which is set forth

in Exhibit O.

“Commissioning”

all activities, services, and obligations to be performed by or on behalf of Supplier under this Contract required for Supplier to achieve Commissioning Completion

“Commissioning Completion”

Achievement of the following:

- (a) Buyer has accepted Delivery of all ESS Equipment pursuant to Section 9;
- (b) the ESS Equipment has achieved Installation Acceptance;
- (c) Supplier has completed the Commissioning activities and submitted a completed Commissioning Checklist in accordance with Exhibit I;
- (d) Supplier has successfully completed the Performance Tests, demonstrating that the Performance Guarantees have been met or has paid the associated PG Payments (if any);
- (e) the Punch List has been provided to and agreed to by Buyer; and Buyer has approved of and signed the Commissioning Completion Certificate.

“Commissioning Completion Certificate”

the certificate substantially in the form of Exhibit N-2.

“Commissioning Checklist”

has the meaning set forth in Section 14(b).

“Commissioning Completion Date”

means the date upon which all of the requirements for Commissioning Completion must be satisfied, as set forth in Exhibit D.

“Commissioning Completion LDs”

the liquidated damages applicable to Commissioning, the value of which is set forth in Exhibit O.

“Commissioning Completion LDs Cap”

Supplier’s liability cap for the Commissioning LDs, as enumerated in Exhibit O.

- “Completion Milestones” Delivery of the Collection Segments;  
Delivery of the PCS/MVT Sets;  
Delivery of the Energy Segments; and  
Commissioning Completion.
- “Confidential Information” has the meaning set forth in Section 26(a).
- “Contract” this Equipment Purchase Agreement entered into by and between Buyer and Supplier, including all Exhibits referenced herein.
- “Contract Price” the total amount payable by Buyer to Supplier in accordance with this Contract, as enumerated in Exhibit E, as may be amended by Change Orders in accordance with this Contract.
- “COVID”
- (a) the novel coronavirus SARS-CoV-2 and the associated disease named by the World Health Organization as “COVID-19” and declared by the World Health Organization to be a global pandemic on March 11, 2020; and
  - (b) any mutation, strain, or variant of COVID-19 or any disease associated with such mutation, strain, or variant, in each case arising after the Effective Date and declared by the World Health Organization to be a pandemic.
- “COVID Impacts”
- (a) measures taken by a Governmental Authority in connection with COVID, including quarantines and/or the enactment, promulgation, modification, or repeal after the Effective Date of any Applicable Law as a result of COVID, that substantially delays the progress of the Work or materially increases Supplier’s cost to perform the Work or
  - (b) circumstances related to COVID that substantially delay the progress of the Work or materially increase Supplier’s cost to perform the Work, including:

- (i) disruption to:
  - (A) production supply chains,
  - (B) activities conducted at a Worksite (including closures or partial closures of manufacturing Worksites or the Project Site),
  - (C) import or export clearances; or
  - (D) transportation facilities or services (including loading, shipment, unloading and trans-shipping),
- (ii) impacts to:
  - (A) labor or other human resources,
  - (B) utility services, delays to import or export clearances, or
  - (C) other resources necessary for the production, Delivery, or storage of the ESS Equipment.

“Data Breach” has the meaning set forth in Section 26(d).

“Date of Delivery” the date on which Buyer issues a Delivery Acceptance Certificate, or the date on which a Delivery Acceptance Certificate is deemed to be issued, in accordance with Section 9(i).

“DDP” “Delivered Duty Paid”, per INCOTERMS 2020.

“DDP Cost Amount” the amount set forth on Exhibit E as an Effective Date estimate for DDP Costs.

“DDP Costs” The costs incurred by Supplier for transportation and delivery of ESS Equipment to the Delivery Location, including loading expenses, delivery costs, security fees, and other costs customarily associated with DDP (but excluding Import Duties), plus twelve percent for overhead and profit.

“Defect”

- (a) any (i) defects in the design, workmanship, or materials comprising the Warranted Equipment, or (ii) damage to the Warranted Equipment caused by Supplier or Subcontractors or occurring when in the care, custody, and control of Supplier, including, as with respect to software, any software error or other problem caused by Supplier’s incorrect operation of the computer code in such software; or
- (b) any other failure of the Warranted Equipment to comply with the requirements of this Contract, Specifications or Applicable Laws or Standards of Practice.

Anything to the contrary notwithstanding, “Defective” has the correlative meaning.

“Delivery”

with respect to ESS Equipment, means:

- (a) Supplier has transported and delivered such ESS Equipment (or, as applicable, a particular portion of it) to the Delivery Location, and made the ESS Equipment available to Buyer (or Other Contractors) for unloading, unpacking, and inspection; and
- (b) Buyer has issued (or been deemed to have issued) a Delivery Acceptance Certificate with respect to such ESS Equipment pursuant to Section 9(i).

“Deliver” and “Delivered” have correlative and equivalent meanings.

“Delivery Acceptance Certificate”

the certificate substantially in the form of Exhibit N-1.

“Delivery Inspection Checklist”

the checklist attached to the Delivery Acceptance Certificate.

“Delivery LDs”

collectively, Collection Segment Delivery LDs, PCS/MVT Set Delivery LDs, and Energy Segment Delivery LDs.

<u>“Delivery LDs Cap”</u>	Supplier’s liability cap for the Delivery LDs, as enumerated in <u>Exhibit O</u> .
<u>“Delivery Location”</u>	(a) the location at the Project Site for Delivery of the applicable ESS Equipment, as such location is identified to Supplier by Buyer; or  (b) the Alternate Delivery Location as assigned in 9(h)(iii).
<u>“Disclosing Party”</u>	has the meaning set forth in <u>Section 26(a)</u> .
<u>“Dispute”</u>	has the meaning set forth in <u>Section 33(a)</u> .
<u>“Effective Date”</u>	has the meaning set forth in the preamble.
<u>“Energy Segment”</u>	has the meaning set forth in <u>Exhibit J</u> .
<u>“Energy Segment Delivery LDs”</u>	the liquidated damages applicable to Delivery of the Energy Segments, the value of which is set forth in <u>Exhibit O</u> .
<u>“Energy Segment Readiness”</u>	means that the Project Site is in a condition that satisfies the Installation Requirements for the Energy Segments thus allowing for the Delivery of the Energy Segments by Supplier. Requirements for Energy Segment Readiness include: (i) internet service is connected and energized; (ii) auxiliary power is connected and energized, and (iii) installation of HVAC is complete.
<u>“Energy Segment Readiness Date”</u>	the date (as set forth in <u>Exhibit D</u> ) by which Buyer must achieve Energy Segment Readiness.
<u>“ESS”</u>	the energy storage system consisting of one or more Centipedes, that includes:  (a) the ESS Equipment; and  (b) Buyer-Furnished Equipment; and  (c) other equipment and materials for which Buyer and Buyer Responsible Parties are responsible

pursuant to Exhibit B.

“ESS Equipment”

the Energy Segments, Collection Segments, PCS/MVT Sets, and all other Supplier-provided equipment, supplies, software and other goods, as enumerated in Exhibit A.

“ESS Product Manual”

the manual set forth in Exhibit J.

“Excusable Event”

has the meaning set forth in Section 16(c).

“Final Acceptance”

shall mean achievement of the following:

- (a) Commissioning Completion, along with receipt of Commissioning Completion Certificate from Buyer;
- (b) Supplier’s delivery to Buyer of final waivers and releases of liens, from Supplier, in accordance with Section 8(c)(ii);
- (c) Supplier’s payment of all outstanding amounts owed by Supplier to Buyer including Liquidated Damages and PG Payments (if any);
- (d) The items on the Punchlist have been completed by Supplier or Supplier has notified Buyer in writing that Buyer should withhold the Punchlist Holdback Amount until the Punchlist is completed.
- (e) confirmation that the OEM Warranties are assignable to Buyer, and copies of such OEM Warranties have been delivered to Buyer in accordance with Section 17(c)(i); and
- (f) completion of training of Buyer’s personnel, as described in Section 15(c), and
- (g) Supplier’s receipt of a Final Acceptance Certificate signed by Buyer.

“Final Acceptance Certificate”

the certificate Supplier shall deliver to Buyer for Buyer’s acceptance and signature upon Final



Acceptance, in the form of Exhibit N-3.

“Final Acceptance Date”

the date on which Supplier achieves Final Acceptance, as such date is enumerated in the Final Acceptance Certificate.

“Financing Parties”

With respect to Supplier and its Affiliates:

- (a) any and all lenders providing senior or subordinated construction, interim or long-term debt or other financing or refinancing;
- (b) any and all equity investors, including those providing tax equity investment or leveraged lease-financing or refinancing (or any other equity investor that makes a capital contribution in cash or in kind); or
- (c) any person or entity providing credit support;

in each case, in connection with the Project, a portfolio of projects of which the Project is a part, this Contract, or Supplier’s business generally and, in each case, any trustee or collateral agent acting behalf of the foregoing.

“Force Majeure Event”

an event or circumstance that the Party claiming relief demonstrates:

- (a) is beyond the reasonable control and foreseeability of the Party claiming relief;
- (b) prevents such Party from performing its obligations under this Contract (other than any obligation for the payment of money); and
- (c) is not the result of the fault or negligence of such Party (including: in the case of Supplier, its Subcontractors; in the case of Buyer, any Buyer Responsible Party).

Examples of Force Majeure Events include:

- (i) acts of god or natural disasters, including earthquakes, floods, fires and explosions, tidal waves, hurricanes, monsoons, cyclones,

typhoons, tropical storms, perils of the sea, tornadoes, volcanic activity or eruptions, lightning strikes, landslides, mudslides, sinkholes, or drought;

- (ii) Abnormal Weather Conditions;
- (iii) Declared war or other military conflict, acts of the public enemy, terrorism or threats of terrorism, piracy, insurrection, riot, revolution, civil commotion, invasion, or other armed conflict, malicious damage, vandalism to the extent that property of one of the Parties is damaged or destroyed, or sabotage;
- (iv) acts of any Governmental Authorities, including expropriation, requisition, confiscation or nationalization, embargos, sanctions, rationing, allocation, export or import restrictions, injunction, or any other act that would render performance of an obligation by the claiming Party illegal, including the other Party or its Affiliate becoming a Restricted Party;
- (v) closure to, blockade of, or other incidents at, ports, harbors, docks, canals, railway, railhead, or adjuncts of shipping or the transportation industry;
- (vi) national or regional labor difficulties, industrial disturbances, pickets, lockouts or strikes;
- (vii) ionizing radiation or contamination by radioactivity; or
- (viii) quarantine, epidemic, pandemics, and COVID Impacts.

Notwithstanding the foregoing; Force Majeure Events shall not include:

- (A) unforeseen difficulties in manufacturing, unless such difficulties are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party; and such event constitutes a Force Majeure Event, as the

definition is applied to Supplier;

- (B) late delivery of or in ability to obtain equipment or materials or supplies for the Work due to acts or omissions of third parties, unless such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party; and such event constitutes a Force Majeure Event, as the definition is applied to Supplier;
- (C) strikes limited to employees of the impacted Party;
- (D) difficulty in obtaining supplies, shortage of labor, or non-performance by Subcontractors or Buyer Responsible Parties, due to acts or omissions of third parties, unless such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Supplier;
- (E) market price fluctuations with respect to labor or materials, supplies or components of the ESS Equipment; and
- (F) mere economic hardship, including Buyer's failure to obtain, or the cancellation of, financing for the Project.

Force Majeure Events expressly exclude Changes in Law (including any of the express exclusions to the definition of Change in Law), Buyer-Caused Delays, and Utility Delays, relief for which are addressed under other provisions of the Contract.

“Governmental Authority”

any national, state, municipal or local government (including any subdivision, court, administrative agency or commission or other authority thereof) exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority Having jurisdiction over the Parties or the Project.

“Guaranteed Collection Segment

the date by which Delivery of all of the Collection

<u>Delivery Date</u>	Segments must have occurred, as set forth in <u>Exhibit D</u> .
<u>“Guaranteed Commissioning Completion Date”</u>	the date by which Supplier shall achieve Commissioning Completion, as set forth in <u>Exhibit D</u> .
<u>“Guaranteed Dates”</u>	the Guaranteed Collection Segment Delivery Date, the Guaranteed PCS/MVT Sets Delivery Date, the Guaranteed Energy Segments Delivery Date, and the Guaranteed Commissioning Completion Date,  as such dates may be extended in accordance with this Contract.
<u>“Guaranteed Energy Segments Delivery Date”</u>	the date by which Delivery of all of the Energy Segments must have occurred, as set forth in <u>Exhibit D</u> .
<u>“Guaranteed PCS/MVT Sets Delivery Date”</u>	the date by which Delivery of all of the PCS/MVT Sets must occur, as set forth in <u>Exhibit D</u> .
<u>“Hazardous Substances”</u>	all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances, pollutants or wastes of any nature regulated pursuant to any Applicable Laws.
<u>“Health-Monitoring Data”</u>	the data identified in <u>Exhibit J-2</u> as a Health Monitoring data type.
<u>“Import Duties”</u>	tariffs, import duties, customs fees, or other taxes, fees or charges payable upon the importation of the ESS Equipment into the United States or to the location of any international Worksites.

“ <u>Indemnified Parties</u> ”	has the meaning set forth in <u>Section 25(a)</u> .
“ <u>Indemnifying Parties</u> ”	has the meaning set forth in <u>Section 25(a)</u> .
“ <u>Installation Acceptance Date</u> ”	the date by which Buyer shall have achieved Installation Completion so that the ESS Equipment is ready for Supplier to commence Commissioning, as such date is further defined in <u>Section 13(c)(v)</u> and set forth in <u>Exhibit D</u> .
“ <u>Installation Completion</u> ”	Buyer’s achievement of the conditions set forth in <u>Section 13(b)</u> , as evidenced by Supplier’s acceptance of the Notice of Installation Completion.
“ <u>Installation Manual</u> ”	the requirements and instructions for installing the ESS Equipment set forth in <u>Exhibit L</u> .
“ <u>Installation Requirements</u> ”	has the meaning set forth in <u>Section 13(a)</u> .
“ <u>ITC Labor Requirements</u> ”	Buyer-imposed obligations on the Work related to the “Prevailing Wage Requirements” and the “Apprenticeship Requirements” set forth in the Internal Revenue Code’s Sections 48(a)(10) and 48(a)(11), respectively.
“ <u>Late Payment Rate</u> ”	has the meaning set forth in <u>Section 8(h)</u> .
“ <u>License</u> ”	has the meaning set forth in <u>Section 28(a)</u> .
“ <u>Licensed Technology</u> ”	all of the following owned by Supplier or its Affiliates:  (a) the copyright and any other intellectual property rights embodied in the processes and contents of any Manuals or other use instructions or documentation relating to the ESS Equipment that are provided to Buyer;  (b) the following patents that are issued to Supplier or its Affiliates and that would be infringed by the use of any part of the ESS Equipment as not

permitted or contemplated by the Contract:

- (i) all patents issued as of the Effective Date;
  - (ii) any patents that issue from patent applications pending as of, or filed after, the Effective Date; and
  - (iii) any continuations, continuations in part, divisions, reissues, and all patents issuing therefrom; including the technology defined by the claims of the patents;
- (c) intellectual property rights embodied in the Work Product;
- (d) software and firmware embedded in or used in connection with the ESS Equipment and any other materials provided by Supplier under the Contract;
- (e) any other trade secrets, proprietary information, and know-how incorporated in the ESS Equipment or otherwise provided or disclosed by Supplier for Buyer's use under this Contract; and
- (f) any improvements of or updates to any of the foregoing provided to Buyer.

“Liquidated Damages” or “LDs” collectively, the Delivery LDs and the Commissioning Completion LDs.

“Liquidated Damages Cap” Supplier's liability cap for the Liquidated Damages, as enumerated in Exhibit O.

“Losses” has the meaning set forth in Section 25(a).

“Manuals” collectively, the ESS Product Manual and the Installation Manual.

“Major Subcontract” any Subcontract with value in excess of \$500,000.

“Manufacturing Worksite” any Worksite (including that of a Subcontractor) where manufacturing, production, fabrication, assembly, or integration of the ESS Equipment (or

component thereof) occurs.

“NMGR T”	New Mexico Gross Receipts Tax as established in the Gross Receipts and Compensating Tax Act. NMSA 1978, Sections 7-9-1 to -120.
“ <u>Notice of Installation Completion</u> ”	Buyer’s written notice of Installation Completion, substantially in the form of <u>Exhibit L-3</u> .
“ <u>OEM Warranty(ies)</u> ”	the product warranty(ies) for the PCS/MVT Sets, as set forth in <u>Exhibit G</u> .
“ <u>OFAC</u> ”	has the meaning set forth in <u>Section 31(a)</u> .
“ <u>Operational Data</u> ”	the data identified in <u>Exhibit J-2</u> as an Operational data type.
“ <u>Operational Data &amp; Health-Monitoring Data Manual</u> ”	the manual set forth in <u>Exhibit J-2</u> .
“ <u>Other Contractors</u> ”	contractors, consultants or suppliers (excluding Supplier and Subcontractors) engaged by or on behalf of Buyer or any Buyer Responsible Party to: <ul style="list-style-type: none"> <li>(a) perform services (other than the Work), including operation and maintenance services,</li> <li>(b) undertake work other than the Work, or</li> <li>(c) provide materials or equipment at or to the Project Site.</li> </ul>
“ <u>Party(ies)</u> ”	has the meaning set forth in the preamble.
“ <u>Party Representative Negotiations</u> ”	has the meaning set forth in <u>Section 33(b)</u> .
“ <u>Payment Milestone</u> ”	Those milestones identified in the first table in Section 2 of <u>Exhibit E</u> .
“ <u>PCS/MVT Set</u> ”	One transformer and one inverter, as further specified

	in <u>Exhibit C</u> .
“ <u>PCS/MVT Set Delivery LDs</u> ”	the liquidated damages applicable to Delivery of the PCS/MVT Sets, the value of which is set forth in <u>Exhibit O</u> .
“ <u>Performance Guarantees</u> ”	the performance guarantees set forth in <u>Exhibit F-1</u> .
“ <u>Performance Tests</u> ”	the tests to be conducted by Supplier to demonstrate achievement of the Performance Guarantees, as such tests are described in <u>Exhibit F-1</u> .
“ <u>Permits</u> ”	any valid waiver from, exemption to, variance from, franchise, permit, authorization, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority having jurisdiction over a matter having to do with this Contract.
“ <u>PG Payments</u> ”	Recovery Payment or Efficiency Buy-Down amount (as defined in <u>Exhibit F-1</u> ).
“ <u>Press Release</u> ”	has the meaning set forth in <u>Section 40(b)</u> .
“ <u>Project</u> ”	has the meaning set forth in the Recitals.
“ <u>Project Schedule</u> ”	the sequential milestone dates set forth in <u>Exhibit D</u> , including the Guaranteed Dates.
“ <u>Project Site</u> ”	the real property upon which the Project is to be located, including the locations where ESS Equipment is to be incorporated into the Project, as more specifically described in <u>Exhibit K</u> .
“ <u>Publicity</u> ”	has the meaning set forth in <u>Section 40(b)</u> .
“ <u>Punchlist</u> ”	has the meaning set forth in <u>Section 15(a)(i)</u> .
“ <u>Punchlist Holdback Amount</u> ”	has the meaning set forth in <u>Section 15(a)(ii)</u> .
“ <u>Readiness Dates</u> ”	the Site Readiness Date;



- the Energy Segment Readiness Date; and the Installation Acceptance Date.
- “Receiving Party” has the meaning set forth in Section 26(a).
- “Recovery Plan” has the meaning set forth in Section 21.
- “Request for Payment” Supplier’s form of invoice, the form of which is set forth in Exhibit M.
- “Restricted Party” has the meaning set forth in Section 31(b).
- “SDNs” has the meaning set forth in Section 42(f).
- “Senior Representative Negotiations” has the meaning set forth in Section 33(b).
- “Site Readiness” The Project Site is in a condition that satisfies Supplier’s Installation Requirements for the Collection Segments and PCS/MVT Sets by completing:
- (a) the pouring and sufficient curing of foundations for such ESS Equipment; or
  - (b) a suitable laydown area large enough, and with sufficient ingress and egress, for Delivery of such ESS Equipment at the pace set forth in Exhibit D.
- “Site Readiness Date” the date (as set forth in Exhibit D) by which Buyer is required to achieve Site Readiness.
- “Soil or Subsurface Condition” any soil, geotechnical or subsurface condition including any geological condition, groundwater condition, type of surface or subsurface soil, erosion, the presence of any cavern or void, religious artifact, archaeological item, biological matter, the presence of Buyer Hazardous Substances at the Project Site or any Delivery Location, and the existence, location or condition of any underground pipeline and conduit or

other manmade structure, material or equipment.

“Specifications”

the drawings, technical description of the Work, and packing instructions contained or referred to in Exhibits A, C, J, and L-1.

“Standards of Practice”

the standards, methods, skill, care, techniques, principles, and practices that are recognized and generally accepted by leading companies in the energy storage system industry for energy systems of similar size, geographic location, and scope as the ESS. Standards of Practice are not intended to be limited to optimum standards, practices or methods, but rather to be a spectrum of reasonable and prudent standards, practices and methods that must take the conditions specific to any given facility or project under consideration.

“Subcontract”

any agreement, written or oral, between Supplier and any Subcontractor.

“Subcontractor(s)”

any person or entity, that furnishes directly to Supplier, pursuant to a Subcontract, labor, services, material, or equipment for the performance of the Work or any portion thereof.

“Supplier”

has the meaning set forth in the preamble, and includes such entity’s successors and permitted assigns.

“Supplier Event of Default”

has the meaning set forth in Section 19(a)(i).

“Supplier Hazardous Substances”

Hazardous Substances brought onto the Project Site or generated on the Project Site by Supplier or its Subcontractors.

“Supplier Permits”

the Permits for which Supplier is responsible for procuring and maintaining as part of the Work, if any, as set forth in Exhibit A and as required for transportation and Delivery.

- “Supplier Representative” Sara Mulhauser.
- “Supplier Taxes” has the meaning set forth in Section 8(b)(iii)(A).
- “Taxes” any taxes or charges of any kind or nature, including ad valorem, consumption, excise, franchise, gross receipts, license, property, sales, stamp, storage, transfer, turnover, use and value-added taxes (including, any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto), that are imposed by any Governmental Authority having jurisdiction. “Taxes” exclude Import Duties, and any tariffs, duties, customs fees or other taxes, fees or charges payable in connection with export of any ESS Equipment from its country of origin into the United States or other country containing a Worksite.
- “Termination Payment” an amount equal to the applicable percentage of the Contract Price, as set forth in the column entitled *“Total Termination Payment as Percentage of Contract Price”* in Section 3 of Exhibit E.
- “Trademarks” has the meaning set forth in Section 40(a).
- “Unpermitted Lien” has the meaning set forth in Section 8(d).
- “Utility” the provider of local electric distribution service to the Project Site, including electricity to charge the ESS, and/or onto whose transmission system energy from the ESS Equipment is discharged.
- “Utility Delay” any delay in, or interference with, Supplier’s performance of the Work resulting from:
- (a) the failure of the Utility to perform any obligations under the relevant agreement(s) between Utility and Buyer;
  - (b) without limitation to clause “(a)”, Utility’s failure to issue an interconnection approval, install infrastructure or make upgrades or modifications necessary for the Project’s interconnection, or to

test, inspect or energize the Project;

- (c) grid operating restrictions imposed by the Utility;
- (d) any transmission or distribution system or substation not operating within the operating parameters of the ESS Equipment as described in the Specifications; or
- (e) any operating restrictions imposed by Governmental Authority on the Project,

in each case, unattributable to the acts or omissions of Supplier or Subcontractors.

“Warranted Equipment”

the ESS Equipment warranted under the Warranty (as defined in Exhibit F-2).

“Warranty”

Supplier’s *Limited Commercial Warranty*, attached hereto as Exhibit F-2.

“Warranty Period”

the time period set forth in the Warranty.

“Work”

all activities, services, and obligations to be performed, and all ESS Equipment to be provided, by or on behalf of Supplier under this Contract, including those set forth in Exhibit A and Supplier’s obligations in Exhibit B.

“Work Product”

has the meaning set forth in Section 11(c).

“Worksite”

any location or place on, under, in, or through which Work or any activities in connection with Work are to be performed, including, Manufacturing Worksites or storage facilities and including the Project Site; *provided*, that Worksite shall not include any location, vessel or place used during transportation to and from Worksites.

**2. Contract and Order of Precedence**

- (a) This Contract consists of the following documents which are attached:

- (i) This Equipment Purchase Agreement
- (ii) Exhibit A – Scope of Work
- (iii) Exhibit B – Division of Responsibility
- (iv) Exhibit C – Technical Specifications
- (v) Exhibit D – Project Schedule
- (vi) Exhibit E – Payment and Termination Payment Schedule
- (vii) Exhibit F-1 – Performance Guarantee
- (viii) Exhibit F-2 – Limited Commercial Warranty
- (ix) Exhibit G – OEM Warranties
- (x) Exhibit H - Insurance Requirements
- (xi) Exhibit I – Commissioning Checklist
- (xii) Exhibit J-1 – ESS Product Manual
- (xiii) Exhibit J-2 – Operational Data & Health-Monitoring Data Manual
- (xiv) Exhibit K – Project Site Layout
- (xv) Exhibit L-1 – Installation Manual
- (xvi) Exhibit L-2 – Installation Checklist
- (xvii) Exhibit L-3 – Form of Notice of Installation Completion
- (xviii) Exhibit M – Form of Request for Payment
- (xix) Exhibit N-1 – Form of Delivery Acceptance Certificate
- (xx) Exhibit N-2 – Form of Commissioning Completion Certificate
- (xxi) Exhibit N-3 – Form of Final Acceptance Certificate
- (xxii) Exhibit O – Liquidated Damages
- (xxiii) Exhibit P – Form of Change Order
- (xxiv) Exhibit Q – Form of Lien Waiver
- (xxv) Exhibit R –Account Setup Form

(xxvi) Exhibit S – Buyer-Furnished Equipment

(xxvii) Exhibit T– RESERVED

(xxviii) Exhibit U – Buyer Requirements

- [REDACTED]
- (b) If any conflict, inconsistency or ambiguity is believed to exist among any of the documents comprising or relating to this Contract or among any of the requirements or provisions thereof, the conflict, inconsistency or ambiguity shall be resolved by applying the following order of precedence:
- (i) The body of this Equipment Purchase Agreement;
  - (ii) Exhibit C;
  - (iii) Exhibit A;
  - (iv) Exhibit B;
  - (v) The other Exhibits; and
  - (vi) Any other document incorporated by reference into any of these documents.
- (c) The Parties shall promptly notify each other of any conflict, inconsistency or ambiguity in the Contract documents, and Buyer shall resolve such conflict in writing within five Business Days. Any Work involving such conflict, inconsistency or ambiguity that is performed by Supplier without Buyer's written resolution, shall be at Supplier's sole risk and expense, and Buyer shall be free thereafter to resolve the issue differently from the approach taken by Supplier. In such event, Supplier shall not be entitled to receive, and Buyer shall have no obligation to grant a Change Order in relation to the Contract Price, Project Schedule, or other provision of this Contract, nor shall Buyer have any liability toward Supplier or others for any work performed without Buyer's written resolution.
- (d) References in Exhibits to an "Energy Storage Agreement" or "ESA" should be interpreted to refer to this Equipment Purchase Agreement.

### **3. Preparation for and Performance of the Work**

- (a) Each Party has fully informed itself with all matters relevant for the performance of its respective obligations under this Contract. Any failure by a Party to take account of any such matters shall not relieve such Party from its obligations under this Contract nor shall it form the basis for a Change Order in favor of such Party.

- (b) Subject to clause “(c)” of the “Buyer-Caused Delay” definition, Supplier is solely responsible for, and Buyer makes no guarantee or warranty, express or implied, as to the correctness, adequacy, sufficiency and consistency of the Specifications.
- (c) Supplier shall perform the Work in conformity with this Contract, all Applicable Laws, all Applicable Codes and Standards and the Standards of Practice. Supplier has in place (or shall develop) and shall comply with procedures for quality control, quality assurance, and management that are consistent with the Standards of Practice for such items.
- (d) Except where expressly stated, Supplier is not relieved of any obligation under this Contract, by any review, approval, consent to progress, certificate, advice, and the like, provided (or omitted) by Buyer (whether in writing or not), or any inspection or witnessing of tests.
- (e) Permits. Supplier shall, as part of the Work, be responsible for procuring and maintaining all Supplier Permits. Buyer shall be responsible for, at its cost and expense, procuring and maintaining all Buyer Permits.

#### **4. Buyer Representative and Supplier Representative**

- (a) Buyer Representative.
  - (i) Buyer has appointed Buyer Representative to represent Buyer in all matters under this Contract. Buyer may change its representative at any time and shall notify Supplier in writing. Buyer Representative may delegate responsibilities to a nominated deputy and shall notify Supplier in writing. Only Buyer Representative, or a nominated deputy, is authorized to receive on behalf of Buyer notifications, information and decisions of Supplier under this Contract. Only written instructions issued by Buyer Representative (or such deputy), are binding on Buyer.
  - (ii) Buyer Representative (and individuals designated by Buyer Representative) shall have access at all reasonable times, upon reasonable prior written notice, to any Manufacturing Worksite.
  - (iii) Except as expressly stated in this Contract, Buyer Representative has no powers to amend this Contract or to relieve Buyer from any of its obligations.
- (b) Supplier Representative.
  - (i) Supplier has appointed Supplier Representative to represent Supplier in all matters under this Contract. Only Supplier Representative, or a nominated deputy, is authorized to receive on behalf of Supplier notifications, information and decisions of Buyer under this Contract. Only written instructions issued by Supplier Representative (or deputy) are binding on Supplier.

- (ii) Except as expressly stated in this Contract, Supplier Representative has no powers to amend this Contract or to relieve Supplier from any of its obligations.

## **5. Cooperation with Others; Project Site Access; Public Work Disclaimer**

- (a) Cooperation. Each Party acknowledges that, concurrently with Supplier's performance of its obligations under this Contract, Buyer, and Other Contractors may be working at the Project Site during the performance of this Contract. Supplier shall reasonably cooperate with Buyer and Other Contractors and coordinate its activities on the Project Site with the work of each such party to avoid or mitigate possible interference with their work. Similarly, Buyer shall, and shall cause its Other Contractors to reasonably cooperate with Supplier and Supplier's Subcontractors and to coordinate its activities on the Project Site with the Work and the work of Subcontractors to avoid or mitigate unreasonable interference.
- (b) Site Access. Buyer shall, (i) provide unrestricted access to Supplier to the Project Site for Supplier to perform the Work; and (ii) defend Supplier against any action in trespass or otherwise resulting from failure by Buyer to have obtained legal rights for access to the Project Site. Supplier shall coordinate and cooperate with Buyer and Other Contractors regarding entry onto the Project Site, and shall comply with Standards of Practice, Applicable Codes and Standards, Applicable Laws, Buyer Requirements, and Exhibit L-1. Buyer shall cause all Buyer Responsible Parties to make commercially reasonable efforts to coordinate with and minimize interference with operations by Supplier and Subcontractors at the Project Site according to the schedule contemplated for such performance.
- (c) Public Work Disclaimer. Buyer represents and warrants that the Project is not a "Public Work," as such term (or its corollary) is defined under Applicable Law.

## **6. Codes and Standards; Supplier Personnel**

- (a) Codes and Standards. Wherever references are made in this Contract to Applicable Codes and Standards, the edition or revision of the Applicable Codes and Standards current on the date such Work is to be performed shall apply unless otherwise expressly stated. In case of conflict between any referenced Applicable Codes and Standards and any Contract documents brought to Buyer's attention under this clause, Buyer shall resolve the conflict in writing.
- (b) Supplier Personnel. Supplier shall use only competent and skilled personnel to perform the Work. Supplier shall remove from the Project Site any person reasonably determined by Buyer to be unfit, unqualified, or to be acting in violation of any obligation of Supplier under this Contract. In addition, Buyer may, at its sole but reasonable discretion, deny access to the Project Site to any person; *provided, however*, such denial of access shall, subject to Section 16(g), entitle Supplier to a Change Order for a Buyer-Caused Delay if such denial is not based upon grounds for removal of persons set forth in the prior sentence.

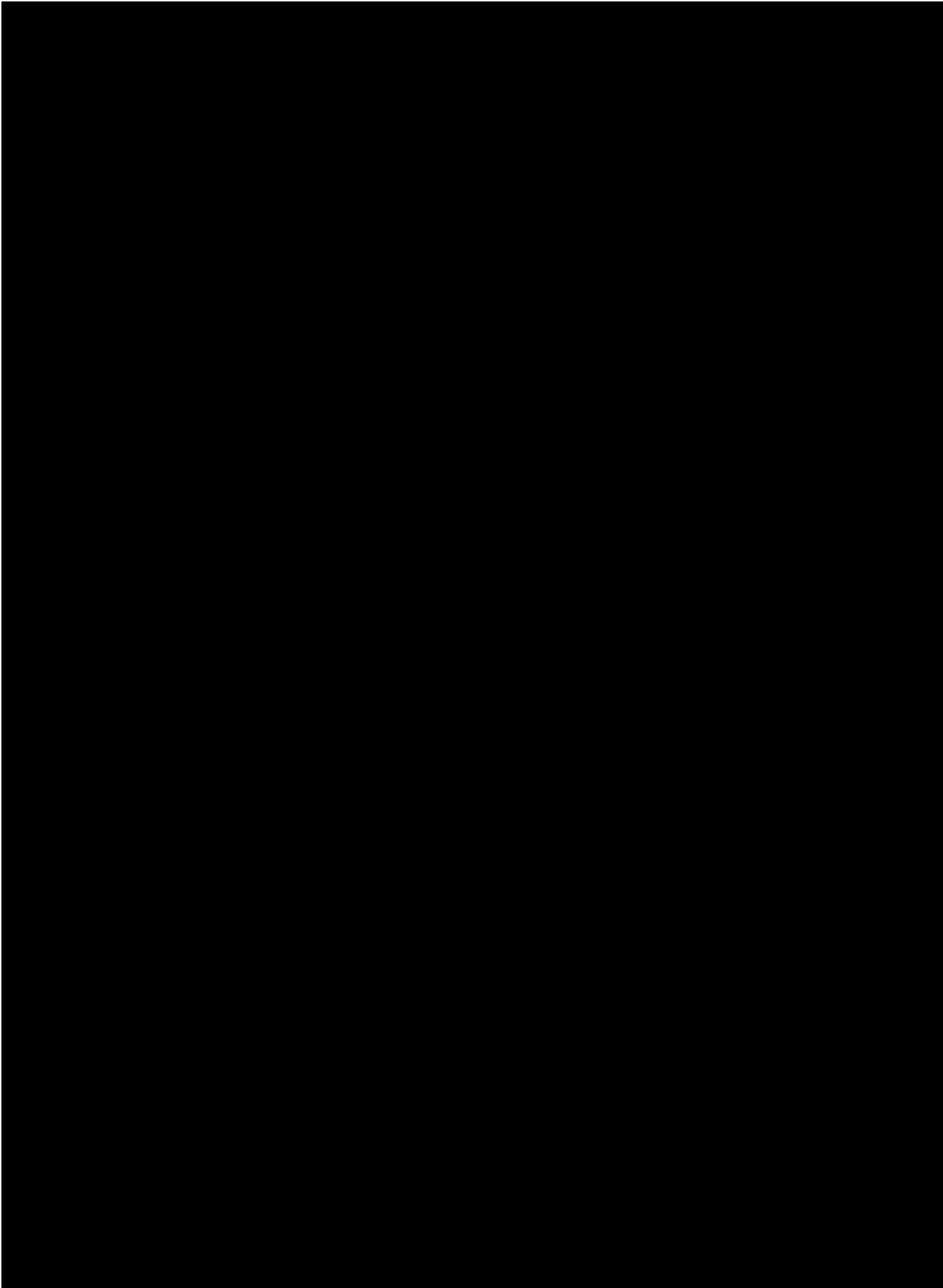


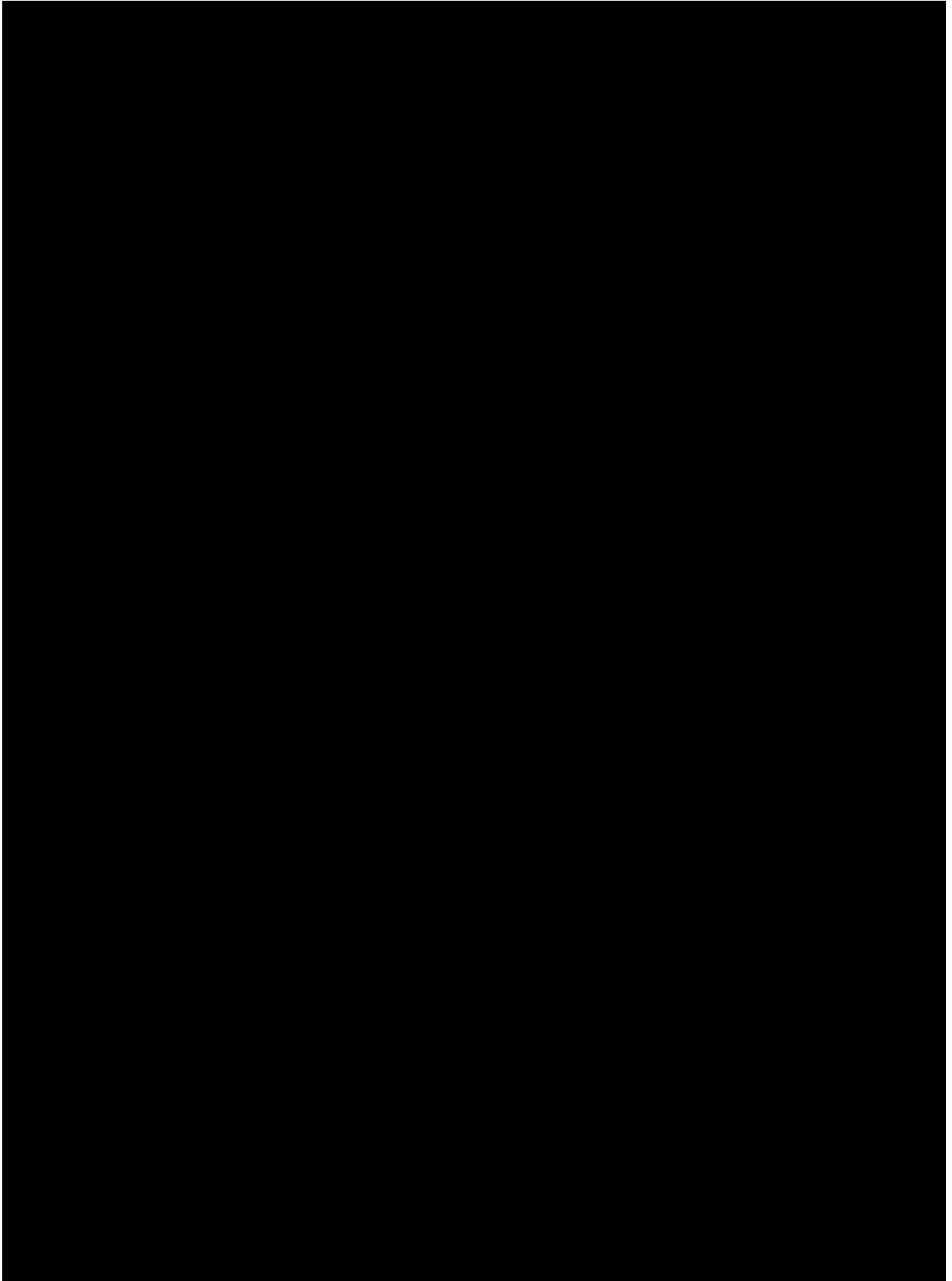
- (c) If an individual is removed from the Work or excluded from the Project Site, Supplier shall promptly replace such individual with another who is fully competent and skilled to perform the Work. All actions by Supplier regarding removal and replacement of personnel shall be at Supplier's sole expense.
- (d) Supplier is responsible for maintaining labor relations with respect to its personnel and Subcontractors in such manner that there is harmony among workers. Supplier shall comply with and enforce, with respect to its personnel and Subcontractors, Project Site procedures, regulations, work rules, and work hours established by Buyer. Supplier shall have no obligation to enforce any Project Site procedures, regulations, work rules, and work hours with respect to Buyer Responsible Parties.
- (e) Cybersecurity. To protect against breach, misuse, destruction, loss or other compromise of Licensed Technology or Confidential Information, Supplier has a Cybersecurity Policy, which may be updated from time to time in accordance with generally accepted NIST cybersecurity standards or with NERC requirements relevant to the Work. At all times Supplier shall comply with Buyer's minimum requirements for cybersecurity as defined in Exhibit U.

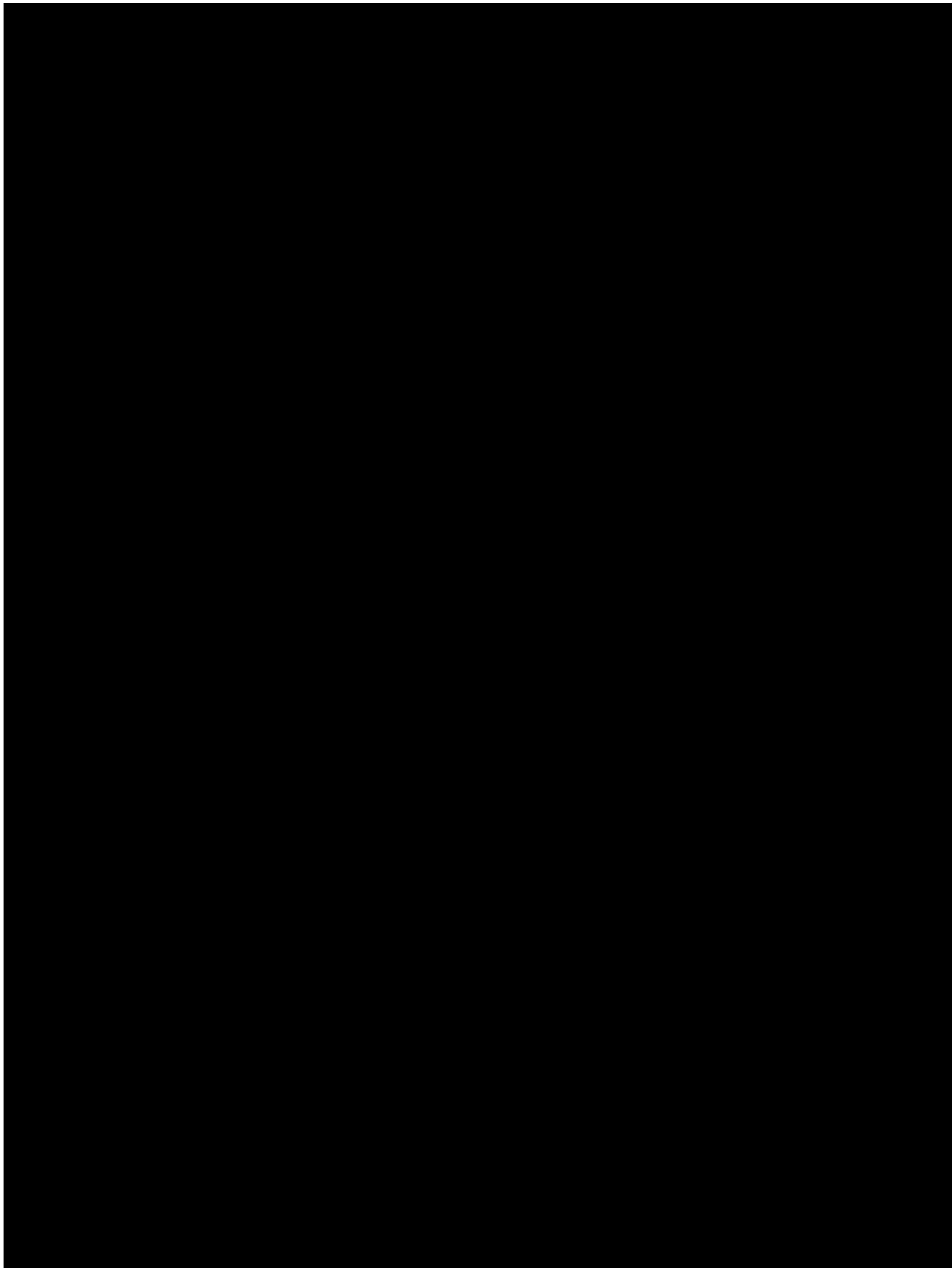
## **7. Physical Security**

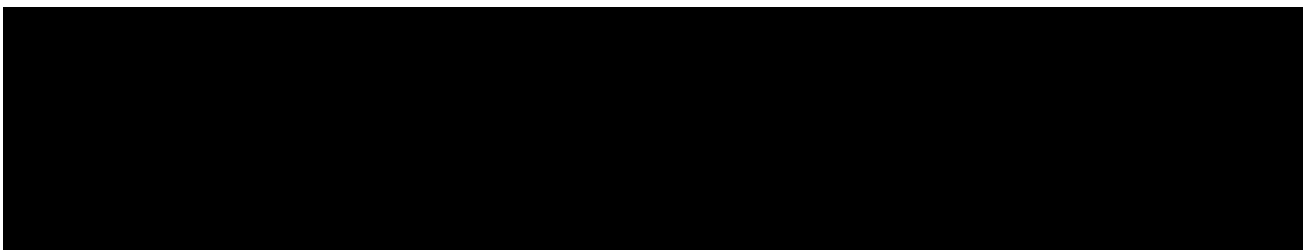
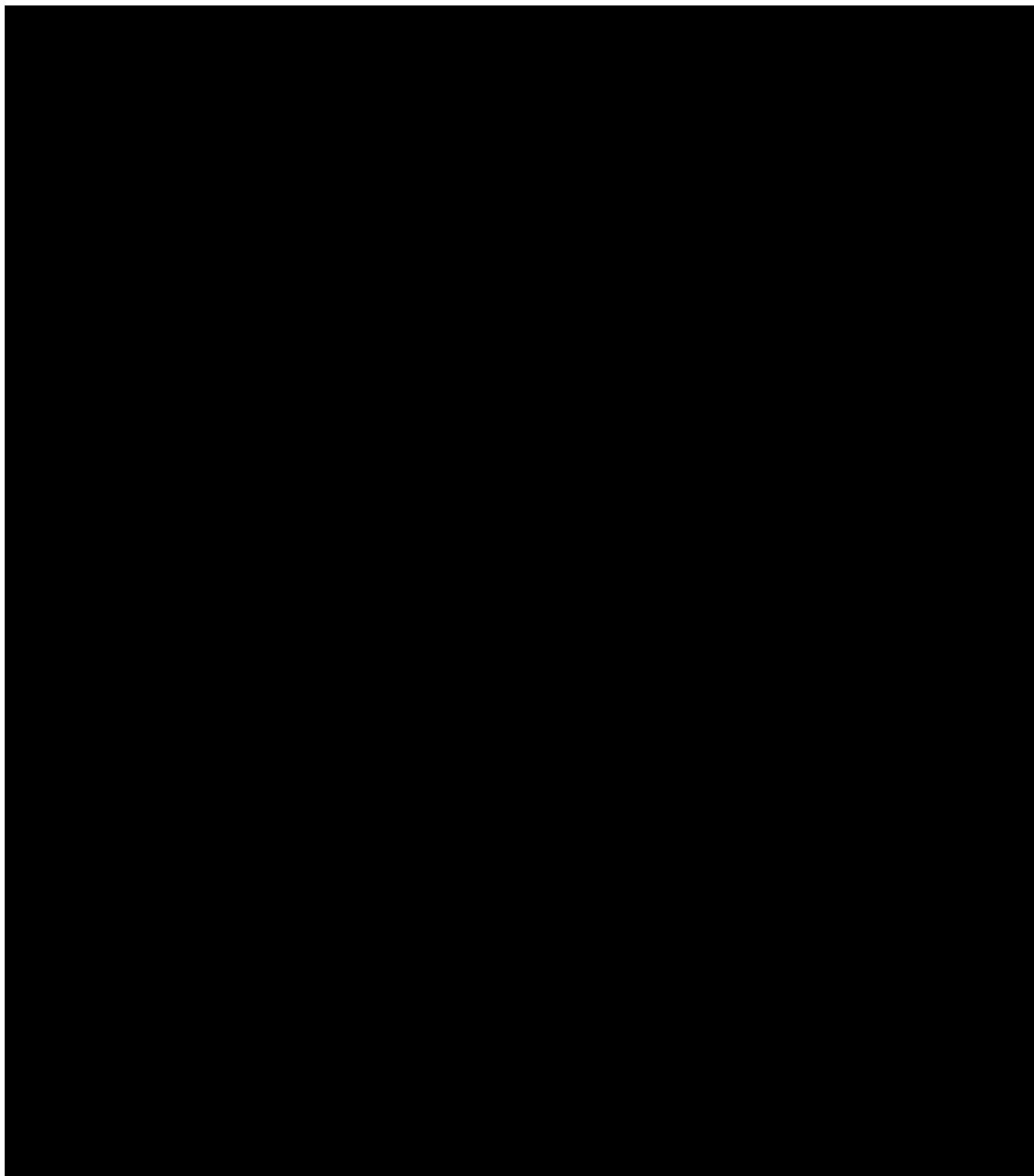
- (a) Supplier shall at all times conduct all operations under this Contract in a manner to minimize the risk of loss, theft, or damage by vandalism, sabotage or any other means to any equipment, materials, work or other property; *provided, however*, with the exception of requirements outlined in Sections 7(b) and 7(c), Buyer shall be solely responsible for physical security of the Project Site and for the risk of loss or damage to the ESS Equipment after risk of loss passes from Supplier to Buyer in accordance with Section 11(a). Supplier shall regularly inspect all equipment, materials and work to discover and determine any conditions which might involve such risks. The above shall not relieve Supplier of its responsibility for maintaining proper security of the ESS Equipment, as required under this Contract.
- (b) Supplier shall comply with Buyer's security requirements for the Project Site, as set forth in Exhibit U. Supplier shall cooperate with Buyer on all security matters and shall promptly comply with all reasonable Project Site security arrangements established by Buyer or Other Contractors, as set forth in Exhibit U.
- (c) Notwithstanding anything to the contrary in this Contract, if Buyer requires background-screening of Supplier's employees (or employees of any Subcontractors) as a condition of conducting the Work, Supplier may utilize its own criminal background-checking and drug-screening policies for such personnel. For the avoidance of doubt, Supplier shall not be obliged to provide Buyer with employees' (or Subcontractor personnel's) personal Confidential Information, including social security numbers, driver's license numbers, birthdates, and personal addresses.

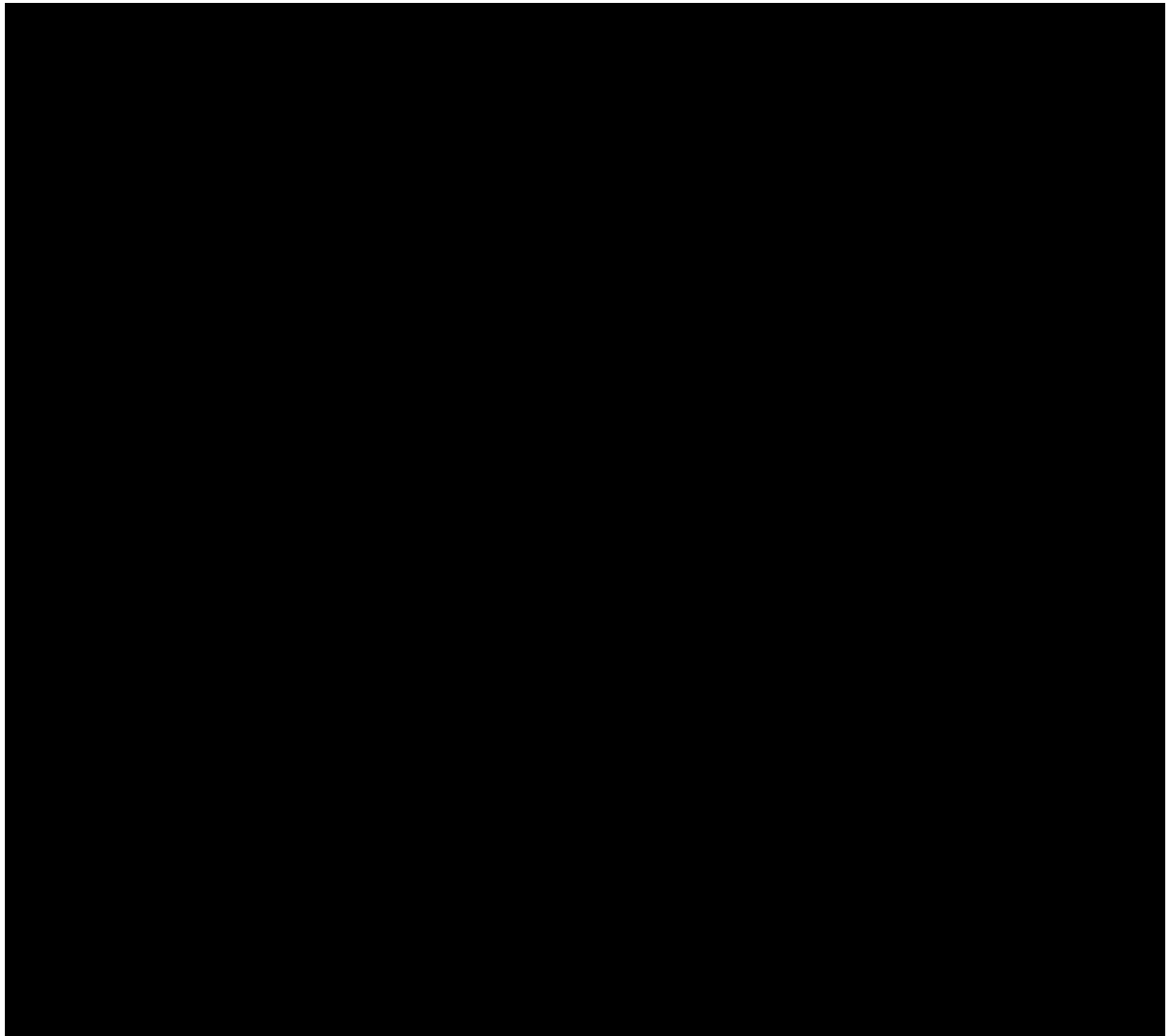
## **8. Price and Payment**











**9. Schedule and Delivery**

- (a) Project Schedule. Supplier shall perform the Work, and Buyer shall perform its obligations under the Contract, including matters for which it is responsible in Exhibit B with all due diligence. Without limiting the generality of the foregoing, Supplier guarantees that all Completion Milestones shall be achieved on or before the corresponding Guaranteed Dates, as such Guaranteed Dates may be adjusted in accordance with this Contract, including for Excusable Events.
- (b) Production Schedule. Beginning four months after the Effective Date, Supplier shall, once per month, provide Buyer with a production schedule showing the manufacturing position of the ESS Equipment, and the scheduled date of shipment.
- (c) Notice of Delays. Each Party shall notify the other Party in writing of any actual, anticipated or probable causes of delay in its performance of its obligations under this Contract in writing, and the actual or anticipated extent of such delay.

Buyer may for expediting purposes, send its own staff or other personnel whom Buyer has retained, to any Manufacturing Worksite.

- (d) INCOTERMS. Any delivery terms relating to ESS Equipment specified in this Contract shall be interpreted in accordance with INCOTERMS 2020 (International Rules for the Interpretation of Trade Terms) published by the International Chamber of Commerce and its supplements, subject to this Contract.
- (e) Packaging of ESS Equipment. Supplier shall pack the ESS Equipment so that it may be safely transported, and then unloaded and unpacked safely by Buyer. The method of packing shall be in accordance with Supplier's general practices and Standards of Practice. In the absence of specific instruction concerning the method of packing, Supplier shall take reasonable steps to prevent damage to or deterioration of the ESS Equipment in transit to their destination, in accordance with customary seaworthy export packing standards and anti-rust, oxidation standards.
- (f) Delivery of ESS Equipment. Buyer shall identify the Delivery Location at least thirty days prior to the Site Readiness Date and Supplier shall be responsible for Delivery of the ESS Equipment DDP to the Delivery Location via common carrier(s), all in accordance with the Project Schedule (including the Completion Milestones) and subject to the following:
- (i) Within ten days of Supplier's receipt of all third-party invoices for DDP Costs, Supplier shall provide Buyer with an itemized statement of the DDP Costs, supported by reasonable documentation.
  - (ii) If the DDP Costs *exceed* the DDP Cost Amount, Supplier shall be entitled to a Change Order to increase the Contract Price by the difference (such amount the "DDP Cost Adjustment"). Upon execution of the applicable Change Order, the DDP Cost Adjustment shall be trued up at the time of Supplier's Request for Payment of the Payment Milestone for Commissioning Completion (or upon termination of this Contract, if this Contract is terminated prior to Commissioning Completion).
  - (iii) Following Supplier's transfer of any ESS Equipment from a Manufacturing Worksite to a common carrier for shipment, Supplier shall execute and provide to Buyer a bill of lading with respect to such shipment of ESS Equipment and such other information as Buyer may reasonably request.
  - (iv) Upon Supplier's completion of Delivery of each shipment of ESS Equipment, Buyer shall or shall cause its Other Contractors to, arrange and pay for all costs associated with off-loading of the ESS Equipment at the Delivery Location.
- (g) Labeling and Marking. Supplier represents that, on Delivery, the ESS Equipment shall have been accurately described, classified, marked, and labeled, in accordance with this Contract, all Applicable Laws, and Standards of Practice.
- (h) Buyer's Achievement of the Readiness Dates. Buyer shall cause Site Readiness to occur no later than the Site Readiness Date. Buyer shall cause Energy Segment

Readiness to occur no later than the Energy Segments Readiness Date. Buyer acknowledges and agrees that (x) achievement of Site Readiness by the Site Readiness Date is a necessary condition precedent for Supplier's obligation to begin Delivery of the Collection Segments and PCS/MVT Sets and to complete Delivery of the Collection Segments and PCS/MVT Sets by the respective Guaranteed Collection Segment Delivery Date and for Supplier's achievement of all other later-scheduled Completion Milestones by their respective Guaranteed Dates, and (y) achievement of Energy Segment Readiness by the Energy Segment Readiness Date, is a necessary condition precedent for Supplier's obligation to Deliver the Energy Segments by the Guaranteed Energy Segment Delivery Date and for Supplier's achievement of all other later-scheduled Completion Milestones by their respective Guaranteed Dates. Accordingly, if Buyer does not have the Project Site prepared for the applicable Delivery described in the preceding sentences, Buyer shall notify Supplier in writing and, at Buyer's sole election either:

- (i) receive the ESS Equipment at the Project Site, which receipt shall trigger the inspection process set forth in Section 9(i);
  - (ii) agree to a cost-plus (with 12% markup) Change Order for any material, reasonable, unavoidable, and documented demurrage, storage, or standby charges (for Buyer's failure to comply with the "Storage Conditions" set forth in Exhibit C) incurred by Supplier as well as any additional transportation costs until Delivery, with such Change Order also extending the Project Schedule (including all Guaranteed Dates) in accordance with Section 16(d) on account of such Buyer-Caused Delay; or
  - (iii) provide an Alternate Delivery Location to Supplier by giving Supplier, not less than twenty (20) Business Days' prior to the applicable Readiness Date, notice of the Alternate Delivery Location to which Supplier may Deliver the ESS Equipment. Upon notice of the Alternate Delivery Location, such Alternate Delivery Location shall be deemed the "Delivery Location" for purposes of Section 9(i) and the other provisions of this Contract. Supplier's reasonable and documented additional costs associated with delivery to the Alternate Delivery Location shall be subject to a cost-plus (with 12% markup) Change Order.
- (i) Inspection of ESS Equipment. Once the ESS Equipment or a portion thereof has arrived at the Delivery Location, Buyer shall promptly inspect the condition of the delivered ESS Equipment pursuant to the Delivery Inspection Checklist. Within ten days after arrival at the Delivery Location, Buyer (i) shall deliver to Supplier a Delivery Acceptance Certificate, which certificate shall confirm the Date of Delivery for the portion of the ESS Equipment delivered; or (ii) shall advise Supplier in writing of any missing items, or damage and/or deficiencies in the ESS Equipment for which Supplier is responsible, and Supplier will, as Buyer's sole remedy, promptly deliver any missing items and promptly repair or replace, at its election, the damaged or deficient ESS Equipment so that the ESS Equipment complies with this Contract. If Buyer does not inspect the ESS Equipment and



notify Supplier within the time period set forth in this Section 9(i), without waiving Buyer's rights regarding subsequently discovered defects, the ESS Equipment shall be deemed Delivered for the purposes of Delivery LDs and Buyer's obligation to pay Payment Milestone # 4. The foregoing notice procedure shall be repeated until Buyer delivers the Delivery Acceptance Certificate to Supplier.

## 10. Liquidated Damages

- (a) Liquidated Damages. If any Completion Milestone has not occurred on or before its applicable Guaranteed Date, Supplier shall pay Buyer, as liquidated damages and not as a penalty, the applicable amounts set forth in Exhibit O.
- (b) Payment of Liquidated Damages. Liquidated Damages shall be due and payable within thirty days after Supplier receives Buyer's Request for Payment therefor; *provided, however*, Buyer shall limit its Request for Payment to once per thirty day period. At Buyer's option, Liquidated Damages may be deducted by Buyer from any payments due by Buyer to Supplier. If Supplier disputes Buyer's claim that some or all Liquidated Damages contained in Buyer's Request for Payment are due, Supplier shall notify Buyer in writing prior to the date payment is due and shall pay the undisputed Liquidated Damages in accordance with this Section. If amounts withheld by Supplier are ultimately determined to have been payable, the provisions of Section 8(h) shall apply.
- (c) Caps on Liquidated Damages. The Parties agree that the (i) Delivery LDs shall be capped at the Delivery LDs Cap, (ii) Commissioning Completion LDs shall be capped at the Commissioning Completion LDs Cap, and (iii) the Liquidated Damages shall be capped at the Liquidated Damages Cap.
- (d) Nature of Liquidated Damages. The Parties agree that it would be extremely difficult to precisely determine the amount of actual damages that would be suffered due to a delay to any Completion Milestone, but that the Liquidated Damages are a genuine pre-estimate, and a fair and reasonable determination of the amount of actual damages which would be suffered by Buyer for Supplier's delay in achieving a Completion Milestone beyond its Guaranteed Date, and that the Liquidated Damages do not constitute a penalty.
- (e) Sole Remedies. Without prejudice to Supplier's obligations set forth in Section 14(b), and subject to Section 23, Buyer's sole remedies for Supplier's failure to achieve a Completion Milestone on or before its Guaranteed Date are: (i) payment by Supplier of the applicable Liquidated Damages under this Section 10; and (ii) Buyer's rights under Section 19(a)(i)(B).
- (f) Refund of Delivery LDs. Notwithstanding anything contrary as set forth herein, if (i) any Completion Milestone for Delivery was not achieved on or before its applicable Guaranteed Date; (ii) Supplier has consequently paid Delivery LDs to Buyer according to Section 10(b); and (iii) Supplier subsequently achieves Commissioning Completion on or before the Guaranteed Commissioning Date,

then Buyer shall refund the Delivery LDs paid by Supplier to Buyer, *less* any costs, expenses, fees, liquidated damages or damages payable to Other Contractors or other reasonable and documented expenses incurred by Buyer due to such delay, within thirty days after the date of Commissioning Completion, without any interests, penalties, charges or adjustments.

**11. Title and Risk of Loss**

- (a) Risk of Loss. Notwithstanding passage of title, Supplier shall have the full responsibility for care, custody and control of the ESS Equipment and shall bear the risk of loss thereof or damage thereto until Buyer commences unloading of the ESS Equipment at the Delivery Location, at which time risk of loss or damage shall pass to Buyer; *provided*, that Buyer shall at all times be liable for all loss or damage to the extent caused by it or any Buyer Responsible Party.
- (b) Title to ESS Equipment and Warranty of Title.
- (i) Title to the ESS Equipment, or part thereof, shall transfer to Buyer and become the property of Buyer upon the earlier of: (A) the Date of Delivery; (B) the date payment for the ESS Equipment, or part thereof, is made by Buyer (without regard to any withholdings); or (C) upon termination of this Contract (following payment by Buyer of any amounts required to be paid hereunder as a result of such termination).
- (ii) Supplier warrants that title to the ESS Equipment is free of any liens, claims, interests or rights of others that may be created by or through Supplier, subject to Supplier's and Subcontractors' rights to retain a lien or security interest in such ESS Equipment until payment has been received in full in accordance with Section 8. In the event of any defect in title, Supplier shall immediately, upon the request of Buyer, at Supplier's sole cost and expense, remove any defect, claim or encumbrance on the title to the ESS Equipment. Transfer of title to Buyer shall in no way affect the Parties' rights and obligations as set forth in other provisions of this Contract.
- (c) Title to Work Product. Title to all drawings, designs, Specifications, reports, test results, specimens, data and other work product (collectively "Work Product"), other than ESS Equipment, prepared by Supplier in connection with this Contract shall transfer to Buyer and become the property of Buyer upon the date of payment for the Work Product, or part thereof, by Buyer (without regard to any withholdings). Supplier shall have the right to retain a copy of the Work Product for its records. Buyer acknowledges that the Work Product is prepared by Supplier as instruments of service for the Work and that it is not intended for re-use on any other project. Buyer waives and releases Supplier from any liability with respect to use of the Work Product for any purpose other than the installation, use, operation, maintenance and repair of the Project. Buyer shall defend, indemnify and hold harmless Supplier and its Indemnified Parties from and against any Losses arising out of any modification of the Work Product or the unauthorized use of the

Work Product by Buyer or any other person or entity (other than Supplier or its Subcontractors).

- (d) Licensed Technology. In no event will title to the Licensed Technology or any other intellectual property of Supplier used in the ESS Equipment or otherwise incorporated into and reflected in the Work Product, including any software or firmware, transfer to Buyer. Title to the Work Product is to the paper, electronic or other media representing the Work Product, and Supplier's intellectual property is licensed to Buyer under Section 28 as part of the Licensed Technology.

## 12. Quality, Inspection and Factory Testing

- (a) Supplier must have quality assurance programs in place adequate to support its performance of the Work.
- (b) Before shipping ESS Equipment, Supplier shall, or shall cause its Subcontractors to, carefully inspect and test the ESS Equipment for compliance with applicable requirements of this Contract. Supplier shall use reasonable efforts to give Buyer at least seven days' prior written notice before any such inspection or test and Buyer (or Buyer's authorized agent) shall be entitled to attend such inspection or test and shall receive copies of all data, results, certifications and other records relating to the inspection or test promptly following Supplier's receipt of the results of and certifications relating to such inspection or test from Subcontractors. If Supplier needs to reschedule the date of such inspection and or test, Supplier shall give a minimum of three days' prior notification to Buyer. As a condition of attending inspections and tests, Buyer shall and shall cause any other Buyer Responsible Parties to, comply with all policies, protocols and directives required of third parties entering Manufacturing Worksites, including having Buyer's agents and representatives agree to any confidentiality agreement required by Subcontractors as a condition of such entry.
- (c) In no event may Buyer's attendance at such inspection or test be interpreted as an acceptance of such ESS Equipment by Buyer and shall not relieve Supplier from any liability, obligation or responsibility in connection with any Defects discovered in the ESS Equipment at any time through the expiration of the Warranty Period.
- (d) All material and equipment furnished and work performed shall be properly inspected and tested by Supplier at its expense in accordance with Exhibits A, B, and C and with any other Contract requirements, and shall, at all times be subject to quality surveillance and quality audits (which shall conform with Standards of Practice), by Buyer or Buyer's authorized representatives who, upon reasonable notice, shall be afforded reasonable access to the Manufacturing Worksites for such quality surveillance or audit.
- (e) Failure of Buyer to make such quality surveillance or to discover Defects shall not relieve Supplier of its obligations under this Contract nor prejudice the rights of

Buyer thereafter to reject or require the correction of Defects in accordance with the provisions of this Contract.

- (f) If any ESS Equipment is determined by Buyer to be Defective at any time prior to Commissioning Completion, Buyer shall have the right to reject such Defective ESS Equipment.

**13. Technical Support; Installation Completion**

- (a) Installation of ESS Equipment. Buyer (itself or through Other Contractors) shall be solely responsible for the installation of the ESS Equipment in accordance with the Manuals, Specifications, all Applicable Law, and Standards of Practice (the “Installation Requirements”). Buyer is responsible for work including civil, engineering, interconnect, and permitting relating to the Project other than the Work, as described in Exhibit B.
- (b) Conditions to Installation Completion. Upon Buyer’s completion of all the requirements set forth below, Buyer shall provide Supplier with a Notice of Installation Completion:
  - (i) completion of all civil work relating to the installation of the ESS Equipment;
  - (ii) safe access to the Project Site has been provided to Supplier for performance of the Commissioning work;
  - (iii) Backfeed Availability;
  - (iv) Buyer-Furnished Equipment (e.g., switchgear) is ready to be energized;
  - (v) the ESS Equipment is capable of, and has the requisite permissions for, discharging or accepting energy;
  - (vi) internet service is available with the bandwidth described in Exhibit C, for remote access by Supplier and to support Supplier’s application programming interface or other necessary systems;
  - (vii) the applicable AC power, communication, and DC power cables are installed; and
  - (viii) the ESS Equipment is installed per the Installation Requirements;
  - (ix) completion of the “Installation Checklist,” as delineated in Exhibit L-2.
- (c) Supplier’s Acceptance of Installation Completion.
  - (i) Within five Business Days of its receipt of a Notice of Installation Completion, Supplier shall review Buyer’s installation work.

- (ii) Within the foregoing five Business Day period, Supplier shall either accept or reject the Notice of Installation Completion. If Supplier fails to so respond within the five Business Day period, the Installation Acceptance Date shall be deemed to have occurred.
- (iii) Supplier's rejection of the Notice of Installation Completion, if applicable, shall be accompanied by a written description of the basis for such rejection in sufficient detail and scope for Buyer and its Other Contractors to correct any defects or deficiencies.
- (iv) If Supplier rejects the Notice of Installation Completion, Buyer shall correct any defects or deficiencies and provide Supplier with a revised Notice of Installation Completion, and the process shall repeat until Supplier accepts the Notice of Installation Completion.
- (v) The date on which Supplier accepts the Notice of Installation Completion shall be the "Installation Acceptance Date".

#### 14. Commissioning

- (a) Buyer acknowledges and agrees that achievement of Installation Completion by the Installation Acceptance Date is a necessary condition precedent for Supplier's obligation to achieve Commissioning Completion by the Guaranteed Commissioning Completion Date.
- (b) Completion of Commissioning.
  - (i) When Supplier considers the criteria for Commissioning Completion to have been met, Supplier shall provide Buyer a completed "Commissioning Checklist" (in substantially the form of Exhibit I).
  - (ii) Within ten Business Days thereafter, Buyer shall either (A) issue to Supplier the Commissioning Completion Certificate or (B) advise Supplier in writing that Commissioning Completion has not been achieved, including advising Supplier of any omissions for which Supplier is responsible or of any other reason why the requirements of Commissioning Completion have not been met. Upon receipt of any deficiency notice from Buyer, Supplier shall correct such omission, and the foregoing notice procedure shall be repeated until Buyer issues a Commissioning Completion Certificate confirming that the requirements for Commissioning Completion have been met; *provided, however,* that Buyer shall have ten Business Days to review Supplier's corrected or additional items.
  - (iii) If Buyer fails to so respond within the ten Business Day period, Commissioning Completion shall be deemed to have occurred and Buyer shall be deemed to have issued Supplier the Commissioning Completion Certificate as of the date of Supplier's notice issued pursuant to this Section 14(b).

- (iv) For purposes of calculating Commissioning Completion LDs, if applicable, the date on which Commissioning Completion occurs shall be the date on which Supplier submitted the Commissioning Checklist to Buyer if such Commissioning Checklist is accepted by Buyer, a Commissioning Completion Certificate is issued (or deemed issued). Commissioning Completion LDs shall not accrue between the date on which a Commissioning Checklist is submitted and the date on which it is accepted (or deemed accepted) by Buyer. For clarity, Commissioning Completion LDs shall accrue as of the Date Buyer notifies Supplier, pursuant to Section 14(b)(ii), until the date of Supplier's revised Commissioning Checklist that Buyer ultimately accepts (or is deemed to have accepted).
- (c) Delayed Commissioning.
  - (i) After Delivery, of the last-Delivered ESS Equipment, but before Supplier commences Commissioning, if more than 120 days of Buyer-Caused Delay occur, then, in addition to Supplier's rights for relief under Section 16(c), Supplier will be deemed to have achieved Commissioning Completion, *provided, however*, such deemed achievement shall be strictly for the purposes of Commissioning Completion LDs, Buyer's obligation to pay Payment Milestone # 5, and (as applicable) commencement of the Warranty Period pursuant to Exhibit F-2, and in no event will such deemed achievement relieve Supplier, upon cessation of the Buyer-Caused Delay, from its obligation to commence and diligently continue completion of Commissioning.
  - (ii) If Buyer-Caused Delay(s) occurring after Supplier commences Commissioning results in an aggregate delay to Supplier of more than fifteen days beyond the Guaranteed Commissioning Completion Date, Supplier will be deemed to have achieved Commissioning Completion; *provided, however*, such deemed achievement shall be strictly for the purposes of Commissioning LDs and Buyer's obligation to pay the Payment Milestone # 5, and (as applicable) commencement of the Warranty Period pursuant to Exhibit F-2. In no event will such deemed achievement relieve Supplier, upon cessation of the Buyer-Caused Delay(s), from its obligation to commence and diligently continue completion of Commissioning.

## 15. Final Acceptance; Training

- (a) Punchlist.
  - (i) Prior to Commissioning Completion, the Parties shall inspect the ESS Equipment, and on the basis thereof Supplier shall prepare for Buyer's review and approval a list of the outstanding items that remain to be completed (the "Punchlist"). The Punchlist may not include any items not within the Supplier scope as set forth in Exhibit B. Buyer shall review and reasonably approve or disapprove the Punchlist provided by Supplier not

later than five days after receipt, and Supplier shall issue a revised Punchlist to Buyer that takes account of or responds to Buyer's comments not later than five days after Supplier's receipt of such comments. This process shall continue until an approved Punchlist is provided. The Parties shall also agree upon a reasonable schedule for Punchlist completion.

- (ii) Until Supplier completes the Punchlist, Buyer shall hold an amount equal to 150% of the value of the Punchlist items (not to exceed 5% of the Contract Price) (the "Punchlist Holdback Amount").
- (b) Final Acceptance. Supplier shall ensure that tests it is required to perform under this Contract are performed in a manner that ensures the quality of the ESS Equipment. All ESS Equipment shall conform and meet the specifications provided. When Supplier considers that the criteria for Final Acceptance have been met, Supplier shall so notify Buyer in writing. Within seven Business Days thereafter, Buyer shall either (i) deliver to Supplier the Final Acceptance Certificate, or (ii) advise Supplier in writing that Final Acceptance has not been achieved, including advising Supplier of any omissions or Defects for which Supplier is responsible or of any other reason why the requirements of Final Acceptance have not been met. Upon receipt of any deficiency notice from Buyer, Supplier shall correct such deficiency, and the foregoing notice procedure shall be repeated until the requirements for Final Acceptance have been met; *provided, however*, that Buyer shall have seven Business Days to review Supplier's corrected or additional items. If Buyer fails to so respond within the seven Business Day period, Supplier will provide Buyer one additional written notice (e.g., via email) to Buyer Representative informing Buyer that Supplier considers the criteria of Commissioning to have been met. If, within twenty-four hours of receipt of such notice, Buyer fails to respond, Final Acceptance shall be deemed to have occurred and Buyer shall be deemed to have provided Supplier with the Final Acceptance Certificate as of the date of Supplier's notice issued pursuant to this Section 15.
- (c) Training. Supplier shall provide training to Buyer's personnel as described in Exhibit A.

## 16. Change Orders

- (a) Supplier shall not make any change in the Work, Specifications, quantities, methods of shipment, Project Schedule or Delivery Location without prior written consent of Buyer.
- (b) Request for Changes. Buyer may at any time request, in writing by Buyer Representative and Buyer Representative only, changes in the Work, including changes in the Work, Specifications, quantities, methods of shipment, Project Schedule, or Delivery Location of the ESS Equipment.
- (c) Change Orders for Excusable Events. Subject to Supplier's compliance with Section 16(g), Supplier shall be entitled to a Change Order adjusting the Contract

Price and the Project Schedule (including the Guaranteed Dates) upon the occurrence of an Excusable Event. For purposes of this Contract, in each case to the extent that such event actually, demonstrably, and reasonably increases the cost of Supplier's performance of the Work or affects the Work such that Supplier's ability to timely perform is actually and demonstrably delayed, an "Excusable Event" shall, mean and refer to:

- (i) any written instructions referred to in Section 16(b);
  - (ii) a Force Majeure Event;
  - (iii) a Buyer-Caused Delay;
  - (iv) a suspension for convenience by Buyer pursuant to Section 18, or any other suspension or stoppages of the Work or Supplier's other obligations under the Contract instructed by or on behalf of Buyer;
  - (v) a Change in Law;
  - (vi) Utility Delays; or
  - (vii) any other event or circumstance set forth in this Contract that affords Supplier the right to receive a Change Order by its terms.
- (d) Adjustments to the Contract Price and Project Schedule for Excusable Events. The adjustment (if any) of the Contract Price as a result of the occurrence of any of the events under Section 16(c) (except Section 16(c)(i), which is governed by Section 16(f) and Section 16(c)(ii), which is governed by Section 16(h)) is limited to the substantiated cost increase or decrease of performing the Work as a direct result of the occurrence of the Excusable Event. In no instance shall Supplier include the cost associated with the preparation or estimation of a Change Order in a Contract Price adjustment.
- (e) The adjustment (if any) of the Project Schedule as a result of the occurrence of any of the aforementioned events under Section 16(c) shall be determined taking into account the following:
- (i) the adjustment of the Project Schedule shall be equitable but limited to the impact on the Project Schedule as a direct result of the occurrence of the Excusable Event; and
  - (ii) all other relevant factors including any inability of Supplier to mitigate any effects on the Project Schedule after working diligently to mitigate the impact of the Excusable Event and making reasonable efforts to continue to perform its obligations under this Contract.
- (f) Disagreement on Adjustments to Contract Price for Buyer-Directed Changes. If the Parties are unable to agree upon a lump sum price for a Buyer directed change



under Section 16(b), Buyer may in its sole discretion, direct Supplier to proceed with the changed Work on the following basis: direct documented costs actually incurred by Supplier in executing the change plus 12% for overhead and profit. Buyer or its designated representative shall have reasonably sufficient audit rights with respect to the documentation and information pertaining to such change and Supplier shall furnish to Buyer, and/or its designated representatives, such records as may be required to enable Buyer to verify and evaluate direct and indirect costs, expenses, Requests for Payment, payments, or claims based on Supplier's or its Subcontractors' actual costs incurred, or number of man-hours, or man-days claimed in the performance of the change.

- (g) Process for Change Orders on Account of Excusable Events. If at any time Supplier believes it is entitled to a Change Order under this Contract, including as a result of an Excusable Event under Section 16(c), Supplier shall give Buyer written notice of its claim, along with its proposed Change Order in substantially the form of Exhibit P within fifteen days after Supplier becomes aware of the event(s) giving rise to the request for a Change Order, which claim shall include an appropriate statement setting forth the reasons for and basis of the claim, the additional work necessary as a result of the Excusable Event, the probable length of delay resulting from such Excusable Event, and the adjustments to the Contract Price, if any, on account of such Excusable Event; *provided, however*, with respect to Change Orders relating to Force Majeure Events, without limiting the requirements of Section 22, to preserve Supplier's claim for relief, Supplier may delay its issuance of the proposed Change Order until after the impact of the Force Majeure Event on the Work and/or the Project Schedule can be accurately quantified. For the avoidance of doubt, if the impact on the Work, the Contract Price, or the Project Schedule on account of an Excusable Event cannot be fully quantified when Supplier submits its proposed Change Order under this Section 16(g), Supplier has the right to issue additional notices and proposed Change Orders under this Section 16(g) to the extent the impact of the Excusable Event(s) necessitate.
- (i) If Supplier fails to notify Buyer of an Excusable Event within the fifteen-day period, such event or condition shall be deemed not to be an Excusable Event, as the case may be, and Supplier shall not be entitled to a Change Order as a result thereof, until such time as Supplier complies with the requirements of Section 16(g), and then only for the period of time and to the extent Supplier would otherwise have been entitled to a Change Order *less* the number of days by which Buyer's receipt of such notice exceeded fifteen days. By way of example, if Supplier would otherwise have been entitled to five days of time extension for an Excusable Event, but did not give notice until the seventeenth day, then Supplier's extension of the Project Schedule shall be reduced to three days.
- (ii) Buyer shall, within ten Business Days of receiving Supplier's claim and proposed Change Order under Section 16(g), either accept, execute, and deliver such Change Order, or object to such Change Order in writing, setting forth, in good faith, reasons for such objection based upon the

Contract, including objections as to whether an Excusable Event has occurred, the claimed relief set forth in the proposed Change Order, or procedural deficiencies of Supplier's claim. Upon execution of the Change Order, the Work, Project Schedule or Contract Price, as applicable, shall be adjusted in accordance with the terms of such Change Order. If Buyer objects, and such objection would not otherwise be resolved by Section 16(g)(iv), then either Party may refer such matter for resolution in accordance with Section 33. During pendency of such Dispute, Supplier shall continue to perform its obligations under the Contract, but the Parties shall operate as though the Project Schedule and all Guaranteed Dates have been extended in accordance with Supplier's proposed Change Order (provided such schedule relief set forth in the proposed Change Order is not frivolous and is made in good faith). Accordingly, no Liquidated Damages shall become due and payable by Supplier to Buyer, unless the same would otherwise be due based upon the Project Schedule, as extended for Supplier's proposed Change Order and any other Change Orders entered or deemed accepted under this Section 16 at the time Liquidated Damages are assessed. If it is determined upon resolution of the Dispute that Supplier is not entitled to all or a portion of the schedule relief it claimed, then Supplier shall promptly pay Liquidated Damages that are due and owed (if any) along with the Late Payment Rate from the date the Liquidated Damages began accruing, as determined via the Dispute resolution to the date of Supplier's payment, based upon the then-current Project Schedule, as adjusted for any partial schedule relief granted, and based upon the dates on which Supplier achieved the relevant Completion Milestones.

- (iii) If Buyer fails to so respond or request additional information regarding the requested Change Order in accordance with Section 16(g)(ii) within the ten Business Day period, Supplier's requested Change Order shall be deemed accepted as proffered under this Section 16(g), and Buyer shall immediately execute and return the proffered Change Order upon Supplier's request in order to document such acceptance.
- (iv) If Buyer agrees that a Change Order is warranted pursuant to this Section 16(g), but the Parties are unable to agree on the applicable adjustment to the Contract Price with respect to such Change Order, then the Parties shall adjust the Contract Price in the manner as set forth in Section 16(f). Supplier will promptly resubmit a proposed Change Order indicating that the Contract Price will be adjusted in accordance with Section 16(f), and Buyer shall execute and return such Change Order within two (2) Business Days of receipt.
- (h) Change Orders for Force Majeure Events Affecting Supplier. If Supplier seeks relief on account of a Force Majeure Event, Supplier may submit a proposed Change Order in accordance with Section 16(g), and Supplier shall be entitled to an extension of the Project Schedule and Guaranteed Dates. In no event shall Supplier be entitled to a change in the Contract Price or any other additional

compensation as a result of a Force Majeure Event claimed by Supplier. Supplier shall work diligently to mitigate the impacts of any Force Majeure Event.

- (i) Change Orders for Force Majeure Events Affecting Buyer. If Buyer seeks relief on account of a Force Majeure Event, within fifteen days following Buyer's delivery of notice under Section 22(b)(iv) regarding the cessation of such Force Majeure Event, Supplier may submit a proposed Change Order in accordance with Section 16(g), and Supplier shall also be entitled to an extension of the Project Schedule and Guaranteed Dates.

## 17. Warranty

- (a) Supplier Warranty. Supplier's warranty for the ESS Equipment and Work is set forth in Exhibit F-2.
- (b) No Implied Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT, SUPPLIER MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, AND SUPPLIER DISCLAIMS ANY WARRANTY OR GUARANTEE IMPLIED BY LAW, INCLUDING IMPLIED WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF CUSTOM OR USAGE, OR ANY ASPECT OF ENGINEERING OR DESIGN. Supplier makes no representation or warranty with respect to: (i) any forecasts, projections, estimates or budgets delivered or made available to Buyer of future revenues, future results of operations (or any component thereof), future cash flows or future financial conditions (or any component thereof) of the ESS or Project, or (ii) any other information or documents made available to Buyer or its counsel, accountants or advisors with respect to the ESS or Project, except as expressly set forth in this Contract.
- (c) OEM Warranties.
  - (i) Copies. On or before the Final Acceptance Date (as stipulated in the Final Acceptance Certificate), Supplier shall provide Buyer with copies of the OEM Warranties set forth in Exhibit G.
  - (ii) Administration of Warranties. Supplier hereby agrees to administer such OEM Warranties in favor of Buyer during the Warranty Period, unless such warranties have been assigned to Buyer, at Buyer's written request, at an earlier date.
  - (iii) Assignment of OEM Warranties. Provided Supplier has been paid by Buyer for the relevant ESS Equipment, Supplier hereby assigns all OEM Warranties that extend beyond the Warranty Period to Buyer upon expiration of the Warranty Period or earlier termination of this Contract or shall otherwise procure for Buyer the right to proceed directly against the relevant Subcontractor under its OEM Warranty. Upon assignment of OEM Warranties to Buyer, Supplier shall be relieved of further liability with

respect to the ESS Equipment which are the subject of the assigned OEM Warranties.

## 18. Suspension

- (a) Buyer may at any time, by written notice, suspend all or part of the Work to be performed under this Contract for cause or for convenience. Supplier shall suspend performance of the Work specified in Buyer's notice as of the effective date specified therein.
- (b) Upon receipt of a notice to suspend from Buyer, Supplier shall, unless the notice requires otherwise:
  - (i) Immediately (but no sooner than prudent safety measures warrant) discontinue work on the date and to the extent specified in the notice;
  - (ii) Execute no additional Subcontracts with respect to suspended work other than to the extent required in the notice;
  - (iii) Promptly make reasonable efforts to obtain suspension on terms satisfactory to Buyer of all Subcontracts to the extent they relate to performance of suspended work;
  - (iv) Continue to protect and maintain the Work including those portions on which work has been suspended;
  - (v) Take any other reasonable steps to minimize costs associated with such suspension; and
  - (vi) Except in cases of a suspension for cause, provide Buyer with estimates of potential suspension costs.
- (c) Buyer may at any time withdraw the suspension of all or part of the suspended Work by written notice to Supplier, specifying the effective date and scope of work to be resumed. Following receipt of such notice, Supplier shall (i) promptly and with all diligence resume performance of the Work for which the suspension is withdrawn on the effective date of withdrawal specified in Buyer's written notice of withdrawal, and (ii) be entitled to a Change Order under Section 16(c)(iv).
- (d) Supplier may, without prejudice to any other right or remedy under this Contract, suspend performance of its obligations under this Contract where the Buyer has failed to pay an amount due and payable to the Supplier within thirty days after such amount was due and payable and such suspension shall, without limiting any other provision of this Contract, constitute a Buyer-Caused Delay.
- (e) If Buyer suspends the Work in whole or substantial part for one hundred twenty days (consecutively or in the aggregate) under Section 18(a), and, after receiving notice from Supplier demanding such suspension be withdrawn, Buyer fails to

withdraw the suspension of the suspended Work in accordance with Section 18(c) within ten Business Days, Supplier may, upon notice terminate this Contract. Such termination shall be deemed a Buyer's termination for convenience under Section 20. Should Buyer withdraw such suspension and thereafter proceed to suspend the Work for its convenience, in whole or in part, within six (6) months of the withdrawal of such suspension, then Supplier may, upon notice, terminate this Contract, and such termination shall be deemed a Buyer termination for convenience under Section 20.

## 19. Events of Default and Remedies

### (a) Supplier Events of Default; Buyer Remedies.

- (i) Supplier shall be considered in default of its contractual obligations under this Contract:
  - (A) if Supplier performs Work which fails to conform to the requirements of this Contract and fails to commence remedy of the same within ten days after receipt of notice from Buyer; *provided, however,* if such failure is incapable of being remedied within ten days, the Parties shall mutually agree on an extended remedy period, not to exceed one hundred eighty days, and Supplier shall have such additional time to remedy the failed work, provided Supplier diligently commences a remedy during the initial ten-day period and continues thereafter to remedy the failure;
  - (B) on the forty-fifth day after Supplier's liability for Liquidated Damages reaches the Liquidated Damages Cap unless Supplier agrees to pay the amount of such excess Liquidated Damages at the applicable Liquidated Damages rate without regard to the Liquidated Damages Cap;
  - (C) if Supplier fails to make payment of any undisputed amount when due under this Contract, which failure continues for twenty Business Days following receipt of written notice of such non-payment from Buyer;
  - (D) if Supplier makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of Supplier, or if Supplier files a petition seeking to take advantage of any other Applicable Law relating to bankruptcy, insolvency, reorganization, winding up or composition of or readjustment of debts and, in the case of any such proceeding instituted against Supplier (but not by Supplier) such proceeding is not dismissed within sixty days of such filing.
  - (E) if Supplier fails to timely prepare a Recovery Plan when requested by Buyer, or implement actions in such Recovery Plan pursuant to

Section 21, and thereafter fails to remedy the same within ten days after receipt of notice from Buyer; *provided, however*, for the avoidance of doubt, Supplier shall not be in breach or default under this Section if implementation of the Recovery Plan in accordance with its terms does not result in Supplier's recovery of the Project Schedule;

- (F) if any covenant or warranty of Supplier in this Contract shall prove to be false or misleading at the time such covenant or warranty is made, and such false or misleading covenant or warranty continues uncured for thirty days after receipt of written notice from Buyer containing the particulars thereof;
- (G) if Supplier or any Subcontractor becomes a Restricted Party; or
- (H) for any default not otherwise addressed in this Section 19(a)(i) above, if Supplier fails to materially fulfill or comply with any of the other material terms of this Contract, and within thirty days after receipt of written notice from Buyer, fails to commence a remedy of the same, and thereafter fails to diligently pursue the remedy within a timeframe mutually agreed by the Parties.

Each of the foregoing a "Supplier Event of Default."

(ii) Termination by Buyer for Supplier Event of Default.

- (A) Upon the occurrence of any Supplier Event of Default (except under Section 19(a)(i)(G)) Buyer shall notify Supplier in writing of the nature of the failure and of Buyer's intention to terminate this Contract or a specified portion of the Work for default. If Supplier does not commence to cure such failure within seven days from receipt of notification, or fails to provide satisfactory evidence to Buyer that such Supplier Event of Default shall be corrected within a longer timeframe acceptable to Buyer, Buyer may by written notice to Supplier terminate all or part of the Work.
- (B) Upon the occurrence of a Supplier Event of Default under Section 19(a)(i)(G), Buyer shall notify Supplier in writing of the event and the date termination is effective. In the event of termination under this Section 19(a)(ii), Buyer may complete the Work by any method deemed expedient, subject to Section 19(a)(iv), and Supplier's liability to Buyer shall be determined in accordance with Section 19(a)(iv).

(iii) Supplier Obligations on Termination. Upon termination for Supplier Event of Default, Supplier shall at its sole expense:

- (A) Immediately (but no sooner than prudent safety measures warrant) discontinue work on the date and to the extent specified in the notice and execute no additional Subcontracts to the extent that they relate to the performance of the terminated work;
  - (B) Inventory, maintain and turn over to Buyer all ESS Equipment, all Work Product, and all other materials, tools, and property furnished by Supplier or provided by Buyer for performance of the terminated Work;
  - (C) Promptly obtain cancellation on terms satisfactory to Buyer of all Subcontracts existing for performance of the terminated work or assign those agreements and Supplier's rights and claims thereunder, as may be directed by Buyer;
  - (D) Comply with other reasonable requests from Buyer regarding the terminated work;
  - (E) Assign all warranties to Buyer; and
  - (F) Continue to perform in accordance with all of the terms and conditions of this Contract such portion of the Work that is not terminated.
- (iv) Supplier's Liability on Termination. Subject to Section 23 if Buyer terminates this Contract pursuant to Section 19(a)(ii) and provided Buyer uses its commercially reasonable efforts to mitigate its damages, Buyer shall be entitled to, as its sole and exclusive remedy (in addition to termination) for a Supplier Event of Default, the sum of: (A) all direct costs in excess of the remaining unpaid portion of the Contract Price reasonably and necessarily incurred by Buyer to complete (or cure deficiencies in) the Work, as reasonably documented by Buyer; *plus* (B) all other reasonable, direct, documented fees and costs in retaining a substitute supplier; *minus* (C) the portion of the Contract Price not already paid or due to Supplier. Supplier shall not be entitled to any payment for the terminated Work, except for amounts due and not previously paid to Supplier for the ESS Equipment and Work completed in accordance with this Contract prior to such notice of termination for default. Upon termination of this Contract, payment of all amounts due Supplier for Work performed under this Contract may be withheld pending completion of the Work, and may be used to offset liabilities of Supplier under this Contract.
- (v) Impact on License. All licenses and rights granted to Buyer in Section 28 shall remain in effect and shall not terminate following termination of this Contract by Buyer for a Supplier Event of Default.
- (vi) Wrongful Termination by Buyer. If, after termination pursuant to this Section 19(a), it is determined for any reason that Supplier was not in

default, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to Section 20.

(b) Buyer Events of Default; Supplier Remedies.

- (i) Buyer shall be considered in default of its contractual obligations under this Contract if:
- (A) Buyer fails to pay an undisputed amount to Supplier that is properly presented, due, and payable and does not cure the failure to pay within thirty (30) days after written notice is made by Supplier;
  - (B) any representation or warranty of Buyer in this Contract shall prove to be false or misleading at the time such representation or warranty is made, and such false or misleading representation or warranty continues uncured for thirty days after receipt of written notice from Supplier;
  - (C) Buyer makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of Buyer, or if Buyer files a petition seeking to take advantage of any other Applicable Law relating to bankruptcy, insolvency, reorganization, winding up or composition of or readjustment of debts and, in the case of any such proceeding instituted against Buyer (but not by Buyer) such proceeding is not dismissed within sixty days of such filing;
  - (D) Buyer, except as expressly permitted under this Contract, assigns or otherwise transfers this Contract;
  - (E) Buyer becomes a Restricted Party; or
  - (F) except as otherwise addressed in this Section 19(b)(i), Buyer fails to materially fulfill or comply with any of the other terms of this Contract, and within thirty days after receipt of written notice from Supplier, fails to commence to remedy the same, and thereafter fails to diligently pursue the remedy.

Each of the foregoing a “Buyer Event of Default.”

- (ii) Non-Payment Due to Withholding or Offset. Where non-payment by Buyer is related to the exercise of a valid set-off or withholding right, the termination rights in Section 19(b)(i)(A) shall not apply.
- (iii) Supplier Remedies. Upon the occurrence of a Buyer Event of Default, Supplier may, until and unless the condition underlying the Buyer Event of Default is cured and without prejudice to other rights or remedies under this Contract or at law or equity: (A) terminate this Contract; (B) seek specific



performance of Buyer's obligations where monetary damages would be inadequate or as otherwise expressly permitted by this Contract, including seeking an injunction; or (C) suspend performance of the Work until Buyer cures such Buyer Event of Default. In the case of termination of this Contract by Supplier for reasons permitted under Section 19(b)(i), Buyer shall pay the Termination Payment.

**20. Buyer's Termination for Convenience**

- (a) Buyer may, at its option, terminate for convenience any of the Work under this Contract in whole or in part, at any time with three days' written notice to Supplier. Such notice shall specify the extent to which the performance of the Work is terminated and the effective date of such termination. Upon receipt of such notice Supplier shall:
- (i) Immediately discontinue the Work terminated on the date and to the extent specified in the notice and execute no additional Subcontracts for equipment, materials, services, or facilities, other than as may be required for completion of such portion of the Work that is not terminated;
  - (ii) Unless directed otherwise by Buyer, promptly obtain cancellation of all Subcontracts existing for the performance of the terminated Work, or assign those Subcontracts as directed by Buyer, *provided* that Buyer has paid the Termination Payment and thereafter assumes all future obligations of Supplier under such Subcontracts;
  - (iii) Assist Buyer in the maintenance, protection, and disposition of Work in progress, plant, tools, equipment, property, and materials acquired by Supplier or furnished by Buyer under this Contract;
  - (iv) Complete performance of such portion of the Work which is not terminated; and
  - (v) Assign the OEM Warranties to Buyer.
- (b) Upon any such termination under this Section 20, Supplier shall waive any claims for damages including loss of anticipated profits on account thereof, but as the sole right and remedy of Supplier, Buyer shall pay the Termination Payment within thirty days after issuing the notice of termination.
- (c) Payment of the Termination Payment constitutes Buyer's sole and exclusive liability to Supplier and Supplier's sole and exclusive remedy in the event that this Contract shall be terminated as provided in this Section 20. Supplier's acceptance of such Termination Payment constitutes an acknowledgment that Buyer has fully satisfied and discharged all obligations under this Contract.

**21. Recovery Plan**

Unless attributable to an Excusable Event, if the progress of Work is delayed or is foreseen to be delayed for more than fifteen days beyond any Guaranteed Date, Supplier, may on its own initiative, or if requested by Buyer, within five Business Days of such request, prepare a recovery schedule demonstrating how it shall perform Work (“Recovery Plan”). The Recovery Plan shall be prepared with a level of detail showing, where relevant, additional shifts, hiring additional personnel, paying or authorizing overtime, providing additional Supplier equipment, or resequencing activities. Any and all costs associated with preparing a Recovery Plan and executing Work under a Recovery Plan shall be at Supplier’s sole cost and expense.

## 22. Force Majeure

- (a) The Parties are each excused from performance of the affected part of an obligation of this Contract (except payment obligations) while performance is prevented by a Force Majeure Event unless the Force Majeure Event was contributed to by the fault of the Party making such claim or was due to circumstances that could have been avoided or mitigated by the exercise of reasonable diligence.
- (b) A Party seeking relief for a Force Majeure Event shall:
  - (i) If Supplier is the affected Party, advise Buyer, within the time period set forth in Section 16(g), of the occurrence of the event, or if Buyer is the affected Party, advise Supplier within fifteen days after Buyer becomes aware of the occurrence of the Force Majeure Event;
  - (ii) use all reasonable endeavors, without incurring additional cost, to mitigate the impact from the Force Majeure Event;
  - (iii) provide, on a regular basis, plans for resumed performance and revised schedules; and
  - (iv) after cessation of the Force Majeure Event, promptly notify the other Party in writing of the cessation, and promptly resume performance of its obligations under this Contract.

## 23. Limitation of Liability

- (a) SUBJECT TO SECTION 23(b), NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT, AND WITHOUT MODIFICATION OF OTHER LIMITS OF LIABILITY SET FORTH HEREIN (INCLUDING THOSE SET FORTH IN SECTION 10(c)), IN NO EVENT SHALL:
  - (i) SUPPLIER OR ITS AFFILIATES BE LIABLE, ALONE OR IN THE AGGREGATE, TO BUYER FOR ANY LOSSES, LIQUIDATED DAMAGES AND/OR OTHER LIABILITIES ARISING UNDER THIS CONTRACT IN EXCESS OF AN AMOUNT EQUAL TO: (A) PRIOR TO COMMISSIONING COMPLETION, ONE HUNDRED PERCENT

(100%) OF THE CONTRACT PRICE; AND (B) AFTER COMMISSIONING COMPLETION, THE LESSER OF: (1) THE REMAINING LIMIT OF LIABILITY EXISTING UNDER CLAUSE “(A)” AS OF COMMISSIONING COMPLETION, OR (2) TWENTY PERCENT (20%) OF THE CONTRACT PRICE; REGARDLESS OF WHETHER SUCH LIABILITY ARISES OUT OF BREACH OF CONTRACT, GUARANTY, WARRANTY, TORT (INCLUDING NEGLIGENCE) PRODUCT LIABILITY, INDEMNITY, CONTRIBUTION, STRICT LIABILITY OR ANY OTHER LEGAL THEORY. Except for liabilities excluded under Section 23(b), all amounts paid by Supplier to Buyer under this Contract, any Losses, the direct costs of Warranty parts, and other costs incurred by Supplier in connection with implementing any remedies required under this Contract and credits toward the Contract Price associated with liability for Liquidated Damages and/or other liabilities of Supplier arising under this Contract, shall be applied towards the foregoing aggregate liability cap (i.e., shall reduce Supplier’s liability under this Contract on a dollar-for-dollar basis).

- (ii) BUYER OR ITS AFFILIATES BE LIABLE, ALONE OR IN THE AGGREGATE, TO SUPPLIER FOR ANY LOSSES, LIQUIDATED DAMAGES AND/OR OTHER LIABILITIES ARISING UNDER THIS CONTRACT IN EXCESS OF AN AMOUNT EQUAL TO ONE HUNDRED PERCENT (100%) OF THE CONTRACT PRICE, REGARDLESS OF WHETHER SUCH LIABILITY ARISES OUT OF BREACH OF CONTRACT, GUARANTY, WARRANTY, TORT (INCLUDING NEGLIGENCE) PRODUCT LIABILITY, INDEMNITY, CONTRIBUTION, STRICT LIABILITY OR ANY OTHER LEGAL THEORY.
- (b) Neither Party’s liability shall be limited by Section 23(a) for any liabilities arising in connection with obligations in the following areas, and these amounts shall not be counted in assessing whether the limitation of liability has been reached:
- (i) third-party indemnity obligations set forth in this Contract;
  - (ii) obligations relating to title and liens set forth in Section 11;
  - (iii) amounts recovered from any applicable insurance;
  - (iv) violation of Applicable Laws or any illegal or unlawful acts;
  - (v) claims based on willful misconduct or gross negligence; or
  - (vi) any liability that cannot be excluded or limited under Applicable Laws.

**24. Waiver of Consequential Damages**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT, BUT SUBJECT TO THE LAST SENTENCE OF THIS SECTION 24, NEITHER PARTY, NOR SUCH PARTY'S AFFILIATES OR ITS RESPECTIVE MEMBERS, SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES, SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER, RESULTING FROM OR ARISING OUT OF THIS CONTRACT, INCLUDING LOSS OF PROFITS OR REVENUE, LOSS OF TIME, LOSS OF BUSINESS OPPORTUNITY, IDLE OR ADDITIONAL FACILITIES OR RESOURCES (INCLUDING EQUIPMENT AND OPERATING COSTS), LOSS (INCLUDING BY A THIRD PARTY) OF PROPERTY OR PROPERTY RIGHTS, LOSSES BASED ON CLAIMS OF CUSTOMERS OR OTHER LOSSES INCURRED BY A PARTY TO A THIRD PARTY (UNLESS EXPRESSLY SET FORTH IN THIS CONTRACT), COST OF CAPITAL, LOSS OF FINANCING, LOSS OF BONDING CAPACITY, LOSS OF TAX CREDITS, DAMAGE TO GOODWILL OR REPUTATION, DAMAGE TO CREDIT RATING, OR BUSINESS INTERRUPTION, AND REGARDLESS OF WHETHER SUCH LIABILITY ARISES IN CONTRACT, GUARANTY OR WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY, INDEMNITY, CONTRIBUTION OR OTHERWISE. BUYER AND SUPPLIER WAIVE AND RELEASE ALL CLAIMS AGAINST EACH OTHER AND AGAINST THE AFFILIATES OF EACH, AND THEIR RESPECTIVE MEMBERS, SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FOR SUCH DAMAGES. The Parties agree that the following items are excluded from the above waiver and release: (a) damages claimed by third parties, who are not Affiliates of a Party, for which a Party has a duty to indemnify the other Party or such Party's other Indemnified Parties under this Contract; (b) damages caused by gross negligence, willful misconduct, fraud or other unlawful acts; (c) damages arising out of a Party's violation of Section 26; and (d) any Liquidated Damages and PG Payments.

**25. Indemnity**

- (a) Subject to the provisions of Section 19, and to the fullest extent permitted by Applicable Law, each Party (the "Indemnifying Party") shall fully indemnify, and save harmless the other Party (along with its directors, officers, shareholders, partners, agents and employees, and Affiliates, the "Indemnified Parties") from and against, and shall defend the Indemnified Parties against claims, actions, demands or suits for, any and all loss, damage, fines, penalties, expense and liability whatsoever, including court costs, reasonable attorneys' fees, and interest (collectively, "Losses") incurred by any Indemnified Parties in connection with or arising from third party claims involving:
- (i) any claim for physical damage to or physical destruction of any real or personal property (excluding the Work), or death of or bodily injury to any person, to the extent caused by the negligence or willful misconduct of the Indemnifying Party arising out of or in connection with the performance of this Contract;

- (ii) any violation of Applicable Law by the Indemnifying Party or other persons for whom it is responsible;
  - (iii) any claims by a Governmental Authority to the extent claiming Taxes for which the Indemnifying Party is liable;
  - (iv) in the case of Supplier as the Indemnifying Party, violation of Section 31(b) or 42(e); and
  - (v) in the case of Buyer as the Indemnifying Party, the presence or release of Buyer Hazardous Substances (unless such release was caused by the negligence of Supplier or Subcontractors, in which case, Supplier shall indemnify Buyer and its Indemnified Parties for such release), or in the case of Supplier as the Indemnifying Party, the release of Supplier Hazardous Substances (unless such release was caused by the negligence of Buyer or any other Buyer Responsible Party, in which case, Buyer shall indemnify Supplier and its Indemnified Parties for such release).
- (b) The Indemnifying Party may not, without the prior written consent of the Indemnified Party, consent to any judgment or settlement that (i) provides for injunctive or other non-monetary relief affecting the Indemnified Party or (ii) does not provide for an unconditional and full release of the Indemnified Party. If the Indemnifying Party, within a reasonable time after receipt of a request for indemnification, fails to take reasonable steps to defend the Indemnified Party against a claim, the Indemnified Party may undertake the defense of such claim without waiving its rights and remedies under this Contract.
- (c) If any Loss subject to an indemnity obligation under this Section 25 is caused by the joint or concurrent negligence of Supplier and Buyer, the Loss shall be borne by each Party in proportion to its respective degree of fault or negligence.
- (d) If either Party becomes aware of any incident likely to give rise to an indemnity claim under this Section 25, that party shall notify the other Party, and both Parties shall cooperate fully in the investigation of the incident.
- (e) Notwithstanding the fact that any Indemnified Party may have the right to assert claims for indemnification under or in respect of more than one provision of this Contract, no Indemnified Party shall be entitled to recover the amount of any Losses suffered by such person more than once, regardless of whether such Losses may be as a result of a breach of more than one representation or warranty or covenant.

## **26. Confidentiality**

- (a) Definition; Non-Disclosure and Non-Use. “Confidential Information” means the Specifications and any drawings, designs, technical information, technical and performance data, standards, dimensions, equipment test results, computer software or programs (including source codes and object codes), business practices, shop procedures, improvements, know how, inventions, intellectual property, patent

applications, reports, financial information, financial data, commercial information, business strategies, customer lists, or customer contact information, information that is based on, contains or reflects any such Confidential Information, and any other information (whether written, verbal or otherwise and whether or not marked as “confidential,” “proprietary,” or similar language or orally designated) that is disclosed to a Party (the “Receiving Party”) by the other Party (the “Disclosing Party”). Confidential Information shall be treated as confidential by the Receiving Party and shall not be (i) disclosed to any third party without the Disclosing Party’s prior written consent, except as otherwise permitted in Section 26(b) or Section 26(f), nor (ii) used for any purpose other than as required in connection with performing or administering this Contract (or any dispute arising under this Contract) or owning, operating or maintaining the ESS or financing or selling the Project or any equity interest in Buyer. Each Party, as the Receiving Party, shall protect the other Party’s Confidential Information from disclosure and unauthorized use with the same degree of protection that is used by the Receiving Party to protect its own Confidential Information, but in no event less than reasonable care. Confidential Information shall be returned to the Disclosing Party whenever the Disclosing Party so demands. For clarity, this Contract is considered Confidential Information of both Parties.

- (b) Permitted Disclosures. Notwithstanding the foregoing, Receiving Party may disclose Confidential Information, without Disclosing Party’s written consent, to Receiving Party’s employees, directors, officers, representatives, legal counsel, accountants, auditors, insurers, other advisors (but solely with respect to the Project), Financing Parties, Subcontractors (in the case of Supplier as the Receiving Party), and Other Contractors (in the case of Buyer as the Receiving Party), in each case, who (i) reasonably need the Confidential Information for the performance of the Work under this Contract or to advise the Receiving Party on the Project, this Contract, or its business, and (ii) have been both informed of the confidential nature of the Confidential Information and either have a professional duty or contractual obligations to not further disclose such Confidential Information or use such Confidential Information in a manner not otherwise permitted under this Section 26. In the case of highly sensitive Confidential Information identified by Disclosing Party, Disclosing Party reserves the right to require Receiving Party to identify specific individuals intended to access said information that is clearly identified as such by Disclosing Party.
- (c) Survival of Obligations. The obligations of confidentiality and restricted use stipulated herein shall remain in full force and effect for a period of three years after the completion of this Contract or the earlier termination or cancellation of this Contract. Such obligations shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against the Receiving Party, nor by the rejection of this Contract in bankruptcy.
- (d) Liability for Breach by Others. The Receiving Party shall be liable for a breach of this Section 26 by any employee or other person to whom the Receiving Party has disclosed Disclosing Party’s Confidential Information. Supplier shall immediately

notify Buyer of any unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("Data Breach") that comes to Supplier's attention. Such notification shall be made to Buyer no more than seventy-two (72) hours after Supplier learns of the Data Breach. Supplier shall also take the following actions in the event of a Data Breach: (a) designate a single individual employed by Supplier who must be available to Buyer twenty-four (24) hours per day, seven (7) days per week as a primary contact regarding Supplier's obligations under this Contract; (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Supplier may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or governmental authority. Supplier shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

- (e) Exclusions from "Confidential Information". Confidential Information shall not include and the requirements of Section 26(a) shall not apply to any information that the Receiving Party can demonstrate: (i) is in the public domain through no breach of this Contract at the time or receipt thereof or which subsequently becomes part of the public domain by publication or otherwise, except by a wrongful act of such Party or any person to whom such Party disclosed such information; (ii) is already in the lawful possession of the Receiving Party at the time of the disclosure by Disclosing Party and were not acquired under a pledge of secrecy or confidentiality obligation, (iii) was independently developed by the Receiving Party without the use of any Confidential Information; or (iv) is approved for release by written authorization of the Disclosing Party, but only to the extent of and subject to such conditions as may be imposed in such written authorization.
- (f) Compelled or Required Disclosures. Each Party shall be permitted to disclose the Confidential Information to the extent required by Applicable Law, a judicial order, any securities exchange requirement, or control area or independent system operator rule, tariff or agreement; *provided* that the Receiving Party required to disclose such Confidential Information shall give prior notice to the Disclosing Party of such required disclosure and, if so requested by the Disclosing Party, shall cooperate with the Disclosing Party to use reasonable efforts to oppose the requested disclosure as appropriate under the circumstances or to seek, through a protective order or other appropriate mechanism, to maintain the confidentiality of the Confidential Information (the reasonable costs of which shall be reimbursed by the Disclosing Party). If a protective order or a similar order limiting disclosure is not obtained, the compelled Party shall furnish only that portion of the other Party's

Confidential Information that, upon the advice of its legal counsel, it is legally required to disclose. Further, each Party shall be permitted to file this Contract with the Securities and Exchange Commission, *provided* that such Party filing this Contract shall work with the other Party to determine what information (such as pricing and other proprietary business information) will be the subject of a confidential treatment request or “CTR.”

- (g) Ownership of Confidential Information. Each Party shall retain all right and title to, and interest in, its own Confidential Information. Except as expressly provided in this Contract, the Parties’ entry into this Contract is not intended to grant any rights to either Party under any intellectual property right or the Confidential Information of the other Party.
- (h) Equitable Relief. The Parties acknowledge that the covenants in this Section 26 are reasonable and necessary for the protection of the proprietary interests of each other. The Parties further agree that Confidential Information is valuable and unique and that the improper disclosure or use of one Party’s Confidential Information by the other Party in breach of this Contract will result in irreparable injury for which remedies at law may be inadequate. In the event of a breach or threatened breach of the terms of this Section 26, the Disclosing Party shall be entitled to, and the Receiving Party consents to, the granting of an injunction prohibiting any such breach, whether temporary, preliminary or final, without proof of actual damages and without posting of a bond. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of money damages. Each Party agrees to reimburse the other Party (if such other Party is successful on the merits) for all court costs and legal fees, including reasonable attorneys’ fees, incurred in enforcing this Contract or obtaining relief under this Section.

**27. Supplier Protection of Confidential Information and Intellectual Property While Subcontracting**

- (a) Consistent with Section 26(b), When work involving a Party’s Confidential Information is given to a Subcontractor (in the case of Supplier) or any Other Contractor (in the case of Buyer), an agreement incorporating nondisclosure and non-use clauses shall be required by Supplier and such Subcontractor or Buyer and such Other Contractor. The agreements shall include the following points:
  - (i) The entrusted Confidential Information is immediately returned to Supplier and Buyer or disposed of immediately after completion of the requested work;
  - (ii) Supplier-conducted audits to check Subcontractor as to whether stipulated measures are being complied with and Buyer-conducted audits to check Other Contractors as to whether stipulated measures are being complied with; and



- (iii) If a Subcontractor or Other Contractor entrusts the work to another or third party, it obtains permission in advance from Supplier and Buyer and ensures an agreement for nondisclosure of the same type is signed with that third party.

## 28. Use of Supplier's Intellectual Property

### (a) Grant of License.

- (i) Upon Delivery (and Buyer's payment to Supplier of undisputed amounts then-due), Supplier hereby grants to Buyer a worldwide, perpetual, non-exclusive, royalty-free, non-transferable (except as permitted herein) right and limited license ("License") to use Supplier's intellectual property in the Licensed Technology as necessary to install and Commission the ESS at the Project Site and solely in accordance with the terms of this Contract.
- (ii) Upon Commissioning Completion (and Buyer's payment to Supplier of undisputed amounts then due), Supplier hereby grants to Buyer a worldwide, perpetual, non-exclusive, royalty free, non-transferable (except as permitted herein) right and limited license to use Supplier's intellectual property in the Licensed Technology as necessary to finance, own, operate, maintain and repair the ESS at the Project Site and solely in accordance with the terms of this Contract.

The Licensed Technology is licensed solely for use in the form delivered to Buyer, and may not be separated from any part of the ESS Equipment with which it may be integrated. Buyer may not modify, adapt, translate, display or distribute the Licensed Technology, or use the Licensed Technology to create a derivative work or sell, lease, loan, publish, disclose, sublicense, grant have made rights, rent assign, transfer, deploy or otherwise make available the Licensed Technology, in whole or in part, to any third party except as expressly permitted in this Contract. Buyer may disclose Licensed Technology, in whole or in part, as permitted in Section 26. The Licensed Technology is the "Confidential Information" of Supplier.

- (b) No Copies. Except as otherwise permitted by this Contract, including Section 26, or required in the ordinary course of business for purposes of the financing, ownership, repair, maintenance and operation of the Project, Buyer shall not make any copies of Manuals, use instructions and other documentation provided by Supplier to Buyer, all of which shall be deemed the Confidential Information of Supplier. For the avoidance of doubt, and subject to Section 26, Buyer may make copies for internal purposes.
- (c) Proprietary Notices. Buyer shall not, and shall cause all Buyer Responsible Parties to not, remove or alter any proprietary notices or legends that appear on or with the Licensed Technology.
- (d) No Reverse Engineering. The Licensed Technology includes trade secrets of Supplier or its Affiliates. In order to protect the Licensed Technology, Buyer shall

not modify, translate, decompile, reverse engineer, decrypt, extract or disassemble the Licensed Technology or otherwise reduce or attempt to reduce any software or firmware in the Licensed Technology to source code form. Notwithstanding the foregoing, solely in connection with the operation and maintenance of the Project, but subject in all respects to Section 26, Buyer shall be entitled to disassemble the ESS Equipment on and after the expiration or earlier termination of the Contract, to the extent necessary to troubleshoot problems, analyze Defects and faults, perform root cause analysis, perform repairs, replace parts and otherwise maintain and operate the ESS Equipment. Buyer shall ensure, both during and (if Buyer still has possession of the Licensed Technology) after the performance of this Contract, that (i) persons or entities who are not bound by a confidentiality agreement consistent with this Contract shall not have access to the Licensed Technology and (ii) persons or entities who are so bound are put on written notice that the Licensed Technology contains trade secrets, owned by and proprietary to Supplier or its Affiliates.

(e) Improvements to Licensed Technology.

- (i) By Supplier. Any improvement hereafter made by or for Supplier or any of its Affiliates in the Licensed Technology that is approved and adopted by Supplier for use by Buyer under this Contract shall be included in the “Licensed Technology” for purposes of the License. The Parties agree that due to the background and expertise of Supplier and its Affiliates in the Licensed Technology and its vested interest in maintaining the quality of its products, Supplier may decide in its sole discretion which improvements it shall approve and adopt for purposes of Buyer’s use under the License.
- (ii) By Buyer. Buyer may not modify the Licensed Technology. Buyer may suggest modifications in the Licensed Technology to Supplier. In order to maintain product quality, any modification in the Licensed Technology suggested by Buyer must first be approved by Supplier in its sole discretion in writing before it is used by Buyer hereunder. If Buyer develops any modification or improvement in the Licensed Technology (whether permitted or not) it shall promptly disclose it to Supplier in writing, and Buyer shall grant, and does hereby grant, all right, title and interest in and to such improvements in the Licensed Technology to Supplier. If and only if, and to the extent, Applicable Law mandates that Buyer own any modifications to or improvements in the Licensed Technology notwithstanding the terms of this Contract, Buyer shall grant and does hereby grant to Supplier and its Affiliates a non-exclusive, perpetual, irrevocable, worldwide, fully-paid, royalty-free, transferrable license to use and sublicense others to use these modifications or improvements for all purposes.

(f) Ownership.

- (i) By Supplier. As between the Parties, Supplier or its Affiliates shall own the Licensed Technology, including any modifications, discoveries, derivative works and improvements related to it, whether developed by Supplier, by Buyer, or by the Parties jointly, all intellectual property therein and any intellectual property developed during, or arising out of, the performance of Supplier's obligations under this Contract. Buyer acquires only the right to use the Licensed Technology and improvements under the License, strictly in compliance with the terms of this Contract, and does not acquire any ownership rights or title to it.
  - (ii) By Buyer. As between the Parties, Buyer or its Affiliates shall own any intellectual property developed or acquired by Buyer prior to or independently of this Contract and the relationship with Supplier created by this Contract, excluding, for the avoidance of doubt, any of the Licensed Technology incorporated therein. Buyer hereby grants to Supplier and its Affiliates a non-exclusive, perpetual, worldwide, royalty-free license to use and sublicense others to use any intellectual property owned by Buyer, as described above, that is used or incorporated in the Licensed Technology or the ESS Equipment or Work, through the last day of any obligations of Supplier under this Contract, for the sole purpose of Supplier's or its Affiliates' energy storage business and Supplier's performance under this Contract.
- (g) Data.
  - (i) Supplier retains all rights to, and ownership of, any Health-Monitoring Data. Upon request of Buyer, and in accordance with Exhibit J-2, Supplier shall provide a summary of Health-Monitoring Data (as described in Exhibit F-1) to the extent required solely for Buyer's validation of ESS use curtailment, Warranty violations, and Performance Guarantee violations. Buyer's use of this Health-Monitoring Data is subject to Section 26.
  - (ii) Buyer retains all rights to, and ownership of, all Operational Data, and hereby grants to Supplier a non-exclusive, royalty-free, non-transferrable license and right to access and utilize the Operational Data, *provided*, Supplier may not use such Operational Data for any purpose other than as required to perform its Work under this Contract, without the express written consent of Buyer. Supplier shall not use Operational Data for purposes including but not limited to tracking or reverse-engineering Buyer's energy market bidding strategies, and such use is subject to Section 26.
- (h) Duration and Transfers. The Licensed Technology is inseparable from the ESS Equipment furnished under this Contract. Accordingly, the License (i) shall continue for so long as Buyer or any successor retains ownership of the ESS Equipment and continues operating the same, (ii) shall terminate automatically if and when the ESS Equipment or portion thereof is permanently removed from

service, and (iii) shall transfer to any of Buyer's successors and assigns permitted under Section 35. If Buyer sells or transfers the Project, the ESS Equipment, or any portion thereof to a third party (other than to a Financing Party or as permitted under Section 35), such License will terminate as to Buyer, and Buyer must, as a condition thereof, notify Supplier in writing and assign to the transferee thereof the License, and procure from the transferee an assumption of the License, on substantially the same terms set forth in this Section 28 and in a form subject to Supplier's prior reasonable approval, to the extent the License is applicable to the assets being sold or transferred. The License shall not be assigned, transferred or sublicensed except as expressly permitted in this Section 28(h). Buyer shall be responsible for, and indemnify, defend and hold harmless Supplier and its Indemnified Parties from and against any damage, injury or loss resulting from the failure of Buyer to comply with the terms of this Section 28. Supplier may terminate the License, except with respect to any Licensed Technology that is integrated in any ESS Equipment that has been Delivered to Buyer and title to which has transferred to Buyer hereunder, on written notice to Buyer if Buyer fails to cure any material breach of an obligation in this Section 28 within thirty days after Supplier's written notice specifying the breach. Notwithstanding the foregoing, Supplier may terminate the License in respect of Supplier's software immediately upon written notice from Supplier to Buyer if Buyer breaches any provision of Section 28(b) or Section 28(d), *provided* that such breach relates to the software and Buyer fails to remedy such breach within five days after written notice from Supplier requesting a remedy. Upon a termination of the License as to the software under this Section 28(h), the License will continue in all other respects in accordance with its terms. Upon termination of the License in respect of the software as provided above, Buyer shall immediately discontinue use of the software and, at Supplier's option, return to Supplier or erase all complete or partial copies of the software from all forms of storage within ten days of the termination. Buyer shall provide a written certificate to Supplier verifying that the software and all complete or partial copies thereof have been destroyed, erased or returned to Supplier, and shall permit Supplier and its representatives the opportunity to verify such compliance.

- (i) No Transfer of Intellectual Property; Reservation of Rights. Except as expressly set forth in this Contract, no right or license to any of Supplier's intellectual property rights is granted by Supplier to Buyer under this Contract. Supplier reserves all rights in the Licensed Technology not expressly granted to Buyer in this Contract.
- (j) [RESERVED]

## **29. Intellectual Property Indemnity**

- (a) Indemnification. Supplier hereby indemnifies and shall defend and hold harmless Buyer from and against any and all Losses arising from any claim, whether rightful or otherwise, that any concept, product, design, equipment, material, process, copyrighted material or confidential information, or any part thereof, furnished by

Supplier under this Contract constitutes an infringement of any patent or copyrighted material or a theft of trade secrets. If use of any part of such concept, product, design, equipment, material, process, copyrighted material or confidential information is limited or prohibited, Supplier shall, at its sole expense, procure the necessary licenses to use the infringing or a modified but non-infringing concept, product, design, equipment, material, process, copyrighted material or confidential information or, with Buyer's prior written approval, replace it with substantially equal but non infringing concepts, products, designs, equipment, materials, processes, copyrighted material or confidential information; *provided, however:*

- (i) any such substituted or modified concepts, products, designs, equipment, material, processes, copyrighted material or confidential information shall meet all the requirements and be subject to all the provisions of this Contract; and
  - (ii) such replacement or modification shall not modify or relieve the indemnifying Party of its obligations under this Contract.
- (b) Buyer-Furnished Information. For any Buyer-furnished concept, product, design, equipment, material, process, copyrighted material or Confidential Information, Buyer shall indemnify Supplier against Losses arising from third-party claims that such Buyer-furnished material constitutes an infringement of any patent or copyrighted material or a theft of trade secrets; *provided, however,* Supplier has treated such Buyer-furnished material as Confidential Information.
- (c) Exceptions to Indemnification Obligations. Supplier's indemnification obligations under Section 29(a) shall not apply to the extent arising as a result of:
- (i) alteration of the ESS Equipment by Buyer or any Buyer Responsible Party (except for alterations at the express written direction or recommendation of Supplier);
  - (ii) the combination or use of the ESS Equipment with other products not provided by Supplier or at Supplier's express written direction or recommendation when the combination is part of any allegedly infringing process, except relief shall not apply to a combination of the ESS Equipment with Buyer-Furnished Equipment;
  - (iii) failure of Buyer to implement any update provided by Supplier that would have prevented the infringement and resulting Loss; or
  - (iv) the ESS Equipment (or portion thereof) was manufactured by Supplier (or Subcontractors) to custom specifications provided by Buyer, and such custom specifications caused the ESS Equipment to be infringing.
- (d) Entire Liability. THE FOREGOING PROVISIONS OF THIS SECTION 29 STATE THE ENTIRE LIABILITY AND OBLIGATION OF SUPPLIER AND ITS AFFILIATES AND THE EXCLUSIVE REMEDY OF BUYER, WITH

RESPECT TO ANY ALLEGED INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY BY THE ESS EQUIPMENT OR THE LICENSED TECHNOLOGY OR ANY PART THEREOF, EXCEPT TO THE EXTENT THAT SUCH LIABILITY CANNOT BE EXCLUDED IN ACCORDANCE WITH MANDATORY LEGAL REQUIREMENTS.

**30. Compliance**

- (a) Supplier represents that it is familiar with and shall comply with all Applicable Laws in effect at the time the Work under this Contract is performed; *provided, however,* Supplier shall be entitled to a Change Order for the costs of complying with, and Project Schedule delays resulting from, Applicable laws requiring the payment of prevailing wages.
- (b) Supplier shall notify Buyer in writing of any material breaches of Applicable Laws related to the performance of this Contract and shall remedy (or cause its Subcontractors to remedy) any non-compliance promptly.
- (c) Supplier further warrants that all Work shall be in compliance with all Applicable Laws. Supplier shall execute and deliver to Buyer any documents as may be required to effect or to evidence such compliance. If any ESS Equipment is, or is likely to be, subject to any restriction arising from such Applicable Laws, Supplier shall promptly notify Buyer in writing and Supplier shall take any and all necessary actions to ensure that the ESS Equipment conforms to all Applicable Laws; *provided, however,* such actions may be eligible for relief under Section 16(c)(v).

**31. Export Compliance with United States Export Controls**

- (a) Export Restrictions. Buyer acknowledges that the ESS Equipment and the Licensed Technology may be subject to the export regulations of the United States of America regarding export and re-export of certain commodities, software, and technology from the United States, including, the *Export Administration Regulations*, 15 C.F.R. Parts 730-774, maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC"), 31 C.F.R. Parts 500 et seq., and the *International Traffic in Arms Regulations*, 22 C.F.R. Parts 120-130, maintained by the Department of State. Buyer shall not, directly or indirectly, sell, export, re-export, transfer, divert or otherwise dispose of the ESS Equipment or the Licensed Technology in violation of U.S. export control laws and regulations (including to any country or Restricted Party or for any use in violation of U.S. export control laws), nor shall Buyer export or re-export, either directly or indirectly, any information or data received from Supplier in connection with the performance under this Contract to any country or Restricted Party or for any use in contravention of said export control laws and regulations. Buyer shall indemnify Supplier to the fullest extent permitted by Applicable Law from and against any Losses that may arise as a result of Buyer's breach of this Section 31(a).

- (b) **Restricted Parties.** Each Party represents and certifies that it is not (and that its Subcontractors or Other Contractors, as the case may be, are not) a “**Restricted Party**”, which for the purposes of this Contract shall be deemed to include any person or entity that is:
- (i) named on applicable government lists of export or sanctions-related prohibited or restricted parties, including OFAC’s Specially Designated Nationals and Blocked Persons List or Sectoral Sanctions Identifications List; the Commerce Department’s Denied Persons List, Entity List or Unverified List; the State Department’s Debarred Parties List; or owned or controlled by any such person;
  - (ii) subject to nonproliferation sanctions under the laws of the United States;
  - (iii) designated as an institution of primary money laundering concern;
  - (iv) engaged in activities involving nuclear weapons materials, missile or rocket technologies, or the proliferation of chemical or biological weapons; or
  - (v) part of or affiliated with any non-U.S. military or paramilitary organization.
- (c) Each Party shall promptly notify the other Party if it or any of its Subcontractors becomes a Restricted Party.

### **32. Health and Safety**

Supplier shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (a) personnel of Supplier and Subcontractors performing Work; and (b) ESS Equipment during performance of the Work. Supplier shall also comply with the Buyer Requirements outlined in Exhibit U regarding health and safety.

### **33. Dispute Resolution**

- (a) **Generally.** Except for third-party claims and cross-claims filed by parties not governed by these dispute resolution provisions in which a Party must implead or otherwise join another Party, any claim, controversy, dispute or matter in question between the Parties arising out of or related to this Contract (a “**Dispute**”) shall be subject to and resolved solely pursuant to the dispute resolution process set forth in this Section 33 following compliance with any other requirements of this Contract concerning any such Dispute. The Parties agree that these Dispute resolution procedures are binding upon them and represent the exclusive procedures to resolve any Disputes. Except as set forth in Section 33(d), neither Party shall pursue court action unless and until permitted by these procedures, and any Party breaching this covenant shall be responsible for all costs, fees and expenses (including reasonable attorneys’ fees) incurred by the other Party in defending and disposing of such court action. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while these procedures are pending.

- (b) Notice of Dispute; Meeting of Representatives. Any Dispute shall first be referred to Buyer's Representative and Supplier's Representative for negotiation and resolution by delivery of a notice by one Party to the other Party requesting such negotiation and resolution of the Dispute, which notice shall specify in reasonable detail the nature of the Dispute and the resolution sought by the Party giving the notice ("Party Representative Negotiations"). If the Parties do not reach a resolution of the Dispute within ten days following the receipt of such notice for Party Representative Negotiations by the other Party, or longer period of time agreed to by the Party Representatives, either Party may request by a notice to the other Party a meeting between senior representatives of each Party with decision making authority to attempt in good faith to negotiate a resolution of the Dispute ("Senior Representative Negotiations"), which meeting shall take place within ten Business Days of receipt of such notice requesting the Senior Representative Negotiations, or longer period of time agreed to by the Party Representatives.
- (c) Binding, Confidential Arbitration.
- (i) Generally. The arbitration procedures hereunder are self-executing, and it shall not be necessary to petition a court to compel arbitration. Any Dispute that has not been resolved through the Senior Representative Negotiations shall be settled by binding, confidential arbitration administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"); *however*, in the event of any conflict between this Section 33 and the AAA Rules, the procedures in this Section 33 shall control. The arbitration shall be conducted by three independent and impartial arbitrators, none of whom shall be current or previous officers, directors or employees of either Party or their respective Affiliates, or have any financial, legal, or other conflicts of interest with respect to the Parties. The Party who submits the Dispute to arbitration shall select and identify the first arbitrator in its notice of arbitration. The other Party shall identify the second arbitrator in a notice to be given not more than twenty-five days after it receives the notice of arbitration. The first two such arbitrators shall both be persons who are knowledgeable about the subject matter of the Dispute, shall have demonstrated experience in the electric utility industry, shall be attorneys with at least ten years of experience in the practice of law, and shall be licensed to practice law in the State of New Mexico; *however*, the Parties may waive any or all of the foregoing requirements by written agreement. Within twenty-five days of the second arbitrator's selection, the two arbitrators shall select a third arbitrator, who shall serve as chairperson of the arbitrators' panel. If the two selected arbitrators cannot agree on a third arbitrator within twenty-five days of the second arbitrator's selection, the third arbitrator shall be appointed by the AAA as provided in the AAA Rules. In that regard, the Parties hereby waive the right to nominate the third arbitrator and hereby accept the appointments by the AAA, as it deems best.



- (ii) Authority of Arbitral Tribunal. The arbitral tribunal shall determine all questions of fact and law relating to any Dispute submitted to arbitration, including whether or not any Dispute is ripe for arbitration or otherwise subject to arbitration. The arbitral tribunal shall have no authority or power to enter an award which is in conflict with any of the provisions of this Contract. The decision or award must be in writing and must contain findings of fact on which it is based. The decision and award of the arbitrator or arbitral panel shall be final and binding on the Parties, may be challenged only on the ground set forth on the Federal Arbitration Act, 9 U.S.C. §1 *et seq.*, and judgment on the award may be entered and enforced by any court having jurisdiction over the Parties or any of their assets.
- (iii) Joinder. If the Dispute involves substantially the same facts and circumstances and/or same questions of facts or law as exist within a dispute between Buyer and an Other Contractor, then the Parties shall not object to joining the Other Contractor into the arbitration for concurrent resolution of such other dispute or having the Dispute consolidated into an existing arbitration proceeding with the Other Contractor; *provided, however*, the parties joined must agree to resolution of the common dispute using the procedures set forth in this Section 33(c), unless Supplier and Buyer agree in writing to use different dispute resolution procedures.
- (iv) Costs; Attorneys' Fees. The expense of arbitration shall be shared equally by the Parties, but each Party shall be responsible for the fees of its own legal counsel, experts, and any witnesses.
- (v) Seat and Language. The seat of the arbitration shall be in Albuquerque, New Mexico. The language of the arbitration shall be English.
- (d) Confidentiality of Disputes. Any proceedings and negotiations between the Parties relating to any Dispute, offers of settlement, or other outcome thereof, and any information, documentation or materials produced for the purposes of or used in negotiations or resolution of any Dispute shall be confidential and shall not be disclosed to any other person without the other Party's prior written consent; *however*, disclosure of the foregoing may be made:
  - (i) in order to enforce the obligation to first comply with the dispute resolution procedures;
  - (ii) as necessary to enforce an arbitration award;
  - (iii) to such disclosing Party's auditors, legal advisers, consultants, insurers, employees, officers, directors, and Affiliates of that Party who have a legitimate need to know such information and are subject to the confidentiality provisions of this Contract, a separate agreement containing substantially similar confidentiality provisions, or another professional obligation of confidentiality; or

- (iv) where that Party is under a legal or regulatory obligation to make such disclosure, subject to the same requirements as set forth in Section 26(f) relating to compelled disclosures of Confidential Information. The arbitrator shall be bound by the same confidentiality requirements.
- (e) Equitable Remedies.
  - (i) Notwithstanding anything to the contrary in this Section 33, the Parties expressly reserve the right to, and nothing shall preclude a Party at any time from seeking or commencing any judicial proceeding for injunctive or equitable relief from a court of competent jurisdiction if in such Party's sole judgement such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action, the Parties shall continue to participate in good faith in the procedures specified in this Section 33. The Parties grant the arbitral tribunal the right to make final determination of the Parties' rights, including whether to make permanent or dissolve any court order for injunctive or equitable relief.
  - (ii) If a Party commences an action seeking equitable remedies as allowed by this Section 33(e), the Parties agree that the action may be brought in any state or federal court located in the state of New Mexico, and each Party unconditionally: (A) consents to nonexclusive personal jurisdiction in the state of New Mexico; (B) waives any objection as to jurisdiction or venue in the state of New Mexico, including on the basis of inconvenient forum; (C) agrees not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts; and (D) irrevocably agrees to be bound by any judgment resulting from such an action.
- (f) Obligations Continue. Notwithstanding the existence of any Dispute, the Parties will continue to perform their respective obligations under the Contract, unless the Parties otherwise mutually agree in writing.

#### **34. Governing Law**

Unless otherwise agreed, this Contract shall be governed by and construed in accordance with the laws of the state of New Mexico, without regard to principles of conflicts of laws (except N.M. Stat. Ann. Section 55-1-301) that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New Mexico. IN ACCORDANCE WITH SECTION 6 OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS ("UN CONVENTION"), THE PARTIES AGREE THAT THE UN CONVENTION SHALL NOT APPLY TO THIS CONTRACT.

#### **35. Assignment**

- (a) Restriction on Assignment. Subject to Sections 35(b) and 35(c), neither Party shall assign or in any other manner transfer any of its rights or obligations under this Contract without the prior written consent of the other Party which consent shall

not be unreasonably withheld. No such purported assignment or transfer without such consent, shall be valid or effective. This Contract, and any rights or obligations hereunder, may only be assigned in whole, and not in part. Nothing in this Section 35(a) shall prohibit a Party from delegating or subcontracting all or any portion of its obligations under this Contract to a Subcontractor (in the case of a delegation by Supplier) or Other Contractor (in the case of a delegation by Buyer) in accordance with this Contract, *provided* that no such delegating or subcontracting shall relieve the delegating Party of any obligation under this Contract.

- (b) Permitted Assignments by Buyer. Notwithstanding Section 35(a), Buyer may, without Supplier's consent but upon ten days' prior written notice to Supplier, assign this Contract to:
- (i) any Affiliate for the purpose of developing, financing or owning the Project,
  - (ii) a purchaser of all or substantially all of Buyer's assets or Buyer's successor in interest as part of a corporate reorganization, consolidation, take-over, merger, statutory share exchange or other business combination; *provided, however,* such person(s) are not a competitor of Supplier (or its Affiliates) in the manufacture and/or design of energy storage and related systems and such person(s) are not then-engaged in litigation or arbitration proceeding with Supplier, or
  - (iii) its Financing Parties by way of collateral assignment to secure financing of the Project.

Any assignment of this Contract by Buyer pursuant to this Section 35(b) (other than pursuant to clause "(iii)" above) shall release Buyer from its liabilities under this Contract, *however* such assignment shall not be valid (A) unless the assignee has equal or greater ability than Buyer to fulfill Buyer's obligations (including its financial obligations) under this Contract and (B) until the assignee delivers a written assumption of Buyer's rights and obligations under this Contract to Supplier. A permitted assignee of Buyer under this Section 35(b) (other than a collateral assignee, unless such collateral assignee assumes this Contract in writing) shall be bound by the obligations of this Contract.

- (c) Permitted Assignments by Supplier. Notwithstanding Section 35(a), Supplier may, without Buyer's consent but upon written notice, assign this Contract to:
- (i) any Affiliate, or
  - (ii) by way of collateral assignment, any Financing Parties.

Assignment of this Contract pursuant to Section 35(c)(i) shall release Supplier from its liabilities under this Contract, *however* such assignment shall not be valid (A) unless the assignee has equal or greater ability than Supplier to fulfill Supplier's obligations (including its financial obligations) under this Contract and (B) until the

assignee delivers a written assumption of Supplier's rights and obligations under this Contract to Buyer. A permitted assignee of Supplier under this Section 35(c) (other than a collateral assignee, unless such collateral assignee assumes this Contract in writing) shall be bound by the obligations of this Contract.

**36. Insurance**

During the entire term of this Contract, including the Warranty Period, the Parties shall maintain (or cause to be maintained) the insurance coverages set forth in Exhibit H.

**37. Independent Contractor**

Nothing in this Contract shall be deemed to constitute Supplier, nor any Subcontractors, nor their respective employees or agents to be the agent, representative or employee of Buyer. Supplier shall at all times be an independent contractor and shall have sole responsibility for and control over the details and means for performing the Work. Supplier covenants and agrees that in the performance of the Work, neither Supplier nor its Subcontractors shall perform any act or make any representation to any person to the effect that Supplier, or any of its agents, representatives or Subcontractors, or any of their respective employees, agents or representatives is an employee, agent, or representative of Buyer.

**38. Subcontracting**

- (a) Supplier guarantees that work by any of its Subcontractors shall conform with the terms of this Contract.
- (b) Notwithstanding the subcontracting of any portion of the Work by Supplier, Supplier shall remain primarily and fully responsible for the complete, proper and safe performance of the Work in strict conformity with the requirements of this Contract. Supplier shall be liable for any and all acts and omissions of its Subcontractors and their respective employees. Nothing contained in this Contract may be construed as imposing any obligation or liability on the part of Buyer toward the Subcontractors.

**39. Record Keeping and Audit**

Supplier shall maintain complete and accurate records and accounts in connection with the performance of this Contract and all related transactions as is consistent with Supplier's internal retention policies, unless a longer period is otherwise specified by Applicable Law. Supplier shall maintain its records and accounts in accordance with U.S. Generally Accepted Accounting Principles (U.S. GAAP) or with International Accounting Standards Committee (IASC) standards consistently applied, as applicable. Supplier's obligation to maintain complete and accurate records under this Section shall include, but is not limited to, records relating to compliance with Applicable Laws relating to (subject to Section 7(c)) employee certifications and qualifications, drug and alcohol use, and, if applicable, United States Department of Transportation requirements. Buyer, or its representatives shall have the right to examine and copy, at Buyer's expense, at all reasonable times (but no more

frequently than once per calendar quarter) and with advance notification, such records and accounts for the purposes of confirming compliance with Contract provisions, verifying payments or requests for payment when costs are the basis of such payment and evaluating the reasonableness of proposed Contract Price adjustments and claims. Except as set forth in this Contract, Buyer and its representatives shall have no right to audit, investigate, analyze, copy or otherwise review documents related to the value of Subcontracts, cost of the ESS Equipment, or Supplier's build-up or components of any hourly rates charged where costs are the basis of payment.

#### 40. **Publicity**

(a) **Trademarks.**

- (i) Except as set forth herein, neither Party shall issue any news release or permit any publicity or advertisement, or otherwise use the other Party's trade name, logo, trademark, trade device, service mark or symbol owned by such Party (the foregoing, "Trademarks").
- (ii) Buyer acknowledges and agrees that certain of the ESS Equipment is branded with Supplier's Trademarks, which Buyer will not obscure, remove, or otherwise modify.

- (b) Within approximately thirty days of the Effective Date, the Parties will issue a press release related to the Project (the "Press Release"). Supplier will draft the Press Release and provide to Buyer for review and comment. The Press Release shall not be issued without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed. In the Press Release, Supplier may use Buyer's Trademark. During performance of the Work, Supplier may, through any media, use Buyer's Trademarks in promotional materials, case studies or lists (the "Publicity"); *provided*, that Supplier shall include protective legends necessary to protect Buyer's rights in and to its Trademarks. Supplier will draft the Publicity and provide it to Buyer for its written approval, *provided*, that if Buyer does not disapprove of such Publicity in writing within ten days of its delivery by Supplier, Buyer will be deemed to have approved of Publicity.

#### 41. **No Waiver**

- (a) Neither Party's failure to enforce any provisions of this Contract shall in any way be construed as a waiver of such provisions nor in any way affect the rights of that Party thereafter to enforce any such provisions. No waiver by a Party of any default of the other Party hereunder shall constitute a waiver of any subsequent default, whether or not the subsequent default is of a similar or different nature. Any waiver by a Party under this Contract must be in writing and signed by the Party's representative to be effective.
- (b) None of the following shall operate as, or be deemed to be, a waiver or release of a Party's obligations under this Contract:

- (i) Failure by a Party to insist upon strict performance of any terms or conditions of this Contract;
- (ii) Failure or delay to exercise any rights or remedies provided herein or by Applicable Law;
- (iii) Failure to properly notify a Party in the event of breach of any obligation;
- (iv) With respect to Supplier's obligations, the acceptance of or payment for any portion of the Work;
- (v) With respect to Supplier's obligations, the review or failure to review any Supplier submissions;
- (vi) With respect to Supplier's obligations, any inspection or test by Buyer or the failure to inspect or test any aspect of the Work; and
- (vii) The termination either in whole or in part of this Contract.

#### **42. Miscellaneous**

- (a) Survival. Notwithstanding the completion of the Work, or the earlier termination of this Contract, the Parties shall continue to be bound by the provisions of this Contract which by their terms survive such completion or termination, including the provisions of Section 17(c), Assignment of OEM Warranties (in the event of termination); Section 17, Warranty (shall survive completion of the Work but not earlier termination of the Contract); Section 19, Events of Default and Remedies; Section 20, Buyer's Termination for Convenience; Section 23, Limitation of Liability; Section 24, Waiver of Consequential Damages, Section 25, Indemnity; Section 26, Confidentiality; Section 28, Use of Supplier's Intellectual Property; Section 30, Compliance with Applicable Law; Section 31, Export Compliance with United States Export Controls; Section 33, Dispute Resolution; Section 34, Governing Law; Section 40, Publicity; Section 41, No Waiver; and this Section 42, Miscellaneous.
- (b) Entire Agreement. This Contract shall constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes any other agreements or statements pertaining to the same subject matter. The Parties shall not be bound by any statement, representation, promise, inducement, or understanding of any kind not set forth in this Contract. No change, amendment, or modification of any of the provisions of this Contract or waiver of any of the provisions shall be effective unless in writing and signed by Buyer Representative. No acknowledgment form or other form of Supplier containing terms and conditions submitted by Supplier shall have the effect of modifying the terms and conditions hereof.
- (c) Headings. Titles and headings are for convenience of reference only. They shall not be taken into consideration in interpreting this Contract.

- (d) Language. The language to be used in all documents comprising or relating to this Contract and in all other communications relating to this Contract shall be English, unless otherwise required in writing by Buyer.
- (e) IRCA Compliance: Supplier agrees to comply with the Immigration and Reform Control Act of 1986 (IRCA) and all other federal and state laws governing identity and employment authorization verification. Supplier agrees to require immigration compliance in all Major Subcontracts. Supplier agrees to provide Buyer with a copy of their Edit Company Profile page in E-Verify, which can be printed directly from E-Verify. No performance under this Contract may take place until a copy of the Edit Company Profile page is provided to Buyer. Failure to submit this document within thirty (30) days of the Effective Date shall render this Contract void.
- (f) RESERVED
- (g) Reservation of Rights. The Parties retain their rights and remedies under Applicable Laws, subject to any provisions in this Contract that provide otherwise.
- (h) Counterparts. This Contract may be signed in any number of counterparts, including via electronic signatures, all of which constitute a single instrument. Delivery hereof may be performed by electronic transmission of scanned signature pages.
- (i) Rules of Interpretation.
- (i) References to Articles, Sections and Exhibits are, unless otherwise indicated, to Articles of, Sections of and Exhibits to this Contract. All Exhibits attached to this Contract are incorporated herein by this reference and made a part hereof for all purposes. References to an Exhibit shall mean the referenced Exhibit and any sub-exhibits, sub-parts, components or attachments included therewith.
- (ii) As used in this Contract, the masculine gender shall include the feminine and neuter and the singular number shall include the plural, and vice versa unless the context requires otherwise.
- (iii) Unless expressly stated otherwise, references to a person or entity includes its successors and permitted assigns and, in the case of a Governmental Authority, any person succeeding to its functions and capacities.
- (iv) As used in this Contract, references to “days” shall mean calendar days, unless the term “Business Day” is used. If the time for performing an obligation under this Contract expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day.
- (v) As used in this Contract, where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding

meanings; the words “herein,” “hereunder” and “hereof” refer to this Contract, taken as a whole, and not to any particular provision of this Contract; “including” means “including, for example and without limitation,” and other forms of the verb “to include” are to be interpreted similarly; and the word “or” is not exclusive.

- (vi) As used in this Contract, all references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made. Any term defined or provision incorporated in this Contract by reference to another document, instrument or agreement shall continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect.
- (vii) Preparation of this Contract has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Any rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or Change Orders.
- (j) Commencement of Claims. Any legal action of either Party arising under this Contract must be commenced:
  - (i) within twelve months after the Final Acceptance Date, except with respect to claims or actions arising under Section 17, Section 25, Section 26, Section 28, Section 29 or Section 40;
  - (ii) with respect to claims or actions by Buyer arising under Section 17, within six months after the expiration or termination of the Warranty Period, *provided* that notice of the Defect was made during the Warranty Period; and
  - (iii) with respect to claims or actions arising under Section 25, Section 26, Section 28, Section 29, or Section 40, prior to the expiration of the statute of limitations provided by Applicable Laws respecting such claims. To the maximum extent permitted by Applicable Law, the Parties hereby waive any right to commence any claim or action after such period.
- (k) Releases Valid in All Events. The Parties intend that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and indemnity and hold harmless provisions expressed throughout this Contract shall apply even in the event of the negligence (in whole or in part), strict liability, tort liability, fault or breach of contract (including other legal bases of responsibility such as fundamental breach) of the Party whose liability is released, disclaimed or limited by any such provision, and shall extend to such Party’s Affiliates and their respective partners, shareholders, directors, officers, employees and agents, and



even if such disclaimers, releases, limitations and apportionments would cause a remedy to fail of its essential purpose.

- (l) Severability. If any provision of this Contract is determined to be illegal or unenforceable: (i) such provision shall be deemed restated in accordance with Applicable Laws to reflect, as nearly as possible, the original intention of the Parties and (ii) such determination shall not affect any other provision of this Contract and all other provisions shall remain in full force and effect.
- (m) Notice. All notices or other communications under this Contract must be in English and in writing, and:
- (i) delivered by hand;
  - (ii) sent by recognized overnight mail or prepaid courier service;
  - (iii) sent by certified mail, return receipt requested; or
  - (iv) sent by email with confirmation of receipt by response email

Notices to Buyer shall be sent to:

Nicholas Pollman  
2401 Aztec Rd NE Albuquerque, NM 87107  
Email: nicholas.pollman@pnm.com

With copy to:

John Verheul  
414 Silver Ave SW  
Albuquerque, NM 87102  
Attn.: Legal Department  
Email: lawdept@pnmresources.com

Notices to Supplier shall be sent to:

Powin, LLC  
20550 SW 115th Avenue  
Tualatin, OR 97062  
Attn.: Legal Department  
Email: notice@powin.com

With copy to:

Justin D. Markell  
Winthrop & Weinstine, P.A.  
225 South Sixth Street, #3500  
Minneapolis, MN 55402

Email: jmarkell@winthrop.com

Any technical or other communications pertaining to the Work shall be between Supplier's Representative and Buyer's Representative, or such other representatives as agreed to by both Parties.

The date of receipt of each such notice, demand or other communication will be (A) the date of delivery thereof if delivered by hand, overnight mail, or courier, (B) the date of the return receipt, if sent by certified mail, or (C) if sent by electronic mail, the date of delivery shall be the date sent, *provided* that the sender does not receive an automated undeliverable or out-of-office message and, if the notice involves any matter under Section 19 or Section 33, the sending Party sends notice by other permitted means within two Business Days of sending notice by electronic mail. Each Party shall have the right to change the place to which notice shall be sent or delivered or to specify additional addresses to which copies of notices may be sent pursuant to this Section 42(1), in either case by similar notice sent or delivered in like manner to the other Party.

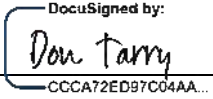
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*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Contract in the spaces provided below, effective as the Effective Date.

**Buyer: Public Service Company of New Mexico**

**Supplier: Powin, LLC**

By:  \_\_\_\_\_  
Print: Don Tarry \_\_\_\_\_  
Title: President and COO \_\_\_\_\_

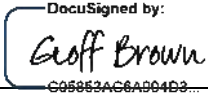
By: \_\_\_\_\_  
Print: Geoff Brown \_\_\_\_\_  
Title: Chief Executive Officer \_\_\_\_\_

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Contract in the spaces provided below, effective as the Effective Date.

**Buyer: Public Service Company of New Mexico**

**Supplier: Powin, LLC**

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

By:  \_\_\_\_\_  
C05952AC6A994D3...

Print: \_\_\_\_\_

Print: Geoff Brown

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

Title: Chief Executive Officer

**Exhibit A**  
**Scope of Work**

*[See Attached]*

## Exhibit A

### Scope of Work

*Capitalized terms not defined herein have the meaning given them in the Contract*

#### **1.1 General Scope and Project Management**

- 1.1.1 Supplier shall be responsible for providing all adequate labor, supervision, tools (including all specialty tools, if required), equipment, components, installed and consumable materials, testing and each and every item and service necessary for the design, engineering, supply, fabrication, inspection, shop testing, shipping, Commissioning and field testing of the ESS.
- 1.1.2 Supplier's design shall be based on the requirements of the Contract, including, the Specifications, this Exhibit A, and Standards of Practice.
- 1.1.3 All Deliveries, testing and Commissioning activities shall comply with the Specifications and the Contract
- 1.1.4 Supplier shall provide the appropriate personnel to manage all aspects of the Work, including at least one OSHA "competent" person for activities at the Project Site. Supplier shall supply [a] technician[s] to advise and assist Buyer and Other Contractors at the Project Site during receiving, off-loading, and installation of the ESS Equipment, [b] technicians to perform the startup, Commissioning, and Performance Testing of the ESS Equipment, and [c] qualified trainers to train Buyer's personnel on the operations and maintenance of the ESS Equipment as required per the Contract.
- 1.1.5 Weekly progress meetings shall be held in person or via teleconference during the performance of the Work on dates mutually agreeable to Buyer and Supplier. Weekly progress meetings shall be held in person or via teleconference during the performance of the Work at the Project Site on dates mutually agreeable to Buyer and Supplier. As of the Installation Acceptance Date, Supplier shall provide a daily Commissioning report which will include at a minimum: current progress and location of Commissioning activities.
- 1.1.6 Supplier shall adhere to Buyer's project site safety plan (or the plan of Other Contractors), and Supplier shall maintain a safety plan and observe all safety practices required for performing its Work, including OSHA standards.
- 1.1.7 Buyer or its Other Contractor(s) shall provide trash disposal and recycling services and associated facilities for debris generated during Supplier's activities on the Project Site, which shall include the removal and disposal of all ESS Equipment shipping and packaging material.

#### **1.2 Project Site**

6060 Douglas Rd. SW, Albuquerque, NM 87121

#### **1.3 Supplier Engineering and Overview Scope of Supply**

1.3.1 Supplier shall perform all necessary engineering and design work required for the design, fabrication, Commissioning and operation of the ESS. The ESS Equipment as further described in Exhibits C and J, will consist of the following primary elements:

- 38 Energy Segments including:
  - UL 1973 certified battery architecture based on LFP cells
  - UL 9540A certified cells, battery pack/modules and stacks
  - IP55 rated enclosure
  - Integrated gas + fire detection, dedicated active ventilation system that meets the NFPA 69 standard providing NFPA 855 compliance
  - Dual field-swappable, forced air HVAC with humidity control
  - Cable tray with pre-cut and pre-terminated AC auxiliary and DC cabling
  - RJ45 Communications cabling between units
  - Router, UPS, StackOS communication gear
  - Color: off-white
  - L-brackets to install per Exhibit L-Installation Manual.
- 2 Collection Segments containing:
  - IP55 rated enclosure
  - AC circuit breakers panel for auxiliary distribution
  - 2 DC Disconnects, each protected by a 2000A, 1500V fuse with DC busbars for PCS connection
  - UPS (for safety control circuit)
  - Communication and control systems
  - Ground fault detector for each DC Disconnect
  - HVAC Controls
  - Fire Panel
  - Color: off-white
  - L-brackets to install per Exhibit L-Installation Manual.
- StackOS:
  - Integrated Battery Management System (“BMS”) and EMS software running on a local hardened computer provided within one of the Collection Segments above
  - Local Modbus API for SCADA integration and control. Including availability of all control and monitoring points identified in Exhibits C and J
  - Simple local HMI for monitoring and maintenance; remote UI accessible. Allows enabling and disabling of StackOS applications.
  - Secure device integration, including PCS and enclosure systems
  - Basic warranty tracking and violation prevention
- 2 SMA - MVPS-4600-S2-US-10 PCS / MVT Sets including:
  - SMA Sunny Central Storage SCS 3950 UP- -US
  - Oil-Filled SMA 4.1MVA 12.47kV Step-up Medium Voltage Transformers
  - Close-coupled LV connection
  - MV switchgear

1.3.2 The PCS and MVT Sets, Collection Segments and Energy Segments will be subject to factory acceptance testing (“FAT”) and Supplier shall transmit relevant FAT

documentation & results to Buyer upon receipt. Buyer (or Buyer designee) may attend the FAT, subject to Section 12 of the Contract.

1.3.3 The ESS shall meet requirements of Exhibit C.

1.3.4 Buyer will obtain, or cause to be obtained and pay for all operational, environmental and land use permits including other permits requiring approval of designs, drawings and specifications by Governmental Authorities. Supplier shall be responsible for supporting all Buyer permitting activities in a timely manner and shall prepare reasonably requested Supplier standard documentation relating to the ESS Equipment in support of Buyer's permitting activities. Any inspections by Governmental Authorities will be arranged by Buyer, and Supplier shall accommodate such inspections wherever practicable.

1.3.5 As-Manufactured Drawings and Test Report Submission:

- a) Within thirty days of Commissioning Completion, Supplier shall furnish a complete set of as-manufactured information showing the ESS Equipment as installed by Buyer and verified by Supplier. Issued for Construction design drawings, as listed in Section 1.3.5(c) shall also be provided.
- b) Supplier shall promptly furnish all relevant test reports and test certificates as they become available.
- c) Within 45 days of the Effective Date of the EPA, Supplier to provide the following initial design drawings for review:
  - a. PCS/MVT Package:
    - i. Skidded solution drawings (electrical drawings from PCS to MVT and switchgear)
  - b. Electrical Drawings, including:
    - i. Single Line Diagram (including DC cabling from stacks to collection segment and collection segment to PCS)
    - ii. AC Auxiliary Distribution
    - iii. Network design behind Powin firewall (including Modbus map)
  - c. Fire System Drawing Package
    - i. Fire system design layout and product specifications
  - d. Mechanical Drawings, including:
    - i. General Arrangement (Collection Segments, Energy Segments)
    - ii. Anchoring and penetration locations
    - iii. Customer interfaces (Ground Pads, Aux Power, and DC combiner/switch connections)

**1.4 ESS Equipment Procured and Delivered to the Project Site by Supplier.** Supplier shall perform, but not be limited to, the following services as part of the Work:

1.4.1 Supplier shall design, furnish and Commission all Energy Segments, Collection Segments and PCS and MVT sets needed for the Project.

1.4.2 Subject to the terms of the Contract, Supplier shall be responsible for all transportation and Delivery of the ESS Equipment. Buyer shall be responsible for the unloading and unpacking of Delivered ESS Equipment in accordance with Supplier's Installation Manual. Transportation and Delivery shall be performed without violating the requirements for



transportation of the battery module OEM, the battery cell OEM or any other requirements of an OEM including those set forth in OEM Warranties.

1.4.3 Supplier shall design, furnish, and commission all applicable heating, ventilation and air conditioning (“HVAC”) units in accordance with Exhibit C.

1.4.4 Supplier shall design, furnish, and commission the ESS, including the BMS, and specifically the StackOS software.

## **1.5 Technical Support by Supplier.**

1.5.1 **Pre-construction & Planning Phase:** Early pre-construction support shall include “desktop-type” support and shall be provided by Supplier through a Request for Information (RFI) process. Where possible, Supplier responses to any submitted RFIs shall be submitted within five (5) Business Days. Supplier shall coordinate with Buyer on ESS Equipment structural loading to allow Buyer to design foundation details.

1.5.2 **Installation Phase:** Supplier shall provide installation technical support, including the following:

- a) Supplier shall provide a “page-turn” of the Installation Manual with Buyer and its Other Contractor(s) during negotiation of the installation contract and again prior to first installation of ESS Equipment. At Buyer request, Supplier shall participate in full installation of the first unit of each component of ESS Equipment to establish a “golden installation” that is intended to set the expectation for future installations and any installation-type questions or conflicts to be resolved early in the installation phase.
- b) Supplier’s construction support includes technical oversight during construction from commencement of Delivery through Installation Acceptance.
- c) Sixty days prior to the Installation Acceptance Date, Supplier shall provide a draft Commissioning Checklist (Exhibit I) which shows the system commissioning activities with prerequisite conditions. The overall startup sequence shall be developed by Supplier such that all ESS Equipment are completed in the proper sequence to support a safe and orderly startup. This draft plan will be used to create the final Commissioning Checklist as a collaborative exercise between Buyer and Supplier.

## **1.6 Commissioning and Testing Services.**

1.6.1 Upon Installation Acceptance, Supplier shall be responsible for the Commissioning of the ESS, including the Energy Segments, Collection Segments, PCS and MVT Sets. Commissioning covers all activities relating to the startup, operation, or simulated operation, of equipment and systems through completion of testing that is detailed in Exhibit F-1. Supplier will provide commercially reasonable support for the testing of the Buyer-supplied RTU for the purposes of remote control and monitoring of the system.

- 1.6.2 Supplier shall be responsible to design, procure, program, install, and test the StackOS system. Supplier shall also be responsible for ensuring that StackOS shall be fully functional prior to the Installation Acceptance Date, with the ability to operate as required in the Contract.
- 1.6.3 Supplier shall perform all testing identified in Exhibit I and verify ability of the system to meet the functional requirements of the Project identified in Exhibit F-1.
- 1.6.4 The Supplier's commissioning staffing shall include adequate personnel, as required to meet the Project Schedule.
- 1.6.5 As part of Commissioning, Supplier shall perform all performance and demonstration testing required by Exhibit F-1.
- 1.6.6 Supplier will provide support for UL 9540 field certification of the installed ESS and PCS system.

## **1.7 Fire Safety**

- 1.7.1 Supplier shall provide an emergency response plan related to the ESS that details proper procedures for Buyer and emergency responder actions during a fire, thermal runaway or other related event.
- 1.7.2 Supplier shall provide support for a Buyer-led hazard mitigation analysis (HMA) of the ESS Equipment to support local permitting requirements.
- 1.7.3 Supplier shall provide a fire safety response training session with local fire responder personnel prior to Commissioning.
- 1.7.4 The training session will be held at the Project Site and will include a site tour of the ESS, overview of ESS Equipment, review of the emergency response plan and walkthrough of emergency response process.

## **1.8 Site Specific Project Requirements**

- 1.8.1 In accordance with Exhibit B and the Contract, Supplier shall include all activities associated with engineering, design, supply, manufacture, delivery to site, and technical support services associated with the installation of ESS Equipment by the Contractor and Commissioning of the ESS Equipment by the Supplier at the Project Site. Supplier shall provide a list of recommended spares prior to the Effective Date of the EPA.
- 1.8.2 The scope of Work to be provided by the Supplier includes an equipment package meeting the energy storage capacity requirements described herein for installation by the Contractor on the Buyer's Project Site. The Supplier shall furnish ESS Equipment for the Project meeting the following requirements:
  - a) Contracted Power, Contracted Energy, and Contracted Duration as defined in Exhibit F-1.
  - b) Designed for outdoor installation in Supplier furnished enclosures.

- c) Once installed is capable of receiving P and Q commands for charge and discharge from Buyer.
- d) Has a maximum rate of charge equivalent to its rate of discharge.
- e) Total cycle-life equivalent of 365 annual equivalent full charge and discharge cycles with an Ending SOH as defined in Exhibit F-1, and with the ability to meet varying annual cycling requirements over the resource life within the limits of StackOS.
- f) The number of cycles per day shall not be limited
- g) Is dispatchable across the entire operating range in accordance with Exhibit F-1 (Contracted Duration, Contracted Power and Contracted Energy) and Exhibit J (Product Manual)
- h) Have control systems in place with the ability to respond to dispatch and disconnection signals that originate remotely from Buyer operations centers.
- i) ESS Equipment needed for integrated operation in parallel with existing solar PV system at the existing distribution system connection at 12.47 kV.
- j) Configured for remote control and monitoring and shall not require any on-site operations staff.
- k) The ESS Equipment shall also have capabilities to support the following:
  - a. When the grid is available ESS Equipment shall be available for contingency reserve upon the occurrence of Buyer generating unit outage.
  - b. Regulation-up and regulation-down.
  - c. Respond to frequency events and comply with NERC standard BAL-003-1.
  - d. Charge/discharge to support renewable generation variability, be available for system peak, and to avoid curtailment of Buyer's system.
  - e. Discharge during system peaks to offset peak demand.
  - f. Voltage and reactive/active power control performance for a Category B system as defined in IEEE 1547-2018 for a Distributed Energy Resource.
  - g. The normal and abnormal performance category as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) shall be Category II minimum.
  - h. Meets or exceeds the recommended performance specifications defined in IEEE 1547 – 2020 and UL 1741 Schedule B.

**Exhibit B**  
**Division of Responsibility**

*[See Attached]*

**Powin and Buyer Working DOR Centipede**

Index	Category	Buyer	Powin	Comments
<b>1.00</b>	<b>Requirements and Specification</b>			
1.01	Definition of Buyer requirements for project Power & Energy capacity	X		
1.02	Buyer requirements for project operational philosophy and strategy	X		Powin to support system configuration/programming and commissioning of Powin-furnished Equipment to support Buyer operational philosophy and strategy , including integration with Power Plant Controller ("PPC"), limited to the system capability as defined in the StackOS Manual.
1.03	Energy Segments, Stacks, Battery Management System (BMS) specifications		X	
1.04	Collection Segment(s) & protection specifications		X	
1.05	PCS to MV Transformer AC collection & protection specifications		X	PCS to MVT will be close coupled and supplied by Powin as part of the Skid.
1.06	MV Transformer requirements for Seller procured PCS (close coupled PCS-MV Transformer connections, alarms)		X	
1.07	MV Transformer to switchgear/POI AC collection and protection specifications	X		
1.08	Collection Segment internal auxiliary panelboard and protection specifications (all segments)		X	
1.09	Project auxiliary power service and protection specifications	X		Buyer to provide auxiliary power to a single terminal point for each Powin Collection Segment.
1.10	Battery enclosure or Segment foundation and anchoring specifications		X	
1.11	Battery enclosure or Segment HVAC / thermal controls		X	
1.12	Battery enclosure or Segment fire protection		X	
1.13	Fire protection equipment external to Seller battery enclosure or Segment such as routing to fire station (if required)	X		
1.14	PCS / inverter specifications (only for AC coupled systems)		X	
1.15	PCS foundation and anchoring design specifications (only for AC coupled systems)		X	
1.16	[Not Used]			
1.17	MV transformer procured by Seller		X	
1.18	MV transformer foundation and anchoring requirements for Seller procured MV Transformer		X	
1.19	12.47 kV Switchgear, metering, -ESS meter, relays, etc.	X		
1.20	All other switchgear, metering, relays, etc. (including 12.47 kV at each MVT HV side)		X	
1.21	Grounding grid	X		
1.22	Battery grounding grid requirements (if applicable)		X	
1.23	Cabling between EMS and Collection Segments and beyond Powin Firewall	X		
1.24	Communication equipment & cabling between PCS and Network	X		
1.25	Communication equipment between Network & utility/off-taker	X		
1.26	Energy Management System (EMS) software platform		X	
1.27	System dispatch signal, SCADA	X		
1.28	Internet service		X	
<b>2.00</b>	<b>Studies and Permitting</b>			
2.01	Geotechnical study	X		
2.02	Interconnection/Impact study	X		Seller to provide commercially reasonable support services and documentation to support interconnection studies and applications prepared by Buyer.
2.03	Noise assessment study (if applicable)	X		
2.04	Environmental/Buyer impact assessments (if applicable)	X		
2.05	Electrical permits	X		
2.06	Building permits	X		
2.07	Civil and construction permits	X		
2.08	Environmental permits (if applicable)	X		
2.09	AC Arc flash analysis	X		
2.10	DC -ESS Arc Flash Study and Labels at Stack level up to Collection Segment		X	
2.11	DC -ESS Short Circuit Analysis up to Collection Segment		X	
<b>3.00</b>	<b>Engineering and Design Deliverables</b>			

3.01	Site layout	X		
3.02	Enclosure/Segment layout and design specifications		X	
3.03	Electrical drawings: DC - Battery stacks up to PCS side of Collection Segment		X	
3.04	Electrical drawings: AC high side of transformer to POI	X		
3.05	Electrical drawings: Auxiliary and station service	X		
				Buyer to provide auxiliary power to a single terminal point for each Powin collection segment.
3.06	Electrical drawings: Overall site cable layout / schedule	X		
3.07	Electrical drawings: Grounding design/grid	X		
3.08	Communication drawings: System Network design	X		
3.09	Communication drawings: network design behind Powin firewall		X	Powin to provide communication cables behind Powin's firewall.
3.10	Communication drawings: System communication schematic	X		
3.11	Communication drawings: communication schematic behind Powin Firewall		X	
3.12	Civil drawings: System level (foundations, anchoring, trenching)	X		
3.13	Civil drawings: Site level (topographic, excavation, stormwater)	X		
3.14	Battery system Ground fault detection and protection		X	
<b>4.00</b>	<b>Procurement</b>			
4.01	Battery Stacks including BMS, Battery and Collection Segments		X	
4.02	Battery enclosure		X	
4.03	Battery enclosure or Segment HVAC / thermal controls		X	
4.04	Battery enclosure or Segment fire protection and suppression systems		X	
4.05	External fire protection and suppression systems such as routing to fire station	X		
4.06	PCS (Inverter, DC-DC Converter)		X	
4.07	MV transformer for skidded inverter systems		X	
	Not Used			
4.08	12.47 kV Switchgear, metering, relays, etc.	X		
4.09	12.47 kV switchgear at each MVT HV side of skid		X	
4.10	Battery to PCS DC connection (conductoring, conduit, underground work)	X		
4.11	Collection or Battery Segment internal cabling (DC, aux, communications, fire protection)		X	cabling pre-cut and terminated by Seller, connection by Buyer
4.12	Communication and Safety Cables from each Centipede Collection Segment to the 'Main' Collection Segment housing	X		
4.13	PCS to transformer AC collection and protection		X	
4.14	MV switchgear on skid with PCS and MVT to facilitate disconnect and coupling of multiple PCS skids		X	
4.15	Transformer to switchgear/POI AC collection and protection	X		
4.16	Collection Segment and Energy Segment foundation and anchoring	X		
4.17	PCS foundation and anchoring (only for AC coupled systems)	X		
4.18	MV transformer foundation and anchoring for Powin procured MV Transformer	X		
4.19	Battery auxiliary power collection and protection for aux systems internal to the Centipede/Enclosure		X	cabling pre-cut and terminated by Seller, connection by Buyer
4.20	Battery auxiliary power collection and protection to Centipede/Enclosure	X		
4.21	Grounding grid	X		
4.22	Cabling between EMS and Collection Segments and beyond Powin Firewall	X		
4.23	Communication equipment between Network and utility/off-taker	X		
4.24	EMS software platform		X	
4.25	Internet service	X		
4.26	Transportation of all ESS Equipment DDP to Delivery Location		X	
4.27	Transportation of Buyer-Furnished Equipment to the Project Site	X		
<b>5.00</b>	<b>Rigging and Offloading</b>			
5.01	Battery Stacks including BMS, Battery and Collection Segments	X		
5.02	Battery enclosure or Segment	X		
5.03	PCS (Inverter, DC-DC Converter)	X		Skidded solution, installed as a package.

5.04	Transformer	x		Skidded solution, installed as a package.
5.04	Buyer Furnished Equipment	x		
<b>6.00</b>	<b>Installation</b>			Powin enter a description for what is considered as completion of installation for each of these activities (i.e. what level of testing / verification is required for installation to be considered complete). Should there be an installation checklist to delineate turnover to Commissioning completed by Powin.
6.01	Battery Stacks including BMS, Battery and Collection Segments	x		
6.02	Battery enclosure or Segment	x		
6.03	Battery enclosure or Segment HVAC / thermal controls		x	
6.04	Battery enclosure or Segment fire protection and suppression systems		x	
6.05	External fire protection and suppression systems such as routing to fire station	x		
6.06	PCS (Inverter, DC-DC Converter)	x		Skidded solution, installed as a package.
6.07	MV transformer	x		Skidded solution, installed as a package.
6.08	12.47 kV Switchgear, metering, relays, etc.	x		
6.08	12.47 kV switchgear at each MVT HV side of skid		x	
6.09	Collection or Battery Segment internal cabling (DC, aux, communications, fire protection)	x		
6.10	Communication Cables from each Centipede Collection to the 'Main' Collection Segment housing	x		
6.11	Battery to PCS DC collection and protection	x		
6.12	PCS to transformer AC collection and protection		x	
6.13	Transformer to switchgear/POI AC collection and protection	x		
6.13	Collection Segment and Energy Segment foundation and anchoring	x		
6.13	PCS foundation and anchoring (only for AC coupled systems)	x		
6.13	MV transformer foundation and anchoring for Powin procured MV Transformer	x		
6.14	Battery auxiliary power collection and protection for aux systems internal to the Segment		x	
6.14	Battery auxiliary power collection and protection to the Segment	x		
6.15	Grounding grid	x		
6.16	Cabling between EMS and Collection Segments and beyond Powin Firewall	x		
6.18	Communication equipment between Network and utility/off-taker	x		
6.19	EMS software platform		x	
6.20	Internet service	x		
<b>7.00</b>	<b>Commissioning</b>			
7.01	Battery Stacks including BMS, Battery and Collection Segments		x	
7.01	Energy Segment and Collection Segment		x	
7.01	Energy Segment and Collection Segment HVAC / thermal controls, including ducting		x	
7.01	Energy Segment and Collection Segment fire protection system till FSS Panel		x	Connection from FSS panel to AHJ required system is responsibility of Buyer
7.01	External fire protection and suppression systems such as routing to fire station	x		
7.02	PCS (Inverter, DC-DC Converter) when procured by Seller		x	
7.03	Not Used			
7.04	MV transformer energization when procured by Seller	x		
7.05	Not Used			
7.05	12.47 kV Switchgear, metering, relays, etc.	x		
7.05	12.47 kV switchgear at each MVT HV side of skid		x	
7.05	ESS to PCS DC connection and protection (conductoring, conduit, underground work)	x		
7.05	Collection and Energy Segment internal cabling (DC, aux, communications, fire protection)		x	
7.05	PCS to transformer AC collection and protection		x	
7.05	MV switchgear on skid with PCS and MVT to facilitate disconnect and coupling of multiple PCS skids		x	
7.05	Transformer to switchgear/POI AC collection and protection	x		
7.05	ESS auxiliary power collection and protection for aux systems internal to the Segment/Enclosure		x	
7.05	ESS auxiliary power collection and protection to Segment/Enclosure	x		
7.05	Grounding grid	x		
7.05	Cabling between EMS and Collection Segments and beyond Powin Firewall	x		

7.05	Communication equipment between Network and utility/off-taker	X		
7.05	EMS software and hardware platform		X	
7.05	Internet service	X		
7.07	FSS		X	
7.08	HVAC		X	
7.09	Contract and performance testing		X	Refer to Exhibit F-1
<b>8.00</b>	<b>Equipment Warranty</b>			
8.01	Batteries and containers - 3 year workmanship		X	
8.02	Communication and controls		X	
8.03	Plant controller, SCADA and other controls external to Powin battery system	X		
8.04	PCS (Inverter, DC-DC Converter) when procured by Powin		X	AC coupled systems - Seller responsible for PCS Skid
8.05				
	<del>Not Used</del>			
8.06	MV transformer for inverter systems procured by Seller		X	
8.07	<del>Not Used</del>			
8.08	Performance Guarantee		X	



**Exhibit C**  
**Technical Specifications**

*[See attached]*

**Exhibit C****Technical Specifications****A. Design Statement:**

The ESS shall be designed to interact with the AC Grid.

**B. ESS characteristics at the ESS Meter inclusive of auxiliary power consumed by the ESS shall be as follows;**

- i) Beginning of Life (“BOL”) Contracted Energy: As set forth in Exhibit F-1
- ii) Contracted Power: is defined as the maximum real AC charge or discharge power deliverable by the ESS at the ESS Meter as set forth in Exhibit F-1 inclusive of auxiliary power at a 0.95 power factor.
- iii) BOL discharge duration: as set forth in Exhibit F-1 at the Contracted Power
- iv) BOL Roundtrip efficiency: as set forth in Exhibit F-1
- v) ESS shall be designed to be AC coupled.

“BOS Losses” to the ESS Meter is as shown in the table below, inclusive of all cabling and equipment. Detailed estimate of all BOS losses is shown in the table below. If the BOS Losses for Buyer responsible equipment is proven to be higher than the values stated in the table below, then the Buyer and Seller shall coordinate and come to a mutually agreeable solution to ensure Guaranteed Capacity is met. Such mutually agreeable solution may be subject to Article 16– Change Orders, of the Agreement.

Table A:

<b>BOS Loss Assumptions</b>		
DC Cabling between Energy Segment and Collection Segment	0.25%	Seller
DC Collection Segment	0.1%	Seller
DC Cabling between Collection Segment and Inverter	0.25%	Buyer
Inverter (PCS)	1.5%	Seller
LV Cabling	0.75%	Seller
Transformer (MVT)	0.95%	Seller
MV Collection	0.25%	Buyer
MV Cabling	0.05%	Buyer
Aux Power consumption	2.22%	Seller
<b>BOS Losses</b>	<b>6.16%</b>	

- C. During Commissioning, Seller requires the ability to deploy control applications that manage the ESS state of charge and maximize usable energy. Failure to provide this solution as described is a Buyer-Caused Commissioning Delay.
- D. D. Thermal management is designed to allow ESS Equipment to provide Contracted Power and Guaranteed Capacity for one full cycle. StackOS may automatically derate the ESS if any rest period between cycles is too short.
- E. The ESS shall be designed for a life of twenty (20) years. The ESS shall be designed to accommodate local conditions at its final installation location at or near longitude as detailed in Exhibit A. Buyer, Buyer’s Contractor, and Seller shall coordinate the final installation location of the ESS.
  - i) F. Site Environmental Conditions Site environmental conditions for design shall be as indicated below:

Temperature	Site Ambient [ -6 °F to 106 °F ]	
ASCE 7 10 Site Seismic Design Requirements	Type	Value
	S <sub>S</sub>	0.451
	S <sub>1</sub>	0.135
	S <sub>MS</sub>	0.65
	S <sub>MI</sub>	0.305
	S <sub>DS</sub>	0.433
	S <sub>DI</sub>	0.203
	Risk Category: [III] Site Class: [D – Default]	
Relative Humidity	0% to 100%	
Location	6060 Douglas Rd. SW, Albuquerque, NM 87121	
ASCE 7 10 Ground Snow Load	10 psf	
ASCE 7 10 Wind Speed	120 mph	

- ii) Site elevation will be established at nominal feet above mean sea level, as indicated below:

<b>Site</b>	<b>Elevation [ft] <sup>1</sup></b>
South Valley Solar	5,056

iii) Site precipitation is as indicated below:

<b>Site</b>	<b>Precipitation [in]</b>				
	Annual Average Total <sup>1</sup>	10 year, 24-hour <sup>2</sup>	25 year, 24-hour <sup>2</sup>	100 year, 24-hour <sup>2</sup>	Average Snowfall Total <sup>3</sup>
South Valley Solar	9.77	1.78	2.11	2.62	9.6

<sup>1</sup> Based on NOAA Normals 1981-2010 data for Albuquerque, NM, or nearest weather station

<sup>2</sup> Based on NOAA Atlas 14 point precipitation frequency estimates (using nearest station based on site coordinates)

<sup>3</sup> Based on database for NM (<https://www.currentresults.com/Weather/New-Mexico/annual-snowfall.php>)

iv) All structures shall comply with the New Mexico Building Code (NMBC) 2015 (or latest revision as applicable).

v) Ice loads shall be in accordance with the NMBC 2015 and ASCE 7.

Equivalent uniform radial thickness,  $t = 0.25$  in  
Importance factor,  $I_i = 1.25$

E. The ESS shall be designed to meet all seismic requirements of the ASCE 7-16 category.

F. The ESS shall be designed to allow full Contracted Power for one full cycle. If there is no adequate rest period prior to the next cycle, then automatic deration may occur via StackOS.

G. Key Operational Parameters

The ESS shall be designed to accommodate the following “Key Operational Parameters”:

<b>Key Operational Parameters</b>	<b>Values</b>
Contracted Energy	Exhibit F-1
Contracted Power	Exhibit F-1

## ESS Component Specifications

Set forth herein are the Specifications for all Energy Segments, Collection Segments, StackOS, and PCS and MVT Sets.

### I. Energy Storage System Specifications

Equipment Information:

Energy Segment	
<b>Electrical</b>	
Model	Stack750
Cell chemistry	LFP
Stack Auxiliary Power Consumption	0.25kW / 5.6 kW (Standby/peak)
Auxiliary Power Voltage	480 Vac Line-Line, 3phase to Collection Segment
Auxiliary Power Frequency	60 Hz
DC Voltage Range	1,210 – 1,491 V
Rated Voltage (Nominal)	1,344 V
Rated Energy (Nominal)	740.4 kWh DC
Rated Power	185.1 kW @ 4 Hrs
Usable SOC Range	0 – 100%
Discharging Mode	CP
Maximum Charge/Discharge Current	160 A
Short Circuit Current	13.5 kA (will be verified by experiment)
Communication Type	Modbus TCP
Cycle Life (25 °C, [0.25P])	7,300 cycles based on one cycle per day.
<b>Environmental</b>	
Operating Temperature Range	-30°C to 50°C

Energy Segment		
Operating Relative Humidity Range	0-100% (Non-Condensing)	
Storage Humidity Range (during installation and commissioning)	0 - 100% (non-condensing)	
<b>Mechanical</b>		
Dimension (LxWxH)	8'1" W x 5'2" D x 10'8"	
Weight	20,000 lbs.	
Paint Color	Off-white	
<b>Protection</b>		
BMS Model	Powin Stack OS	
Grounding	Terminals floating, enclosure grounded.	
GFCI/Surge (Stack)	Yes	
Grounding/Bonding	Yes	
Fire Suppression and detection	Heat/Smoke Detectors	Y
	UL Certified Fire Panel with StackOS annunciation	Y
Hydrogen Gas Detection	Yes	
Ventilation	Yes	
Remote Stop/Shut-Off	StackOS	
Labeling	ANSI Z535.4-2011 (R2017)	
<b>Structural</b>		

Energy Segment	
Floor Load	Not rated for load bearing. All equipment is supported by structural framing.
Roof Load	50 psf
Wind Load Rating and Code (ASCE 7-16)	180mph; ASCE 7-16
Seismic Parameters	Sds: 1.58 Sd1: 0.94 Ie: 1.25

### Storage Conditions

The following details the acceptable temperature conditions and corresponding durations within which the Energy Segment can be stored without connection to auxiliary power supply and/or climate control functionality. For the sake of clarity, Energy Segments should not be intentionally stored onsite without auxiliary power and climate control operational, but such storage does not violate the warranty provided it complies with the below table. Stack doors must remain always shut while stored onsite except during installation.

Maximum Storage Duration	Running Average Temperature
1 Day	-20 C to 45 C
7 Days	-20 C to 40 C
30 Days	-10 C to 30 C
180 Days	0 C to 25C

**Running Average Temperature (RAT)** refers to the rolling mean of the National Oceanic and Atmospheric Administration (NOAA) daily average ambient temperature at the site since delivery or loss of climate control.

**Storage Duration** refers to the maximum time, measured in consecutive days, during which the ESS may be stored without climate control in a specified RAT band and remain in specification. The clock starts at Stack delivery or loss of aux power and resets if climate control is restored, and cell temperatures are returned to 25 C.

The acceptable Storage Duration may become more restrictive or less restrictive with changes in the RAT. For example, if the RAT increases such that the allowable storage period goes from 180 days to 30 days, then ambient temps subsequently decrease, the allowable storage period may go back to 180 days.

**Example:**

In the following example, auxiliary power and climate control must be provided/restored by Day 8:

Energy Segment				
Days in Storage	Daily Average Temp (C)	Running Average Temp (C)	Acceptable Storage Duration	Max Days Remaining in Storage
1	27.0	27.0	30	29
2	29.0	28.0	30	28
3	30.0	28.7	30	27
4	34.2	30.1	7	3
5	33.0	30.6	7	2
6	27.0	30.0	30	24
7	31.0	30.2	7	0
8	31.0	30.3	7	-1
9	35.0	30.8	7	-2
10	35.0	31.2	7	-3

Note that the Storage Duration moves between 30 days and 7 days based on changes in the RAT.

Collection Segment	
<b>Electrical</b>	
Model	Powin Centipede Collection Segment
Aux Power Supply Voltage Range	480V Line – Line, 3phase
Frequency	60 Hz
<b>Environmental</b>	
Operating Temperature Range	-30°C to 50°C
Operating Relative Humidity Range	0-100%
<b>Mechanical</b>	
Dimension (L x W x H)	8'1" W x 7'3" D x 10'8"
Weight	11,000 lbs
Thermal Insulation	Rockwool panel with 30mm thickness throughout the enclosure (R-4.48)
Ingress Protection	NEMA 3R / IP 55



Collection Segment		
Cooling System	Forced Air HVAC	
Fire Suppress System	Alarm Panel	Y
	Horn/ Lights	Y
	Backup Power / UPS	Y
<b>Additional Equipment</b>		
DC Cabinets	Quantity 1-3 1500V rated DC cabinets. Each includes DC fusing, isolation meter, and [400-4200]A non-loadbreak manual disconnect switch	
Emergency Stop	Yes. Located outside Collection Segment door.	
AC Load Panel	Size <u>480V/208V, 180kVA</u>	
Environmental Controller	Quantity 1	
Fire Panel	Quantity 1	
Network Communication Devices	Quantity 1, Modbus IP	
Energy Segment configuration	3 buses with 7 Energy Segments maximum on each bus, or 2 buses with 10 Energy Segments maximum on each bus	
Circuit Protection	Fuses. Automatic Disconnects	
Backup Power/UPS	Quantity 1, 120V UPS – [2.2] kW (Collection segments)	
	Quantity 1-3, 208V UPS – [5] kW (Energy segments)	
Controller	StackOS	
HMI & Web Interface	Quantity 1 available in Collection Segment. There is also a display in every Energy Segment.	
Labeling	ANSI Z535.4-2011 (R2017)	
<b>Structural</b>		

Collection Segment	
Floor Load	Not rated for load bearing. All equipment is supported by structural framing.
Roof Load	50 psf
Wind Load Rating and Code	180mph; ASCE 7-16
Seismic Parameters	Sds: 1.58 Sd1: 0.94 Ie: 1.25

Inverter	
Manufacturer	SMA
Model	Sunny Central Storage 3950 UP-US
Nominal Active Power at 25°C at 1200Vdc	3,950 kW
AC Apparent Power at 50°C at 1200Vdc	3,365 kVA
Maximum AC Output Current	3,320 A
Nominal AC Voltage	690 Vac
Operating Frequency	60 Hz Nominal
Power Factor	0.8 leading ... 0.8 lagging
Harmonic Distortion (THDi)	< 3% at nominal power
DC Voltage Range	1,003 Vdc to 1,500 Vdc
Maximum DC Current	4,750 A
Maximum Efficiency	98.8%
Enclosure Rating	NEMA 3R
Weight (Approximate)	8,200 lbs
Air Flow	6,500 m <sup>3</sup> /hr
Type of Ventilation	Forced air cooling
Operating Temperature Range	-25°C to +60°C
Relative Humidity	95% to 100% (Condensing)/ 0% to 95% (Non-Condensing)

Inverter / Transformer Skid (if applicable)	
Manufacturer	SMA
Model	MV Power Station MVPS – 4600 – S2-US-10
Weight	<18 tons
Dimensions [L x W x H] mm	238.5” x 96.0” x 114.0”
Vector Configuration	YNd11

## II. Design Standards / Codes

Standard/ Code	Title
UL 1973	Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail (LER) Applications
UL 9540A	Test Method for Evaluating Thermal Runaway Fire Propagation in Energy Storage Systems
UL 1741SA	Inverters, Converters, Controllers and Interconnection System Equipment for Use with Distributed Energy Resources
IEEE C62.41-1991	IEEE Recommended Practice for Surge Voltages in Low-Voltage AC Power Circuits
NEC 2017	National Electrical Code
NFPA 855	Standard for the Installation of Stationary Energy Storage Systems
UN38.3	Certification for Lithium Batteries
UL9540 (Field Certification)	Standard for Energy Storage Systems and Equipment

In addition to this list, all state and federal codes must be followed.

<b>Internet Requirements:</b>	
Downlink Bandwidth	10Mbps ↓ (regardless of system size)
Uplink Bandwidth:	System Size < 250 MWh: 6 Mbps ↑
Monitoring data usage:	~0.25 GB/MWh/Day

**Exhibit D**  
**Project Schedule**

*[See attached]*

**Exhibit D**  
**Project Schedule**

<b>Milestone</b>	<b>Responsible Party</b>	<b>Buyer's Responsible Date</b>	<b>Supplier's Target Completion Date</b>	<b>Guaranteed Date</b>
Shipment of First Collection Segment(s) (ex-works ("EXW"))	Supplier	N/A	March 27, 2024	None
Site Readiness Date	Buyer	April 9, 2024	N/A	None
Delivery of Collection Segment <i>Delivery of no more than 2 Collection Segment to the Delivery Location per week*</i>	Supplier	N/A	Starting April 10, 2024 Complete April 11, 2024	April 25, 2024 (the "Guaranteed Collection Segment Delivery Date")
Delivery of PCS/MVT Sets:	Supplier	N/A	Starting April 10, 2024 Complete April 11, 2024	April 25, 2024 (the "Guaranteed PCS/MVT Sets Delivery Date")
Shipment of first Energy Segments-EXW	Supplier	N/A	April 29, 2024	None
Energy Segment Readiness Date (i.e., internet service & Aux. Power connected & energized)	Buyer	May 1, 2024	N/A	None
Delivery of Energy Segments <i>Delivery of no more than 16 Energy Segments to the Delivery Location per day*</i>	Supplier	N/A	Starting May 13, 2024 Complete May 15, 2024	May 29, 2024 ("Guaranteed Energy Segments Delivery Date")
Backfeed Power available (and the ability to discharge and accept energy)	Buyer	May 29, 2024	N/A	None
Installation Acceptance Date	Buyer	14 Days after Delivery of Energy Segments	N/A	None
Commissioning Completion Date	Supplier	N/A	29 Days after Installation Acceptance Date	43 Days after Installation Acceptance Date ("Guaranteed Commissioning Completion Date")

\*Provided that Supplier has not exceeded the maximum delivery rates stated above, Buyer may also be liable for

*any demurrage or standby charges incurred by Supplier for Buyer's failure to unload ESS Equipment within 2 hours of a truck's arrival at the Delivery Location*

**Exhibit E**  
**Payment and Termination Payment Schedule**

*[See attached]*

**Exhibit E**

**Payment and Termination Payment Schedule**

1. [REDACTED] consisting of the following components:

Cost Scope	Cost
Equipment	[REDACTED]
3 <sup>rd</sup> Party Equipment	[REDACTED]
Technical Support	Incl. per Exhibit A
Installation Support	[REDACTED]
Commissioning Support	[REDACTED]
Buyer Training Support	Incl. per Exhibit A
Delivery to Site - DDP Cost Amount (subject to DDP Cost Adjustment per Section 9(h)(ii) of the Contract)	[REDACTED]
<b>Total Contract Price</b>	[REDACTED]

The Contract Price does not include costs for New Mexico Gross Receipts Taxes or other local sales and excise taxes.

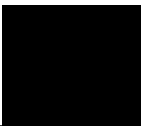
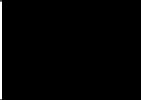
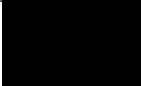
2. **Payment of Contract Price.** The Contract Price is payable progressively upon the achievement of the following payment milestones:

#	Milestone	Price (USD)	Estimated Dates	Contract Price %	Cumulative %	Payment Term
1	LNTP Payment	[REDACTED]	3/9/2023	[REDACTED]	[REDACTED]	Net 7 Business Days
2	Effective Date*	[REDACTED]	4/20/2023	[REDACTED]	[REDACTED]	Net 30 Days
	[REDACTED]	[REDACTED]	4/20/2023	[REDACTED]	[REDACTED]	
3	90 Days After Effective Date	[REDACTED]	7/19/2023	[REDACTED]	[REDACTED]	Net 30 Days
	[REDACTED]	[REDACTED]	7/19/2023	[REDACTED]	[REDACTED]	
4	Completion of Delivery of all ESS Equipment	[REDACTED]	5/29/2024	[REDACTED]	[REDACTED]	Net 30 Days
	[REDACTED]	[REDACTED]	5/29/2024	[REDACTED]	[REDACTED]	
5	Commissioning Completion	[REDACTED]	6/27/2024	[REDACTED]	[REDACTED]	Net 30 Days
6	Final Acceptance	[REDACTED]	7/11/2024	[REDACTED]	[REDACTED]	Net 30 Days

\*refers to Effective Date of the Contract



**Termination Payment.** In the event Supplier terminates the Contract in accordance with Section 19(b)(iii) or Buyer terminates the Contract for convenience pursuant to Section 20, Buyer shall make the following payment to Supplier:

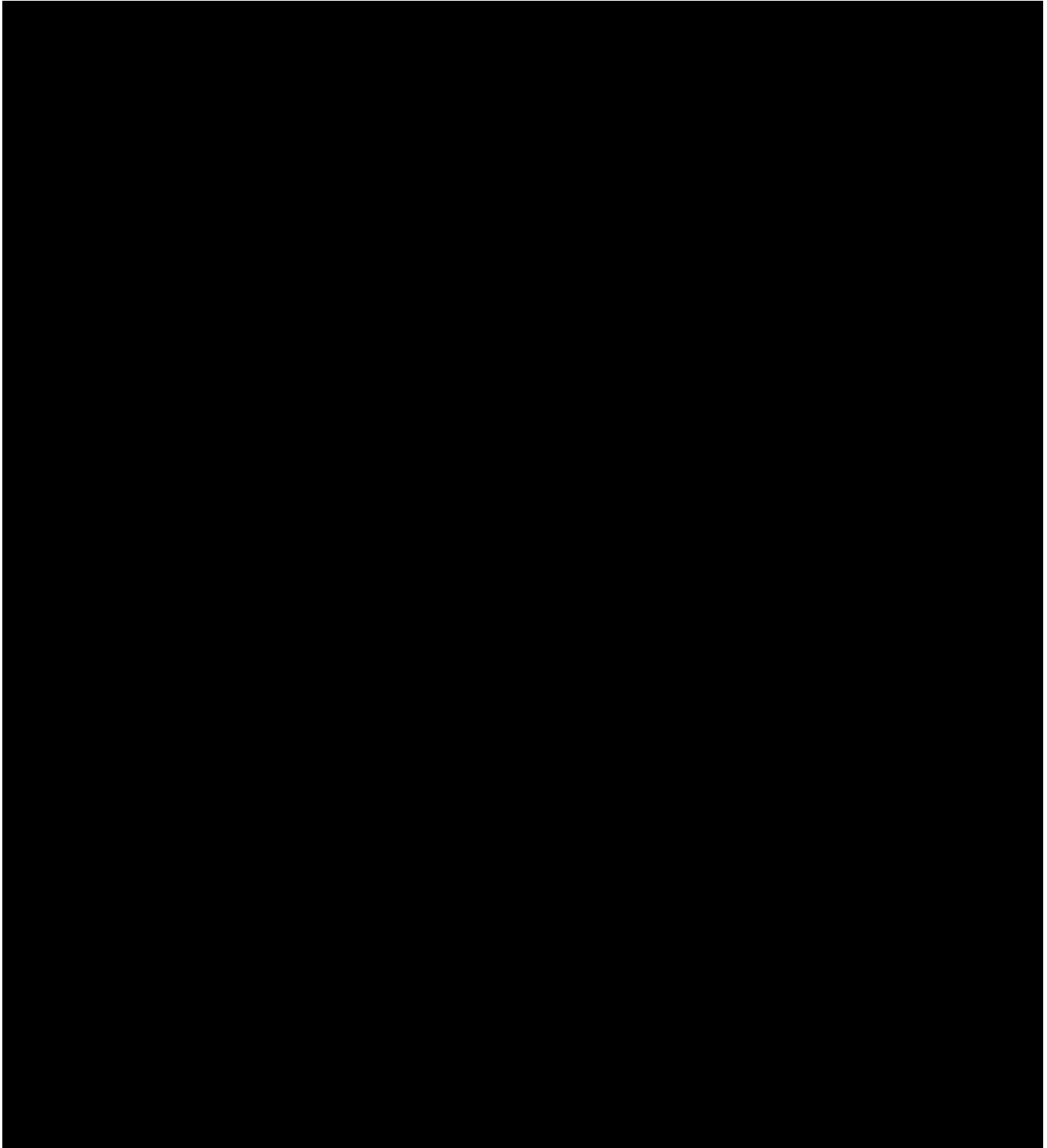
#	Timing of Termination Notice	Total Termination Payment as Percentage of Contract Price
1	After Effective Date but prior to notification of manufacturing start	
2	After notification of manufacturing start	
3	After Supplier's notification of ESS Equipment leaving manufacturing Worksite(s)	

**Exhibit F-1**  
**Performance Guarantee**

*[See attached]*

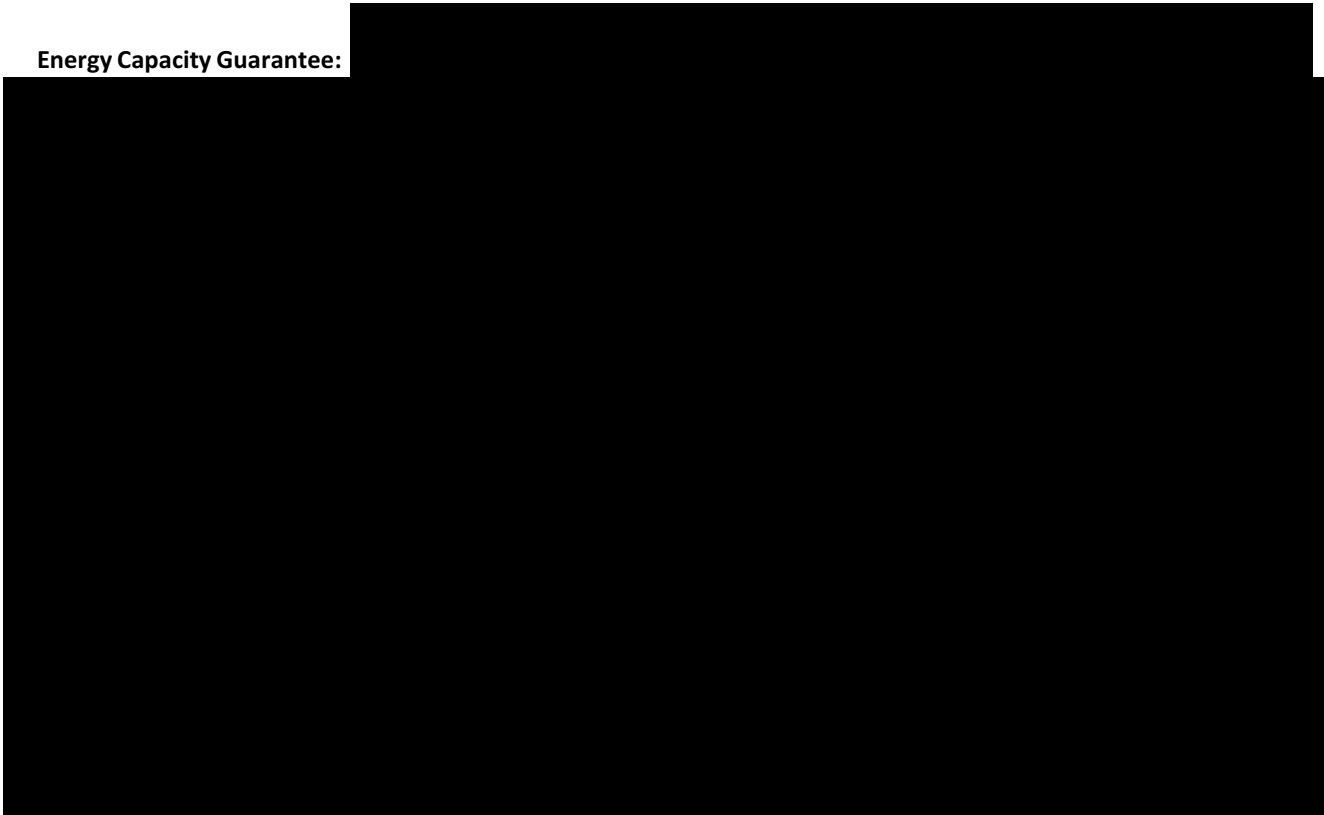
**Exhibit F-1**  
**Performance Guarantee**

POWIN STACK PERFORMANCE GUARANTEE  
FOR PNM RESOURCES ("CUSTOMER") AT SOUTH VALLEY ("PROJECT")

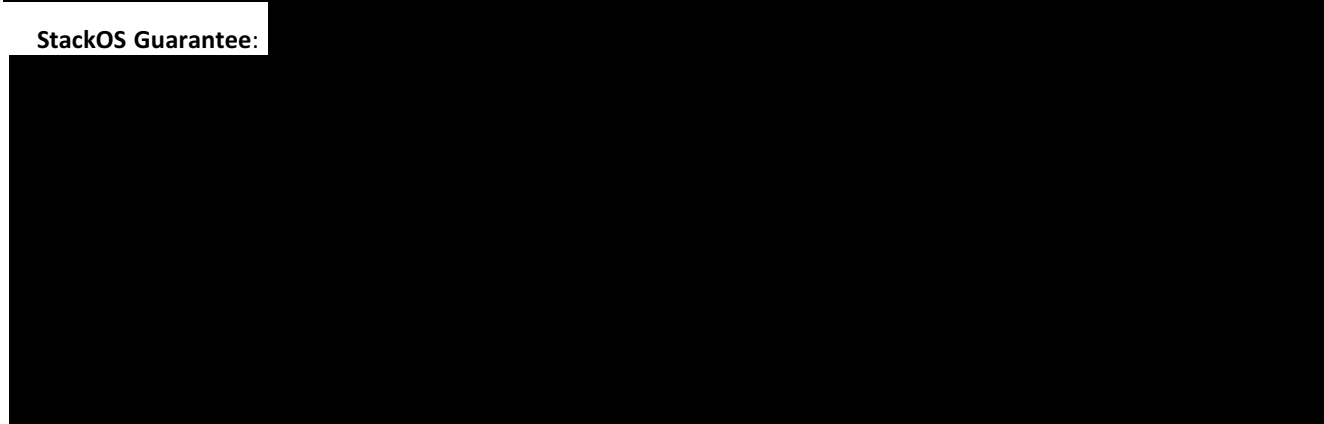




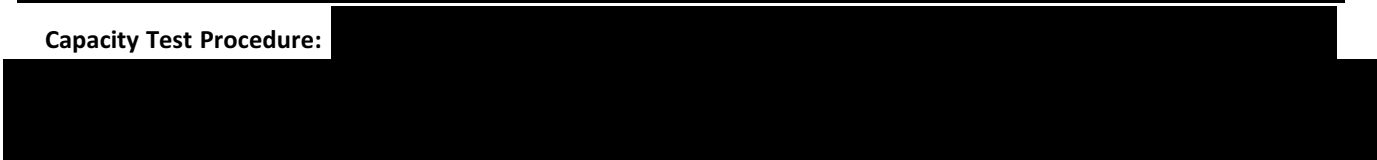
**Energy Capacity Guarantee:**

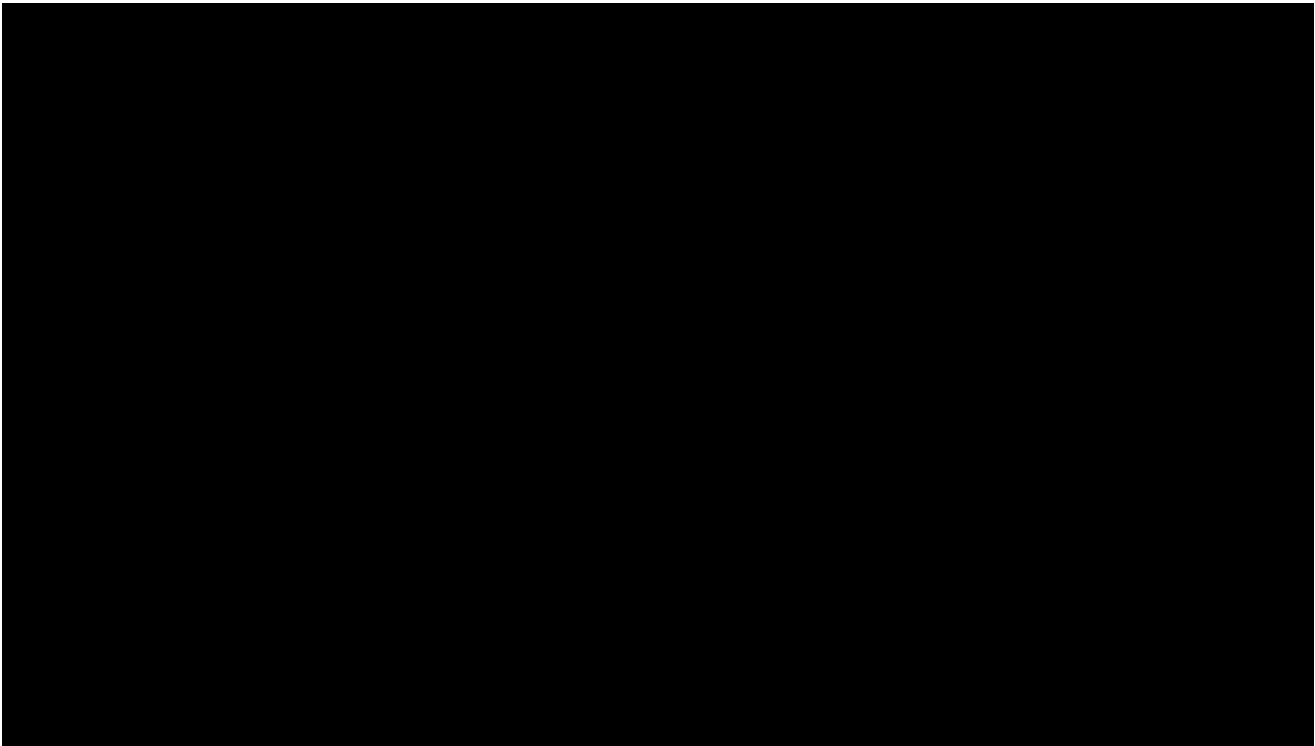


**StackOS Guarantee:**

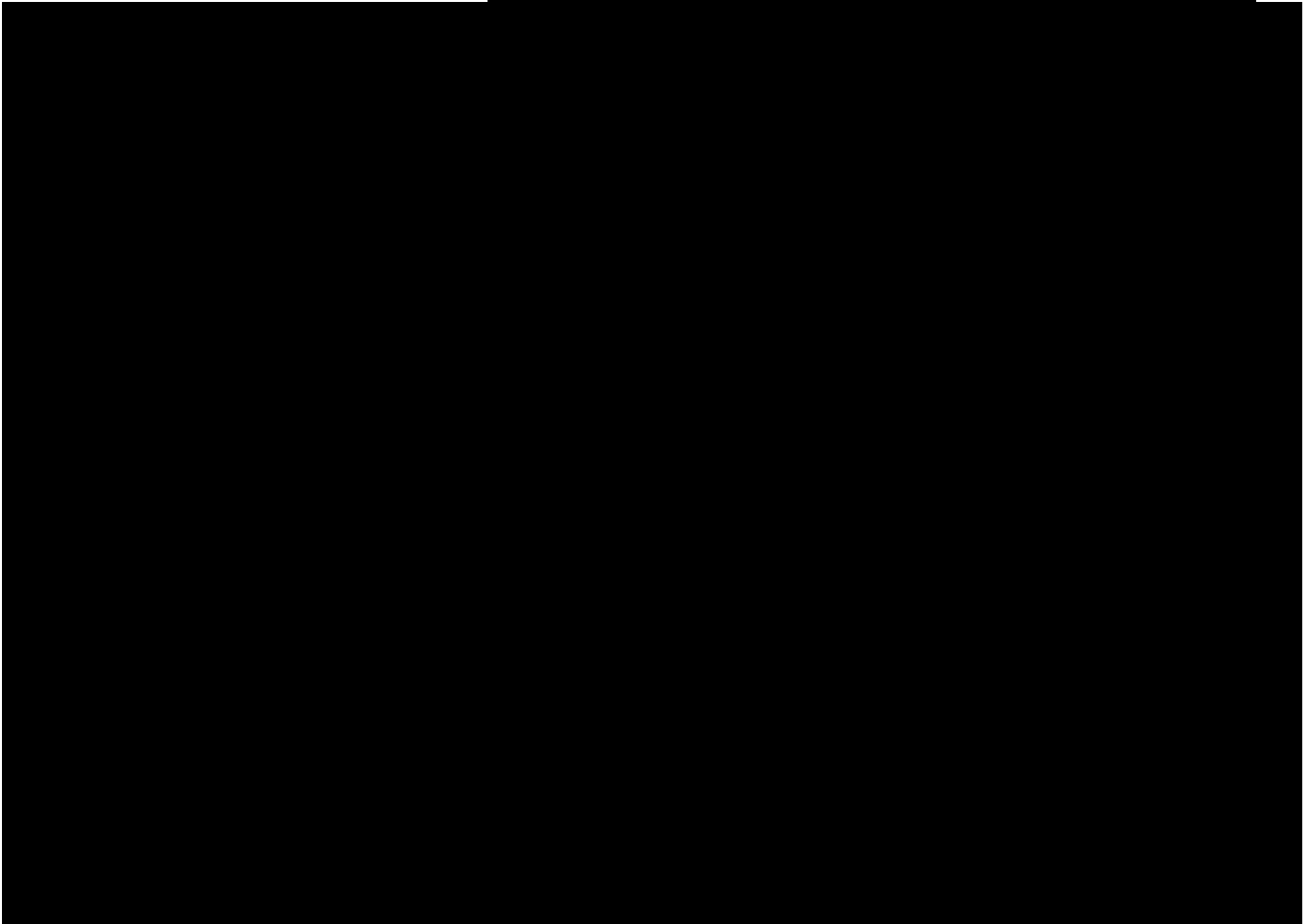


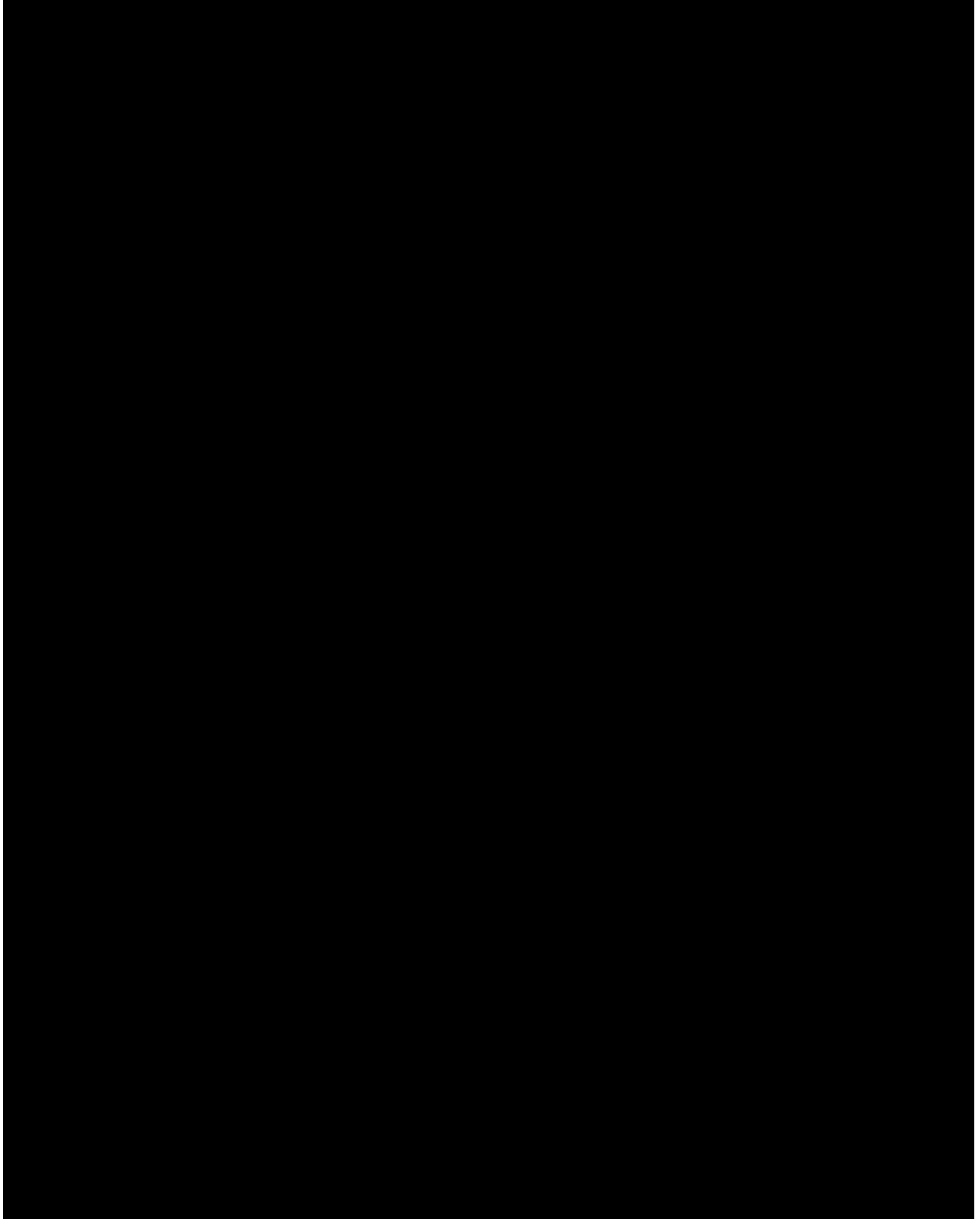
**Capacity Test Procedure:**





**Electrical Conversion Efficiency Guarantee:**



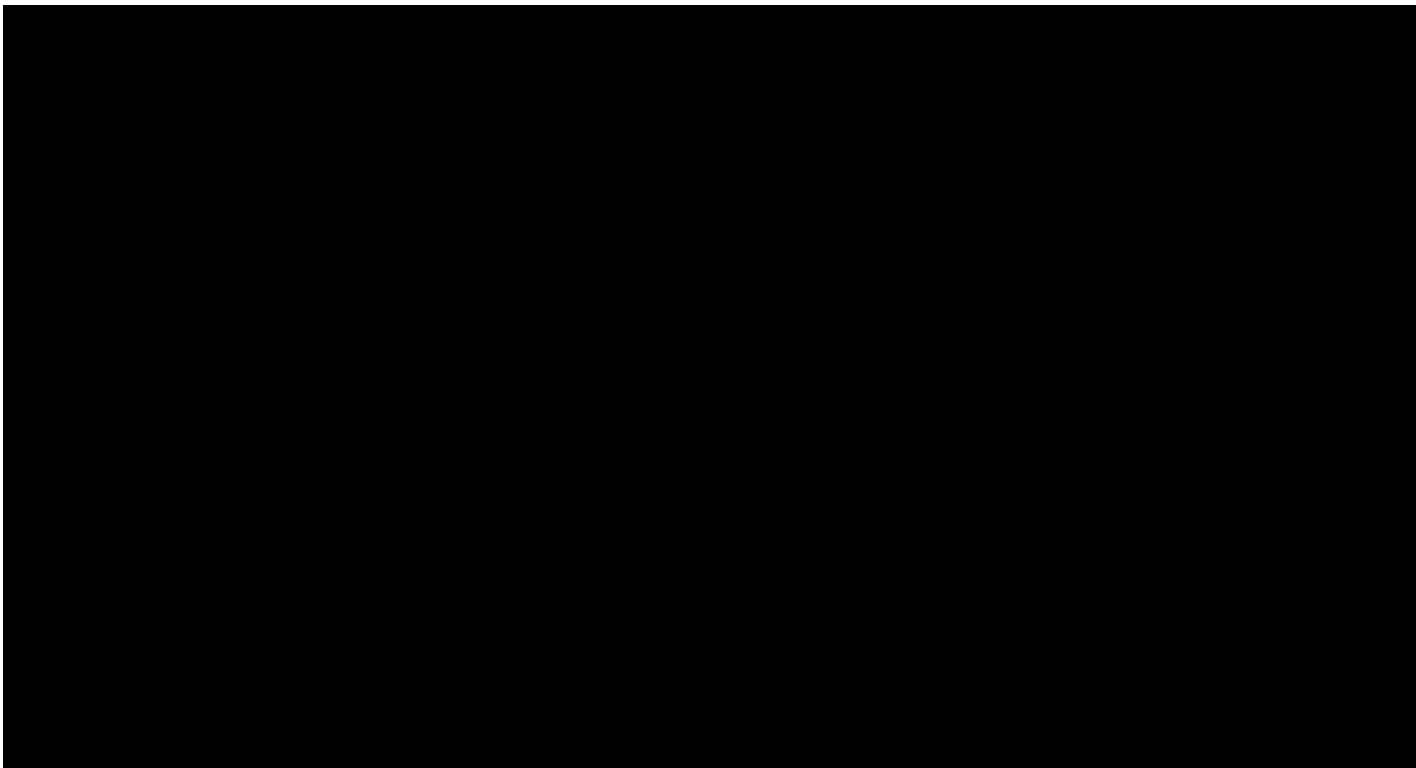


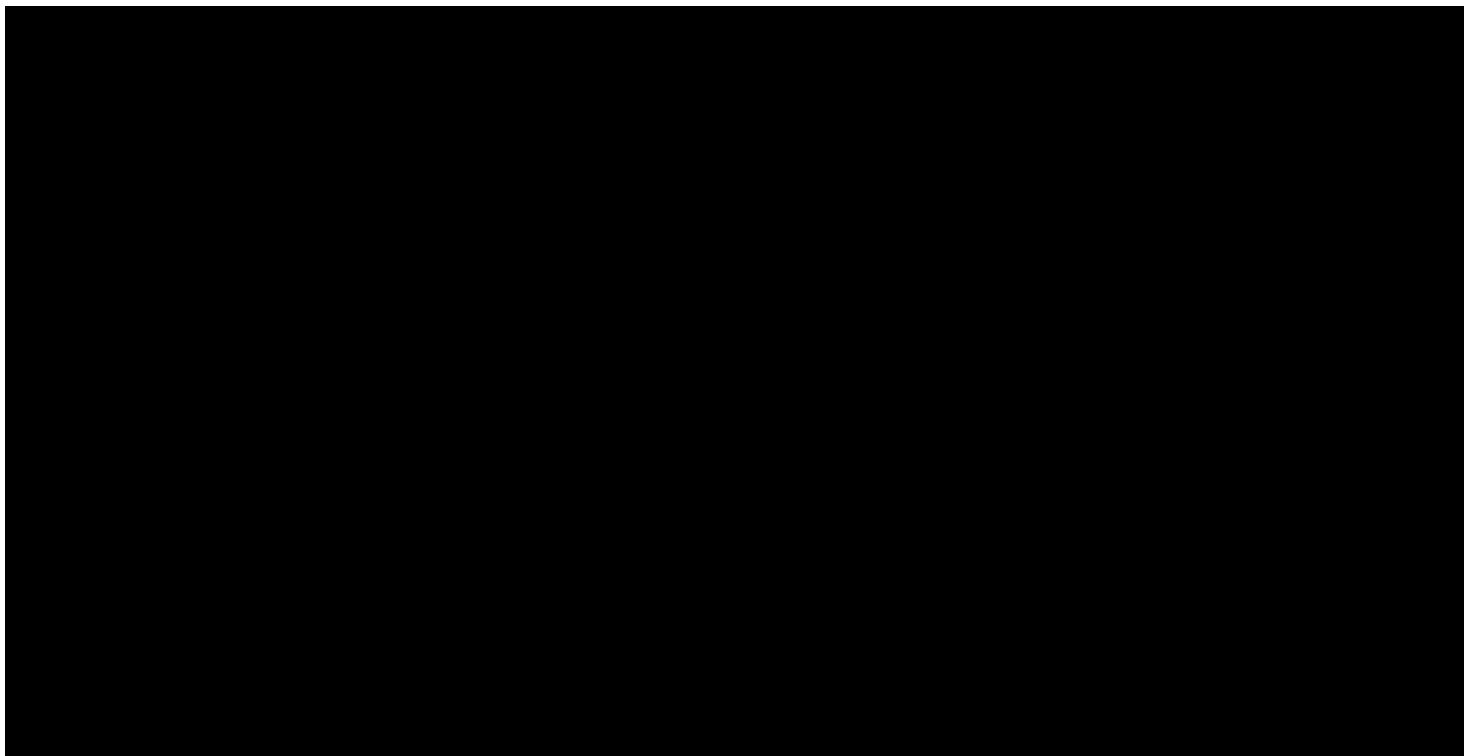
**Additional Terms:**

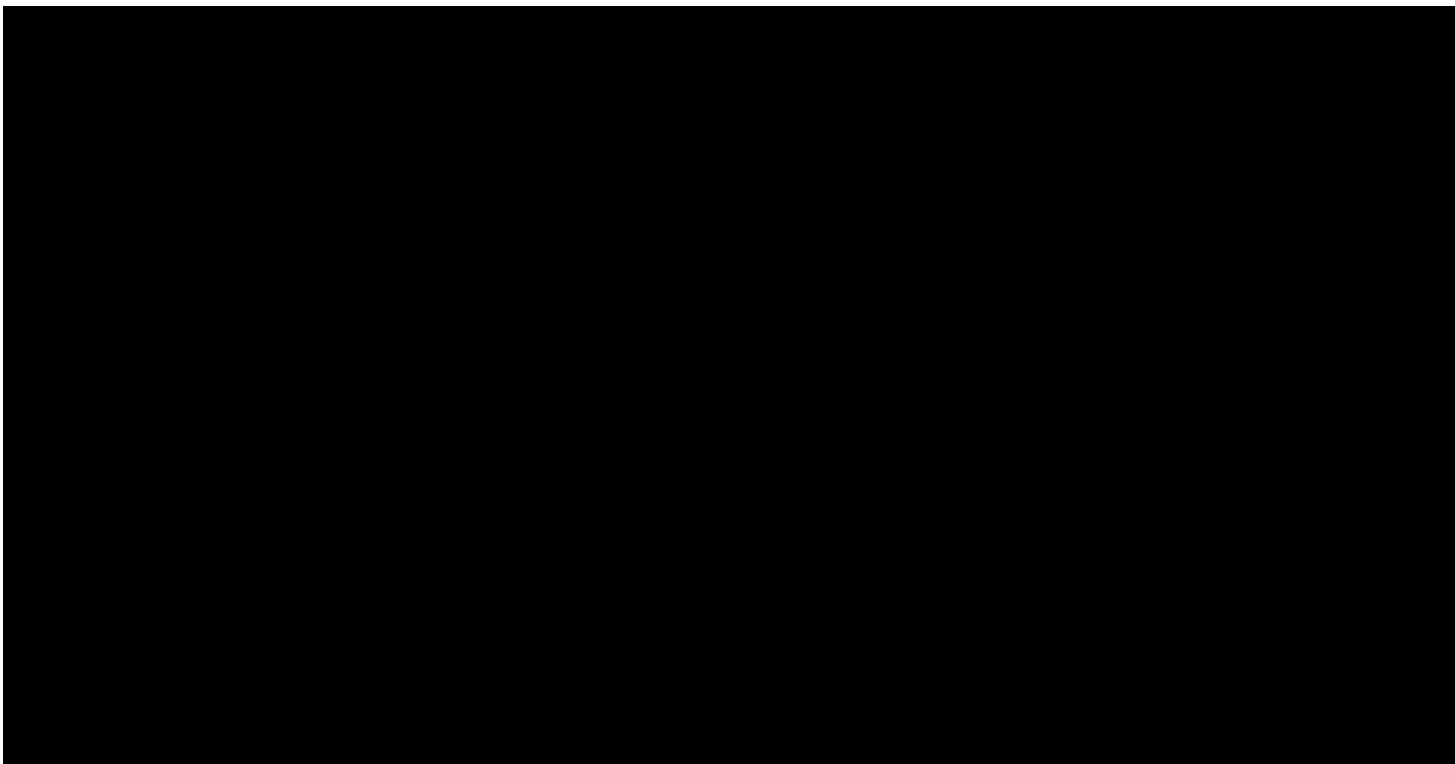


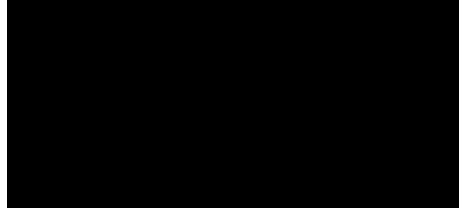
















**Exhibit F-2**  
**Limited Commercial Warranty**

*[See attached]*

## **Exhibit F-2**

### **Limited Commercial Warranty**

POWIN LIMITED COMMERCIAL WARRANTY  
FOR PNM RESOURCES ("CUSTOMER") AT SOUTH VALLEY ("PROJECT")

This "Commercial Warranty", (the "Warranty" or "LCW"), covers defects and breakage in the ESS Equipment.

**Limited Commercial Warranty:** The workmanship and performance of all equipment manufactured by Powin and supplied to the Customer are guaranteed during the period commencing on commencement of Guarantee Period in the Performance Guarantee and ending on the earlier of the date that is 36 months thereafter or the date that the Performance Guarantee ends (the "Warranty Period"). During the Warranty Period, the ESS Equipment shall perform according to the Performance Guarantee and be free from any workmanship or material defects. The Warranty applies to all materials and equipment supplied by Powin, as listed in Schedule A (the "Warranty Eligible Equipment").

In satisfaction of its obligations under the Warranty, Powin will, at its election, repair or replace the defective component(s) free of charge, as long as Customer notifies Powin of the defect during the Warranty Period. The Warranty will cover all costs of material, labor and travel necessary to dismantle, inspect, transport, repair or replace, install, and verify proper operation of the ESS Equipment.

Powin may use new and/or reconditioned parts in its performance of warranty-related service. Powin reserves the right to use parts or products of original or improved design in the repair or replacement, provided such components are (i) in new unused condition, or (ii) if reconditioned of quality not less than the component being replaced (including with respect to costs of ownership, operation and maintenance and system performance), and (iii) in no way void any applicable equipment warranties (or any portion thereof). If Powin repairs or replaces a component, that component's performance shall be guaranteed for the later of the remaining portion of the original Warranty or 365 days from the date of repair. In no event shall the Warranty exceed 48 months from the commencement of the Guarantee Period. All replaced products and all parts removed from the repaired product as the result of a Warranty claim become the property of Powin.

Powin reserves the right to inspect the faulty component(s) and determine if the defect is due to material or manufacturing flaws. Powin also reserves the right to charge for material and time expended at industry standard rates if the defect is excluded from the Warranty, as described below. The Warranty does not cover costs related to inspection, removal, installation, or repair of ESS components not included in Schedule A. Where the Warranty Eligible Equipment that gave rise to the Warranty claim causes damage to other Warranty Eligible Equipment, Powin will be responsible (up to the limitation of liability set forth in the Agreement); provided, however, to the extent Buyer receives insurance proceeds (net of any deductible) arising from a Warranty claim, Buyer shall reimburse Powin in an amount equal to such proceeds.

The Warranty does not cover any defect or damage caused by any of the following occurrences: normal wear and tear; shipping or transportation; rigging and offloading; exposure to unsuitable environmental conditions, including but not limited to damage due to lightning strikes; unauthorized or abnormal use or operation; negligence or accidents, including but not limited to lack of maintenance or improper maintenance; material or workmanship not provided by Powin or its representatives; force majeure events or other acts of God such as fire, flood, earthquake; or terrorism, or war. In no event shall the occurrence of any of the above be excluded from the Warranty to the extent they were caused by, or the responsibility of, Powin or any of its affiliates. This Warranty will terminate if the ESS is ever operated or experiences conditions defined in Exhibit F-1 that void the Performance Guarantee.



Warranty claims or questions can be submitted to the Powin Service Hotline at 855-888-3659 or via email at [service@powin.com](mailto:service@powin.com).

SCHEDULE AWARRANTY ELIGIBLE EQUIPMENT

- Powin Stack product and all subcomponents
- Powin provided enclosure and subcomponents:
  - Lighting system
  - Hydrogen detection system
  - Fire detection and suppression system
  - AC breaker panel for comms and aux loads
  - HVAC and associated control equipment and ducting
  - DC collection, fusing, cabling, and cable trays
  - Auxiliary power cabling
  - Excluded as Warranty Eligible Equipment
    - Uninterruptable power supplies
    - Networking equipment, including StackOS computer, HMI, switches, and routers
- PCS
- MVT

**Exhibit G**  
**OEM Warranties**

*[See Attached]*

**SMA Solar Technology AG** | Sonnenallee 1 | 34266 Niestetal | Germany  
 Phone: +49 561 9522-0 | Fax: +49 561 9522-100 | Internet: www.SMA.de | E-Mail: info@SMA.de  
 Amtsgericht Kassel (District court) Kassel HRB (registration number) 3972  
 Vorsitzender des Aufsichtsrats (Chairman of the Supervisory Board): Uwe Kleinkauf  
 Vorstand (Managing Board): Dr.-Ing. Jürgen Reinert, Thomas Pixa



## SMA Limited Factory Warranty

Note: this description of SMA Solar Technology AG's (hereinafter "SMA") Limited Factory Warranty is effective and applies to all purchases of the Product Types stated below conducted after **2022-06-01** and to that extent supersedes all prior SMA Limited Factory Warranty rights.

The SMA Limited Factory Warranty is not a guarantee of durability and does not include device availability. It applies exclusively to new devices of the following Product Types:

SUNNY CENTRAL: SC-xxxx-UP, SC-xxxxUP-US, SC xxxCP-JP, SC-xxxx, SC-xxxx-US, SCxxxx-EV, SC-xxxx-EV-US

SUNNY CENTRAL STORAGE: SCS xxxx, SCS-xxxx-US, SCS-xxxx-EV, SCS-xxxx-EV-US, SCS-xxxx-UP, SCS-xxxx-UP-US, SCS-xxxx- UP-XT, SCS-xxxx- UP-XT-US

SMA DC/DC CONVERTER: DPS-500

MEDIUM VOLTAGE BLOCK: MVB-US, MVB-EV-US

MEDIUM VOLTAGE POWER STATION: MVPS-xxxx, MVPS xxxSC, MVPS xxxSC-JP, MVPS-xxxx-S2, MVPS-xxxx-S2-US, MVPSxxxx-S4-US, MVPS-xxxx-S-AU

SMA POWER PLANT CONTROLLER: PPC-10

SMA REDUNDANCY CONNECTOR: PPM-RC-10

SMA HYBRID CONTROLLER: HYBRID-CONTROLLER

POWER PLANT MANAGER: PPM-10

SMA DATA MANAGER L: EDML-10

SUNNY HIGHPOWER PEAK3 ("SHP PEAK3"): SHP xxx-20, SHP xxx-US-20, SHP xxx-JP-20

### No Restriction on Statutory Warranty Rights or other National Statutory Rights

The statutory warranty obligation of the device seller and the corresponding statutory warranty rights of the buyer which may not lawfully be excluded or limited are not affected by this SMA Limited Factory Warranty. Furthermore, should this SMA Limited Factory Warranty violate any national statutory rights which may not lawfully be excluded or limited and which grant the warranty claimant any rights in addition to the SMA Limited Factory Warranty, then such national statutory rights shall not be affected by the provisions of this SMA Limited Factory Warranty.

### Warrantor

The warrantor is SMA. SMA reserves the right to have the services specified in this SMA Limited Factory Warranty conducted by SMA authorized partners.

## Warranty Eligibility

The persons who are eligible to raise claims under this SMA Limited Factory Warranty are only (i) buyers that have purchased the devices themselves and have put them into operation for the first time (herein "Initial Operator") and (ii) buyers that have acquired the devices legitimately and with no modifications from the Initial Operator or the Initial Operator's legal successor(s). The persons eligible under this SMA Limited Factory Warranty are herein referred to as "warranty claimant". Other persons are not authorized to assert claims against SMA under this SMA Limited Factory Warranty unless authorized by the warranty claimant. Assigning and/or transferring these rights to persons other than a warranty claimant is not permitted.

### **Optional: Corrective Maintenance – 1 Component Exchange by Customer**

Under the SMA Limited Factory Warranty the Customer has the option to perform the Corrective Maintenance -1 component exchange for the Sunny Central/Sunny Central Storage products after successfully completing the Preventative and Corrective Maintenance training offered by SMA for purchase. If this option is selected for the Factory Warranty period all components and Corrective Maintenance – 2 component exchange will be warranted and performed by SMA. An additional appendix will be provided concerning the process, training and requirements to perform the Corrective Maintenance – 1 component exchange if this option is selected.

## Warranty Period

For the devices of the Product Types mentioned above, including their standard feature options and factory built customizations, the warranty claimant receives a **63-MONTH** SMA Limited Factory Warranty from delivery date per agreed Incoterm in the sales contract from SMA unless a different warranty period has been agreed to between Warrantor and Buyer.

If structural or unauthorized changes or unauthorized (attempted) repairs of the device have been made, and SMA has not requested these changes or repairs, the SMA Limited Factory Warranty will be terminated on the date these structural or unauthorized changes or unauthorized (attempted) repairs were made, regardless of the period mentioned above. If damage has been sustained to any structurally altered or (attempted) repaired devices that were not altered or (attempted) repaired at SMA's request, the costs incurring in order to repair the damages, regardless of whether these structural changes were cause of these damages, are not covered by this SMA Limited Factory Warranty. SMA will inform the warranty claimant in advance about these costs. The repair will be performed depending on the warranty claimant's consent to cover these costs.

### **Specific Warranty Period Information for the SUNNY HIGHPOWER PEAK3**

Independent of the duration of the SMA Limited Factory Warranty, for the SHP PEAK3 the warranty period begins when the device is first commissioned (in line with the commissioning report) or the invoice date by the first warranty claimant. The requirement for this is a product registration on the SMA homepage ([www.my.sma-service.com/s/product-registration](http://www.my.sma-service.com/s/product-registration)) within 12 months after commissioning or the invoice date for the first warranty claimant. If the product registration does not occur, the factory warranty period for the SHP PEAK3 will begin on the delivery date per agreed Incoterm in the sales contract from SMA.

## Geographic Scope of Application

This SMA Limited Factory Warranty applies worldwide. Warranty coverage may vary in certain countries within the geographic scope of application (see below).

## Warranty Coverage

This SMA Limited Factory Warranty covers the costs of defects in workmanship and materials during the warranty period according to these conditions. SMA will, at its own discretion, repair or replace the defective part(s) or the device according to the specific conditions as mentioned below, provided that:

- a trained person properly maintains the equipment according to the published SMA and/or manufacturer maintenance documents including, without limitation, any protocols, regulations, and intervals required therein, (the type label on the device must be completely legible), and;
- the warranty claimant promptly notifies SMA of a device fault or defect as soon as an indication of such a fault or defect occurs, and;
- SMA, through remote diagnosis or inspection, establishes the existence of such a defect covered by this SMA Limited Factory Warranty.

SMA will, at its option, use new and/or equal to new condition parts of original or improved design in the repair or replacement of the warranty claimant's device.

### Specific Information for the SUNNY HIGHPOWER PEAK3

If a SHP PEAK3 becomes defective during the warranty period, the device will be (at the discretion of SMA):

- replaced with a device of equivalent value with regard to product type and age, or
- repaired on-site by SMA or a service partner appointed by SMA (when SMA reasonably concludes that the geographical area in which the system is operated is deemed too risky to render on-site services, SMA's obligations to render these services for said area are suspended for the period in which such risk is reasonably deemed to exist), or
- repaired at SMA's premises by SMA or a service partner appointed by SMA, or the warranty claimant must accept a replacement device of equivalent value with regard to product type and age even if it has cosmetic defects that do not affect energy production, or safety compliance. SMA will, at its option, use new and/or equal to new condition parts of original or improved design in the repair or replacement of the warranty claimant's device.

### Specific Information if SMA chooses to Supply a Replacement Device (specific for SHP PEAK3)

If SMA decides to replace the device, SMA will at its discretion either send in advance a replacement device or send a replacement device after prepayment of the value of the replacement device and the costs of delivery, or send a replacement device after receipt of the defective device. As required by SMA, the warranty claimant must return the defective device at its own risk in a packaging that is suitable for its transportation to an address defined by SMA that will be located within the same country that the replacement device is shipped from. The costs for removal and replacement of the device, as well as the transportation costs for sending the replacement device and returning the defective device (including, but not limited to, export certifications, inspections, and customs duties) are to be borne entirely by the warranty claimant. However, if the device is installed in a **SMA Primary Support Country**, (see table below) the SMA Limited Factory Warranty will also cover transportation costs, export certifications, inspections, and customs duties for replacement and returned devices.

SMA will retain ownership of the replacement device that has been delivered until it receives the defective device.

If SMA has decided to request from the warranty claimant the prepayment of the value of the replacement device before delivery of the replacement device, SMA will refund to the warranty claimant the amount received by the warranty claimant as prepayment of the value of the replacement device once the warranty claimant has returned to SMA the defective device and this defective device does not have any further defects not previously made known to SMA.

If the warranty claimant returns the defective device more than thirty (30) calendar days after receipt of the replacement device, then SMA has the right to charge the warranty claimant for the cost of administering the overdue RMA (Return Material Authorization) account. Return items will not be accepted without a valid RMA number obtained from SMA that is clearly displayed on the returned items packaging.

### **Specific Information if SMA chooses to Repair a Device at SMA's Premises (specific for SHP PEAK3)**

If the device is to be repaired at SMA's premises, the warranty claimant must remove the defective device and send it for repair to SMA in Kassel, Germany at its own risk in a packaging that is suitable for the transportation. Once the device has been repaired at SMA's premises, SMA will return the repaired device to the warranty claimant. The costs for removal and replacement of the device, as well as the costs for sending the device to SMA's facilities in Kassel, Germany and returning it to the warranty claimant including, but not limited to, transportation costs, export certifications, inspections, and customs duties are to be borne entirely by the warranty claimant. However, if the device is installed in a **SMA Primary Support Country**, (see table below), the SMA Limited Factory Warranty will also cover transportation costs, export certifications, inspections, and customs duties for the returned and repaired device.

### **Specific Requirements regarding Commissioning**

The SMA Limited Factory Warranty only applies to devices which have been commissioned by an employee of the SMA group itself or a SMA authorized partner. This restriction does not apply to the SMA Data Manager L (EDML-10) and the SHP PEAK3 which can be commissioned by the warranty claimant or third parties.

### **Specific Requirements regarding Operation and Preventative Maintenance**

The following provisions apply to operation, preventative maintenance and required documentation thereof:

- The SMA Limited Factory Warranty requires that the device is operated within applicable specifications, and maintained per the manufacturer's maintenance manuals and protocols.
- To determine the validity of the SMA Limited Factory Warranty, SMA reserves the right to request documented proof of true records of proper preventative maintenance before servicing, as well as true records showing the devices have been operated in compliance with their specifications. If a copy of each protocol of the preventive maintenance from the start of the Factory Warranty period is not provided to SMA upon request, the SMA Limited Factory Warranty is void. This also applies should no operational records be provided confirming compliant device operation.
- If remote or on-site diagnostics are performed in response to damage, defect, or reduced performance and the underlying cause of the reported issue is determined to be the result of improper operation or preventative maintenance (either lack thereof, performed at irregular intervals, or physical damage caused negligently or otherwise), SMA will require payment for services not covered under this SMA Limited Factory Warranty prior to any repair activity taking place, included but not limited to the cost of any parts, labor and transportation that may be necessary to make a complete repair.

### **Specific Information regarding Repair Coverage**

When devices are installed in a **SMA Primary Support Country** (see table below), the SMA Limited Factory Warranty includes replacement parts and/or exchange devices, repair labor costs, transportation costs, export certifications, and inspection as well as travel, accommodations, and expenses for SMA Service personnel for on-site repairs. If the installation site is not in a SMA Primary Support Country, the warranty claimant shall bear costs, including, but not limited to packaging, transportation, export certifications, inspections, taxes, and customs duties costs for replacement and return parts, as well as the travel, accommodations, and expenses of SMA Service personnel for on-site repairs.

### Specific Information on the Coverage of Other Costs

SMA will inform the warranty claimant of any costs (including, but not limited to transportation, customs duties, travel, and/or accommodation to the extent they are not covered by this SMA Limited Factory Warranty) that require payment in advance of the repair action. The repair will be performed depending on the warranty claimant's consent to cover these costs.

### SMA Primary Support Countries (Countries in **bold** are in addition and specific only for the SHP PEAK3)

SMA Primary Support Countries are the following countries, however excluding their associated islands and overseas territories:

Australia	Austria	Brazil	Bulgaria	Canada*	Chile	Denmark
France	Germany	Greece	Hungary	India	Israel	Italy
Japan	Jordan	<b>Liechtenstein</b>	Mexico	<b>Monaco</b>	Netherlands	<b>New Zealand</b>
<b>Other EU countries</b>	Philippines	Poland	Portugal	Puerto Rico	Romania	<b>San Marino</b>
Slovakia	South Africa	South Korea	<b>Switzerland</b>	Spain	<b>Taiwan</b>	Thailand
Turkey	United Arab Emirates	United Kingdom	United States of America	<b>Vatican City</b>	Vietnam	

\* Applies exclusively to Ontario and Quebec provinces

### Warranty Exclusions

#### Temporary exclusion of SMA services in high risk areas:

Following international best practices as well as its employee security policy, SMA constantly evaluates the risk potential of areas in which on-the-ground and other services are likely to be rendered for SMA devices (hereinafter the "Services"). Such risk evaluation is based on international assessment standards, in particular the City/Country Security Assessment Rating (CSAR) as applied by iJET® or comparable institutions (hereinafter the "Area Risk Assessment"). Aspects considered in such Area Risk Assessment include inter alia risk of war (whether undeclared or not), terrorism, riots, kidnapping or comparable threats.

Against this background, the following stipulations apply:

- (1) In case that an Area Risk Assessment leads to the conclusion that an iJET® rating of 5 (very high), a similar rating from a comparable institution or a travel ban from the German Federal Foreign Office applies for a particular area, SMA's obligations under this SMA Limited Factory Warranty to render on-site Services like repair works are suspended for the period during which such very high risk rating or such travel ban applies.
- (2) In case that such an Area Risk Assessment leads to an iJET® rating of 4 (high) or a similar rating from a comparable institution and there is no travel ban from the German Federal Foreign Office, SMA will render on-site Services under this SMA Limited Factory Warranty only if:
  - the warranty claimant ensures full security (including possible evacuation) for the SMA personnel during its entire stay in such area, and
  - the warranty claimant bears the costs of such full security protection, and
  - travel to the area is not withheld due to concerns by SMA's Security Officer made in its reasonable discretion.



The warranty claimant has to provide SMA in due time (at least 30 days) before any Services shall be rendered with a written communication including a detailed protection plan on how full security for SMA personnel will be ensured for the Services as well as a statement that the warranty claimant will cover the respective cost directly and in full. In case the warranty claimant does not provide for a satisfactory protection plan on time or denies covering such security costs, SMA's on-site obligations under this SMA Limited Factory Warranty shall be suspended for the period during which such high-risk rating applies.

- (3) In both scenarios (1. and 2. above), SMA shall not be deemed to be in breach of its obligations under this SMA Limited Factory Warranty.
- (4) SMA will duly provide the warranty claimant with a written communication describing the result of the Area Risk Assessment as well as its obligations it is prevented from performing, and the effective date of such suspension.

**The SMA Limited Factory Warranty does not cover damages or performance issues that occur due to:**

- Failure to observe the technical documents and manuals, and/or the protocols and/or requirements therein
- Damage related to improper handling, transportation, storage, or repackaging not provided by SMA
- Incorrect installation, unauthorized commissioning, or incorrect parameter settings not provided by SMA
- Non-SMA authorized tests or component disassembly/reassembly during installation and or commissioning
- Non-SMA authorized modifications, changes, or attempted repairs
- Insufficient ventilation of the device and any consequential thermal damage
- Corrosion due to exposure to sea coast/saltwater atmospheres or other aggressive atmospheres or environmental conditions outside the scope of design as defined in the customer manual of the device
- Failure to observe the applicable safety regulations (UL, CSA, VDE, IEC, etc.)
- Improper forced shutdown
- Accidents and external influences
- Force majeure, examples including, but not limited to: overvoltage, lightning strikes, floods, fires, earthquakes, storm damage, pest damage and rodents damage
- Incorrect function of upstream protection systems including, but not limited to, switchyards, substations or other electric equipment between SMA devices and the grid connection of the site including such connection
- Incorrect function of the warranty claimant's SCADA or other site control and measurement systems
- Operating conditions of the warranty claimant's plant infrastructure that are outside the specifications of SMA devices, including but not limited to, excessive high or low voltage, voltage spikes or dips, harmonics, frequency deviations, and network faults.
- Insufficient or insecure protection of the communication network or device interfaces against unauthorized access

**The items below are expressly not covered by this SMA Limited Factory Warranty:**

- All items not purchased from SMA including, but not limited to, medium-voltage transformers, medium-voltage switchgear, disconnect units, re-combiners, combiners, disconnects, installed cables, controllers, batteries, current transformers, voltage transformers and communications devices.
- Consumables and parts subject to regular wear and tear, including but not limited to, fuses, filters, (rechargeable) batteries, overvoltage protection devices.
- Cosmetic or finish defects which do not directly influence energy production, or degrade form, fit, function.

## Impact of Warranty Coverage on the (Remaining) Warranty Period

If device components are replaced under this SMA Limited Factory Warranty, the components used will be covered by the same remainder of the warranty period as the repaired device. If the entire device is replaced under this SMA Limited Factory Warranty, the remainder of the warranty period will be transferred to the replacement device.

## Procedure to Exercise Rights under this SMA Limited Factory Warranty

To determine the warranty entitlement, the warranty claimant must submit the device serial number and a copy of the commissioning report if not on file with SMA. The type label on the device must be completely legible. Otherwise, SMA will refuse to perform warranty services in accordance with this SMA Limited Factory Warranty.

The warranty claimant or the warranty claimant's Authorized Representative (Warranty claimant's Authorized Representative is defined as an individual determined by the warranty claimant who is qualified to safely access the equipment and who meets the latest local jurisdiction requirements and definitions of an "Authorized Person". Examples: EN 50110 (European Standard), NFPA 70 (NEC) and NFPA 70E (Electrical Safety), CSA Z462 (Canada)) must report a failure to the SMA Service Center while at or near the equipment being reported, using the procedure as described below. Warranty service is also available by accessing SMA's Online Support at [www.SMA-Solar.com](http://www.SMA-Solar.com) under the heading SERVICE & SUPPORT.

Reporting a failure shall constitute a "Qualified Service Case" when fully completed:

- Name of the person reporting the failure, date and time of failure, company name, phone number, and email
- Site name, address, contact name, and phone number (if different from fault reporter)
- Serial number of all defective device(s), and their local equipment designation (i.e. Station 3B, Inverter-A)
- If applicable, battery manufacturer and battery type
- Error code(s) or diagnostic light patterns displayed or recorded
- Description of any actions or maintenance protocols performed prior to failure
- The warranty claimant may be requested to provide remote access (incl. appropriate internet connection and necessary login credentials) to the plant and to the SMA devices to enable remote troubleshooting
- The warranty claimant may be required to send an email to the local SMA Service Center to confirm the above details along with a zipped download of files from SMA devices.

The warranty claimant, in a timely manner, must grant SMA and/or SMA authorized partners the necessary access, and time to remedy the defect. For unattended sites, SMA may require that the warranty claimant provide, and pay for, a site escort. The warranty claimant must ensure that the device and related equipment can be accessed safely and immediately with a light vehicle (4 metric tons) or, in the case of work required on medium voltage equipment also heavy vehicles and cranes in any weather. Should it be necessary to work on medium voltage equipment, the warranty claimant is responsible to isolate, disconnect/bypass and reconnect both the medium voltage grid and low voltage inverter side termination points from the affected equipment, in order for SMA to diagnose and make repairs.

The warranty claimant is fully responsible for creating and implementing its own site safety policy(s) and informing SMA and/or SMA authorized partner personnel about all relevant safety protocols applicable on the site. Under no circumstances shall SMA or SMA authorized partners be responsible for the safety of warranty claimant's technicians, representatives or contractors while working on SMA devices and equipment. The warranty claimant will provide SMA personnel at no cost any required site-specific protective clothing or protective equipment that is not part of SMA's standard safety equipment. SMA may charge the warranty claimant for waiting times on site and for costs incurred to provide a safe working environment caused by the warranty claimant's failure to observe their obligations. SMA reserves the right not to enter the site should SMA personnel consider it unsafe to do so or weather conditions are unacceptable to perform the work requested.

The warranty claimant is responsible to make available at its costs cranes or any other resources needed in order for SMA personnel to gain access to perform diagnosis and repairs. The warranty claimant is obliged to provide at its costs lifting tools determined by SMA to enable on-site repairs regarding the following devices: Utility Power Systems (UPSys), Utility Power Racks (UPR), Power Skids Australia (PSAU), Medium Voltage Power Stations (MVPS), Medium Voltage Stations (MVS) or Transformer Compact Stations (TCS). The warranty claimant will supply at its costs to SMA personnel electrical power, lubricants, fuels, water, lighting and any other energy required by SMA personnel to remedy the defect.

SMA will make a determination if defective parts can be disposed of or must be returned to SMA. If SMA does not get the requested defective part back within 30 days of the warranty claimant's repair action, SMA has the right to charge the warranty claimant the value of the delivered replacement part. If the defective part is returned after the 30-day period SMA has the right to charge the warranty claimant for the cost of administering the overdue RMA (Return Material Authorization) account. Return items will not be accepted without a valid RMA number obtained from SMA that is clearly displayed or included in the returned items packaging. All defective parts shall become the property of SMA upon receipt at SMA's return facility.

Replacement Medium Voltage Transformers or Switch Gear as well as other components installed in SMA's medium voltage devices may require significant lead time.

The services to be rendered by SMA in accordance with this SMA Limited Factory Warranty that are free of charge for the warranty claimant apply only if the course of action is agreed with and confirmed in writing by SMA in advance. Written documents and electronic messages, such as fax or e-mail, satisfy the requirement that confirmation be given in writing.

### **Specific Information to Exercise Rights under this SMA Limited Factory Warranty for the SHP PEAK3**

The warranty claimant must notify SMA of a device fault or defect within the warranty period. To determine if the device is covered by the SMA Limited Factory Warranty, the warranty claimant must – in addition to the requirements stated below - submit a copy of the commissioning report which must include the serial number of the defective device. SMA reserves the right to request a copy of other documents including, but not limited to, the purchasing invoice, which must include the serial number of the device. SMA only accepts documents in the following languages: Arabic, Czech, Dutch, English, French, German, Greek, Hindi, Italian, Japanese, Mandarin, South Korean, Spanish, and Thai. A certified translation in one of the mentioned languages will also be accepted. The type label on the device must be completely legible. If the aforementioned requirements are not fully met, SMA is not obliged to perform any obligations under the SMA Limited Factory Warranty. The warranty claimant or their electrically qualified representative must report a failure to their local SMA Service Center using the following procedure as described below.

- Proper fault diagnosis may require a qualified service technician to be at the SMA device location and equipped with a quality digital AC/DC voltmeter and required tools as specified in SMA device manual.
- The on-site qualified service technician may be asked to take voltage measurements and provide error codes from the inverter.
- Additional information may be required, including, but not limited to:
  - Model type number
  - Installation site name
  - Original date of commissioning
  - PV array configuration
  - Battery manufacturer and battery type
  - Description of any modifications that have been performed on the inverter
- Safely remove any interface option modules from the inverter to be returned, and retain them for reinstallation on the replacement device.

- SMA will provide instructions for proper return or disposal of the defective device.
- If no failure is found when the device is tested by the SMA Service Repair Department, the warranty claimant may be charged an inspection fee and transportation costs.

If the services are to be rendered by SMA free of charge in accordance with this SMA Limited Factory Warranty, these are only free of charge if the course of action is agreed with and confirmed in writing by SMA in advance. Written documents and electronic messages, including, but not limited to, fax or e-mail, satisfy the requirement that confirmation be given in writing. All costs incurred by the warranty claimant to exercise its rights under this SMA Limited Factory Warranty shall be borne by the warranty claimant.

## Final Validity

The rights mentioned in this SMA Limited Factory Warranty reflect the rights of the warranty claimant in accordance with this SMA Limited Factory Warranty. No other claims are covered by the SMA Limited Factory Warranty including, but not limited to:

- Claims for compensation for direct or indirect damage caused by the defective device, including, but not limited to, consequential, punitive or special damages, interest and other financing expenses, cost of purchase or replacement power, loss of information or data
- Claims for compensation for costs arising from warranty claimant's personnel (such as, but not limited to working hours, travel expenses, accommodation)
- Claims for compensation for costs arising from disassembly or installation
- Claims for compensation for any hazardous, controlled or otherwise unnatural material discharge, cleanup, or disposal related to defects or damage from, but not limited to, medium voltage transformers/switchgear or insulating fluids/gases contained within
- Claims for loss of power production or loss of profits

If the warranty claimant requests unnecessary or unjustified service work under this SMA Limited Factory Warranty, SMA shall be entitled to invoice the warranty claimant for the costs incurred as a result.

## Firmware Disclaimer

SMA periodically provides firmware updates at SMA's sole discretion on SMA purchased products. Such firmware updates are made available to the warranty claimant "as is" and normally at no additional cost. SMA does not assume any obligation for the reimbursement of expenses and providing any maintenance, support, further updates, or configuration changes resulting out of or in connection with the SMA firmware update. Unless there is evidence of willful or grossly negligent fault on the part of SMA, SMA does not assume any liability for direct, indirect, incidental, or consequential damages, including loss of production, loss of profits or any additional expenses, which resulted from or in connection with the SMA firmware update, regardless of whether it is carried out remotely or manually, even if the user has been informed of the possibility of such damage.

## Applicable Law and Place of Jurisdiction

All claims arising from or in connection with this SMA Limited Factory Warranty are subject to German law with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Kassel, Germany, is the exclusive place of jurisdiction for all disputes arising from or in connection with this SMA Limited Factory Warranty provided that the warranty claimant is a Merchant according to the German Civil Code, a legal entity under public law or a person governed by public law.

**For more information, please visit the "Service" section of our website at [www.SMA-Solar.com](http://www.SMA-Solar.com)**

**Exhibit H**  
**Insurance Requirements**

*[See attached]*

## Exhibit H

### Insurance Requirements

#### 1. Supplier's Insurance

(a) Without limiting Supplier's liability under this Agreement, Supplier shall maintain, in full force and effect during the term of this Agreement, at its sole cost and expense, the insurance described below from insurers having an A.M. Best Insurance Reports rating of "A-" / X or better and licensed to conduct business in the US state of the Project Site.

(i) Workers' Compensation

(1) Worker's Compensation (including coverage for occupational disease) and such other forms of insurance as may be required by (and in the amounts required by) the Applicable Law at the Worksite.

(2) Employer's Liability coverage (including occupational disease, injury or death) which shall cover all of Supplier's employees, whether full-time, leased, temporary or casual, who are engaged in the Work and shall have limits not less than:

- \$1,000,000 each accident for bodily injury by accident;
- \$1,000,000 each employee for bodily injury by disease; and
- \$1,000,000 policy limit bodily injury by disease

(ii) Commercial General Liability

Commercial General Liability, written on an ISO "occurrence" form CG 00 01, covering all liability arising out of the ESS Equipment and/or Work furnished by Supplier, and shall include Broad Form Contractual Liability, Products and Completed Operations Liability, explosion, collapse and underground hazards, sudden and accidental pollution liability, and Broad Form Property Damage Liability coverage, including, but not limited to resulting and/or downstream damage caused to equipment and property. Supplier will maintain coverage for Products and Completed Operations Hazards for a minimum of four years beyond Commissioning. The limits of coverage shall not be less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate.

(iii) Business Automobile Liability

Business Automobile Liability (including coverage for owned, hired and non-owned automobiles) covering all vehicles used by Supplier in connection with the performance of this Contract, with limits not less than \$1,000,000 per occurrence combined single limit for bodily injury and

property damage and \$1,000,000 in the aggregate. Such coverage shall be at least as broad as the most recent Insurance Services Office Business Auto Coverage form covering Automobile Liability and shall otherwise comply with Applicable Laws.

(iv) Umbrella/Excess Liability Insurance

Supplier shall maintain umbrella/excess insurance covering claims in excess of the underlying Commercial General Liability and Business Automobile Liability, and Employers Liability insurance maintained by Supplier. The coverage shall be written on a follow form basis, or the coverage shall be written on terms at least as broad as the underlying policies and shall have limits of not less than \$20,000,000 per occurrence and \$20,000,000 aggregate. Such coverage shall not contain any endorsements that restrict the underlying policies..

(v) Professional Liability Insurance

Supplier shall provide Professional Liability Insurance which shall include coverage for all professional services provided by Supplier or on Supplier's behalf, with limits not less than \$1,000,000 per claim and \$1,000,000 aggregate, with a deductible not to exceed \$250,000. Notwithstanding anything to the contrary, Supplier shall, at a minimum, maintain the professional liability insurance from the Effective Date through the date that is four (4) years after the date on which Commissioning is achieved.

(vi) Ocean marine/Inland Transit Cargo Insurance

(1) Supplier shall maintain Ocean marine/Inland Transit Cargo Insurance insuring the ESS Equipment against loss or damage from "all risk" perils, with limits not less than \$11,000,000 per claim (vessel and aircraft) and \$500,000 per claim domestic land. Coverage shall include all modes of transportation, including land, air, marine, inland and ocean transit, and shall commence from the time the ESS Equipment is first moved at the originating Worksite for the purpose of immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit and shall thereafter remain in force, including during shipment deviation, delay, forced discharge, temporary storage, re-shipment and transshipment, until completion of unloading within the legal boundaries of the Project Site. Such insurance shall cover all risks of loss or damage, including war risk, strikes, riots, civil commotion, theft, pilferage, non-delivery, charges of general average, sacrifice or contribution, salvage expenses, consolidation, repackaging, refused and returned shipments, contain a replacement by air extension clause, 50/50 clause, non-vitiation clause, debris removal and shall include extra/expediting expense coverage.

- (2) Supplier shall cause the Ocean marine/Inland Transit Cargo Insurance policy to be endorsed to include Buyer, Owner and Owner's designees, if any, and "loss Payees" as their interest may appear. Additionally, Supplier shall cause the policy to be endorsed to provide the insurer(s)' waiver of any and all rights of recovery, by subrogation, setoff or otherwise, against Buyer, Owner and Owner's designees, if any, and the respective directors, officers, employees, and agents of each of the foregoing. Any required payments of deductibles under the ocean marine/cargo insurance shall be the responsibility of Supplier, and Supplier shall be responsible for the cost of all surveys required by the Cargo Insurers and compliance with the Survey Warranty Clause required by such insurers.
- (b) Supplier shall cause its policies required under Sections 1(a)(ii) through (iv), above, to name Buyer, Owner, any other party designated by Owner, if any, and the respective directors, officers, employees, and agents of each of the foregoing, as additional insureds. The commercial general liability policy shall be endorsed with ISO industry standard Additional Insured endorsement forms CG 20 10 and CG 20 37. The insurance required under Sections 1(a)(ii) through (iv), above, shall be primary to and in excess of or in addition to any insurance or self-insurance maintained by the additional insured parties and the policy forms shall include or be endorsed to include a cross liability and severability of interest clause or ISO standard separation of insureds clause. Additionally, all of Supplier's policies required under Sections 1(a)(ii) through (v) shall be endorsed to provide the insurer(s)' waiver of any and all rights of recovery, by subrogation, setoff or otherwise, against Buyer, Owner, Owner's designees, if any, and the respective directors, officers, employees, and agents of each of the foregoing.
- (c) Supplier shall ensure its insurance will not be canceled, changed or not renewed until the expiration of at least thirty days (ten (10) days in the case of cancellation due to non-payment of premiums) after Notice of such cancellation, change or non-renewal has been received by Supplier. Supplier shall provide written notice to Buyer no later than five (5) days following receipt of any such notice.
- (d) Supplier shall ensure its liability insurance will not be canceled, changed or not renewed until the expiration of at least thirty days (ten (10) days in the case of cancellation due to non-payment of premiums) after Notice of such cancellation, change or non-renewal has been received by Supplier. Supplier shall provide written notice to the Buyer no later than five (5) business days following receipt of any such notice
- (e) Within five (5) business days after the Effective Date, Supplier shall deliver Certificate(s) of Insurance to Buyer evidencing the coverage's and features required under Sections 1(a)(i) through (vi)(1) and all of the requirements set forth in Section 1(a)(vi)(2) and in Section 1(b). Additionally, copies of all endorsements required



in Section 1(a)(vi)(2) and in Section 1(b), shall be attached to the Certificate(s) of Insurance.

(f) No Representation of Coverage Adequacy.

By requiring insurance herein, Buyer does not represent that coverage and limits will necessarily be adequate to protect Supplier and such coverage and limits shall not be deemed as a limitation on Supplier's liability under the indemnities granted to Buyer in this Agreement.

It is expressly acknowledged, understood and agreed that regardless of whether Supplier provides a satisfactory or an unsatisfactory certificate of insurance pursuant to this Exhibit H, Buyer fails to identify a deficiency from evidence that is provided, or whether Buyer allows Supplier to perform the Services, such acts or omissions by Buyer shall not be construed as a waiver of Supplier's obligation to maintain such insurance nor preclude Buyer from asserting against Supplier, any claim or claims alleging Supplier's breach of any of its insurance procurement or maintenance obligations under this Agreement.

2. Buyer's Insurance

(a) From insurers licensed to conduct business in the US state where the Project, for which the ESS Equipment and/or Work are furnished hereunder, is located and having an A.M. Best Insurance Reports rating of "A-" or better

(i) Commercial General Liability

Owner shall maintain commercial general liability insurance in limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Such insurance shall include coverage for products/completed operations, broad form/blanket contractual liability for written contracts, broad form property damage and personal injury liability, premises/operations explosion, independent contractor liability, and collapse and underground hazards coverage and hostile fire liability.

(ii) Builder's All-Risk Insurance

As a condition of achieving Site Readiness, Buyer shall obtain and maintain, or cause to be maintained, builder's all-risk insurance in relation to the Project. Builder's all-risk shall cover all property in the course of transit or construction, including all property stored at the Project Site or any temporary Delivery Locations, including the Work, ESS Equipment and Buyer-Furnished Equipment (other than ESS Equipment properly covered under Supplier's equipment floater), from physical loss or damage caused by perils covered by a builder's all-risk form or equivalent coverage for projects similar in size and scope similar to the Project. Should any property in transit by ocean, air, rail or road not be covered under the builders all risk policy, then Buyer shall obtain and maintain cargo

insurance to provide coverage for all such property in transit, unless such property is insured for transit under purchase agreement terms. Such builders all risk insurance shall: (a) include "extended coverage" (including earthquake, flood, collapse, sinkhole, subsidence), (b) include mechanical and electrical breakdown coverage during start-up and testing, including Acceptance Tests and other operations of the Project prior to Substantial Completion, (c) cover the Project and the Site for removal of debris and (d) otherwise cover damage to property and other claims arising out of the unloading, lifting, lowering or other handling of property at the Site, in an amount to cover materials and equipment to be used. Coverage shall be on a full replacement cost valuation basis (with sublimits as appropriate), and not on an actual costs valuation or depreciated basis. Except as set forth in the next sentence, all deductibles for builders all-risk insurance shall be the responsibility of Supplier. Buyer shall bear the deductible under the builders all risk insurance for damage to the Work caused by Buyer or the Other Contractors, or damage to the Work caused by Force Majeure Events (except to the extent that Supplier's actions or omissions result in or contributes to any loss or damage arising from Force Majeure Events). The builder's all-risk coverage shall not contain an exclusion for resultant damage caused by faulty workmanship, design or materials. Supplier shall, at the direction of Buyer, assist in preparing all claim forms and coordinating with the various underwriters with respect to all claims to be made under the builder's all risk policy, all without increase to the Contract Price.

(iii) Permanent Property Insurance

Upon Commissioning, Buyer shall provide special form property insurance at a replacement cost basis (without a deduction for depreciation) and with no co-insurance provisions, covering the Project (including all real and personal property whether fixed, in transit, or off site). If the policies of insurance referred to in this paragraph require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, then Buyer will cause them to be so endorsed or obtain such consent.

- (b) Buyer shall cause its policies required under Sections 2(a) above, to name Supplier as additional insured as their interests may appear. Additionally, all of Buyer's policies required under Sections 2(a) shall provide the insurer(s)' waive of any and all rights of recovery, by subrogation, setoff or otherwise, against Supplier and Supplier's designees, if any, and the respective directors, officers, employees, and agents of each of the foregoing.
- (c) Within five (5) business days after obtaining the evidence required above, Buyer shall deliver Certificate(s) of Insurance to Supplier evidencing the coverages and features required under Sections 2(a) and all of the requirements set forth in Section 2(b).

- (d) Buyer shall ensure its insurance will not be canceled, changed or not renewed until the expiration of at least thirty days (60 days for builder's all-risk; ten (10) days in the case of cancellation due to non-payment of premiums) after Notice of such cancellation, change or non-renewal has been received by Buyer. Buyer shall provide written notice to Supplier no later than five (5) days following receipt of any such notice.

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**Exhibit I**  
**Commissioning Checklist**

*[See attached]*



## **Commissioning Checklist**



# S750 Collection Segment Functional Performance Test Commissioning Checklist

Date Checklist Completed: \_\_\_\_\_

Onsite Work Completed by: \_\_\_\_\_

Remote Work Completed by: \_\_\_\_\_

Station Code: \_\_\_\_\_ Site Name: \_\_\_\_\_

Site Location: \_\_\_\_\_

Enclosure #: \_\_\_\_\_

## PER COLLECTION SEGMENT

*For the test procedure, consider HVAC 1 to mean Lead and HVAC 2 to mean Lag.*

1.0	Before Functional Testing	Comments	Initials
<input type="checkbox"/>	a. Confirm the Commissioning HVAC - Pre-Functional Checklist has been completed with NO outstanding items		
<input type="checkbox"/>	b. Confirm the Auxiliary Power for the TEAM Controller, HVAC units and all necessary components are powered and ready for testing		
<input type="checkbox"/>	c. Confirm TEAM controller has been updated with the most recent firmware and programming.		
<input type="checkbox"/>	d. Confirm a computer is connected to the TEAM controller and has access to the User Interface.		
<input type="checkbox"/>	e. Confirm, during testing, that all door switches are in the closed position		
<input type="checkbox"/>	f. Confirm All network parameters (IP address) are configured for all devices		
<input type="checkbox"/>	g. Record Network Parameters for the Segment: <ul style="list-style-type: none"> <li>a. IP Address</li> <li>b. Subnet</li> <li>c. Gateway</li> </ul>		
2.0	Initial Conditions (Confirm expected Values)	Comments (Record readings from UI and Physical Unit)	Initials
<i>This section is to confirm that the sensors are communicating, and all values equal what is expected.</i>			
<input type="checkbox"/>	a. Record OAT sensor value (°C)		
<input type="checkbox"/>	b. Record OAH sensor value (°C)		
<input type="checkbox"/>	c. Record Space Temp sensor value (°C)		
<input type="checkbox"/>	d. Record Space RH sensor value (%)		



# S750 Collection Segment Functional Performance Test Commissioning Checklist

PER COLLECTION SEGMENT		
<input type="checkbox"/>	e. Record SAT value (°C)	
<input type="checkbox"/>	f. Record HVAC 1 Current (amps)	
<input type="checkbox"/>	g. Record HVAC 2 Current (amps)	
<input type="checkbox"/>	h. Confirm all the points above are equal to what is expected	
<input type="checkbox"/>	i. Confirm DC Door status is correct	
<input type="checkbox"/>	j. Confirm AC Door status is correct	
<input type="checkbox"/>	k. Confirm Lower Topcap status is correct	
<input type="checkbox"/>	l. Confirm Electric Heater 1 & 2 status is OFF	
<input type="checkbox"/>	m. Confirm Freeze Sensor 1 & 2 status is OFF (closed)	
<input type="checkbox"/>	n. Confirm all HVAC outputs are set to OFF (adjust setpoints as needed)	
3.0	Cooling, Phase 1	Initials
<i>Make the space temperature read 10 degrees above the cooling setpoint (Note: The HVAC units operate on Lead/Lag, expect delays between HVAC 1 and HVAC 2 operations).</i>		
<input type="checkbox"/>	a. Confirm HVAC 1 Reversing Valve is OFF	
<input type="checkbox"/>	b. Confirm HVAC 2 Reversing Valve is OFF	
<input type="checkbox"/>	c. Confirm HVAC 1 Electric Heater is OFF	
<input type="checkbox"/>	d. Confirm HVAC 2 Electric Heater is OFF	
<input type="checkbox"/>	e. Confirm HVAC 1 FAN HIGH call initiates before the compressors	
<input type="checkbox"/>	f. Confirm HVAC 2 FAN HIGH call initiates before the compressors	
<input type="checkbox"/>	g. Confirm HVAC 1 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	h. Confirm HVAC 2 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	i. Confirm the SAT value is adequate for cooling	
<input type="checkbox"/>	j. Record SAT value (°C)	
<input type="checkbox"/>	k. Confirm the Current for unit 1 is approximately 15 amps [compressor=13amps; fan=2amps]	
<input type="checkbox"/>	l. Record HVAC 1 Current (amps)	
	Comments	Initials



# S750 Collection Segment Functional Performance Test Commissioning Checklist

PER COLLECTION SEGMENT		
<input type="checkbox"/>	m. Confirm the Current for unit 2 is approximately 15 amps [compressor=13amps; fan=2amps]	
<input type="checkbox"/>	n. Record HVAC 2 Current (amps)	
<input type="checkbox"/>	o. Record Space Temp sensor value (°C)	
<input type="checkbox"/>	p. Record Space RH sensor value (%)	
4.0	Cooling, Phase 2	Initials
<i>Make the space temperature below the Cooling setpoint and above the Heating setpoint.</i>		
<input type="checkbox"/>	a. Confirm the Compressor for both units stage OFF	
<input type="checkbox"/>	b. Confirm the FAN HIGH call remains energized after the compressor OFF command	
<input type="checkbox"/>	c. Confirm the FAN HIGH call stages OFF	
<input type="checkbox"/>	d. Release All overrides and set system to Normal operation	
5.0	Heating, Phase 1	Initials
<i>Make the space temperature read 5 degrees below the heating setpoint (Note: The HVAC units operate on Lead/Lag, expect delays between HVAC 1 and HVAC 2 operations).</i>		
<input type="checkbox"/>	a. Confirm HVAC 1 Reversing Valve energizes ON	
<input type="checkbox"/>	b. Confirm HVAC 2 Reversing Valve energizes ON	
<input type="checkbox"/>	c. Confirm the compressor call initiates before the HIGH FAN call	
<input type="checkbox"/>	d. Confirm HVAC 1 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	e. Confirm HVAC 2 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	f. Confirm HVAC 1 FAN HIGH call energizes and operates as expected	
<input type="checkbox"/>	g. Confirm HVAC 2 FAN HIGH call energizes and operates as expected	
<input type="checkbox"/>	h. Confirm the SAT value is adequate for heating	
<input type="checkbox"/>	i. Record SAT value (°C)	
<input type="checkbox"/>	j. Confirm the Current for unit 1 is approximately 15 amps [compressor=13amps; fan=2amps]	





# S750 Collection Segment Functional Performance Test Commissioning Checklist

PER COLLECTION SEGMENT		
<input type="checkbox"/>	k. Record HVAC 1 Current (amps)	
<input type="checkbox"/>	l. Confirm the Current for unit 2 is approximately 15 amps [compressor=13amps; fan=2amps]	
<input type="checkbox"/>	m. Record HVAC 2 Current (amps)	
<input type="checkbox"/>	n. Make the OAT read 2°C	
<input type="checkbox"/>	o. Confirm the Compressors stage OFF before Electric Heaters energize	
<input type="checkbox"/>	p. Confirm HVAC 1 Electric Heater energizes ON	
<input type="checkbox"/>	q. Confirm HVAC 2 Electric Heater energizes ON	
<input type="checkbox"/>	r. Confirm the SAT value is adequate for heating	
<input type="checkbox"/>	s. Record SAT value (°C)	
<input type="checkbox"/>	t. Confirm the Current for unit 1 is approximately 2 amps [fan=2amps] [Note: the electric heaters are not measured by the CT-1 sensor]	
<input type="checkbox"/>	u. Record HVAC 1 Current (amps)	
<input type="checkbox"/>	v. Confirm the Current for unit 2 is approximately 2 amps [fan=2amps] [Note: the electric heaters are not measured by the CT-2 sensor]	
<input type="checkbox"/>	w. Record HVAC 2 Current (amps)	
6.0	Heating, Phase 2	Initials
<i>Make the space temperature below the Cooling setpoint and above the Heating setpoint.</i>		
<input type="checkbox"/>	a. Confirm the Compressor for both units stage OFF	
<input type="checkbox"/>	b. Confirm HVAC 1 Reversing Valve stages OFF	
<input type="checkbox"/>	c. Confirm HVAC 2 Reversing Valve stages OFF	
<input type="checkbox"/>	d. Confirm the FAN HIGH call remains energized until after the compressor OFF command	
<input type="checkbox"/>	e. Confirm the FAN HIGH call stages OFF for both units	
<input type="checkbox"/>	f. Release All overrides and set system to Normal operation	



# S750 Collection Segment Functional Performance Test Commissioning Checklist

PER COLLECTION SEGMENT		
7.0	Dehumidification, Phase 1	Comments
Initials		
<i>Make the space temperature read 1 degree below the cooling setpoint.</i>		
<i>Make the Dehumidification/RH% setpoint 1% or at least 20% below current space RH%.</i>		
<input type="checkbox"/>	a. Confirm HVAC 1 Reversing Valve is OFF	
<input type="checkbox"/>	b. Confirm HVAC 2 Reversing Valve is OFF	
<input type="checkbox"/>	c. Confirm HVAC 1 FAN LOW call initiates before the compressors	
<input type="checkbox"/>	d. Confirm HVAC 2 FAN LOW call initiates before the compressors	
<input type="checkbox"/>	e. Confirm HVAC 1 compressor call energizes and operates as expected	
<input type="checkbox"/>	f. Confirm HVAC 2 compressor does not energize; ONLY ONE COMPRESSOR SHOULD OPERATE FOR DEHUMIDIFICATION.	
<input type="checkbox"/>	g. Confirm HVAC 1 Electric Heater energizes ON	
<input type="checkbox"/>	h. Confirm HVAC 2 Electric Heater energizes ON	
<input type="checkbox"/>	i. Confirm the SAT value is adequate for Dehumidification (Supply air temp should approximately equal the Space Temperature)	
<input type="checkbox"/>	j. Record SAT value (°C)	
8.0	Dehumidification, Phase 2	Comments
Initials		
<i>Make the Dehumidification/RH% setpoint 10% above the current space RH% value.</i>		
<input type="checkbox"/>	a. Confirm the Compressor for both units stage OFF	
<input type="checkbox"/>	b. Confirm the Electric Heater for both units stages OFF	
<input type="checkbox"/>	c. Confirm the FAN LOW call remains energized after the compressor and OFF command	
<input type="checkbox"/>	d. Confirm the FAN LOW call stages OFF	
<input type="checkbox"/>	e. Release All overrides and set system to Normal operation	
9.0	Alarms	Comments
Initials		
<i>Adjust the space temperature to place the HVAC units into cooling mode and allow time for the units to properly energize.</i>		
<input type="checkbox"/>	a. Simulate a FSS Alarm to the TEAM controller (ioLogic E1242: AI 1+)	
<input type="checkbox"/>	b. Confirm an ALARM is issued to the UI	



# S750 Collection Segment Functional Performance Test Commissioning Checklist

PER COLLECTION SEGMENT		
<input type="checkbox"/>	c. Confirm ALL outputs to the HVAC units are OFF, nothing should operate from the HVAC units	
<input type="checkbox"/>	d. Clear the Alarm	
<input type="checkbox"/>	e. Simulate a FSS Trouble to the TEAM controller (ioLogic E1242: DI 3)	
<input type="checkbox"/>	f. Confirm an ALARM is issued to the UI	
<input type="checkbox"/>	g. Confirm ALL outputs to the HVAC units are OFF, nothing should operate from the HVAC units	
<input type="checkbox"/>	h. Clear the Alarm	
<input type="checkbox"/>	i. Confirm the TEAM controller returns to normal operation	
<input type="checkbox"/>	j. OPEN and CLOSE the DC doors	
<input type="checkbox"/>	k. Confirm ALL outputs to the HVAC units are OFF when door is open, nothing should operate from the HVAC units	
<input type="checkbox"/>	l. Confirm the status is displayed correctly in the UI	
<input type="checkbox"/>	m. OPEN and CLOSE the AC doors	
<input type="checkbox"/>	n. Confirm ALL outputs to the HVAC units are OFF when door is open, nothing should operate from the HVAC units	
<input type="checkbox"/>	o. Confirm the status is displayed correctly in the UI	
<input type="checkbox"/>	p. OPEN and CLOSE the Lower Topcap Doors	
<input type="checkbox"/>	q. Confirm ALL outputs to the HVAC units are OFF when door is open, nothing should operate from the HVAC units	
<input type="checkbox"/>	r. Confirm the status is displayed correctly in the UI	
<input type="checkbox"/>	s. Return all setpoints to normal, release ALL overrides and make sure all testing equipment changes have been cleared from the Segment.	





# S750 Energy Segment Functional Performance Test Commissioning Checklist

Date Checklist Completed: \_\_\_\_\_

Onsite Work Completed by: \_\_\_\_\_

Remote Work Completed by: \_\_\_\_\_

Station Code: \_\_\_\_\_ Site Name: \_\_\_\_\_

Site Location: \_\_\_\_\_

Enclosure #: \_\_\_\_\_

## PER ENERGY SEGMENT

*For the test procedure, consider HVAC 1 to mean Lead and HVAC 2 to mean Lag.*

1.0	Before Testing	Comments	Initials
<input type="checkbox"/>	a. Confirm the TEAM Cx - Pre-Functional Checklist has been completed with NO outstanding items		
<input type="checkbox"/>	b. Confirm the Auxiliary Power for the TEAM Controller, HVAC units and all necessary components are powered and ready for testing		
<input type="checkbox"/>	c. Confirm TEAM controller has been updated with the most recent firmware and programming		
<input type="checkbox"/>	d. Confirm a computer is connected to the TEAM controller and has access to the User Interface Energy Segment Main Page, Energy Segment Simulation Page, and the Collection Segment Main Page for the line-up		
<input type="checkbox"/>	e. Confirm during testing that all door switches are in the closed position		
<input type="checkbox"/>	f. Record Network Parameters for the Segment: <ul style="list-style-type: none"> <li>a. IP Address</li> <li>b. Subnet</li> <li>c. Gateway</li> </ul>		
2.0	Initial Conditions	Comments	Initials
<i>This section is to confirm that the sensors are communicating, and all values equal what is expected.</i>			
<input type="checkbox"/>	a. Record OAT sensor value (°C from CS)		
<input type="checkbox"/>	b. Record OAH sensor value (°C from CS)		
<input type="checkbox"/>	c. Record Hydrogen Sensor (PPM)		
<input type="checkbox"/>	d. Record Hydrogen Sensor Status		
<input type="checkbox"/>	e. Record Space Temp sensor value (°C)		



# S750 Energy Segment Functional Performance Test Commissioning Checklist

PER ENERGY SEGMENT		
<input type="checkbox"/>	f. Record Space RH sensor value (%)	
<input type="checkbox"/>	g. Record SAT value (°C)	
<input type="checkbox"/>	h. Record HVAC 1 Current (amps)	
<input type="checkbox"/>	i. Record HVAC 2 Current (amps)	
<input type="checkbox"/>	j. Confirm all the points above are equal to what is expected?	
<input type="checkbox"/>	k. Confirm Battery Door status is correct	
<input type="checkbox"/>	l. Confirm Lower Topcap status is correct	
<input type="checkbox"/>	m. Confirm Emergency Ventilation status is OFF	
<input type="checkbox"/>	n. Confirm Electric Heater 1 & 2 status is OFF	
<input type="checkbox"/>	o. Confirm Freeze Sensor 1 & 2 status is OFF (closed)	
<input type="checkbox"/>	p. Confirm all HVAC outputs are set to OFF (adjust setpoints as needed)	
3.0	Cooling, Phase 1	Initials
<i>Make the space temperature read 10 degrees above the cooling setpoint (Note: The HVAC units operate on Lead/Lag, expect delays between HVAC 1 and HVAC 2 operations).</i>		
<input type="checkbox"/>	a. Confirm HVAC 1 Reversing Valve is OFF	
<input type="checkbox"/>	b. Confirm HVAC 2 Reversing Valve is OFF	
<input type="checkbox"/>	c. Confirm HVAC 1 Electric Heater is OFF	
<input type="checkbox"/>	d. Confirm HVAC 2 Electric Heater is OFF	
<input type="checkbox"/>	e. Confirm HVAC 1 FAN HIGH call initiates before the compressors	
<input type="checkbox"/>	f. Confirm HVAC 2 FAN HIGH call initiates before the compressors	
<input type="checkbox"/>	g. Confirm HVAC 1 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	h. Confirm HVAC 2 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	i. Confirm the SAT value is adequate for cooling	
<input type="checkbox"/>	j. Record SAT value (°C)	
<input type="checkbox"/>	k. Confirm the Current for unit 1 is approximately 15 amps [compressor=13amps; fan=2amps]	
<input type="checkbox"/>	l. Record HVAC 1 Current (amps)	



# S750 Energy Segment Functional Performance Test Commissioning Checklist

PER ENERGY SEGMENT		
<input type="checkbox"/>	m. Confirm the Current for unit 2 is approximately 15 amps [compressor=13amps; fan=2amps]	
<input type="checkbox"/>	n. Record HVAC 2 Current {amps}	
<input type="checkbox"/>	o. Record Space Temp sensor value (°C)	
<input type="checkbox"/>	p. Record Space RH sensor value (%)	
4.0	Cooling, Phase 2	Initials
<i>Make the space temperature below the Cooling setpoint and above the Heating setpoint.</i>		
<input type="checkbox"/>	a. Confirm the Compressor for both units stage OFF	
<input type="checkbox"/>	b. Confirm the FAN HIGH call remains energized after the compressor OFF command	
<input type="checkbox"/>	c. Confirm the FAN HIGH call stages OFF	
<input type="checkbox"/>	d. Release All overrides and set system to Normal operation	
5.0	Heating, Phase 1	Initials
<i>Make the space temperature read 5 degrees below the heating setpoint (Note: The HVAC units operate on Lead/Lag, expect delays between HVAC 1 and HVAC 2 operations).</i>		
<input type="checkbox"/>	a. Confirm HVAC 1 Reversing Valve energizes ON	
<input type="checkbox"/>	b. Confirm HVAC 2 Reversing Valve energizes ON	
<input type="checkbox"/>	c. Confirm the compressor call initiates before the HIGH FAN call	
<input type="checkbox"/>	d. Confirm HVAC 1 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	e. Confirm HVAC 2 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	f. Confirm HVAC 1 FAN HIGH call energizes and operates as expected	
<input type="checkbox"/>	g. Confirm HVAC 2 FAN HIGH call energizes and operates as expected	
<input type="checkbox"/>	h. Confirm the SAT value is adequate for heating	
<input type="checkbox"/>	i. Record SAT value (°C)	
<input type="checkbox"/>	j. Confirm the Current for unit 1 is approximately 15 amps [compressor=13amps; fan=2amps]	



# S750 Energy Segment Functional Performance Test Commissioning Checklist

PER ENERGY SEGMENT		
<input type="checkbox"/>	k. Record HVAC 1 Current (amps)	
<input type="checkbox"/>	l. Confirm the Current for unit 2 is approximately 15 amps [compressor=13amps; fan=2amps]	
<input type="checkbox"/>	m. Record HVAC 2 Current (amps)	
<input type="checkbox"/>	n. Make the OAT read 2°C	
<input type="checkbox"/>	o. Confirm the Compressors stage OFF before Electric Heaters energize	
<input type="checkbox"/>	p. Confirm HVAC 1 Electric Heater energizes ON	
<input type="checkbox"/>	q. Confirm HVAC 2 Electric Heater energizes ON	
<input type="checkbox"/>	r. Confirm the SAT value is adequate for heating	
<input type="checkbox"/>	s. Record SAT value (°C)	
<input type="checkbox"/>	t. Confirm the Current for unit 1 is approximately 2 amps [fan=2amps] [Note: the electric heaters are not measured by the CT-1 sensor]	
<input type="checkbox"/>	u. Record HVAC 1 Current (amps)	
<input type="checkbox"/>	v. Confirm the Current for unit 2 is approximately 2 amps [fan=2amps] [Note: the electric heaters are not measured by the CT-2 sensor]	
<input type="checkbox"/>	w. Record HVAC 2 Current (amps)	
6.0	Heating, Phase 2	Initials
<i>Make the space temperature below the Cooling setpoint and above the heating setpoint.</i>		
<input type="checkbox"/>	a. Confirm the Compressor for both units stage OFF	
<input type="checkbox"/>	b. Confirm HVAC 1 Reversing Valve stages OFF	
<input type="checkbox"/>	c. Confirm HVAC 2 Reversing Valve stages OFF	
<input type="checkbox"/>	d. Confirm the FAN HIGH call remains energized until after the compressor OFF command	
<input type="checkbox"/>	e. Confirm the FAN HIGH call stages OFF for both units	
<input type="checkbox"/>	f. Release All overrides and set system to Normal operation	





# S750 Energy Segment Functional Performance Test Commissioning Checklist

PER ENERGY SEGMENT			
7.0	Dehumidification, Phase 1	Comments	Initials
<i>Make the space temperature read 1 degree below the cooling setpoint.</i>			
<i>Make the Dehumidification/RH% setpoint 1% or at least 20% below current space RH%.</i>			
<input type="checkbox"/>	a. Confirm HVAC 1 Reversing Valve is OFF		
<input type="checkbox"/>	b. Confirm HVAC 2 Reversing Valve is OFF		
<input type="checkbox"/>	c. Confirm HVAC 1 FAN LOW call initiates before the compressors		
<input type="checkbox"/>	d. Confirm HVAC 2 FAN LOW call initiates before the compressors		
<input type="checkbox"/>	e. Confirm HVAC 1 compressor call energizes and operates as expected		
<input type="checkbox"/>	f. Confirm HVAC 2 compressor does not energize; ONLY ONE COMPRESSOR SHOULD OPERATE FOR DEHUMIDIFICATION.		
<input type="checkbox"/>	g. Confirm HVAC 1 Electric Heater energizes ON		
<input type="checkbox"/>	h. Confirm HVAC 2 Electric Heater energizes ON		
<input type="checkbox"/>	i. Confirm the SAT value is adequate for Dehumidification (Supply air temp should approximately equal the Space Temperature)		
<input type="checkbox"/>	j. Record SAT value (°C)		
8.0	Dehumidification, Phase 2	Comments	Initials
<i>Make the Dehumidification/RH% setpoint 10% above the current space RH% value.</i>			
<input type="checkbox"/>	a. Confirm the Compressor for both units stage OFF		
<input type="checkbox"/>	b. Confirm the Electric Heater for both units stages OFF		
<input type="checkbox"/>	c. Confirm the FAN LOW call remains energized after the compressor and OFF command		
<input type="checkbox"/>	d. Confirm the FAN LOW call stages OFF		
<input type="checkbox"/>	e. Release All overrides and set system to Normal operation		
9.0	Emergency Ventilation, Alarms, and Dampers	Comments	Initials
<i>Adjust the space temperature to place the HVAC units into cooling mode and allow time for the units to properly energize.</i>			
<input type="checkbox"/>	a. Confirm there is power to the Ventilation Damper actuator motor		



# S750 Energy Segment Functional Performance Test Commissioning Checklist

PER ENERGY SEGMENT		
<input type="checkbox"/>	b. Confirm the ventilation damper is CLOSED when powered	
<input type="checkbox"/>	c. Turn OFF power to the actuator motors	
<input type="checkbox"/>	d. Confirm the dampers OPEN on power fail	
<input type="checkbox"/>	e. Turn ON power to the actuator motors	
<input type="checkbox"/>	f. Adjust the space temperature to place the HVAC units into cooling mode and allow time for the units to properly energized	
<input type="checkbox"/>	g. Press and hold the Hydrogen sensor test button to trigger a Hydrogen Alarm	
<input type="checkbox"/>	h. Confirm ALL outputs to the HVAC units are OFF, nothing should operate from the HVAC units	
<input type="checkbox"/>	i. Confirm the Ventilation dampers fully OPEN	
<input type="checkbox"/>	j. Confirm the ventilation intake fan energizes and blows air into the unit.	
<input type="checkbox"/>	k. Confirm an ALARM is issued to the UI	
<input type="checkbox"/>	l. Clear the Hydrogen Alarm	
<input type="checkbox"/>	m. Confirm the dampers fully CLOSE	
<input type="checkbox"/>	n. Confirm the Ventilation fan turns OFF	
<input type="checkbox"/>	o. Confirm the TEAM controller goes back to normal operation and engages cooling operations	
<input type="checkbox"/>	p. Simulate an FSS ALM/TBL or SMOKE Alarm to the TEAM controller (ioLogic E1242: AI 1+)	
<input type="checkbox"/>	q. Confirm an ALARM is issued to the UI	
<input type="checkbox"/>	r. Confirm ALL outputs to the HVAC units are OFF, nothing should operate from the HVAC units	
<input type="checkbox"/>	s. Clear the Alarm	
<input type="checkbox"/>	t. Confirm the TEAM controller returns to normal operation	
<input type="checkbox"/>	u. OPEN and CLOSE both sides of Battery doors	
<input type="checkbox"/>	v. Confirm ALL outputs to the HVAC units are OFF when door is open, nothing should operate from the HVAC units	



# S750 Energy Segment Functional Performance Test Commissioning Checklist

PER ENERGY SEGMENT		
<input type="checkbox"/> w. Confirm the status is displayed correctly in the UI		
<input type="checkbox"/> x. OPEN and CLOSE the Lower Topcap Doors on both sides		
<input type="checkbox"/> y. Confirm ALL outputs to the HVAC units are OFF when door is open, nothing should operate from the HVAC units		
<input type="checkbox"/> z. Confirm the status is displayed correctly in the UI		
<input type="checkbox"/> aa. Return all setpoints to normal, release ALL overrides and make sure all testing equipment changes have been cleared from the Segment.		



**S750 Energy Segment Functional  
Performance Test  
Commissioning Checklist**

Additional Notes/Comments:

Signature of Onsite Technician performing this Checklist: \_\_\_\_\_

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

Signature of Remote Technician performing this Checklist: \_\_\_\_\_

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

**Exhibit J-1**  
**ESS Product Manual**

*[See attached]*

**[REDACTED]**



**POWIN**

September 2022

**CENTIPEDE STACK750  
A MODULAR BATTERY ENERGY STORAGE  
PLATFORM  
PRODUCT MANUAL**

CONFIDENTIAL

MP-S750 Rev 0

**Exhibit J-2**  
**Operational Data & Health-Monitoring Data Manual**

*[See attached]*

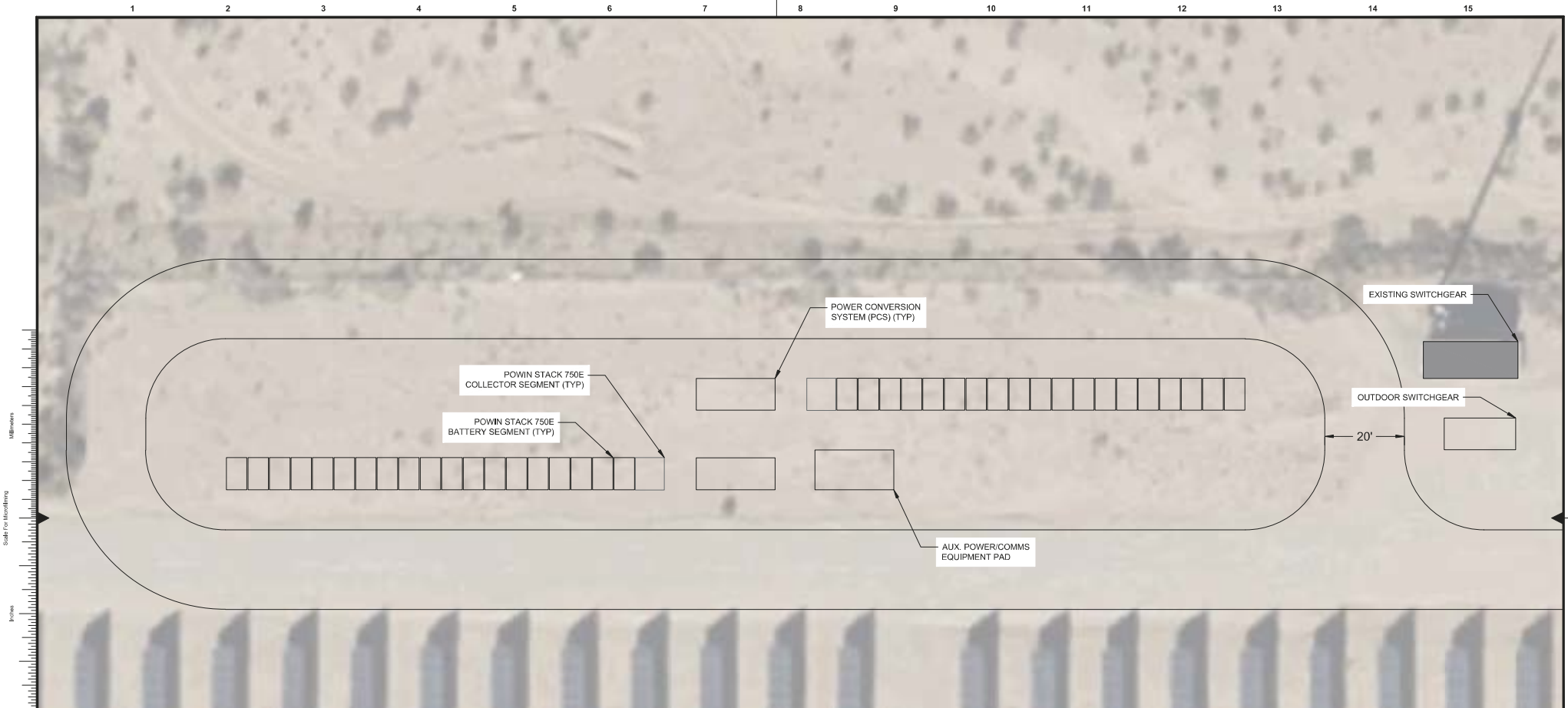
**[REDACTED]**

**Exhibit K**  
**Project Site Layout**

*[See attached]*



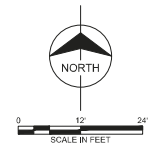




**PLAN VIEW**

- LEGEND:**  
 EXISTING EQUIPMENT
- ABBREVIATION LIST:**  
 AUX - AUXILIARY  
 TYP - TYPICAL

- NOTES:**
1. FINAL LAYOUT SUBJECT TO CHANGE BASED ON FINAL ENVIRONMENTAL AND CIVIL SETBACK DISTANCES.
  2. EQUIPMENT QUANTITIES, CONFIGURATION, AND FOOTPRINT SUBJECT TO CHANGE BASED ON FINAL BESS TECHNOLOGY SELECTION AND ADDITIONAL PROJECT DUE DILIGENCE.



**CONCEPTUAL ONLY**

ENERGY STORAGE SYSTEM DESCRIPTION	
NAMEPLATE	6 MW / 24 MWh

BESS MATERIAL LIST	
NUMBER OF POWIN STACK750E BATTERY SEGMENTS	38
NUMBER OF POWIN STACK750E COLLECTION SEGMENTS	2
NUMBER OF SMA MVPS-4600-S2 PCS SKIDS	2

no.	date	by	ckd	description
A	8/12/22	MRA	JAG	ISSUED FOR REVIEW - 30% DESIGN PACKAGE

**BURNS & MCDONNELL**

9400 WARD PARKWAY  
 KANSAS CITY, MO 64114  
 816-333-9400  
 Burns & McDonnell Engineering Co., Inc.

designed: M. ANSTINE  
 detailed: M. ANSTINE

SOUTH VALLEY BESS  
 BERNALILLO COUNTY, NEW MEXICO

BESS SITE PLAN	
project: 147387	contract: -
drawing: <b>G100</b>	rev: <b>A</b>
sheet: _____	of _____ sheets
file: PNM SouthValley Layout.dwg	

**Exhibit L-1**  
**Installation Manual**

*[See Attached]*

**[REDACTED]**



**POWIN**

March 2023

# **STACK750 INSTALLATION PROCEDURE**

CONFIDENTIAL

PI-S750 (Rev 7)

**Exhibit L-2**  
**Installation Checklist**

*[See Attached]*



# S750 Lineup Mechanical Installation Checklist

Project Name:

Project Number:

Date of Arrival:

Name of Company Performing Installation

Name of Installer:

Lineup Identification:

Signature of Installer Responsible:

## Serial Numbers

Location ID	Item	Date Set on Foundation	Segment Serial Number	Initials
	Collection Segment			
	Energy Segment 1			
	Energy Segment 2			
	Energy Segment 3			
	Energy Segment 4			
	Energy Segment 5			
	Energy Segment 6			
	Energy Segment 7			
	Energy Segment 8			
	Energy Segment 9			
	Energy Segment 10			
	Energy Segment 11			
	Energy Segment 12			
	Energy Segment 13			
	Energy Segment 14			
	Energy Segment 15			
	Energy Segment 16			
	Energy Segment 17			
	Energy Segment 18			
	Energy Segment 19			
	Energy Segment 20			
	Energy Segment 21			

## Pre-Installation Requirements

	Comments	Initials
<input type="checkbox"/> a. Foundations in place per IFC Drawing; plane drainage does not exceed 1°	Date Completed:	



# S750 Lineup Mechanical Installation Checklist

## Pre-Installation Requirements

<input type="checkbox"/>	b. Conduits In place per IFC Drawing	Date Completed:	
<input type="checkbox"/>	c. Site Grounding Grid installed and tested	Results:	Date Completed:
<input type="checkbox"/>	d. AC Power available to Point of Interconnect	Date Completed:	
<input type="checkbox"/>	e. Internet available to Point of Interconnect	Date Completed:	
<input type="checkbox"/>	f. Lift Plan, Lifting Materials, and Equipment Specified	Date Completed:	
<input type="checkbox"/>	g. Verify painted surfaces are coated	Date Completed:	
<input type="checkbox"/>	h. Verify all markings and labels are affixed without signs of peeling	Date Completed:	
<input type="checkbox"/>	i. Verify all segments are facing corresponding side (i.e., Side A or Side B)	Date Completed:	
<input type="checkbox"/>	j. On last Energy Segment, verify there is a Ladder Tray Cover Plate.	Date Completed:	

## Collection Segment Installation to Foundation

		Comments	Initials
<input type="checkbox"/>	a. Set on foundation	Date Completed:	
<input type="checkbox"/>	b. Verify alignment of incoming conduits for DC, AC, and Communication cables	Date Completed:	
<input type="checkbox"/>	c. Verified as level within 3mm of adjacent section	Date Completed:	
<input type="checkbox"/>	d. Shims used per engineer recommendation	Date Completed:	
<input type="checkbox"/>	e. Anchor Plates installed to segment and torqued to 876.0 in-lbs. (+0/-4.0)	Date Completed:	
<input type="checkbox"/>	f. Anchor Plates affixed to foundation per IFC Drawing/Design	Date Completed:	

## Collection Segment Incoming Cable Installation

		Comments	Initials
<input type="checkbox"/>	a. Incoming conduit floor access panel opened	Date Completed:	
<input type="checkbox"/>	b. Conduit extended into Segment	Date Completed:	
<input type="checkbox"/>	c. Cable floor access panel sealed	Date Completed:	



# S750 Lineup Mechanical Installation Checklist

Segment HVAC Exhaust Vent Installation			
		Comments	Initials
<input type="checkbox"/>	a. Installation and Sealing of HVAC Exhaust Vent Collection Segment	Date Completed:	
<input type="checkbox"/>	b. Installation and Sealing of HVAC Exhaust Vent Energy Segment 1	Date Completed:	
<input type="checkbox"/>	c. Installation and Sealing of HVAC Exhaust Vent Energy Segment 2	Date Completed:	
<input type="checkbox"/>	d. Installation and Sealing of HVAC Exhaust Vent Energy Segment 3	Date Completed:	
<input type="checkbox"/>	e. Installation and Sealing of HVAC Exhaust Vent Energy Segment 4	Date Completed:	
<input type="checkbox"/>	f. Installation and Sealing of HVAC Exhaust Vent Energy Segment 5	Date Completed:	
<input type="checkbox"/>	g. Installation and Sealing of HVAC Exhaust Vent Energy Segment 6	Date Completed:	
<input type="checkbox"/>	h. Installation and Sealing of HVAC Exhaust Vent Energy Segment 7	Date Completed:	
<input type="checkbox"/>	i. Installation and Sealing of HVAC Exhaust Vent Energy Segment 8	Date Completed:	
<input type="checkbox"/>	j. Installation and Sealing of HVAC Exhaust Vent Energy Segment 9	Date Completed:	
<input type="checkbox"/>	k. Installation and Sealing of HVAC Exhaust Vent Energy Segment 10	Date Completed:	
<input type="checkbox"/>	l. Installation and Sealing of HVAC Exhaust Vent Energy Segment 11	Date Completed:	
<input type="checkbox"/>	m. Installation and Sealing of HVAC Exhaust Vent Energy Segment 12	Date Completed:	
<input type="checkbox"/>	n. Installation and Sealing of HVAC Exhaust Vent Energy Segment 13	Date Completed:	
<input type="checkbox"/>	o. Installation and Sealing of HVAC Exhaust Vent Energy Segment 14	Date Completed:	
<input type="checkbox"/>	p. Installation and Sealing of HVAC Exhaust Vent Energy Segment 15	Date Completed:	
<input type="checkbox"/>	q. Installation and Sealing of HVAC Exhaust Vent Energy Segment 16	Date Completed:	
<input type="checkbox"/>	r. Installation and Sealing of HVAC Exhaust Vent Energy Segment 17	Date Completed:	
<input type="checkbox"/>	s. Installation and Sealing of HVAC Exhaust Vent Energy Segment 18	Date Completed:	





# S750 Lineup Mechanical Installation Checklist

## Segment HVAC Exhaust Vent Installation

<input type="checkbox"/>	t. Installation and Sealing of HVAC Exhaust Vent Energy Segment 19	Date Completed:	
<input type="checkbox"/>	u. Installation and Sealing of HVAC Exhaust Vent Energy Segment 20	Date Completed:	
<input type="checkbox"/>	v. Installation and Sealing of HVAC Exhaust Vent Energy Segment 21	Date Completed:	

## Collection Segment UPS Installation

		Comments	Initials
<input type="checkbox"/>	a. Verify site layout and confirm quantity of UPS to be installed into Collection Segment	Date Completed:	
<input type="checkbox"/>	b. Unpackage UPS and inspect for damage	Date Completed:	
<input type="checkbox"/>	c. Lift UPS into designated position and fasten to network rack	Date Completed:	

## Collection Segment Exterior Strobe Mounting

		Comments	Initials
<input type="checkbox"/>	a. Install Exterior Strobe per work instruction: WI-041	Date Completed:	

## Collection Segment External DC Disconnect Switch Installation

		Comments	Initials
<input type="checkbox"/>	a. Install External DC Disconnect Switch handle	Date Completed:	
<input type="checkbox"/>	b. Validate functionality with Internal DC Connect Switch	Date Completed:	

## Energy Segment Stand-Pipe Connection (optional)

		Comments	Initials
<input type="checkbox"/>	a. Check stand-pipe threads for damage.		





# S750 Lineup Pre-Energization Electrical Installation Checklist

Project Name:

Project Number:

Name of Company Performing Installation

Name of Installer Responsible:

Lineup Identification:

Signature of Installer Responsible:

Serial Numbers			
Location ID	Item	Segment Serial Number	Initials
	Collection Segment		
	Energy Segment 1		
	Energy Segment 2		
	Energy Segment 3		
	Energy Segment 4		
	Energy Segment 5		
	Energy Segment 6		
	Energy Segment 7		
	Energy Segment 8		
	Energy Segment 9		
	Energy Segment 10		
	Energy Segment 11		
	Energy Segment 12		
	Energy Segment 13		
	Energy Segment 14		
	Energy Segment 15		
	Energy Segment 16		
	Energy Segment 17		
	Energy Segment 18		
	Energy Segment 19		
	Energy Segment 20		
	Energy Segment 21		

Grounding Connections		
Item	Comments	Initials
<input type="checkbox"/> a. Collection Segment - Connection to Grounding Grid	Date Completed:	



# S750 Lineup Pre-Energization Electrical Installation Checklist

Grounding Connections		
<input type="checkbox"/> b. All Energy Segments - Connection to Grounding Grid A side (if applicable)	Date Completed:	
<input type="checkbox"/> c. All Energy Segments - Connection to Grounding Grid B side (if applicable)	Date Completed:	
<input type="checkbox"/> d. Transformer – Torque Check and Verification	Date Completed:	
<input type="checkbox"/> e. All segment-to-segment ground harnesses are installed and torqued.	Date Completed:	
<input type="checkbox"/> f. All cable trays are grounded by grounding washers or equipment ground conductor.	Date Completed:	

Collection Segment - Bottom Entry Connections		
Item	Comments	Initials
<input type="checkbox"/> g. Cables from PCS to DC Combiner 1 Installed per IFC Drawings and tested with passing results	Date Completed:	
<input type="checkbox"/> h. Cables from PCS to DC Combiner 2 Installed per IFC Drawings and tested with passing results	Date Completed:	
<input type="checkbox"/> i. Cables from PCS to DC Combiner 3 Installed per IFC Drawings and Tested with passing results	Date Completed	
<input type="checkbox"/> j. Cables from AC Point of Connection to AC Main Breaker Collection Segment, installed per IFC Drawings and tested with passing results	Date Completed:	
<input type="checkbox"/> k. Phase rotation at AC main Breaker <input type="checkbox"/> Clockwise <input type="checkbox"/> Counterclockwise	Date Completed:	
<input type="checkbox"/> l. Communication cables (Ethernet or Fiber Optic) from Point of Connection to Collection Segment Connection Point	Date Completed:	

UPS – Collection Segment to Energy Segments		
Item	Comments	Initials
<input type="checkbox"/> m. UPS 1 - Connect Cable to ES 1-7 into Group 2	Date Completed:	
<input type="checkbox"/> n. UPS 2 - Connect Cable to ES 8-14 into Group 2	Date Completed:	
<input type="checkbox"/> o. UPS 3 - Connect Cable to ES 15-21 into Group 2	Date Completed:	

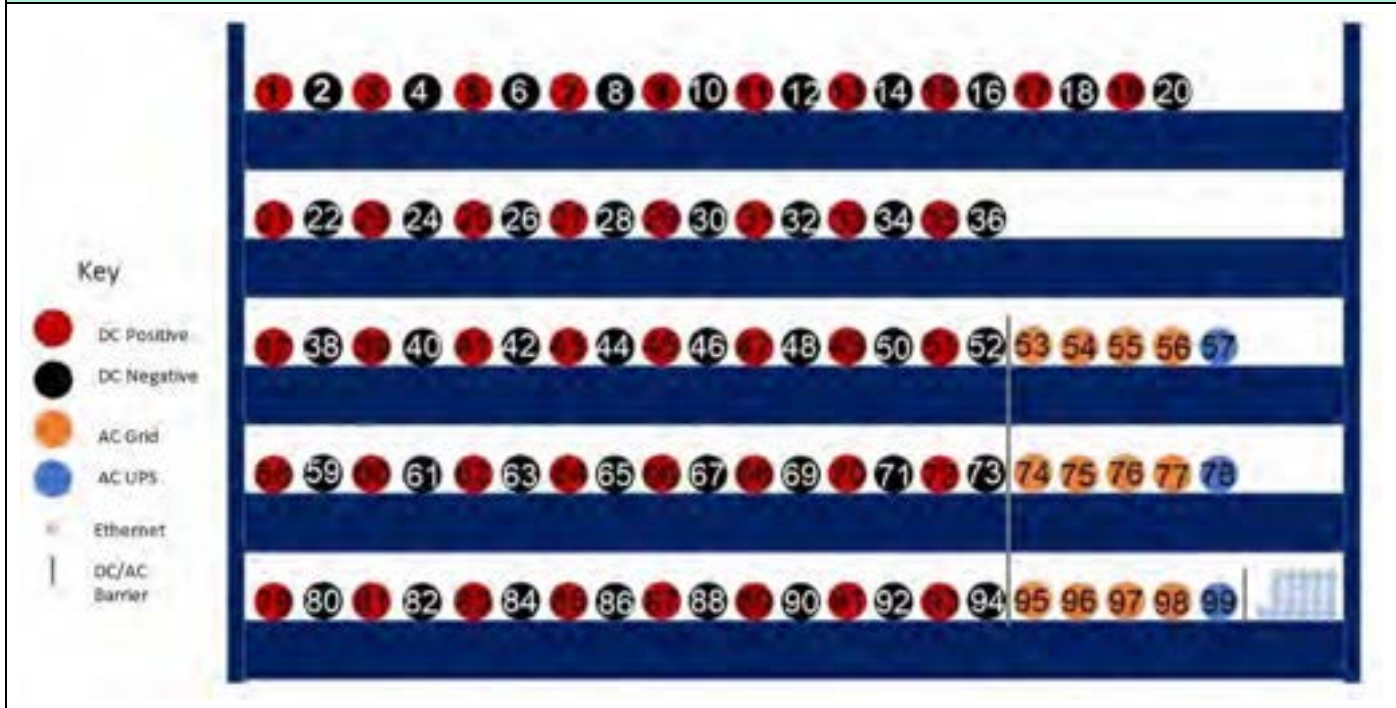


# S750 Lineup Pre-Energization Electrical Installation Checklist

## UPS – Collection Segment to Energy Segments

<input type="checkbox"/> p. UPS - Collection Segment UPS to Network Rack*	Date Completed:	
<input type="checkbox"/> q. UPS - Master Collection UPS (EMS) to UPS Circuit (if applicable)	Date Completed:	

## Collection Segment to Energy Segments – Cable Layout



Cable Location	ES Location	Cable Location	ES Location	Cable Location	ES Location
1		2		3	
4		5		6	
7		8		9	
10		11		12	
13		14		15	
16		17		18	
19		20		21	
22		23		24	
25		26		27	
28		29		30	
31		32		33	
34		35		36	



# S750 Lineup Pre-Energization Electrical Installation Checklist

## Collection Segment to Energy Segments – Cable Layout

37		38		39	
40		41		42	
43		44		45	
46		47		48	
49		50		51	
52		53		54	
55		56		57	
58		59		60	
61		62		63	
64		65		66	
67		68		69	
70		71		72	
73		74		75	
76		77		78	
79		80		81	
82		83		84	
85		86		87	
88		89		90	
91		92		93	
94		95		96	
97		98		99	

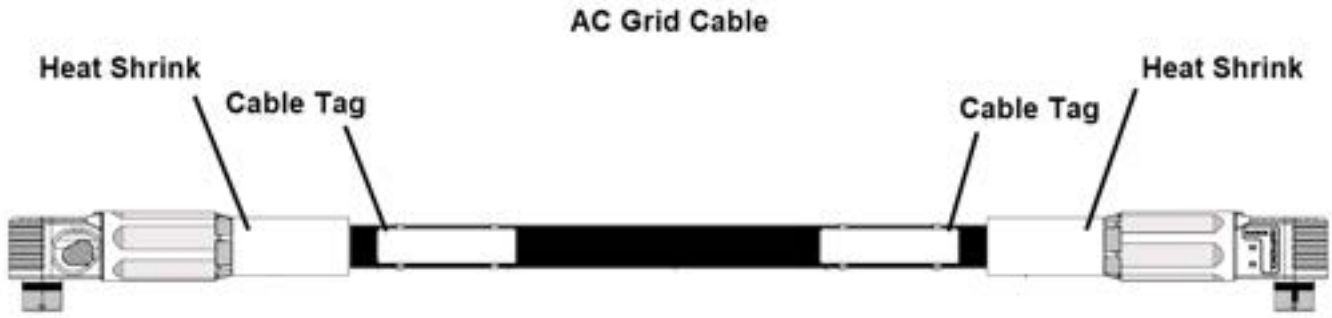
## AC-GRID – Connections

Item	Comments	Initials
<input type="checkbox"/> r. Cables installed into the correct location and secured in place at distances not exceeding 6-feet.	Date Completed:	
<input type="checkbox"/> s. Cables tested at each Energy Segment.	Date Completed:	



# S750 Lineup Pre-Energization Electrical Installation Checklist

## AC-GRID – Connections



Segment	Upstream Point	Segment Connection	Cable ID	Megger Date	Results	Connection Date	Performed by
---------	----------------	--------------------	----------	-------------	---------	-----------------	--------------

Segments 1-7 can be tested together from QA2 secondary terminals.

1. Open QA2 in CS.
2. Open QA1, QA14, and QA7 in ES 1-7.
3. Disconnect String controller -AS1 terminal on each ES 1-7.
4. Disconnect HVAC Power socket in upper section -AS21 and -AS22 in ES1-7.
5. Confirm 1 megaohm resistance at 500V for 60 seconds from each phase to phase and all phases to ground.
6. Repeat steps 1-5 for CS-QA3 and for ES8-14.
7. Repeat steps 1-5 for CS-QA4 and for ES15-21.

ES1	CS:AS104	ES1:AS1					
ES1	CS:AS105	ES1:AS2					
ES1	CS:AS106	ES1:AS3					
ES1	CS:AS107	ES1:AS4					
ES2	ES1:AS5	ES2:AS2					
ES2	ES1:AS6	ES2:AS3					
ES2	ES1:AS7	ES2:AS1					
ES2	ES1:AS8	ES2:AS4					
ES3	ES2:AS5	ES3:AS2					
ES3	ES2:AS6	ES3:AS3					
ES3	ES2:AS7	ES3:AS1					
ES3	ES2:AS8	ES3:AS4					
ES4	ES3:AS5	ES4:AS2					
ES4	ES3:AS6	ES4:AS3					
ES4	ES3:AS7	ES4:AS1					
ES4	ES3:AS8	ES4:AS4					
ES5	ES4:AS5	ES5:AS2					
ES5	ES4:AS6	ES5:AS3					
ES5	ES4:AS7	ES5:AS1					
ES5	ES4:AS8	ES5:AS4					



# S750 Lineup Pre-Energization Electrical Installation Checklist

Segment	Upstream Point	Segment Connection	Cable ID	Megger Date	Results	Connection Date	Performed by
ES6	ES5:AS5	ES6:AS2					
ES6	ES5:AS6	ES6:AS3					
ES6	ES5:AS7	ES6:AS1					
ES6	ES5:AS8	ES6:AS4					
ES7	ES6:AS5	ES7:AS2					
ES7	ES6:AS6	ES7:AS3					
ES7	ES6:AS7	ES7:AS1					
ES7	ES6:AS8	ES7:AS4					
ES8	CS:AS108	ES8:AS01					
ES8	CS:AS109	ES8:AS02					
ES8	CS:AS110	ES8:AS03					
ES8	CS:AS111	ES8:AS04					
ES9	ES08:AS5	ES9:AS2					
ES9	ES08:AS6	ES9:AS3					
ES9	ES08:AS7	ES9:AS1					
ES9	ES08:AS8	ES9:AS4					
ES10	ES09:AS5	ES10:AS2					
ES10	ES09:AS6	ES10:AS3					
ES10	ES09:AS7	ES10:AS1					
ES10	ES09:AS8	ES10:AS4					
ES11	ES10:AS5	ES11:AS2					
ES11	ES10:AS6	ES11:AS3					
ES11	ES10:AS7	ES11:AS1					
ES11	ES10:AS8	ES11:AS4					
ES12	ES11:AS5	ES12:AS2					
ES12	ES11:AS6	ES12:AS3					
ES12	ES11:AS7	ES12:AS1					
ES12	ES11:AS8	ES12:AS4					
ES13	ES12:AS5	ES13:AS2					
ES13	ES12:AS6	ES13:AS3					
ES13	ES12:AS7	ES13:AS1					
ES13	ES12:AS8	ES13:AS4					
ES14	ES13:AS5	ES14:AS2					
ES14	ES13:AS6	ES14:AS3					
ES14	ES13:AS7	ES14:AS1					
ES14	ES13:AS8	ES14:AS4					
ES15	CS:AS112	ES15:AS1					





# S750 Lineup Pre-Energization Electrical Installation Checklist

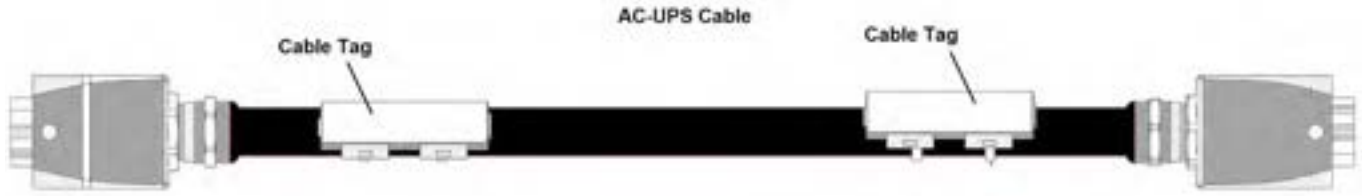
Segment	Upstream Point	Segment Connection	Cable ID	Megger Date	Results	Connection Date	Performed by
ES15	CS:AS113	ES15:AS2					
ES15	CS:AS114	ES15:AS3					
ES15	CS:AS115	ES15:AS4					
ES16	ES15:AS5	ES16:AS2					
ES16	ES15:AS6	ES16:AS3					
ES16	ES15:AS7	ES16:AS1					
ES16	ES15:AS8	ES16:AS4					
ES17	ES16:AS5	ES17:AS2					
ES17	ES16:AS6	ES17:AS3					
ES17	ES16:AS7	ES17:AS1					
ES17	ES16:AS8	ES17:AS4					
ES18	ES17:AS5	ES18:AS2					
ES18	ES17:AS6	ES18:AS3					
ES18	ES17:AS7	ES18:AS1					
ES18	ES17:AS8	ES18:AS4					
ES19	ES18:AS5	ES19:AS2					
ES19	ES18:AS6	ES19:AS3					
ES19	ES18:AS7	ES19:AS1					
ES19	ES18:AS8	ES19:AS4					
ES20	ES19:AS5	ES20:AS2					
ES20	ES19:AS6	ES20:AS3					
ES20	ES19:AS7	ES20:AS1					
ES20	ES19:AS8	ES20:AS4					
ES21	ES20:AS5	ES21:AS2					
ES21	ES20:AS6	ES21:AS3					
ES21	ES20:AS7	ES21:AS1					
ES21	ES20:AS8	ES21:AS4					

AC-UPS - Connections		
Item	Comments	Initials
<input type="checkbox"/> t. Cables installed into the correct location and secured at distances not exceeding 6-feet.	Date Completed:	
<input type="checkbox"/> u. Cables tested at each Energy Segment	Date Completed:	



# S750 Lineup Pre-Energization Electrical Installation Checklist

## AC-UPS - Connections



Segment	Upstream Point	Segment Connection	Cable ID	Megger Date	Results	Connection Date	Performed by
---------	----------------	--------------------	----------	-------------	---------	-----------------	--------------

Segments 1-7 can be tested together from QA20 secondary terminals.

1. Open QA20 in CS.
2. Open QA10 in ES 1-7.
3. From QA20 secondary terminals, check insulation resistance is greater than 1Megaohm with Megger at 500V for 60 seconds across phase to phase and each phase to ground.
4. Repeat steps 1-3 for QA21 breaker in CS for segments 8-14.
5. Repeat steps 1-3 for QA22 breaker in CS for segments 15-21.

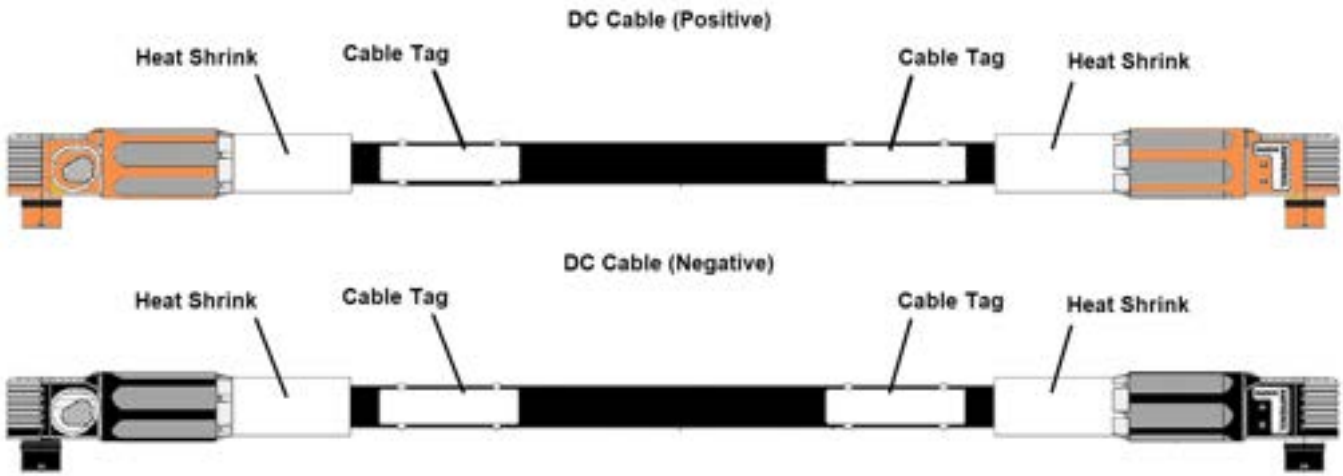
ES1	CS:AS116	ES1:AS9					
ES2	ES1:AS10	ES2:AS9					
ES3	ES2:AS10	ES3:AS9					
ES4	ES3:AS10	ES4:AS9					
ES5	ES4:AS10	ES5:AS9					
ES6	ES5:AS10	ES6:AS9					
ES7	ES6:AS10	ES7:AS9					
ES8	CS:AS117	ES8:AS9					
ES9	ES8:AS10	ES9:AS9					
ES10	ES9:AS10	ES10:AS9					
ES11	ES10:AS10	ES11:AS9					
ES12	ES11:AS10	ES12:AS9					
ES13	ES12:AS10	ES13:AS9					
ES14	ES13:AS10	ES14:AS9					
ES15	CS:AS118	ES15:AS9					
ES16	ES15:AS10	ES16:AS9					
ES17	ES16:AS10	ES17:AS9					
ES18	ES17:AS10	ES18:AS9					
ES19	ES18:AS10	ES19:AS9					
ES20	ES19:AS10	ES20:AS9					
ES21	ES20:AS10	ES21:AS9					



# S750 Lineup Pre-Energization Electrical Installation Checklist

## DC Connections – Collection Segment to Energy Segments

Item	Comments	Initials
<input type="checkbox"/> v. Cables installed into the correct location and secured in place at distances not exceeding 6-feet.	Date Completed:	
<input type="checkbox"/> w. Cables tested at each Energy Segment	Date Completed:	



Segment	Upstream Point	Segment Connection	Cable ID	Megger Date	Results	Connection Date	Performed by
ES1	CS:AS20	ES1:AS11					
ES1	CS:AS21	ES1:AS12					
ES1	CS:AS22	ES1:AS13					
ES1	CS:AS23	ES1:AS14					
ES2	CS:AS24	ES2:AS11					
ES2	CS:AS25	ES2:AS12					
ES2	CS:AS26	ES2:AS13					
ES2	CS:AS27	ES2:AS14					
ES3	CS:AS28	ES3:AS11					
ES3	CS:AS29	ES3:AS12					
ES3	CS:AS30	ES3:AS13					
ES3	CS:AS31	ES3:AS14					
ES4	CS:AS32	ES4:AS11					
ES4	CS:AS33	ES4:AS12					
ES4	CS:AS34	ES4:AS13					
ES4	CS:AS35	ES4:AS14					
ES5	CS:AS36	ES5:AS11					
ES5	CS:AS37	ES5:AS12					
ES5	CS:AS38	ES5:AS13					
ES5	CS:AS39	ES5:AS14					



# S750 Lineup Pre-Energization Electrical Installation Checklist

Segment	Upstream Point	Segment Connection	Cable ID	Megger Date	Results	Connection Date	Performed by
ES6	CS:AS40	ES6:AS11					
ES6	CS:AS41	ES6:AS12					
ES6	CS:AS42	ES6:AS13					
ES6	CS:AS43	ES6:AS14					
ES7	CS:AS44	ES7:AS11					
ES7	CS:AS45	ES7:AS12					
ES7	CS:AS46	ES7:AS13					
ES7	CS:AS47	ES7:AS14					
ES8	CS:AS48	ES8:AS11					
ES8	CS:AS49	ES8:AS12					
ES8	CS:AS50	ES8:AS13					
ES8	CS:AS51	ES8:AS14					
ES9	CS:AS52	ES9:AS11					
ES9	CS:AS53	ES9:AS12					
ES9	CS:AS54	ES9:AS13					
ES9	CS:AS55	ES9:AS14					
ES10	CS:AS56	ES10:AS11					
ES10	CS:AS57	ES10:AS12					
ES10	CS:AS58	ES10:AS13					
ES10	CS:AS59	ES10:AS14					
ES11	CS:AS60	ES11:AS11					
ES11	CS:AS61	ES11:AS12					
ES11	CS:AS62	ES11:AS13					
ES11	CS:AS63	ES11:AS14					
ES12	CS:AS64	ES12:AS11					
ES12	CS:AS65	ES12:AS12					
ES12	CS:AS66	ES12:AS13					
ES12	CS:AS67	ES12:AS14					
ES13	CS:AS68	ES13:AS11					
ES13	CS:AS69	ES13:AS12					
ES13	CS:AS70	ES13:AS13					
ES13	CS:AS71	ES13:AS14					
ES14	CS:AS72	ES14:AS11					
ES14	CS:AS73	ES14:AS12					
ES14	CS:AS74	ES14:AS13					
ES14	CS:AS75	ES14:AS14					
ES15	CS:AS76	ES15:AS11					



# S750 Lineup Pre-Energization Electrical Installation Checklist

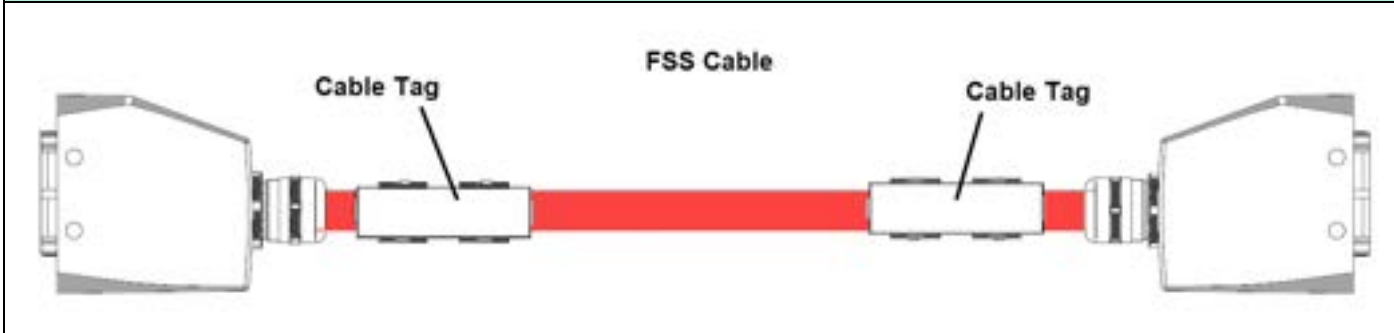
Segment	Upstream Point	Segment Connection	Cable ID	Megger Date	Results	Connection Date	Performed by
ES15	CS:AS77	ES15:AS12					
ES15	CS:AS78	ES15:AS13					
ES15	CS:AS79	ES15:AS14					
ES16	CS:AS80	ES16:AS11					
ES16	CS:AS81	ES16:AS12					
ES16	CS:AS82	ES16:AS13					
ES16	CS:AS83	ES16:AS14					
ES17	CS:AS84	ES17:AS11					
ES17	CS:AS85	ES17:AS12					
ES17	CS:AS86	ES17:AS13					
ES17	CS:AS87	ES17:AS14					
ES18	CS:AS88	ES18:AS11					
ES18	CS:AS89	ES18:AS12					
ES18	CS:AS90	ES18:AS13					
ES18	CS:AS91	ES18:AS14					
ES19	CS:AS92	ES19:AS11					
ES19	CS:AS93	ES19:AS12					
ES19	CS:AS94	ES19:AS13					
ES19	CS:AS95	ES19:AS14					
ES20	CS:AS96	ES20:AS11					
ES20	CS:AS97	ES20:AS12					
ES20	CS:AS98	ES20:AS13					
ES20	CS:AS99	ES20:AS14					
ES21	CS:AS100	ES21:AS11					
ES21	CS:AS101	ES21:AS12					
ES21	CS:AS102	ES21:AS13					
ES21	CS:AS103	ES21:AS14					

FSS – Connections		
Item	Comments	Initials
<input type="checkbox"/> x. Cables installed into the correct location and secured in place at distances not exceeding 6-feet.	Date Completed:	
<input type="checkbox"/> y. Cables tested at each Energy Segment	Date Completed:	
<input type="checkbox"/> z. Cables visually inspected.	Date Completed:	



# S750 Lineup Pre-Energization Electrical Installation Checklist

## FSS – Connections



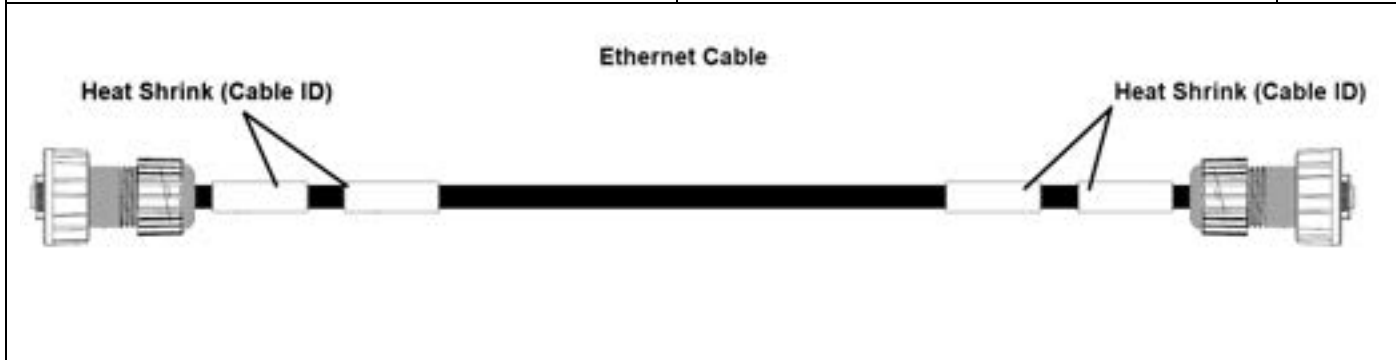
Segment	Upstream Point	Segment Connection	Cable ID	Visual Inspection	Results	Connection Date	Performed by
ES1	CS:AS146	ES1:AS17					
ES2	ES1:AS18	ES2:AS17					
ES3	ES2:AS18	ES3:AS17					
ES4	ES3:AS18	ES4:AS17					
ES5	ES4:AS18	ES5:AS17					
ES6	ES5:AS18	ES6:AS17					
ES7	ES6:AS18	ES7:AS17					
ES8	ES7:AS18	ES8:AS17					
ES9	ES8:AS18	ES9:AS17					
ES10	ES9:AS18	ES10:AS17					
ES11	ES10:AS18	ES11:AS17					
ES12	ES11:AS18	ES12:AS17					
ES13	ES12:AS18	ES13:AS17					
ES14	ES13:AS18	ES14:AS17					
ES15	ES14:AS18	ES15:AS17					
ES16	ES15:AS18	ES16:AS17					
ES17	ES16:AS18	ES17:AS17					
ES18	ES17:AS18	ES18:AS17					
ES19	ES18:AS18	ES19:AS17					
ES20	ES19:AS18	ES20:AS17					
ES21	ES20:AS18	ES21:AS17					



# S750 Lineup Pre-Energization Electrical Installation Checklist

## Ethernet - Collection Segment to Energy Segments

Item	Comments	Initials
Using Fluke Networks LIQ-100 Link IQ Cable and Network Tester:		
1. Cable qualification to IEEE 802.3: Verify if a 4-pair cable with continuity on all 4 pairs can support 1000BASE-T (1G) data rate throughput.		
2. Verify wire connectivity end-to-end to verify there are no:		
a. Opens		
b. Shorts		
c. Split Pairs		
d. Mis-wires		
3. Verify cable length measurement of tester matches actual lengths.		
4. Document results.		
<input type="checkbox"/> aa. Cables installed into the correct location and secured in place at distances not exceeding 6-feet.	Date Completed:	
<input type="checkbox"/> bb. Cables tested at each Energy Segment.	Date Completed:	
<input type="checkbox"/> cc. Verify network port mapping using end to end network cable tester.	Date Completed:	



Segment	Upstream Point	Segment Connection	Cable ID	Testing Date	Results	Connection Date	Performed by
ES1	CS:AS119	ES1:AS15					
ES2	CS:AS120	ES2:AS15					
ES3	CS:AS121	ES3:AS15					
ES4	CS:AS122	ES4:AS15					
ES5	CS:AS123	ES5:AS15					
ES6	CS:AS124	ES6:AS15					
ES7	CS:AS125	ES7:AS15					
ES8	CS:AS126	ES8:AS15					
ES9	CS:AS127	ES9:AS15					
ES10	CS:AS128	ES10:AS15					
ES11	CS:AS129	ES11:AS15					
ES12	CS:AS130	ES12:AS15					
ES13	CS:AS131	ES13:AS15					



# S750 Lineup Pre-Energization Electrical Installation Checklist

ES14	CS:AS132	ES14:AS15				
ES15	CS:AS133	ES15:AS15				
ES16	CS:AS134	ES16:AS15				
ES17	CS:AS135	ES17:AS15				
ES18	CS:AS136	ES18:AS15				
ES19	CS:AS137	ES19:AS15				
ES20	CS:AS138	ES20:AS15				
ES21	CS:AS139	ES21:AS15				

## Grounding – Connections Section to Section

Item	Comments	Initials
<input type="checkbox"/> dd. Cables installed into the correct location	Date Completed:	
<input type="checkbox"/> ee. Cables tested at each Energy Segment	Date Completed:	
<input type="checkbox"/> ff. All M10 hardware torqued to 18 - 23 Nm (13 - 17 ft-lbs).	Date Completed:	



Segment	Upstream Point	Segment Connection	Cable ID	Continuity Date	Results	Connection Date	Performed by
ES1	CS:Right Grounding Block	ES1:Left Grounding Block					
ES2	ES1:Right Grounding Block	ES2:Left Grounding Block					
ES3	ES2:Right Grounding Block	ES3:Left Grounding Block					
ES4	ES3:Right Grounding Block	ES4:Left Grounding Block					
ES5	ES4:Right Grounding Block	ES5:Left Grounding Block					
ES6	ES5:Right Grounding Block	ES6:Left Grounding Block					





# S750 Lineup Pre-Energization Electrical Installation Checklist

Segment	Upstream Point	Segment Connection	Cable ID	Continuity Date	Results	Connection Date	Performed by
ES7	ES6:Right Grounding Block	ES7:Left Grounding Block					
ES8	ES7:Right Grounding Block	ES8:Left Grounding Block					
ES9	ES8:Right Grounding Block	ES9:Left Grounding Block					
ES10	ES9:Right Grounding Block	ES10:Left Grounding Block					
ES11	ES10:Right Grounding Block	ES11:Left Grounding Block					
ES12	ES11:Right Grounding Block	ES12:Left Grounding Block					
ES13	ES12:Right Grounding Block	ES13:Left Grounding Block					
ES14	ES13:Right Grounding Block	ES14:Left Grounding Block					
ES15	ES14:Right Grounding Block	ES15:Left Grounding Block					
ES16	ES15:Right Grounding Block	ES16:Left Grounding Block					
ES17	ES16:Right Grounding Block	ES17:Left Grounding Block					
ES18	ES17:Right Grounding Block	ES18:Left Grounding Block					
ES19	ES18:Right Grounding Block	ES19:Left Grounding Block					



# S750 Lineup Pre-Energization Electrical Installation Checklist

Segment	Upstream Point	Segment Connection	Cable ID	Continuity Date	Results	Connection Date	Performed by
ES20	ES19:Right Grounding Block	ES20:Left Grounding Block					
ES21	ES20:Right Grounding Block	ES21:Left Grounding Block					

## Cable Tray Grounding

Item	Comments	Initials
<input type="checkbox"/> gg. Cables Trays installed in each section	Date Completed:	
<input type="checkbox"/> hh. Inspect and confirm that the ground washer is installed and torqued to specification.	Date Completed:	
<input type="checkbox"/> ii. Complete a continuity check from ground washer to frame.	Date Completed:	

## Cable Tray Access Cover

Item	Comments	Initials
<input type="checkbox"/> jj. Top covers installed and tightened	Date Completed:	
<input type="checkbox"/> kk. Cable Tray Transition Piece between segments installed and sealed	Date Completed:	
<input type="checkbox"/> ll. Cable Tray side covers installed and all hardware torqued (see WI-024 for torque values)	Date Completed:	

## Pre-Energization Collection Segment Bottom Entry Connections Voltage Check\*

Item	Comments	Initials
<input type="checkbox"/> mm. Voltage verified at Transformer AC Main Breaker on the terminals for AS01 on Primary Side of Collection Segment Transformer: Phase 1-2 ___ vac Phase 2-3 ___ vac Phase 1-3 ___ vac Phase 1-Ground ___ vac Phase 2 -Ground ___ vac	Date Completed:	



# S750 Lineup Pre-Energization Electrical Installation Checklist

Pre-Energization Collection Segment Bottom Entry Connections Voltage Check*		
Phase 3 - Ground ____ vac		
<input type="checkbox"/> nn. Phase rotation at Terminals AS01 <input type="checkbox"/> Clockwise <input type="checkbox"/> Counterclockwise	Date Completed:	
<input type="checkbox"/> oo. Voltage Verified at: QA8 (A-N) ____ vac QA7 (C-N) ____ vac QA5 (B-N) ____ vac	Date Completed:	
* Procedures are detailed in PC-S006 Stack750 Line Up Configuration & Commissioning		



# S750 Lineup Pre-Energization Electrical Installation Checklist

Additional Notes/Comments:

Signature of Onsite Installation Submitting this Checklist as complete: \_\_\_\_\_ Date: \_\_\_\_\_

Signature of Receipt of Powin Technician performing this Checklist: \_\_\_\_\_ Date: \_\_\_\_\_

**Exhibit L-3**  
**Form of Notice of Installation Completion**

*[See Attached]*



(Powin Form)

Exhibit L-3

Form of Notice of Installation Completion

**Notice of Installation Completion**

**Project Name:** \_\_\_\_\_  
**Contract Title and Number:** \_\_\_\_\_  
**Buyer:** \_\_\_\_\_  
**Contract Date:** \_\_\_\_\_

Buyer Completion of Installation. Buyer hereby certifies and represents that the requirements to Installation Completion are satisfied in accordance with the Contract as of [\_\_\_\_\_, 20\_\_].

Supplier Review of Installation Completion. Supplier has reviewed Buyer’s installation work, and (*check one*):

Supplier accepts Buyer’s Notice of Installation Completion. Installation Completion has occurred as of [\_\_\_\_\_] (the “**Installation Acceptance Date**”).

Supplier rejects Buyer’s Notice of Installation Completion due to the reason(s) specified below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**Supplier:**  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Signature: \_\_\_\_\_

**Buyer:**  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Signature: \_\_\_\_\_

**Exhibit M**  
**Form of Request for Payment**

*[See Attached]*

**Exhibit M**  
**Form of Request for Payment**

The content set forth on Attachment 1 to this Exhibit M will be in all invoices:



### Exhibit M – Attachment 1



# Invoice

**Invoice #**  
**Date:**  
**Due Date:**

**Bill To**

**Project Location**

**PO #**

**Terms**

Project	Item	Amount
---------	------	--------

Subtotal

Tax Total

Total

Amount Paid

Amount Due

Status

**Bank Information**

Bank name: HSBC Bank USA, NA  
 Bank address: 452 5th Avenue, New York, NY 10018  
 For Wire (ABA): 021001088  
 For ACH (ABA): 022000020  
 SWIFT Code (for international wires): MRMDUS33  
 Beneficiary name: Powin, LLC  
 Beneficiary account #: 963022679

**Tax ID:**  
86-2270504

**Exhibit N-1**  
**Form of Delivery Acceptance Certificate**

*[See Attached]*



(Powin Form)

Exhibit N-1  
Form of Delivery Acceptance Certificate

**Delivery Acceptance Certificate**

**Project Name:** \_\_\_\_\_

**Contract Title and Number:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_

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

Supplier hereby certifies and represents that as of the date set forth below Delivery of the following ESS Equipment has been achieved in accordance with the Contract.

ESS Equipment that has achieved Delivery: \_\_\_\_\_

The Date of Delivery for such ESS Equipment is hereby established as: \_\_\_\_\_

\_\_\_\_\_  
[DATE]

Signing of this Delivery Acceptance Certificate by Buyer in no way alters the responsibility of Supplier to complete their obligations in accordance with the Contract. Buyer agrees that the above ESS Equipment has achieved Delivery as of:

\_\_\_\_\_  
[DATE]

**Supplier:**

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

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

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

Signature: \_\_\_\_\_

**Buyer:**

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

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

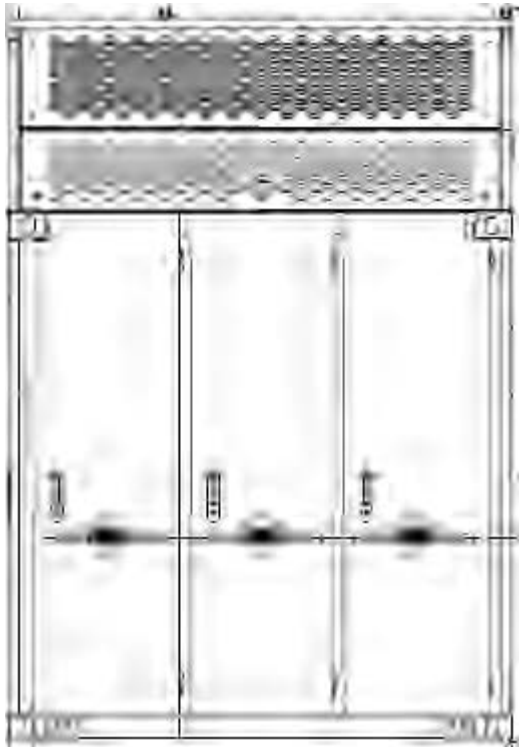
Date: \_\_\_\_\_

Signature: \_\_\_\_\_





# Collection Segment Receiving Checklist

Project Name:	Project Number:
Date of Arrival:	Company Name of Inspector:
Transport Company:	Name of Inspector:
Segment Serial Number:	Signature of Inspector:

Transportation		
Item	Comments	Initials
<input type="checkbox"/> a. Bill of Lading		
<input type="checkbox"/> b. Packaging In good condition		
<input type="checkbox"/> c. Transportation Cover Intact		
<input type="checkbox"/> d. Note Damage Below in each area		
<b>Front View</b> 	<b>Items to Verify</b> <ul style="list-style-type: none"> <li>• All Side Paneling is not dented or scratched</li> <li>• Grounding Bar Intact and Undamaged</li> <li>• Door Handles Un Damaged and Open Freely</li> <li>• Keys Delivered with Unit</li> </ul>	

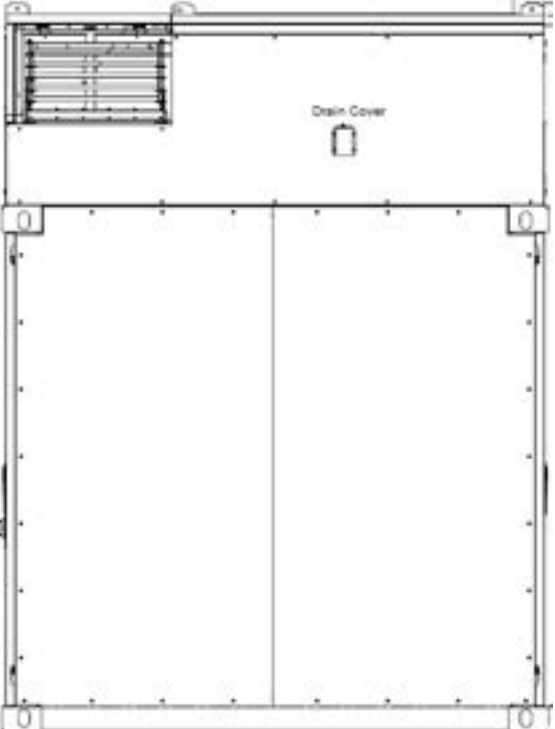
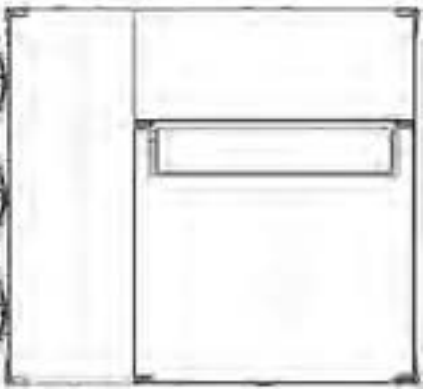


# Collection Segment Receiving Checklist

<p style="text-align: center;"><b>Back View</b></p> 	<p><b>Items to Verify</b></p> <ul style="list-style-type: none"> <li>• All Paneling is not dented or scratched</li> <li>• Grounding Bar Intact and Undamaged</li> <li>• Door Handles Un Damaged and Open Freely</li> <li>• Keys Delivered with Unit</li> <li>• Doors Open and Close.</li> <li>• Door Handles Lock and Unlock</li> </ul>	
<p><b>Left Side View</b></p> 	<p><b>Items to Verify</b></p> <ul style="list-style-type: none"> <li>• All Side Paneling is not dented or scratched</li> <li>• Bus Bar Installed and intact</li> <li>• Exterior FSS Strobe</li> <li>• Doors Open and Close.</li> <li>• Door Handles Lock and Unlock</li> </ul>	



# Collection Segment Receiving Checklist

<p>Right Side View</p> 	<p>Items to Verify</p> <ul style="list-style-type: none"> <li>• All Side Paneling is not dented or scratched</li> <li>• Cable Tray Access is sealed and no water ingress is visible</li> <li>• Drain Cover is intact and not damaged</li> </ul>	
<p>Top View</p> 	<p>Items to Verify</p> <ul style="list-style-type: none"> <li>• Roof Paneling not dented or scratched</li> <li>• HVAC Lifting Points Intact and not damaged</li> <li>• Exhaust Duct Sealed and no water ingress is visible</li> </ul>	
<input type="checkbox"/>		
<p>2.0 Loose Items Shipped with Unit</p>	<p>Comments</p>	<p>Initials</p>
<input type="checkbox"/> a. 4 x Anchor Plates		
<input type="checkbox"/> b. Exhaust Hood		
<input type="checkbox"/> c. 3 x Exterior DC Disconnect Switch		
<input type="checkbox"/> d. Grounding Equipment		
<input type="checkbox"/> e.		






# Energy Segment Receiving Checklist

Project Name:	Project Number:
Date of Arrival:	Name of Inspector:
Segment Serial Number:	Signature of Inspector:

## Transportation



	Comments	Initials
<input type="checkbox"/> Bill of Lading		
<input type="checkbox"/> Packaging In good condition		
<input type="checkbox"/> Transportation Cover Intact		
<input type="checkbox"/> Note Damage Below in each area		

<p style="text-align: center;"><b>Front View</b></p> 	<p><b>Items to Verify</b></p> <ul style="list-style-type: none"> <li>All Side Paneling is not dented or scratched</li> <li>LCD CONTROL PANEL Intact and Not Damaged</li> <li>Grounding Bar Intact and Undamaged</li> <li>Door Handles Un Damaged and Open Freely</li> <li>Keys Delivered with Unit</li> </ul>
---	---



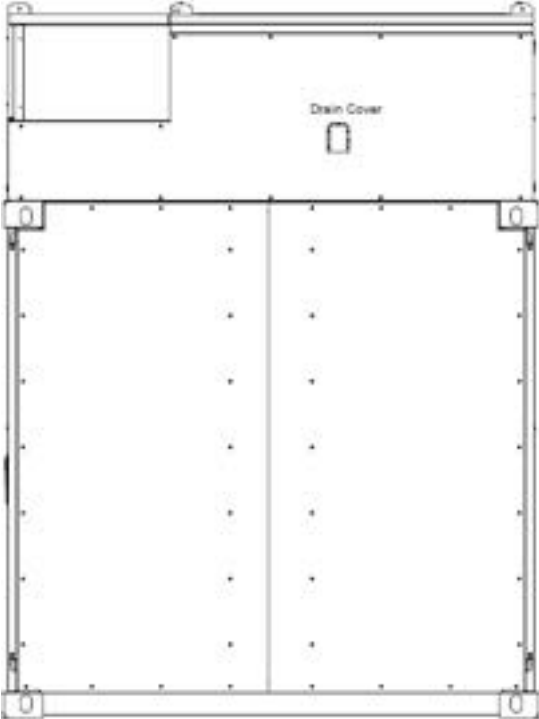



# Energy Segment Receiving Checklist

<p style="text-align: center;"><b>Back View</b></p> 	<p>Items to Verify</p> <ul style="list-style-type: none"><li>• All Side Paneling is not dented or scratched</li><li>• LCD CONTROL PANEL Intact and Not Damaged</li><li>• Grounding Bar Intact and Undamaged</li><li>• Door Handles Un Damaged and Open Freely</li><li>• Keys Delivered with Unit</li></ul>	
<p><b>Left Side View</b></p> 	<p>Items to Verify</p> <ul style="list-style-type: none"><li>• All Side Paneling is not dented or scratched</li><li>• Cable Tray Access is sealed and no water ingress is visible</li></ul>	



# Energy Segment Receiving Checklist

<p>Right Side View</p> 	<p>Items to Verify</p> <ul style="list-style-type: none"> <li>• All Side Paneling is not dented or scratched</li> <li>• Cable Tray Access is sealed and no water ingress is visible</li> <li>• Drain Cover is intact and not damaged</li> </ul>	
<p>Top View</p> 	<p>Items to Verify</p> <ul style="list-style-type: none"> <li>• Roof Paneling not dented or scratched</li> <li>• HVAC Lifting Points Intact and not damaged</li> <li>• Exhaust Duct Sealed and no water ingress is visible</li> </ul>	
<p><input checked="" type="checkbox"/></p>		
<p>2.0 Loose Items Shipped with Unit</p>	<p>Comments</p>	<p>Initials</p>
<p><input type="checkbox"/> a. 4 x Anchor Plates</p>		
<p><input type="checkbox"/> HVAC Exhaust Hood</p>		
<p><input type="checkbox"/> Cable Tray Extender?</p>		



**Exhibit N-2**  
**Form of Commissioning Certificate**  
*[See Attached]*



(Powin Form)

**Exhibit N-2**  
**Form of Commissioning**  
**Completion Certificate**

**Project Name:** \_\_\_\_\_

**Contract Title and Number:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_

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

Supplier hereby certifies and represents that as of the date set forth below Commissioning has been completed in accordance with the Contract:

**(Date)**

\_\_\_\_\_

Buyer's Review of Commissioning Completion. Buyer has reviewed Supplier's Commissioning Work, and (*check one*):

Buyer accepts Supplier's Notice of Commissioning Completion. Commissioning Completion has occurred as of [\_\_\_\_\_] (the "**Commissioning Completion Date**").

Buyer rejects Supplier's Notice of Commissioning Completion due to the reason(s) specified below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

The approved Punchlist of items to be completed or corrected is appended hereto. Corrections or changes called for in this Punchlist will be made within [ \_\_\_\_\_ days] from the date of this Commissioning Completion Certificate.

Signing of this Commissioning Completion Certificate by Buyer in no way alters the responsibility of Supplier to complete its obligations in accordance with the Contract. Buyer accepts the Work and will assume full possession thereof on:

(Date)

\_\_\_\_\_

-

**Supplier:**

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

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

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

Signature: \_\_\_\_\_

**Buyer:**

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

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

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

Signature: \_\_\_\_\_

**Exhibit N-3**  
**Form of Final Acceptance Certificate**  
*[See Attached]*



(Powin Form)

**Exhibit N-3  
Form of Final Acceptance  
Certificate**

**Project Name:** \_\_\_\_\_

**Contract Title and  
Number:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_

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

Supplier hereby certifies and represents that as of the date set forth below, all requirements for achievement of Final Acceptance have been completed in accordance with the Contract:

\_\_\_\_\_ ***[DATE]*** \_\_\_\_\_

The Work has been reviewed by Buyer and Buyer hereby deems Final Acceptance to have occurred in accordance with the Contract. The Final Acceptance Date is hereby established as:

\_\_\_\_\_ ***[DATE]*** \_\_\_\_\_

**Supplier:**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Signature: \_\_\_\_\_

**Buyer:**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Signature: \_\_\_\_\_

**Exhibit O**

**Liquidated Damages**

*[See Attached]*



## Exhibit O

### Liquidated Damages

For any Completion Milestone not achieved by its Guaranteed Date, Supplier shall pay Buyer, as liquidated damages, according to the following table:

Form of Liquidated Damages	Liquidated Damages Amount per day	LD Cap
<b>Delivery LDs</b>		
Collection Segment Delivery LDs  (% of Contract Price, pro rated per Collection Segment Undelivered)	For Days 1 through 15	
	For Days 16 through 30	
	For Days 31 through 60	
	For Days 61+	
Energy Segment Delivery LDs  (% of Contract Price, pro rated per Energy Segment Undelivered)	For Days 1 through 15	
	For Days 16 through 30	
	For Days 31 through 60	
	For Days 61+	
PCS/MVT Set Delivery LDs  (% of Contract Price, pro rated per PCS/MVT Set Undelivered)	For Days 1 through 15	
	For Days 16 through 30	
	For Days 31 through 60	
	For Days 61+	
<b>Commissioning LDs</b>		
Commissioning LDs	For Days 1 through 15	
	For Days 16 through 30	
	For Days 31 through 60	
	For Days 61+	

The aggregate Liquidated Damages Cap is [REDACTED] of the Contract Price.

**Exhibit P**  
**Form of Change Order**

*[See Attached]*



AGREEMENT. EXCEPT AS SPECIFICALLY MODIFIED HEREIN, ALL THE TERMS AND CONDITIONS OF THE CONTRACT, AS AMENDED, REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, Buyer and Supplier have executed this Change Order as of the date first above written.

**BUYER**

**SUPPLIER**

[\_\_\_\_\_]

[POWIN, LLC]

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

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

Name: [\_\_\_\_\_]

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

**Exhibit Q**  
**Form of Lien Waiver**

*[See Attached]*

**UNCONDITIONAL WAIVER AND RELEASE**  
**UPON FINAL PAYMENT**

Property Name: \_\_\_\_\_  
Property Location: \_\_\_\_\_  
Undersigned's Customer: \_\_\_\_\_  
Invoice/Payment Application Number: \_\_\_\_\_  
Payment Amount: \_\_\_\_\_  
Amount of Disputed Claims: \$ \_\_\_\_\_

The undersigned has been paid in full for all work, materials and equipment furnished to their Customer for the above described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property, except for the payment of Disputed Claims, if any, noted above. The undersigned warrants that they either have already paid or will use the money received from this final payment promptly to pay in full all laborers, subcontractors, materialmen and suppliers for all work, materials and equipment that are the subject of this waiver and release.

DATED on \_\_\_\_\_, 20

(Claimant name)

By:

Its:

Address:

Phone:

Fax: \_\_\_\_\_

**Notice: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it to the extent of the Payment Amount or the amount received. If you have not been paid, use a conditional release form.**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

**Exhibit R**  
**Account Setup Form**

*[See attached]*



## Account Setup For

**1: Ship To Address: (Name, Address, City, State, Pos**

PNM South Valley Solar  
6060 Douglas Rd. SW  
Albuquerque, NM 87121

Coordinates: 34°59'16.92"N, 106°44'9.47"W

**2: Physical Site Address: (Installation of Equipment and SC.**

[pnm.accountspayable@pnmresources.com](mailto:pnm.accountspayable@pnmresources.com)



**If for any reason there is a change to any address, any such cost Powin incurs due to the change will be passed through to the buyer.**

**5: Invoicing**

Referenced PO Number: TBD

**All invoices will be emailed in PDF format.**

Please list Accounts Payable contact information: (Name, Phone #, Email Address)

Public Service Company of New Mexico (PNM)  
414 Silver Ave. SW, MS 1055  
Albuquerque, New Mexico 87102

Attention: Accounts Payable  
pnm.accountspayable@pnmresources.com  
Shalene Sharp (505)241-2243

Please list any additional email addresses you would like copied on invoice submittals

Nicholas.Pollman@pnm.com

**6: Tax**

**Powin collects sales tax based on the Physical Site Address.** (Please fill out the below)

- We are exempt (Please attach or email certificate as noted above)
- We are not exempt

Employer Identification Number (EIN)

85-0019030

**I certify that the information on this document is complete and accurate and I assume all responsibility for providing such representations.**

**Shelia Mulligan** Digitally signed by Shelia Mulligan  
Date: 2023.03.29 06:00:11 -06'00'

**INTERNAL COMPLETION SECTION**

**Customer**

**Project Name**

**Project Number**

**Exhibit S**

**Buyer Furnished Equipment**

*[See attached]*

**Exhibit S**

- 1. Meter - Schweitzer Engineering Laboratories Model SEL-735**

**Exhibit T**

**[RESERVED]**

**Exhibit U**

**Buyer Requirements**

*[See attached]*

## **Exhibit U**

### **Buyer Requirements**

#### **U.1 Safety**

PNM strives for the highest safety standards on our projects and it is our goal to provide an accident and injury free environment. In support of this, Supplier will be expected to work diligently to maintain safety and occupational health standards when performing its Services on and off the Project Site. Supplier shall comply with all Applicable Codes and Standards including but not limited to OSHA, NFPA, ANSI, FAA, ACOE, and DOT safety and health regulations, as applicable.

It is the obligation of Supplier to ensure that all of its employees and Subcontractors are knowledgeable of the standards established by these agencies and to implement the rules and regulations contained therein for Services performed under its direction.

Supplier's safety responsibilities shall include, but not be limited to:

- Protecting and promoting the health and safety of employees, Subcontractors, Buyer's Representative, Buyer's Responsible Parties and others who may be affected by the Supplier's activities.
- Complying with and continually and diligently monitoring and enforcing all Applicable Codes and Standards during its performance of Services on the Project Site, including but not limited to ESS Equipment inspections, construction field support and Commissioning of the Project.
- Assuring that safety, health, environmental, and loss-control programs in place for the Project are given the proper priority and attention, and are achieving the required results.
- Participating in detailed safety orientations provided by Buyer's Other Contractors.
- Participating in daily safety meetings, safety audits, and job safety task analyses on the Project Site.
- Cooperating with and contributing to regular safety audits and inspections performed by Buyer's Other Contractors including in-depth field inspections and record auditing to ensure proper documentation is maintained and the requirements of the Applicable Codes and Standards are being followed.

#### **U.2 Cybersecurity**

**Definitions.** As used in this Exhibit –

“Buyer Data” means all Buyer, Affiliate and third-party data and information processed or stored on computers or other electronic media, as well as any data and information derived from such data and information or data otherwise collected, produced, or generated by or provided to Supplier under this Contract, regardless of the form in which obtained, processed, or stored. Buyer Data includes, without limitation: (a) information on paper or other non-electronic media provided to Supplier for computer processing or storage, or information formerly on electronic media; (b) information provided to Supplier by Buyer or other users or by other third parties; and (c) Privacy Restricted Data.

“Consultant” means a mutually agreed upon, independent third-party consultant.

“Privacy Restricted Data” means any information about Buyer’s existing or prospective customers, users, or third parties or any information, including protected health information, relating to an identified or identifiable person and that, either by itself or in combination with other pieces of information, identifies, or can be used to identify a person. Privacy Restricted Data includes information regarding any customer’s, user’s or other person’s identity, social security number, telephone number, credit card number, e-mail address, and in the case of customers, such customer’s account information, service purchase and usage information and all Customer Proprietary Network Information (“CPNI”) as that term is used in 47 U.S.C. § 222.

“Security Breach” means unauthorized access, use, disclosure, distribution, modification, contamination, loss, damage, destruction, or loss of availability or integrity of any Buyer Data or Confidential Information within Supplier systems.

“Systems or Facilities” means Supplier systems that store or process Buyer Data or interconnect with Buyer systems

“Virus(es)” means computer instructions (a) that adversely affect or disable the operation, security or integrity of a computing, telecommunications or other digital operating or processing system or environment, including programs, data, databases, computer libraries and computer and communications equipment, by altering, destroying, disrupting or inhibiting such operation, security or integrity; (b) that without functional purpose, self-replicate without manual intervention; or (c) that purport to perform a useful function but which actually perform either a destructive or harmful function, or perform no useful function and utilize substantial computer, telecommunications or memory resources.

Other capitalized terms as used in this Exhibit shall have the meanings set forth in the Equipment Purchase Agreement (the "Contract") between Buyer and Supplier.

**Security Breach/Compromise Notification.** Promptly, but in no event later than required by Applicable Law, Supplier will report to Buyer any Security Breach. Supplier will report to Buyer any Security Breach via telephone to Buyer's Service Desk at 505-241-2678 and by email to securitynotifications@pnmresources.com. Such notice shall summarize in reasonable detail the effect on Buyer, its Affiliates, and any third parties, the nature of the Security Breach (including the categories and approximate number of individuals and personal information records affected, and the likely consequences of the Security Breach), and the corrective actions taken or to be taken by Supplier. Supplier shall promptly and at its sole cost and expense take all necessary and advisable corrective actions and shall cooperate fully with Buyer in all reasonable and lawful efforts to prevent, mitigate, or rectify such Security Breach. As part of the foregoing, Supplier shall (i) investigate such Security Breach and if applicable, Consultant will perform a root cause analysis thereon; (ii) except to the extent that the Security Breach is conclusively and finally determined to be caused by Buyer, remediate the effects of such Security Breach and prevent such Security Breach from recurring; and (iii) if requested by Buyer, assist Buyer and its Affiliates in notifying relevant government authorities and affected individuals about the Security Breach. The content of any filings, communications, notices, press releases or reports related to any Security Breach that identifies Buyer or its Affiliates must be approved in writing by Buyer prior to any publication or communication thereof.

Further, Supplier shall at its sole cost and expense, work with its subcontractors to: (i) in the event of any Security Breach, cooperate fully with Buyer to limit the unauthorized access, disclosure or use of the Buyer Data, seek the return of any such Buyer Data, investigate and, except to the extent that the Security Breach is conclusively and finally determined to be caused by Buyer's errors or omissions, remedy the Security Breach and any related dispute, inquiry, claim or action; (ii) in the case of a breach of Supplier, assist and support Buyer in the event of an investigation by a regulator, data protection authority, judicial process or similar authority, if and to the extent that such investigation relates to any Buyer Data; and (iii) comply with all requirements of Applicable Laws, rules, and regulations (including those that are applicable to Supplier as a processor of Privacy Restricted Data) that apply with respect to any Buyer Data. Supplier shall comply with industry best practices with respect to such Applicable Laws, rules, and regulations relating to the protection of information that identifies or can be used to identify an individual and shall not cause Buyer to be out of compliance with any of such Applicable Laws, rules, and regulations.



**Security, Data Confidentiality, Integrity and Availability Compliance.** Supplier shall exercise commercially reasonable efforts to prevent unauthorized exposure or disclosure of Buyer Data. Supplier represents and warrants that its collection, access, use, storage, disposal, and disclosure of Buyer Data does and will comply with all applicable federal, state, and foreign privacy and data protection laws, as well as all other applicable regulations and directives.

Supplier and Buyer shall use commercially reasonable efforts to not insert or, permit to be coded or inserted, any Virus(es) into the Buyer Data, Systems or Facilities. If a Virus is found in Buyer Data, Systems or Facilities due to a breach of the foregoing obligation, then a Consultant will be engaged by the Parties to determine responsibility for the Virus. If the Consultant finds Supplier to be the responsible Party and that Buyer took commercially reasonable efforts to ensure that Buyer Systems and Facilities are protected from Virus(es) then Supplier will be responsible for the costs to remediate the effects of the Virus on Buyer's, its Affiliates' and their respective third party providers' information systems and software, and will remediate the Virus from the Buyer Data, all at Supplier's sole cost and expense.

**Subcontractors.** Supplier shall not permit any Subcontractor to access Buyer Data, Systems or Facilities unless such Subcontractor is subject to a written contract with Supplier protecting Buyer Data, Systems or Facilities, with terms reasonably consistent with those of this Contract. Supplier shall exercise reasonable efforts to ensure that each Subcontractor complies with all of the terms of this Exhibit related to Buyer Data. As between Supplier and Buyer, Supplier shall pay any fees or costs related to each Subcontractor's compliance with such terms.

**Ongoing monitoring.** Buyer shall have the right to monitor all internet traffic inline and unencrypted at the appropriate location through the use of Gatekeeper. If Gatekeeper does not provide Buyer-required monitoring solution, Supplier will use commercially reasonable efforts to assist Buyer in achieving Buyer-required monitoring solution.

**Security Reviews.** Supplier shall annually perform, in its normal course of business, reviews of security processes and procedures, architecture and/or data flow documentation and diagrams.

Any report or other result generated through the reviews allowed by this provision will be Supplier's confidential information. If any review referenced above uncovers deficiencies or identifies suggested changes in Supplier's performance of the Services, Supplier shall exercise reasonable efforts promptly to address such identified deficiencies and suggested changes and shall keep Buyer reasonably informed of the progress of the remediation of such deficiency or implementation of such change. In the event Buyer does not agree with the remediation/implementation efforts or progress on the part of Supplier, Buyer has existing rights

and remedies under the Contract.

**Vulnerability Scanning.** Supplier shall maintain and apply a reasonable vulnerability scanning policy and practice during the Term of this Agreement. The vulnerability scanning policy shall include Supplier, at its sole cost and expense, engaging third party to conduct external and internal vulnerability scans on at least an annual basis of: (i) any equipment used by or for Supplier that stores and/or processes any Buyer, its Affiliates and third parties Data and (ii) unrelated devices used by or for Supplier that share common network resources with the equipment described above in subclause (i). The third party shall be commercially recognized within the industry for conducting vulnerability assessments of computer platforms with such assessments scored under the National Institute of Standards and Technology (NIST) Common Vulnerability Scoring System (CVSS). Supplier shall promptly provide Buyer with the results of each such vulnerability assessment. Supplier agrees to remediation of any high vulnerability risks as measured by standard NIST CVSS scale identified through any such vulnerability scans within sixty (60) days' time from a high-risk vulnerability notification/determination and shall continually keep Buyer reasonably informed of the progress of the remediation efforts.

26159384v7

**Exhibit V**



*[See Attached]*

[REDACTED]

# PNM Exhibit JJ-4

Is contained in the following 233 pages.



# **EQUIPMENT PURCHASE AGREEMENT**

**between**

**PUBLIC SERVICE COMPANY OF NEW MEXICO, as Buyer**

**and**

**POWIN, LLC, as Supplier**

**May 1, 2023**

**RIO DEL ORO PROJECT**



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\* \* \* \* \*

## EQUIPMENT PURCHASE AGREEMENT

This EQUIPMENT PURCHASE AGREEMENT (this “Contract”) is entered into as of May 1, 2023 (the “Effective Date”) by and between PUBLIC SERVICE COMPANY OF NEW MEXICO, a New Mexico corporation (“Buyer”) and POWIN, LLC, a Delaware limited liability company (“Supplier”; together with Buyer, the “Parties”; each a “Party”).

### RECITALS:

WHEREAS, Buyer is developing a distribution feeder energy storage project, the location of which is described in Exhibit A (the “Project”);

WHEREAS, Supplier is a supplier of utility-scale energy storage systems; and

WHEREAS, Buyer wishes to purchase from Supplier, and Supplier wishes to sell to Buyer, an energy storage system for the Project, in accordance with the terms and conditions hereof.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **1. Definitions**

The following capitalized terms as used in this Contract shall have the meanings set forth below:

<u>Term</u>	<u>Meaning</u>
“ <u>AAA</u> ”	has the meaning set forth in <u>Section 33(c)</u> .
“ <u>AAA Rules</u> ”	has the meaning set forth in <u>Section 33(c)</u> .
“ <u>Abnormal Weather Condition</u> ”	fog, snow, ice, rain, mud, smoke, smog, excessive heat, storms, wind and similar inclement weather conditions severe enough:  (a) to prohibit or substantially impair use of transportation systems such that a common carrier, acting reasonably, would not use such systems to transport ESS Equipment; or  (b) that (i) safe performance of the scheduled Work is prevented or substantially hindered, or (ii) an experienced supplier, exercising Standards of Practice would, as a matter of safety, refrain from performing comparable work under comparable



conditions.

“Affiliate”

an entity directly, or indirectly controlled by or under common control of a Party. “Control” for this definition (including, with correlative meanings, the terms “controlled by” and “under common control with”), means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of an entity, whether through the ability to exercise voting power, by contract or otherwise.

“Alternate Delivery Location”

a location to which Buyer directs Delivery to be made by Supplier as described in Section 9(h)(iii), that is (a) not on the Project Site, (b) within twenty-five miles of the Project Site, and (c) accords with the ESS Equipment storage requirements set forth in Exhibit L-1.

“Applicable Codes and Standards”

all national, state, and local engineering, environmental, construction, safety, and electrical generation codes and standards, applicable to the Work.

“Applicable Law(s)”

as amended from time to time, any act, statute, law, regulation, Permit ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) applicable to Supplier, the Project, the Project Site, the ESS Equipment, or the Work; or any similar form of decision, determination, written interpretation or administration of any of the foregoing by any Governmental Authority having jurisdiction over Supplier, Buyer, the Project, the Project Site, or the performance of the Work.

“Backfeed Availability”

Buyer has made available backfeed power, including the ability to export energy from the ESS Equipment (at the ESS’s rated power) to the point of interconnection (or other agreed upon metered location) and to import energy at that same point of interconnection.

“Business Day”

any day other than a Saturday, Sunday, U.S. federal or New Mexico state holiday, or any other day on

which banks are authorized to be closed in Portland, Oregon, or New Mexico.

“Buyer”

has the meaning set forth in the preamble, and includes such entity’s successors and permitted assigns.

“Buyer-Caused Delay”

an actual, material delay in Supplier’s performance of the Work directly resulting from and to the extent of:

- (a) a failure by Buyer or any Buyer Responsible Party to timely perform its obligations required under this Contract, including failure to timely perform its obligations: (i) to procure and maintain all Buyer Permits as and when necessary to not delay the Work, or (ii) in support of Delivery and Commissioning;
- (b) any material act, omission or material breach of this Contract by Buyer or any material act or omission of any Buyer Responsible Party;
- (c) any inaccurate, additional, or changed information from the information provided by Buyer or any Buyer Responsible Party and set forth in the Exhibits as of the Effective Date;
- (d) Soil or Subsurface Conditions;
- (e) [RESERVED];
- (f) Buyer’s failure to timely achieve any Readiness Date or other milestones for which Buyer is the “Responsible Party” in Exhibit D; or
- (g) any other event or circumstance set forth in this Contract as “Buyer-Caused Delay”;

*other than*, in each case, as a result of:

- (i) any actions taken by Buyer pursuant to the express terms and conditions of this Contract to enforce its rights under this Contract in connection with a breach or default by Supplier of its covenants, obligations, representations or warranties

set forth in this Contract;

(ii) a Force Majeure Event; or

(iii) Change in Law.

“Buyer-Furnished Equipment”

The equipment to be provided by Buyer, as set forth in Exhibit S.

“Buyer Event of Default”

has the meaning set forth in Section 19(b)(i).

“Buyer Hazardous Substances”

all Hazardous Substances, other than Supplier Hazardous Substances.

“Buyer Permits”

all Permits relating to the Project, the ESS Equipment and the Work, including those related to the development, construction and operation of the Project, except for Supplier Permits.

“Buyer Requirements”

the agreements setting forth Buyer’s requirements applicable to the Work, copies of which are set forth in Exhibit U.

“Buyer Representative”

Nicholas Pollman

“Buyer Responsible Party”

collectively, Buyer, Buyer’s Affiliates, the Buyer Representative, all Other Contractors and their respective suppliers or subcontractors of any tier, or any person directly employed by any of them for whose acts any of them are liable.

Buyer Responsible Parties exclude Supplier and Subcontractors.

“Buyer Taxes”

has the meaning set forth in Section 8(b)(iii)(B).

“Centipede”

Supplier’s proprietary, fully integrated modular energy storage system, comprised primarily of a Collection Segment(s), Energy Segments, enclosures, hardware and software.

“Change in Law”

after the Effective Date:

- (a) the enactment of a new Applicable Law or Applicable Code and Standard;
- (b) a change in, or repeal of, a then-existing Applicable Law or Applicable Codes and Standards that could not have been anticipated; or
- (c) a change in the interpretation of any Applicable Law or Applicable Code or Standard resulting from a decision of, or ruling by, any Governmental Authority having jurisdiction over Supplier, Buyer, the Project, the Project Site, or the performance of the Work;

*but excluding:*

- (i) any of the foregoing that occurs prior to the Effective Date but the effectiveness of which occurs after the Effective Date; and
- (ii) changes in Applicable Laws with respect to income, profits, assumed profits, capital gains, corporation tax, or turnover taxes.

“Change Order(s)”

a written order issued and signed by Buyer Representative and Supplier Representative adjusting the Work, the Contract Price and/or the Project Schedule, including the Guaranteed Dates, in accordance with Section 16 and documented via the Form of Change Order in Exhibit P.

“Collection Segment”

the component of the Centipede that:

- (a) manages and controls the Energy Segments;
- (b) aggregates DC power and monitors both the grid and its battery decisions on when and where to efficiently dispatch power; and
- (c) houses the AC load panel, HVAC controls, fire panel, networking and communications equipment and controls.

“Collection Segment Delivery LDs”

the liquidated damages applicable to Delivery of the Collection Segments, the value of which is set forth

in Exhibit O.

“Commissioning”

all activities, services, and obligations to be performed by or on behalf of Supplier under this Contract required for Supplier to achieve Commissioning Completion

“Commissioning Completion”

Achievement of the following:

- (a) Buyer has accepted Delivery of all ESS Equipment pursuant to Section 9;
- (b) the ESS Equipment has achieved Installation Acceptance;
- (c) Supplier has completed the Commissioning activities and submitted a completed Commissioning Checklist in accordance with Exhibit I;
- (d) Supplier has successfully completed the Performance Tests, demonstrating that the Performance Guarantees have been met or has paid the associated PG Payments (if any);
- (e) the Punch List has been provided to and agreed to by Buyer; and Buyer has approved of and signed the Commissioning Completion Certificate.

“Commissioning Completion Certificate”

the certificate substantially in the form of Exhibit N-2.

“Commissioning Checklist”

has the meaning set forth in Section 14(b).

“Commissioning Completion Date”

means the date upon which all of the requirements for Commissioning Completion must be satisfied, as set forth in Exhibit D.

“Commissioning Completion LDs”

the liquidated damages applicable to Commissioning, the value of which is set forth in Exhibit O.

“Commissioning Completion LDs Cap”

Supplier’s liability cap for the Commissioning LDs, as enumerated in Exhibit O.

- “Completion Milestones” Delivery of the Collection Segments;  
Delivery of the PCS/MVT Sets;  
Delivery of the Energy Segments; and  
Commissioning Completion.
- “Confidential Information” has the meaning set forth in Section 26(a).
- “Contract” this Equipment Purchase Agreement entered into by and between Buyer and Supplier, including all Exhibits referenced herein.
- “Contract Price” the total amount payable by Buyer to Supplier in accordance with this Contract, as enumerated in Exhibit E, as may be amended by Change Orders in accordance with this Contract.
- “COVID”
- (a) the novel coronavirus SARS-CoV-2 and the associated disease named by the World Health Organization as “COVID-19” and declared by the World Health Organization to be a global pandemic on March 11, 2020; and
  - (b) any mutation, strain, or variant of COVID-19 or any disease associated with such mutation, strain, or variant, in each case arising after the Effective Date and declared by the World Health Organization to be a pandemic.
- “COVID Impacts”
- (a) measures taken by a Governmental Authority in connection with COVID, including quarantines and/or the enactment, promulgation, modification, or repeal after the Effective Date of any Applicable Law as a result of COVID, that substantially delays the progress of the Work or materially increases Supplier’s cost to perform the Work or
  - (b) circumstances related to COVID that substantially delay the progress of the Work or materially increase Supplier’s cost to perform the Work, including:

- (i) disruption to:
  - (A) production supply chains,
  - (B) activities conducted at a Worksite (including closures or partial closures of manufacturing Worksites or the Project Site),
  - (C) import or export clearances; or
  - (D) transportation facilities or services (including loading, shipment, unloading and trans-shipping),
- (ii) impacts to:
  - (A) labor or other human resources,
  - (B) utility services, delays to import or export clearances, or
  - (C) other resources necessary for the production, Delivery, or storage of the ESS Equipment.

“Data Breach”

has the meaning set forth in Section 26(d).

“Date of Delivery”

the date on which Buyer issues a Delivery Acceptance Certificate, or the date on which a Delivery Acceptance Certificate is deemed to be issued, in accordance with Section 9(i).

“DDP”

“Delivered Duty Paid”, per INCOTERMS 2020.

“DDP Cost Amount”

the amount set forth on Exhibit E as an Effective Date estimate for DDP Costs.

“DDP Costs”

The costs incurred by Supplier for transportation and delivery of ESS Equipment to the Delivery Location, including loading expenses, delivery costs, security fees, and other costs customarily associated with DDP (but excluding Import Duties), plus twelve percent for overhead and profit.

“Defect”

- (a) any (i) defects in the design, workmanship, or materials comprising the Warranted Equipment, or (ii) damage to the Warranted Equipment caused by Supplier or Subcontractors or occurring when in the care, custody, and control of Supplier, including, as with respect to software, any software error or other problem caused by Supplier’s incorrect operation of the computer code in such software; or
- (b) any other failure of the Warranted Equipment to comply with the requirements of this Contract, Specifications or Applicable Laws or Standards of Practice.

Anything to the contrary notwithstanding, “Defective” has the correlative meaning.

“Delivery”

with respect to ESS Equipment, means:

- (a) Supplier has transported and delivered such ESS Equipment (or, as applicable, a particular portion of it) to the Delivery Location, and made the ESS Equipment available to Buyer (or Other Contractors) for unloading, unpacking, and inspection; and
- (b) Buyer has issued (or been deemed to have issued) a Delivery Acceptance Certificate with respect to such ESS Equipment pursuant to Section 9(i).

“Deliver” and “Delivered” have correlative and equivalent meanings.

“Delivery Acceptance Certificate”

the certificate substantially in the form of Exhibit N-1.

“Delivery Inspection Checklist”

the checklist attached to the Delivery Acceptance Certificate.

“Delivery LDs”

collectively, Collection Segment Delivery LDs, PCS/MVT Set Delivery LDs, and Energy Segment Delivery LDs.



“ <u>Delivery LDs Cap</u> ”	Supplier’s liability cap for the Delivery LDs, as enumerated in <u>Exhibit O</u> .
“ <u>Delivery Location</u> ”	(a) the location at the Project Site for Delivery of the applicable ESS Equipment, as such location is identified to Supplier by Buyer; or  (b) the Alternate Delivery Location as assigned in 9(h)(iii).
“ <u>Disclosing Party</u> ”	has the meaning set forth in <u>Section 26(a)</u> .
“ <u>Dispute</u> ”	has the meaning set forth in <u>Section 33(a)</u> .
“ <u>Effective Date</u> ”	has the meaning set forth in the preamble.
“ <u>Energy Segment</u> ”	has the meaning set forth in <u>Exhibit J</u> .
“ <u>Energy Segment Delivery LDs</u> ”	the liquidated damages applicable to Delivery of the Energy Segments, the value of which is set forth in <u>Exhibit O</u> .
“ <u>Energy Segment Readiness</u> ”	means that the Project Site is in a condition that satisfies the Installation Requirements for the Energy Segments thus allowing for the Delivery of the Energy Segments by Supplier. Requirements for Energy Segment Readiness include: (i) internet service is connected and energized; (ii) auxiliary power is connected and energized, and (iii) installation of HVAC is complete.
“ <u>Energy Segment Readiness Date</u> ”	the date (as set forth in <u>Exhibit D</u> ) by which Buyer must achieve Energy Segment Readiness.
“ <u>ESS</u> ”	the energy storage system consisting of one or more Centipedes, that includes:  (a) the ESS Equipment; and  (b) Buyer-Furnished Equipment; and  (c) other equipment and materials for which Buyer and Buyer Responsible Parties are responsible

pursuant to Exhibit B.

“ESS Equipment”

the Energy Segments, Collection Segments, PCS/MVT Sets, and all other Supplier-provided equipment, supplies, software and other goods, as enumerated in Exhibit A.

“ESS Product Manual”

the manual set forth in Exhibit J.

“Excusable Event”

has the meaning set forth in Section 16(c).

“Final Acceptance”

shall mean achievement of the following:

- (a) Commissioning Completion, along with receipt of Commissioning Completion Certificate from Buyer;
- (b) Supplier’s delivery to Buyer of final waivers and releases of liens, from Supplier, in accordance with Section 8(c)(ii);
- (c) Supplier’s payment of all outstanding amounts owed by Supplier to Buyer including Liquidated Damages and PG Payments (if any);
- (d) The items on the Punchlist have been completed by Supplier or Supplier has notified Buyer in writing that Buyer should withhold the Punchlist Holdback Amount until the Punchlist is completed.
- (e) confirmation that the OEM Warranties are assignable to Buyer, and copies of such OEM Warranties have been delivered to Buyer in accordance with Section 17(c)(i); and
- (f) completion of training of Buyer’s personnel, as described in Section 15(c), and
- (g) Supplier’s receipt of a Final Acceptance Certificate signed by Buyer.

“Final Acceptance Certificate”

the certificate Supplier shall deliver to Buyer for Buyer’s acceptance and signature upon Final

Acceptance, in the form of Exhibit N-3.

“Final Acceptance Date”

the date on which Supplier achieves Final Acceptance, as such date is enumerated in the Final Acceptance Certificate.

“Financing Parties”

With respect to Supplier and its Affiliates:

- (a) any and all lenders providing senior or subordinated construction, interim or long-term debt or other financing or refinancing;
- (b) any and all equity investors, including those providing tax equity investment or leveraged lease-financing or refinancing (or any other equity investor that makes a capital contribution in cash or in kind); or
- (c) any person or entity providing credit support;

in each case, in connection with the Project, a portfolio of projects of which the Project is a part, this Contract, or Supplier’s business generally and, in each case, any trustee or collateral agent acting behalf of the foregoing.

“Force Majeure Event”

an event or circumstance that the Party claiming relief demonstrates:

- (a) is beyond the reasonable control and foreseeability of the Party claiming relief;
- (b) prevents such Party from performing its obligations under this Contract (other than any obligation for the payment of money); and
- (c) is not the result of the fault or negligence of such Party (including: in the case of Supplier, its Subcontractors; in the case of Buyer, any Buyer Responsible Party).

Examples of Force Majeure Events include:

- (i) acts of god or natural disasters, including earthquakes, floods, fires and explosions, tidal waves, hurricanes, monsoons, cyclones,

typhoons, tropical storms, perils of the sea, tornadoes, volcanic activity or eruptions, lightning strikes, landslides, mudslides, sinkholes, or drought;

- (ii) Abnormal Weather Conditions;
- (iii) Declared war or other military conflict, acts of the public enemy, terrorism or threats of terrorism, piracy, insurrection, riot, revolution, civil commotion, invasion, or other armed conflict, malicious damage, vandalism to the extent that property of one of the Parties is damaged or destroyed, or sabotage;
- (iv) acts of any Governmental Authorities, including expropriation, requisition, confiscation or nationalization, embargos, sanctions, rationing, allocation, export or import restrictions, injunction, or any other act that would render performance of an obligation by the claiming Party illegal, including the other Party or its Affiliate becoming a Restricted Party;
- (v) closure to, blockade of, or other incidents at, ports, harbors, docks, canals, railway, railhead, or adjuncts of shipping or the transportation industry;
- (vi) national or regional labor difficulties, industrial disturbances, pickets, lockouts or strikes;
- (vii) ionizing radiation or contamination by radioactivity; or
- (viii) quarantine, epidemic, pandemics, and COVID Impacts.

Notwithstanding the foregoing; Force Majeure Events shall not include:

- (A) unforeseen difficulties in manufacturing, unless such difficulties are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party; and such event constitutes a Force Majeure Event, as the

definition is applied to Supplier;

- (B) late delivery of or in ability to obtain equipment or materials or supplies for the Work due to acts or omissions of third parties, unless such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party; and such event constitutes a Force Majeure Event, as the definition is applied to Supplier;
- (C) strikes limited to employees of the impacted Party;
- (D) difficulty in obtaining supplies, shortage of labor, or non-performance by Subcontractors or Buyer Responsible Parties, due to acts or omissions of third parties, unless such acts or omissions are themselves excused by reason of a Force Majeure Event, as the definition is applied to such third party, and such event constitutes a Force Majeure Event, as the definition is applied to Supplier;
- (E) market price fluctuations with respect to labor or materials, supplies or components of the ESS Equipment; and
- (F) mere economic hardship, including Buyer's failure to obtain, or the cancellation of, financing for the Project.

Force Majeure Events expressly exclude Changes in Law (including any of the express exclusions to the definition of Change in Law), Buyer-Caused Delays, and Utility Delays, relief for which are addressed under other provisions of the Contract.

“Governmental Authority”

any national, state, municipal or local government (including any subdivision, court, administrative agency or commission or other authority thereof) exercising any regulatory, taxing, importing or other governmental or quasi-governmental authority Having jurisdiction over the Parties or the Project.

“Guaranteed Collection Segment

the date by which Delivery of all of the Collection

<u>Delivery Date</u>	Segments must have occurred, as set forth in <u>Exhibit D</u> .
<u>“Guaranteed Commissioning Completion Date”</u>	the date by which Supplier shall achieve Commissioning Completion, as set forth in <u>Exhibit D</u> .
<u>“Guaranteed Dates”</u>	the Guaranteed Collection Segment Delivery Date, the Guaranteed PCS/MVT Sets Delivery Date, the Guaranteed Energy Segments Delivery Date, and the Guaranteed Commissioning Completion Date,  as such dates may be extended in accordance with this Contract.
<u>“Guaranteed Energy Segments Delivery Date”</u>	the date by which Delivery of all of the Energy Segments must have occurred, as set forth in <u>Exhibit D</u> .
<u>“Guaranteed PCS/MVT Sets Delivery Date”</u>	the date by which Delivery of all of the PCS/MVT Sets must occur, as set forth in <u>Exhibit D</u> .
<u>“Hazardous Substances”</u>	all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances, pollutants or wastes of any nature regulated pursuant to any Applicable Laws.
<u>“Health-Monitoring Data”</u>	the data identified in <u>Exhibit J-2</u> as a Health Monitoring data type.
<u>“Import Duties”</u>	tariffs, import duties, customs fees, or other taxes, fees or charges payable upon the importation of the ESS Equipment into the United States or to the location of any international Worksites.

- “Indemnified Parties” has the meaning set forth in Section 25(a).
- “Indemnifying Parties” has the meaning set forth in Section 25(a).
- “Installation Acceptance Date” the date by which Buyer shall have achieved Installation Completion so that the ESS Equipment is ready for Supplier to commence Commissioning, as such date is further defined in Section 13(c)(v) and set forth in Exhibit D.
- “Installation Completion” Buyer’s achievement of the conditions set forth in Section 13(b), as evidenced by Supplier’s acceptance of the Notice of Installation Completion.
- “Installation Manual” the requirements and instructions for installing the ESS Equipment set forth in Exhibit L.
- “Installation Requirements” has the meaning set forth in Section 13(a).
- “ITC Labor Requirements” Buyer-imposed obligations on the Work related to the “Prevailing Wage Requirements” and the “Apprenticeship Requirements” set forth in the Internal Revenue Code’s Sections 48(a)(10) and 48(a)(11), respectively.
- “Late Payment Rate” has the meaning set forth in Section 8(h).
- “License” has the meaning set forth in Section 28(a).
- “Licensed Technology” all of the following owned by Supplier or its Affiliates:
- (a) the copyright and any other intellectual property rights embodied in the processes and contents of any Manuals or other use instructions or documentation relating to the ESS Equipment that are provided to Buyer;
  - (b) the following patents that are issued to Supplier or its Affiliates and that would be infringed by the use of any part of the ESS Equipment as not

permitted or contemplated by the Contract:

- (i) all patents issued as of the Effective Date;
  - (ii) any patents that issue from patent applications pending as of, or filed after, the Effective Date; and
  - (iii) any continuations, continuations in part, divisions, reissues, and all patents issuing therefrom; including the technology defined by the claims of the patents;
- (c) intellectual property rights embodied in the Work Product;
- (d) software and firmware embedded in or used in connection with the ESS Equipment and any other materials provided by Supplier under the Contract;
- (e) any other trade secrets, proprietary information, and know-how incorporated in the ESS Equipment or otherwise provided or disclosed by Supplier for Buyer's use under this Contract; and
- (f) any improvements of or updates to any of the foregoing provided to Buyer.

“Liquidated Damages” or “LDs” collectively, the Delivery LDs and the Commissioning Completion LDs.

“Liquidated Damages Cap” Supplier's liability cap for the Liquidated Damages, as enumerated in Exhibit O.

“Losses” has the meaning set forth in Section 25(a).

“Manuals” collectively, the ESS Product Manual and the Installation Manual.

“Major Subcontract” any Subcontract with value in excess of \$500,000.

“Manufacturing Worksite” any Worksite (including that of a Subcontractor) where manufacturing, production, fabrication, assembly, or integration of the ESS Equipment (or



component thereof) occurs.

“NMGR T”	New Mexico Gross Receipts Tax as established in the Gross Receipts and Compensating Tax Act. NMSA 1978, Sections 7-9-1 to -120.
“ <u>Notice of Installation Completion</u> ”	Buyer’s written notice of Installation Completion, substantially in the form of <u>Exhibit L-3</u> .
“ <u>OEM Warranty(ies)</u> ”	the product warranty(ies) for the PCS/MVT Sets, as set forth in <u>Exhibit G</u> .
“ <u>OFAC</u> ”	has the meaning set forth in <u>Section 31(a)</u> .
“ <u>Operational Data</u> ”	the data identified in <u>Exhibit J-2</u> as an Operational data type.
“ <u>Operational Data &amp; Health-Monitoring Data Manual</u> ”	the manual set forth in <u>Exhibit J-2</u> .
“ <u>Other Contractors</u> ”	contractors, consultants or suppliers (excluding Supplier and Subcontractors) engaged by or on behalf of Buyer or any Buyer Responsible Party to: <ul style="list-style-type: none"> <li>(a) perform services (other than the Work), including operation and maintenance services,</li> <li>(b) undertake work other than the Work, or</li> <li>(c) provide materials or equipment at or to the Project Site.</li> </ul>
“ <u>Party(ies)</u> ”	has the meaning set forth in the preamble.
“ <u>Party Representative Negotiations</u> ”	has the meaning set forth in <u>Section 33(b)</u> .
“ <u>Payment Milestone</u> ”	Those milestones identified in the first table in Section 2 of <u>Exhibit E</u> .
“ <u>PCS/MVT Set</u> ”	One transformer and one inverter, as further specified

	in <u>Exhibit C</u> .
“ <u>PCS/MVT Set Delivery LDs</u> ”	the liquidated damages applicable to Delivery of the PCS/MVT Sets, the value of which is set forth in <u>Exhibit O</u> .
“ <u>Performance Guarantees</u> ”	the performance guarantees set forth in <u>Exhibit F-1</u> .
“ <u>Performance Tests</u> ”	the tests to be conducted by Supplier to demonstrate achievement of the Performance Guarantees, as such tests are described in <u>Exhibit F-1</u> .
“ <u>Permits</u> ”	any valid waiver from, exemption to, variance from, franchise, permit, authorization, license or similar order of or from, or filing or registration with, or notice to, any Governmental Authority having jurisdiction over a matter having to do with this Contract.
“ <u>PG Payments</u> ”	Recovery Payment or Efficiency Buy-Down amount (as defined in <u>Exhibit F-1</u> ).
“ <u>Press Release</u> ”	has the meaning set forth in <u>Section 40(b)</u> .
“ <u>Project</u> ”	has the meaning set forth in the Recitals.
“ <u>Project Schedule</u> ”	the sequential milestone dates set forth in <u>Exhibit D</u> , including the Guaranteed Dates.
“ <u>Project Site</u> ”	the real property upon which the Project is to be located, including the locations where ESS Equipment is to be incorporated into the Project, as more specifically described in <u>Exhibit K</u> .
“ <u>Publicity</u> ”	has the meaning set forth in <u>Section 40(b)</u> .
“ <u>Punchlist</u> ”	has the meaning set forth in <u>Section 15(a)(i)</u> .
“ <u>Punchlist Holdback Amount</u> ”	has the meaning set forth in <u>Section 15(a)(ii)</u> .
“ <u>Readiness Dates</u> ”	the Site Readiness Date;

the Energy Segment Readiness Date; and  
the Installation Acceptance Date.

- “Receiving Party” has the meaning set forth in Section 26(a).
- “Recovery Plan” has the meaning set forth in Section 21.
- “Request for Payment” Supplier’s form of invoice, the form of which is set forth in Exhibit M.
- “Restricted Party” has the meaning set forth in Section 31(b).
- “SDNs” has the meaning set forth in Section 42(f).
- “Senior Representative Negotiations” has the meaning set forth in Section 33(b).
- “Site Readiness” The Project Site is in a condition that satisfies Supplier’s Installation Requirements for the Collection Segments and PCS/MVT Sets by completing:
- (a) the pouring and sufficient curing of foundations for such ESS Equipment; or
  - (b) a suitable laydown area large enough, and with sufficient ingress and egress, for Delivery of such ESS Equipment at the pace set forth in Exhibit D.
- “Site Readiness Date” the date (as set forth in Exhibit D) by which Buyer is required to achieve Site Readiness.
- “Soil or Subsurface Condition” any soil, geotechnical or subsurface condition including any geological condition, groundwater condition, type of surface or subsurface soil, erosion, the presence of any cavern or void, religious artifact, archaeological item, biological matter, the presence of Buyer Hazardous Substances at the Project Site or any Delivery Location, and the existence, location or condition of any underground pipeline and conduit or

other manmade structure, material or equipment.

“Specifications”

the drawings, technical description of the Work, and packing instructions contained or referred to in Exhibits A, C, J, and L-1.

“Standards of Practice”

the standards, methods, skill, care, techniques, principles, and practices that are recognized and generally accepted by leading companies in the energy storage system industry for energy systems of similar size, geographic location, and scope as the ESS. Standards of Practice are not intended to be limited to optimum standards, practices or methods, but rather to be a spectrum of reasonable and prudent standards, practices and methods that must take the conditions specific to any given facility or project under consideration.

“Subcontract”

any agreement, written or oral, between Supplier and any Subcontractor.

“Subcontractor(s)”

any person or entity, that furnishes directly to Supplier, pursuant to a Subcontract, labor, services, material, or equipment for the performance of the Work or any portion thereof.

“Supplier”

has the meaning set forth in the preamble, and includes such entity’s successors and permitted assigns.

“Supplier Event of Default”

has the meaning set forth in Section 19(a)(i).

“Supplier Hazardous Substances”

Hazardous Substances brought onto the Project Site or generated on the Project Site by Supplier or its Subcontractors.

“Supplier Permits”

the Permits for which Supplier is responsible for procuring and maintaining as part of the Work, if any, as set forth in Exhibit A and as required for transportation and Delivery.

- “Supplier Representative” Sara Mulhauser.
- “Supplier Taxes” has the meaning set forth in Section 8(b)(iii)(A).
- “Taxes” any taxes or charges of any kind or nature, including ad valorem, consumption, excise, franchise, gross receipts, license, property, sales, stamp, storage, transfer, turnover, use and value-added taxes (including, any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto), that are imposed by any Governmental Authority having jurisdiction. “Taxes” exclude Import Duties, and any tariffs, duties, customs fees or other taxes, fees or charges payable in connection with export of any ESS Equipment from its country of origin into the United States or other country containing a Worksite.
- “Termination Payment” an amount equal to the applicable percentage of the Contract Price, as set forth in the column entitled *“Total Termination Payment as Percentage of Contract Price”* in Section 3 of Exhibit E.
- “Trademarks” has the meaning set forth in Section 40(a).
- “Unpermitted Lien” has the meaning set forth in Section 8(d).
- “Utility” the provider of local electric distribution service to the Project Site, including electricity to charge the ESS, and/or onto whose transmission system energy from the ESS Equipment is discharged.
- “Utility Delay” any delay in, or interference with, Supplier’s performance of the Work resulting from:
- (a) the failure of the Utility to perform any obligations under the relevant agreement(s) between Utility and Buyer;
  - (b) without limitation to clause “(a)”, Utility’s failure to issue an interconnection approval, install infrastructure or make upgrades or modifications necessary for the Project’s interconnection, or to

test, inspect or energize the Project;

- (c) grid operating restrictions imposed by the Utility;
- (d) any transmission or distribution system or substation not operating within the operating parameters of the ESS Equipment as described in the Specifications; or
- (e) any operating restrictions imposed by Governmental Authority on the Project,

in each case, unattributable to the acts or omissions of Supplier or Subcontractors.

“Warranted Equipment”

the ESS Equipment warranted under the Warranty (as defined in Exhibit F-2).

“Warranty”

Supplier’s *Limited Commercial Warranty*, attached hereto as Exhibit F-2.

“Warranty Period”

the time period set forth in the Warranty.

“Work”

all activities, services, and obligations to be performed, and all ESS Equipment to be provided, by or on behalf of Supplier under this Contract, including those set forth in Exhibit A and Supplier’s obligations in Exhibit B.

“Work Product”

has the meaning set forth in Section 11(c).

“Worksite”

any location or place on, under, in, or through which Work or any activities in connection with Work are to be performed, including, Manufacturing Worksites or storage facilities and including the Project Site; *provided*, that Worksite shall not include any location, vessel or place used during transportation to and from Worksites.

**2. Contract and Order of Precedence**

- (a) This Contract consists of the following documents which are attached:

- (i) This Equipment Purchase Agreement
- (ii) Exhibit A – Scope of Work
- (iii) Exhibit B – Division of Responsibility
- (iv) Exhibit C – Technical Specifications
- (v) Exhibit D – Project Schedule
- (vi) Exhibit E – Payment and Termination Payment Schedule
- (vii) Exhibit F-1 – Performance Guarantee
- (viii) Exhibit F-2 – Limited Commercial Warranty
- (ix) Exhibit G – OEM Warranties
- (x) Exhibit H - Insurance Requirements
- (xi) Exhibit I – Commissioning Checklist
- (xii) Exhibit J-1 – ESS Product Manual
- (xiii) Exhibit J-2 – Operational Data & Health-Monitoring Data Manual
- (xiv) Exhibit K – Project Site Layout
- (xv) Exhibit L-1 – Installation Manual
- (xvi) Exhibit L-2 – Installation Checklist
- (xvii) Exhibit L-3 – Form of Notice of Installation Completion
- (xviii) Exhibit M – Form of Request for Payment
- (xix) Exhibit N-1 – Form of Delivery Acceptance Certificate
- (xx) Exhibit N-2 – Form of Commissioning Completion Certificate
- (xxi) Exhibit N-3 – Form of Final Acceptance Certificate
- (xxii) Exhibit O – Liquidated Damages
- (xxiii) Exhibit P – Form of Change Order
- (xxiv) Exhibit Q – Form of Lien Waiver
- (xxv) Exhibit R –Account Setup Form

(xxvi) Exhibit S – Buyer-Furnished Equipment

(xxvii) Exhibit T– RESERVED

(xxviii) Exhibit U – Buyer Requirements

- [REDACTED]
- (b) If any conflict, inconsistency or ambiguity is believed to exist among any of the documents comprising or relating to this Contract or among any of the requirements or provisions thereof, the conflict, inconsistency or ambiguity shall be resolved by applying the following order of precedence:
- (i) The body of this Equipment Purchase Agreement;
  - (ii) Exhibit C;
  - (iii) Exhibit A;
  - (iv) Exhibit B;
  - (v) The other Exhibits; and
  - (vi) Any other document incorporated by reference into any of these documents.
- (c) The Parties shall promptly notify each other of any conflict, inconsistency or ambiguity in the Contract documents, and Buyer shall resolve such conflict in writing within five Business Days. Any Work involving such conflict, inconsistency or ambiguity that is performed by Supplier without Buyer's written resolution, shall be at Supplier's sole risk and expense, and Buyer shall be free thereafter to resolve the issue differently from the approach taken by Supplier. In such event, Supplier shall not be entitled to receive, and Buyer shall have no obligation to grant a Change Order in relation to the Contract Price, Project Schedule, or other provision of this Contract, nor shall Buyer have any liability toward Supplier or others for any work performed without Buyer's written resolution.
- (d) References in Exhibits to an "Energy Storage Agreement" or "ESA" should be interpreted to refer to this Equipment Purchase Agreement.

### **3. Preparation for and Performance of the Work**

- (a) Each Party has fully informed itself with all matters relevant for the performance of its respective obligations under this Contract. Any failure by a Party to take account of any such matters shall not relieve such Party from its obligations under this Contract nor shall it form the basis for a Change Order in favor of such Party.



- (b) Subject to clause “(c)” of the “Buyer-Caused Delay” definition, Supplier is solely responsible for, and Buyer makes no guarantee or warranty, express or implied, as to the correctness, adequacy, sufficiency and consistency of the Specifications.
- (c) Supplier shall perform the Work in conformity with this Contract, all Applicable Laws, all Applicable Codes and Standards and the Standards of Practice. Supplier has in place (or shall develop) and shall comply with procedures for quality control, quality assurance, and management that are consistent with the Standards of Practice for such items.
- (d) Except where expressly stated, Supplier is not relieved of any obligation under this Contract, by any review, approval, consent to progress, certificate, advice, and the like, provided (or omitted) by Buyer (whether in writing or not), or any inspection or witnessing of tests.
- (e) Permits. Supplier shall, as part of the Work, be responsible for procuring and maintaining all Supplier Permits. Buyer shall be responsible for, at its cost and expense, procuring and maintaining all Buyer Permits.

#### **4. Buyer Representative and Supplier Representative**

- (a) Buyer Representative.
  - (i) Buyer has appointed Buyer Representative to represent Buyer in all matters under this Contract. Buyer may change its representative at any time and shall notify Supplier in writing. Buyer Representative may delegate responsibilities to a nominated deputy and shall notify Supplier in writing. Only Buyer Representative, or a nominated deputy, is authorized to receive on behalf of Buyer notifications, information and decisions of Supplier under this Contract. Only written instructions issued by Buyer Representative (or such deputy), are binding on Buyer.
  - (ii) Buyer Representative (and individuals designated by Buyer Representative) shall have access at all reasonable times, upon reasonable prior written notice, to any Manufacturing Worksite.
  - (iii) Except as expressly stated in this Contract, Buyer Representative has no powers to amend this Contract or to relieve Buyer from any of its obligations.
- (b) Supplier Representative.
  - (i) Supplier has appointed Supplier Representative to represent Supplier in all matters under this Contract. Only Supplier Representative, or a nominated deputy, is authorized to receive on behalf of Supplier notifications, information and decisions of Buyer under this Contract. Only written instructions issued by Supplier Representative (or deputy) are binding on Supplier.

- (ii) Except as expressly stated in this Contract, Supplier Representative has no powers to amend this Contract or to relieve Supplier from any of its obligations.

**5. Cooperation with Others; Project Site Access; Public Work Disclaimer**

- (a) Cooperation. Each Party acknowledges that, concurrently with Supplier's performance of its obligations under this Contract, Buyer, and Other Contractors may be working at the Project Site during the performance of this Contract. Supplier shall reasonably cooperate with Buyer and Other Contractors and coordinate its activities on the Project Site with the work of each such party to avoid or mitigate possible interference with their work. Similarly, Buyer shall, and shall cause its Other Contractors to reasonably cooperate with Supplier and Supplier's Subcontractors and to coordinate its activities on the Project Site with the Work and the work of Subcontractors to avoid or mitigate unreasonable interference.
- (b) Site Access. Buyer shall, (i) provide unrestricted access to Supplier to the Project Site for Supplier to perform the Work; and (ii) defend Supplier against any action in trespass or otherwise resulting from failure by Buyer to have obtained legal rights for access to the Project Site. Supplier shall coordinate and cooperate with Buyer and Other Contractors regarding entry onto the Project Site, and shall comply with Standards of Practice, Applicable Codes and Standards, Applicable Laws, Buyer Requirements, and Exhibit L-1. Buyer shall cause all Buyer Responsible Parties to make commercially reasonable efforts to coordinate with and minimize interference with operations by Supplier and Subcontractors at the Project Site according to the schedule contemplated for such performance.
- (c) Public Work Disclaimer. Buyer represents and warrants that the Project is not a "Public Work," as such term (or its corollary) is defined under Applicable Law.

**6. Codes and Standards; Supplier Personnel**

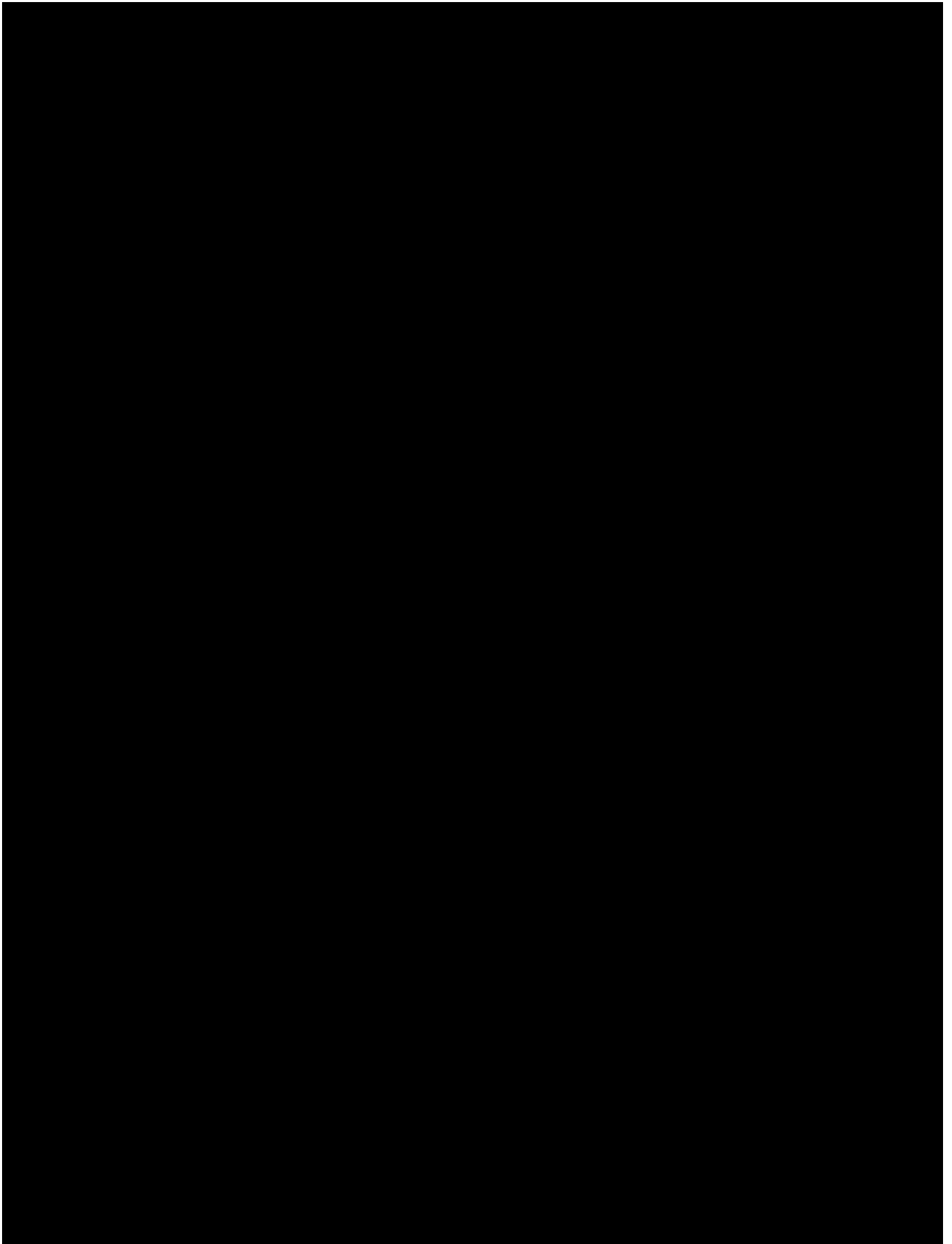
- (a) Codes and Standards. Wherever references are made in this Contract to Applicable Codes and Standards, the edition or revision of the Applicable Codes and Standards current on the date such Work is to be performed shall apply unless otherwise expressly stated. In case of conflict between any referenced Applicable Codes and Standards and any Contract documents brought to Buyer's attention under this clause, Buyer shall resolve the conflict in writing.
- (b) Supplier Personnel. Supplier shall use only competent and skilled personnel to perform the Work. Supplier shall remove from the Project Site any person reasonably determined by Buyer to be unfit, unqualified, or to be acting in violation of any obligation of Supplier under this Contract. In addition, Buyer may, at its sole but reasonable discretion, deny access to the Project Site to any person; *provided, however*, such denial of access shall, subject to Section 16(g), entitle Supplier to a Change Order for a Buyer-Caused Delay if such denial is not based upon grounds for removal of persons set forth in the prior sentence.

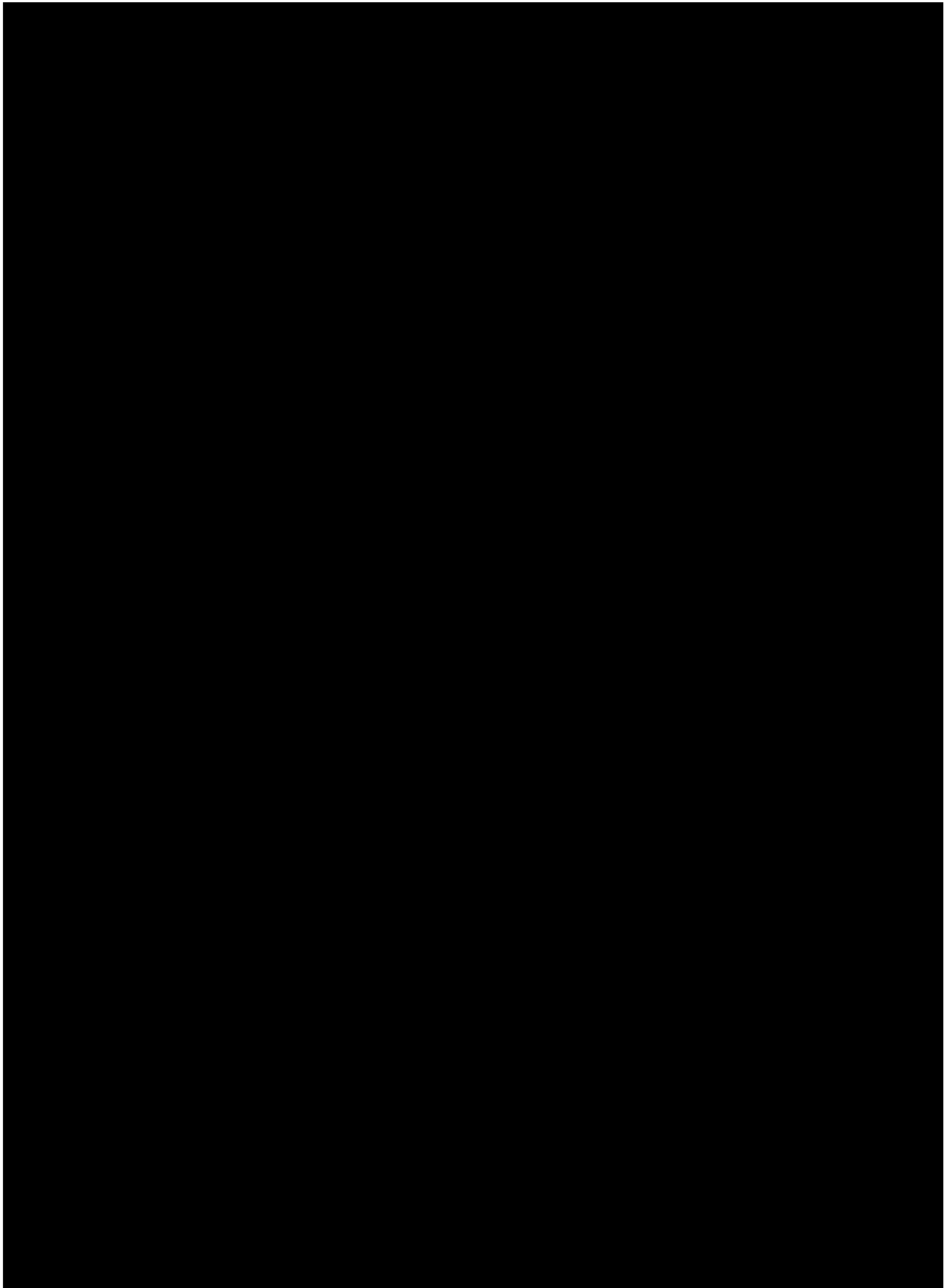
- (c) If an individual is removed from the Work or excluded from the Project Site, Supplier shall promptly replace such individual with another who is fully competent and skilled to perform the Work. All actions by Supplier regarding removal and replacement of personnel shall be at Supplier's sole expense.
- (d) Supplier is responsible for maintaining labor relations with respect to its personnel and Subcontractors in such manner that there is harmony among workers. Supplier shall comply with and enforce, with respect to its personnel and Subcontractors, Project Site procedures, regulations, work rules, and work hours established by Buyer. Supplier shall have no obligation to enforce any Project Site procedures, regulations, work rules, and work hours with respect to Buyer Responsible Parties.
- (e) Cybersecurity. To protect against breach, misuse, destruction, loss or other compromise of Licensed Technology or Confidential Information, Supplier has a Cybersecurity Policy, which may be updated from time to time in accordance with generally accepted NIST cybersecurity standards or with NERC requirements relevant to the Work. At all times Supplier shall comply with Buyer's minimum requirements for cybersecurity as defined in Exhibit U.

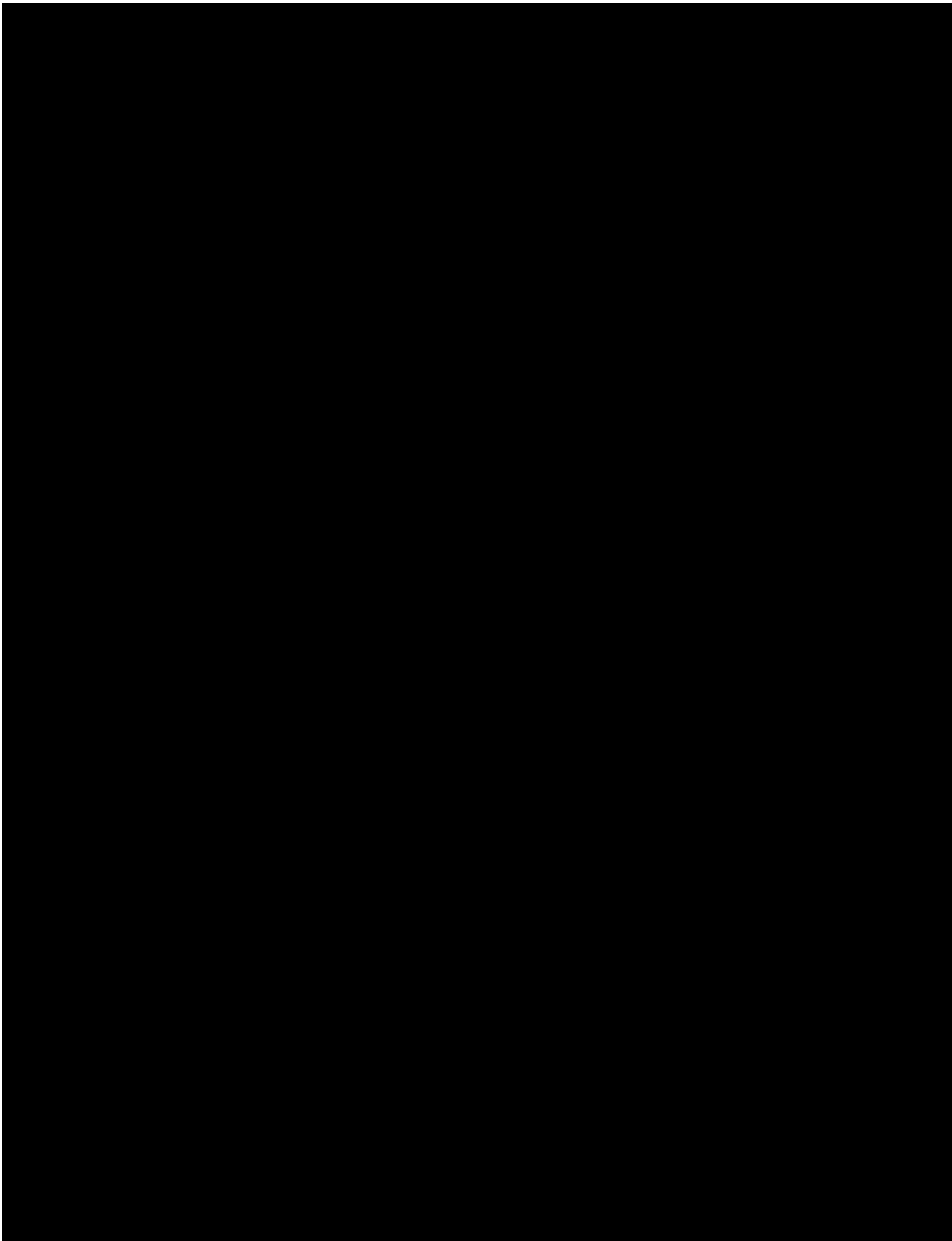
## **7. Physical Security**

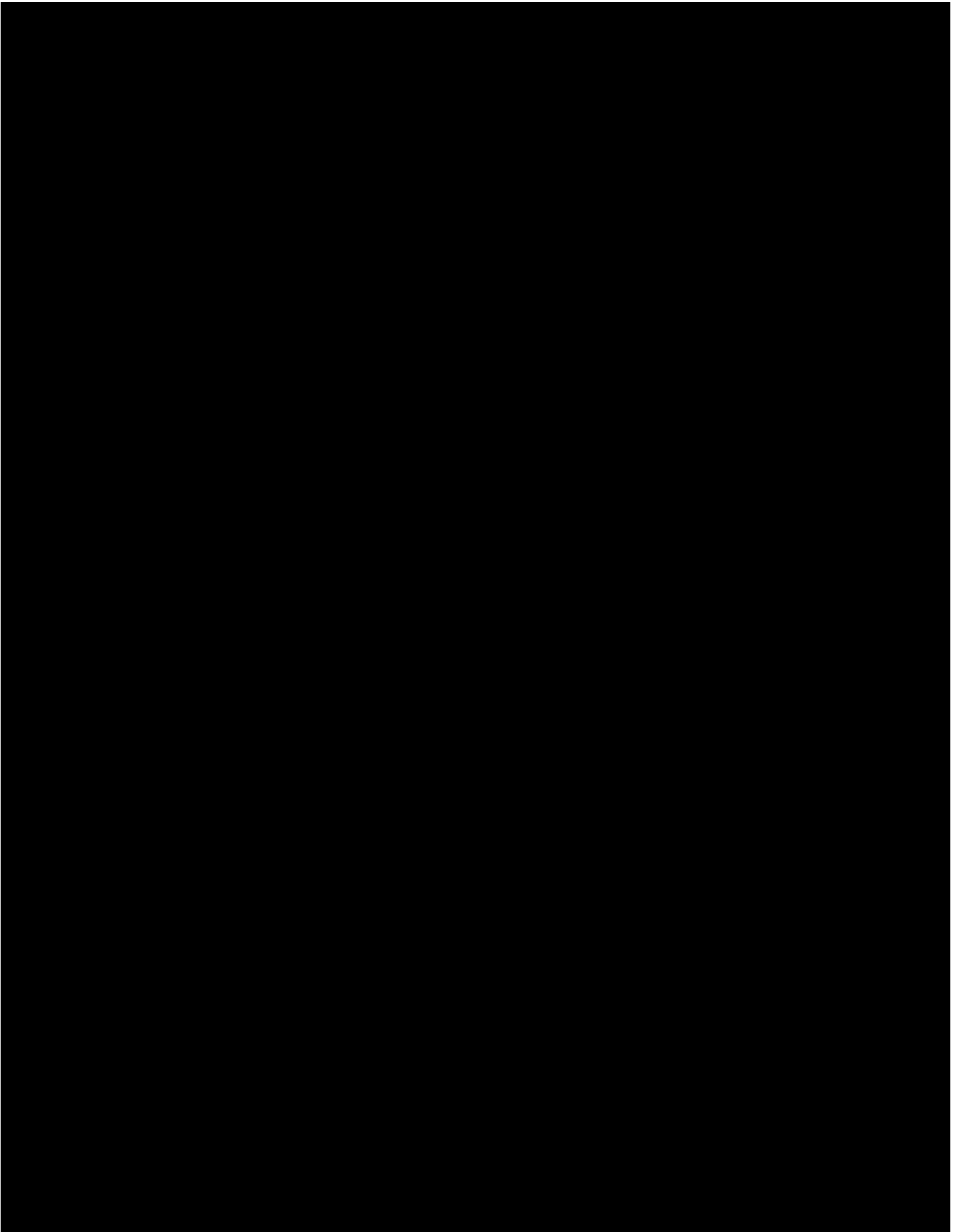
- (a) Supplier shall at all times conduct all operations under this Contract in a manner to minimize the risk of loss, theft, or damage by vandalism, sabotage or any other means to any equipment, materials, work or other property; *provided, however*, with the exception of requirements outlined in Sections 7(b) and 7(c), Buyer shall be solely responsible for physical security of the Project Site and for the risk of loss or damage to the ESS Equipment after risk of loss passes from Supplier to Buyer in accordance with Section 11(a). Supplier shall regularly inspect all equipment, materials and work to discover and determine any conditions which might involve such risks. The above shall not relieve Supplier of its responsibility for maintaining proper security of the ESS Equipment, as required under this Contract.
- (b) Supplier shall comply with Buyer's security requirements for the Project Site, as set forth in Exhibit U. Supplier shall cooperate with Buyer on all security matters and shall promptly comply with all reasonable Project Site security arrangements established by Buyer or Other Contractors, as set forth in Exhibit U.
- (c) Notwithstanding anything to the contrary in this Contract, if Buyer requires background-screening of Supplier's employees (or employees of any Subcontractors) as a condition of conducting the Work, Supplier may utilize its own criminal background-checking and drug-screening policies for such personnel. For the avoidance of doubt, Supplier shall not be obliged to provide Buyer with employees' (or Subcontractor personnel's) personal Confidential Information, including social security numbers, driver's license numbers, birthdates, and personal addresses.

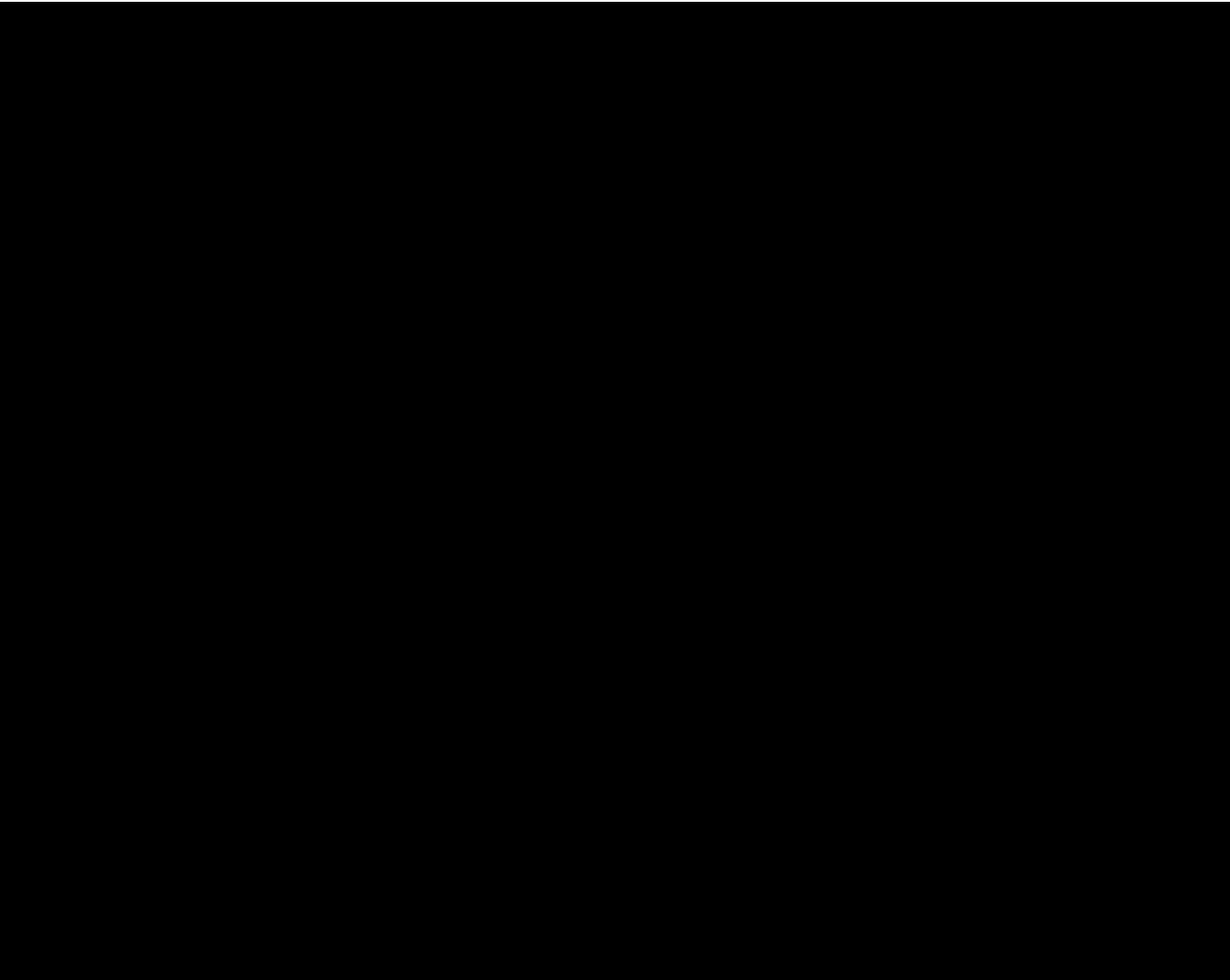
## **8. Price and Payment**











**9. Schedule and Delivery**

- (a) Project Schedule. Supplier shall perform the Work, and Buyer shall perform its obligations under the Contract, including matters for which it is responsible in Exhibit B with all due diligence. Without limiting the generality of the foregoing, Supplier guarantees that all Completion Milestones shall be achieved on or before the corresponding Guaranteed Dates, as such Guaranteed Dates may be adjusted in accordance with this Contract, including for Excusable Events.
- (b) Production Schedule. Beginning four months after the Effective Date, Supplier shall, once per month, provide Buyer with a production schedule showing the manufacturing position of the ESS Equipment, and the scheduled date of shipment.
- (c) Notice of Delays. Each Party shall notify the other Party in writing of any actual, anticipated or probable causes of delay in its performance of its obligations under this Contract in writing, and the actual or anticipated extent of such delay.

Buyer may for expediting purposes, send its own staff or other personnel whom Buyer has retained, to any Manufacturing Worksite.



- (d) INCOTERMS. Any delivery terms relating to ESS Equipment specified in this Contract shall be interpreted in accordance with INCOTERMS 2020 (International Rules for the Interpretation of Trade Terms) published by the International Chamber of Commerce and its supplements, subject to this Contract.
- (e) Packaging of ESS Equipment. Supplier shall pack the ESS Equipment so that it may be safely transported, and then unloaded and unpacked safely by Buyer. The method of packing shall be in accordance with Supplier's general practices and Standards of Practice. In the absence of specific instruction concerning the method of packing, Supplier shall take reasonable steps to prevent damage to or deterioration of the ESS Equipment in transit to their destination, in accordance with customary seaworthy export packing standards and anti-rust, oxidation standards.
- (f) Delivery of ESS Equipment. Buyer shall identify the Delivery Location at least thirty days prior to the Site Readiness Date and Supplier shall be responsible for Delivery of the ESS Equipment DDP to the Delivery Location via common carrier(s), all in accordance with the Project Schedule (including the Completion Milestones) and subject to the following:
- (i) Within ten days of Supplier's receipt of all third-party invoices for DDP Costs, Supplier shall provide Buyer with an itemized statement of the DDP Costs, supported by reasonable documentation.
  - (ii) If the DDP Costs *exceed* the DDP Cost Amount, Supplier shall be entitled to a Change Order to increase the Contract Price by the difference (such amount the "DDP Cost Adjustment"). Upon execution of the applicable Change Order, the DDP Cost Adjustment shall be trued up at the time of Supplier's Request for Payment of the Payment Milestone for Commissioning Completion (or upon termination of this Contract, if this Contract is terminated prior to Commissioning Completion).
  - (iii) Following Supplier's transfer of any ESS Equipment from a Manufacturing Worksite to a common carrier for shipment, Supplier shall execute and provide to Buyer a bill of lading with respect to such shipment of ESS Equipment and such other information as Buyer may reasonably request.
  - (iv) Upon Supplier's completion of Delivery of each shipment of ESS Equipment, Buyer shall or shall cause its Other Contractors to, arrange and pay for all costs associated with off-loading of the ESS Equipment at the Delivery Location.
- (g) Labeling and Marking. Supplier represents that, on Delivery, the ESS Equipment shall have been accurately described, classified, marked, and labeled, in accordance with this Contract, all Applicable Laws, and Standards of Practice.
- (h) Buyer's Achievement of the Readiness Dates. Buyer shall cause Site Readiness to occur no later than the Site Readiness Date. Buyer shall cause Energy Segment

Readiness to occur no later than the Energy Segments Readiness Date. Buyer acknowledges and agrees that (x) achievement of Site Readiness by the Site Readiness Date is a necessary condition precedent for Supplier's obligation to begin Delivery of the Collection Segments and PCS/MVT Sets and to complete Delivery of the Collection Segments and PCS/MVT Sets by the respective Guaranteed Collection Segment Delivery Date and for Supplier's achievement of all other later-scheduled Completion Milestones by their respective Guaranteed Dates, and (y) achievement of Energy Segment Readiness by the Energy Segment Readiness Date, is a necessary condition precedent for Supplier's obligation to Deliver the Energy Segments by the Guaranteed Energy Segment Delivery Date and for Supplier's achievement of all other later-scheduled Completion Milestones by their respective Guaranteed Dates. Accordingly, if Buyer does not have the Project Site prepared for the applicable Delivery described in the preceding sentences, Buyer shall notify Supplier in writing and, at Buyer's sole election either:

- (i) receive the ESS Equipment at the Project Site, which receipt shall trigger the inspection process set forth in Section 9(i);
  - (ii) agree to a cost-plus (with 12% markup) Change Order for any material, reasonable, unavoidable, and documented demurrage, storage, or standby charges (for Buyer's failure to comply with the "Storage Conditions" set forth in Exhibit C) incurred by Supplier as well as any additional transportation costs until Delivery, with such Change Order also extending the Project Schedule (including all Guaranteed Dates) in accordance with Section 16(d) on account of such Buyer-Caused Delay; or
  - (iii) provide an Alternate Delivery Location to Supplier by giving Supplier, not less than twenty (20) Business Days' prior to the applicable Readiness Date, notice of the Alternate Delivery Location to which Supplier may Deliver the ESS Equipment. Upon notice of the Alternate Delivery Location, such Alternate Delivery Location shall be deemed the "Delivery Location" for purposes of Section 9(i) and the other provisions of this Contract. Supplier's reasonable and documented additional costs associated with delivery to the Alternate Delivery Location shall be subject to a cost-plus (with 12% markup) Change Order.
- (i) Inspection of ESS Equipment. Once the ESS Equipment or a portion thereof has arrived at the Delivery Location, Buyer shall promptly inspect the condition of the delivered ESS Equipment pursuant to the Delivery Inspection Checklist. Within ten days after arrival at the Delivery Location, Buyer (i) shall deliver to Supplier a Delivery Acceptance Certificate, which certificate shall confirm the Date of Delivery for the portion of the ESS Equipment delivered; or (ii) shall advise Supplier in writing of any missing items, or damage and/or deficiencies in the ESS Equipment for which Supplier is responsible, and Supplier will, as Buyer's sole remedy, promptly deliver any missing items and promptly repair or replace, at its election, the damaged or deficient ESS Equipment so that the ESS Equipment complies with this Contract. If Buyer does not inspect the ESS Equipment and

notify Supplier within the time period set forth in this Section 9(i), without waiving Buyer's rights regarding subsequently discovered defects, the ESS Equipment shall be deemed Delivered for the purposes of Delivery LDs and Buyer's obligation to pay Payment Milestone # 4. The foregoing notice procedure shall be repeated until Buyer delivers the Delivery Acceptance Certificate to Supplier.

## 10. Liquidated Damages

- (a) Liquidated Damages. If any Completion Milestone has not occurred on or before its applicable Guaranteed Date, Supplier shall pay Buyer, as liquidated damages and not as a penalty, the applicable amounts set forth in Exhibit O.
- (b) Payment of Liquidated Damages. Liquidated Damages shall be due and payable within thirty days after Supplier receives Buyer's Request for Payment therefor; *provided, however*, Buyer shall limit its Request for Payment to once per thirty day period. At Buyer's option, Liquidated Damages may be deducted by Buyer from any payments due by Buyer to Supplier. If Supplier disputes Buyer's claim that some or all Liquidated Damages contained in Buyer's Request for Payment are due, Supplier shall notify Buyer in writing prior to the date payment is due and shall pay the undisputed Liquidated Damages in accordance with this Section. If amounts withheld by Supplier are ultimately determined to have been payable, the provisions of Section 8(h) shall apply.
- (c) Caps on Liquidated Damages. The Parties agree that the (i) Delivery LDs shall be capped at the Delivery LDs Cap, (ii) Commissioning Completion LDs shall be capped at the Commissioning Completion LDs Cap, and (iii) the Liquidated Damages shall be capped at the Liquidated Damages Cap.
- (d) Nature of Liquidated Damages. The Parties agree that it would be extremely difficult to precisely determine the amount of actual damages that would be suffered due to a delay to any Completion Milestone, but that the Liquidated Damages are a genuine pre-estimate, and a fair and reasonable determination of the amount of actual damages which would be suffered by Buyer for Supplier's delay in achieving a Completion Milestone beyond its Guaranteed Date, and that the Liquidated Damages do not constitute a penalty.
- (e) Sole Remedies. Without prejudice to Supplier's obligations set forth in Section 14(b), and subject to Section 23, Buyer's sole remedies for Supplier's failure to achieve a Completion Milestone on or before its Guaranteed Date are: (i) payment by Supplier of the applicable Liquidated Damages under this Section 10; and (ii) Buyer's rights under Section 19(a)(i)(B).
- (f) Refund of Delivery LDs. Notwithstanding anything contrary as set forth herein, if (i) any Completion Milestone for Delivery was not achieved on or before its applicable Guaranteed Date; (ii) Supplier has consequently paid Delivery LDs to Buyer according to Section 10(b); and (iii) Supplier subsequently achieves Commissioning Completion on or before the Guaranteed Commissioning Date,

then Buyer shall refund the Delivery LDs paid by Supplier to Buyer, *less* any costs, expenses, fees, liquidated damages or damages payable to Other Contractors or other reasonable and documented expenses incurred by Buyer due to such delay, within thirty days after the date of Commissioning Completion, without any interests, penalties, charges or adjustments.

**11. Title and Risk of Loss**

- (a) Risk of Loss. Notwithstanding passage of title, Supplier shall have the full responsibility for care, custody and control of the ESS Equipment and shall bear the risk of loss thereof or damage thereto until Buyer commences unloading of the ESS Equipment at the Delivery Location, at which time risk of loss or damage shall pass to Buyer; *provided*, that Buyer shall at all times be liable for all loss or damage to the extent caused by it or any Buyer Responsible Party.
- (b) Title to ESS Equipment and Warranty of Title.
- (i) Title to the ESS Equipment, or part thereof, shall transfer to Buyer and become the property of Buyer upon the earlier of: (A) the Date of Delivery; (B) the date payment for the ESS Equipment, or part thereof, is made by Buyer (without regard to any withholdings); or (C) upon termination of this Contract (following payment by Buyer of any amounts required to be paid hereunder as a result of such termination).
- (ii) Supplier warrants that title to the ESS Equipment is free of any liens, claims, interests or rights of others that may be created by or through Supplier, subject to Supplier's and Subcontractors' rights to retain a lien or security interest in such ESS Equipment until payment has been received in full in accordance with Section 8. In the event of any defect in title, Supplier shall immediately, upon the request of Buyer, at Supplier's sole cost and expense, remove any defect, claim or encumbrance on the title to the ESS Equipment. Transfer of title to Buyer shall in no way affect the Parties' rights and obligations as set forth in other provisions of this Contract.
- (c) Title to Work Product. Title to all drawings, designs, Specifications, reports, test results, specimens, data and other work product (collectively "Work Product"), other than ESS Equipment, prepared by Supplier in connection with this Contract shall transfer to Buyer and become the property of Buyer upon the date of payment for the Work Product, or part thereof, by Buyer (without regard to any withholdings). Supplier shall have the right to retain a copy of the Work Product for its records. Buyer acknowledges that the Work Product is prepared by Supplier as instruments of service for the Work and that it is not intended for re-use on any other project. Buyer waives and releases Supplier from any liability with respect to use of the Work Product for any purpose other than the installation, use, operation, maintenance and repair of the Project. Buyer shall defend, indemnify and hold harmless Supplier and its Indemnified Parties from and against any Losses arising out of any modification of the Work Product or the unauthorized use of the

Work Product by Buyer or any other person or entity (other than Supplier or its Subcontractors).

- (d) Licensed Technology. In no event will title to the Licensed Technology or any other intellectual property of Supplier used in the ESS Equipment or otherwise incorporated into and reflected in the Work Product, including any software or firmware, transfer to Buyer. Title to the Work Product is to the paper, electronic or other media representing the Work Product, and Supplier's intellectual property is licensed to Buyer under Section 28 as part of the Licensed Technology.

## 12. Quality, Inspection and Factory Testing

- (a) Supplier must have quality assurance programs in place adequate to support its performance of the Work.
- (b) Before shipping ESS Equipment, Supplier shall, or shall cause its Subcontractors to, carefully inspect and test the ESS Equipment for compliance with applicable requirements of this Contract. Supplier shall use reasonable efforts to give Buyer at least seven days' prior written notice before any such inspection or test and Buyer (or Buyer's authorized agent) shall be entitled to attend such inspection or test and shall receive copies of all data, results, certifications and other records relating to the inspection or test promptly following Supplier's receipt of the results of and certifications relating to such inspection or test from Subcontractors. If Supplier needs to reschedule the date of such inspection and or test, Supplier shall give a minimum of three days' prior notification to Buyer. As a condition of attending inspections and tests, Buyer shall and shall cause any other Buyer Responsible Parties to, comply with all policies, protocols and directives required of third parties entering Manufacturing Worksites, including having Buyer's agents and representatives agree to any confidentiality agreement required by Subcontractors as a condition of such entry.
- (c) In no event may Buyer's attendance at such inspection or test be interpreted as an acceptance of such ESS Equipment by Buyer and shall not relieve Supplier from any liability, obligation or responsibility in connection with any Defects discovered in the ESS Equipment at any time through the expiration of the Warranty Period.
- (d) All material and equipment furnished and work performed shall be properly inspected and tested by Supplier at its expense in accordance with Exhibits A, B, and C and with any other Contract requirements, and shall, at all times be subject to quality surveillance and quality audits (which shall conform with Standards of Practice), by Buyer or Buyer's authorized representatives who, upon reasonable notice, shall be afforded reasonable access to the Manufacturing Worksites for such quality surveillance or audit.
- (e) Failure of Buyer to make such quality surveillance or to discover Defects shall not relieve Supplier of its obligations under this Contract nor prejudice the rights of

Buyer thereafter to reject or require the correction of Defects in accordance with the provisions of this Contract.

- (f) If any ESS Equipment is determined by Buyer to be Defective at any time prior to Commissioning Completion, Buyer shall have the right to reject such Defective ESS Equipment.

**13. Technical Support; Installation Completion**

- (a) Installation of ESS Equipment. Buyer (itself or through Other Contractors) shall be solely responsible for the installation of the ESS Equipment in accordance with the Manuals, Specifications, all Applicable Law, and Standards of Practice (the “Installation Requirements”). Buyer is responsible for work including civil, engineering, interconnect, and permitting relating to the Project other than the Work, as described in Exhibit B.
- (b) Conditions to Installation Completion. Upon Buyer’s completion of all the requirements set forth below, Buyer shall provide Supplier with a Notice of Installation Completion:
  - (i) completion of all civil work relating to the installation of the ESS Equipment;
  - (ii) safe access to the Project Site has been provided to Supplier for performance of the Commissioning work;
  - (iii) Backfeed Availability;
  - (iv) Buyer-Furnished Equipment (e.g., switchgear) is ready to be energized;
  - (v) the ESS Equipment is capable of, and has the requisite permissions for, discharging or accepting energy;
  - (vi) internet service is available with the bandwidth described in Exhibit C, for remote access by Supplier and to support Supplier’s application programming interface or other necessary systems;
  - (vii) the applicable AC power, communication, and DC power cables are installed; and
  - (viii) the ESS Equipment is installed per the Installation Requirements;
  - (ix) completion of the “Installation Checklist,” as delineated in Exhibit L-2.
- (c) Supplier’s Acceptance of Installation Completion.
  - (i) Within five Business Days of its receipt of a Notice of Installation Completion, Supplier shall review Buyer’s installation work.

- (ii) Within the foregoing five Business Day period, Supplier shall either accept or reject the Notice of Installation Completion. If Supplier fails to so respond within the five Business Day period, the Installation Acceptance Date shall be deemed to have occurred.
- (iii) Supplier's rejection of the Notice of Installation Completion, if applicable, shall be accompanied by a written description of the basis for such rejection in sufficient detail and scope for Buyer and its Other Contractors to correct any defects or deficiencies.
- (iv) If Supplier rejects the Notice of Installation Completion, Buyer shall correct any defects or deficiencies and provide Supplier with a revised Notice of Installation Completion, and the process shall repeat until Supplier accepts the Notice of Installation Completion.
- (v) The date on which Supplier accepts the Notice of Installation Completion shall be the "Installation Acceptance Date".

#### 14. Commissioning

- (a) Buyer acknowledges and agrees that achievement of Installation Completion by the Installation Acceptance Date is a necessary condition precedent for Supplier's obligation to achieve Commissioning Completion by the Guaranteed Commissioning Completion Date.
- (b) Completion of Commissioning.
  - (i) When Supplier considers the criteria for Commissioning Completion to have been met, Supplier shall provide Buyer a completed "Commissioning Checklist" (in substantially the form of Exhibit I).
  - (ii) Within ten Business Days thereafter, Buyer shall either (A) issue to Supplier the Commissioning Completion Certificate or (B) advise Supplier in writing that Commissioning Completion has not been achieved, including advising Supplier of any omissions for which Supplier is responsible or of any other reason why the requirements of Commissioning Completion have not been met. Upon receipt of any deficiency notice from Buyer, Supplier shall correct such omission, and the foregoing notice procedure shall be repeated until Buyer issues a Commissioning Completion Certificate confirming that the requirements for Commissioning Completion have been met; *provided, however*, that Buyer shall have ten Business Days to review Supplier's corrected or additional items.
  - (iii) If Buyer fails to so respond within the ten Business Day period, Commissioning Completion shall be deemed to have occurred and Buyer shall be deemed to have issued Supplier the Commissioning Completion Certificate as of the date of Supplier's notice issued pursuant to this Section 14(b).

- (iv) For purposes of calculating Commissioning Completion LDs, if applicable, the date on which Commissioning Completion occurs shall be the date on which Supplier submitted the Commissioning Checklist to Buyer if such Commissioning Checklist is accepted by Buyer, a Commissioning Completion Certificate is issued (or deemed issued). Commissioning Completion LDs shall not accrue between the date on which a Commissioning Checklist is submitted and the date on which it is accepted (or deemed accepted) by Buyer. For clarity, Commissioning Completion LDs shall accrue as of the Date Buyer notifies Supplier, pursuant to Section 14(b)(ii), until the date of Supplier's revised Commissioning Checklist that Buyer ultimately accepts (or is deemed to have accepted).
- (c) Delayed Commissioning.
  - (i) After Delivery, of the last-Delivered ESS Equipment, but before Supplier commences Commissioning, if more than 120 days of Buyer-Caused Delay occur, then, in addition to Supplier's rights for relief under Section 16(c), Supplier will be deemed to have achieved Commissioning Completion, *provided, however*, such deemed achievement shall be strictly for the purposes of Commissioning Completion LDs, Buyer's obligation to pay Payment Milestone # 5, and (as applicable) commencement of the Warranty Period pursuant to Exhibit F-2, and in no event will such deemed achievement relieve Supplier, upon cessation of the Buyer-Caused Delay, from its obligation to commence and diligently continue completion of Commissioning.
  - (ii) If Buyer-Caused Delay(s) occurring after Supplier commences Commissioning results in an aggregate delay to Supplier of more than fifteen days beyond the Guaranteed Commissioning Completion Date, Supplier will be deemed to have achieved Commissioning Completion; *provided, however*, such deemed achievement shall be strictly for the purposes of Commissioning LDs and Buyer's obligation to pay the Payment Milestone # 5, and (as applicable) commencement of the Warranty Period pursuant to Exhibit F-2. In no event will such deemed achievement relieve Supplier, upon cessation of the Buyer-Caused Delay(s), from its obligation to commence and diligently continue completion of Commissioning.

## 15. Final Acceptance; Training

- (a) Punchlist.
  - (i) Prior to Commissioning Completion, the Parties shall inspect the ESS Equipment, and on the basis thereof Supplier shall prepare for Buyer's review and approval a list of the outstanding items that remain to be completed (the "Punchlist"). The Punchlist may not include any items not within the Supplier scope as set forth in Exhibit B. Buyer shall review and reasonably approve or disapprove the Punchlist provided by Supplier not



later than five days after receipt, and Supplier shall issue a revised Punchlist to Buyer that takes account of or responds to Buyer's comments not later than five days after Supplier's receipt of such comments. This process shall continue until an approved Punchlist is provided. The Parties shall also agree upon a reasonable schedule for Punchlist completion.

- (ii) Until Supplier completes the Punchlist, Buyer shall hold an amount equal to 150% of the value of the Punchlist items (not to exceed 5% of the Contract Price) (the "Punchlist Holdback Amount").
- (b) Final Acceptance. Supplier shall ensure that tests it is required to perform under this Contract are performed in a manner that ensures the quality of the ESS Equipment. All ESS Equipment shall conform and meet the specifications provided. When Supplier considers that the criteria for Final Acceptance have been met, Supplier shall so notify Buyer in writing. Within seven Business Days thereafter, Buyer shall either (i) deliver to Supplier the Final Acceptance Certificate, or (ii) advise Supplier in writing that Final Acceptance has not been achieved, including advising Supplier of any omissions or Defects for which Supplier is responsible or of any other reason why the requirements of Final Acceptance have not been met. Upon receipt of any deficiency notice from Buyer, Supplier shall correct such deficiency, and the foregoing notice procedure shall be repeated until the requirements for Final Acceptance have been met; *provided, however*, that Buyer shall have seven Business Days to review Supplier's corrected or additional items. If Buyer fails to so respond within the seven Business Day period, Supplier will provide Buyer one additional written notice (e.g., via email) to Buyer Representative informing Buyer that Supplier considers the criteria of Commissioning to have been met. If, within twenty-four hours of receipt of such notice, Buyer fails to respond, Final Acceptance shall be deemed to have occurred and Buyer shall be deemed to have provided Supplier with the Final Acceptance Certificate as of the date of Supplier's notice issued pursuant to this Section 15.
- (c) Training. Supplier shall provide training to Buyer's personnel as described in Exhibit A.

## 16. Change Orders

- (a) Supplier shall not make any change in the Work, Specifications, quantities, methods of shipment, Project Schedule or Delivery Location without prior written consent of Buyer.
- (b) Request for Changes. Buyer may at any time request, in writing by Buyer Representative and Buyer Representative only, changes in the Work, including changes in the Work, Specifications, quantities, methods of shipment, Project Schedule, or Delivery Location of the ESS Equipment.
- (c) Change Orders for Excusable Events. Subject to Supplier's compliance with Section 16(g), Supplier shall be entitled to a Change Order adjusting the Contract

Price and the Project Schedule (including the Guaranteed Dates) upon the occurrence of an Excusable Event. For purposes of this Contract, in each case to the extent that such event actually, demonstrably, and reasonably increases the cost of Supplier's performance of the Work or affects the Work such that Supplier's ability to timely perform is actually and demonstrably delayed, an "Excusable Event" shall, mean and refer to:

- (i) any written instructions referred to in Section 16(b);
  - (ii) a Force Majeure Event;
  - (iii) a Buyer-Caused Delay;
  - (iv) a suspension for convenience by Buyer pursuant to Section 18, or any other suspension or stoppages of the Work or Supplier's other obligations under the Contract instructed by or on behalf of Buyer;
  - (v) a Change in Law;
  - (vi) Utility Delays; or
  - (vii) any other event or circumstance set forth in this Contract that affords Supplier the right to receive a Change Order by its terms.
- (d) Adjustments to the Contract Price and Project Schedule for Excusable Events. The adjustment (if any) of the Contract Price as a result of the occurrence of any of the events under Section 16(c) (except Section 16(c)(i), which is governed by Section 16(f) and Section 16(c)(ii), which is governed by Section 16(h)) is limited to the substantiated cost increase or decrease of performing the Work as a direct result of the occurrence of the Excusable Event. In no instance shall Supplier include the cost associated with the preparation or estimation of a Change Order in a Contract Price adjustment.
- (e) The adjustment (if any) of the Project Schedule as a result of the occurrence of any of the aforementioned events under Section 16(c) shall be determined taking into account the following:
- (i) the adjustment of the Project Schedule shall be equitable but limited to the impact on the Project Schedule as a direct result of the occurrence of the Excusable Event; and
  - (ii) all other relevant factors including any inability of Supplier to mitigate any effects on the Project Schedule after working diligently to mitigate the impact of the Excusable Event and making reasonable efforts to continue to perform its obligations under this Contract.
- (f) Disagreement on Adjustments to Contract Price for Buyer-Directed Changes. If the Parties are unable to agree upon a lump sum price for a Buyer directed change

under Section 16(b), Buyer may in its sole discretion, direct Supplier to proceed with the changed Work on the following basis: direct documented costs actually incurred by Supplier in executing the change plus 12% for overhead and profit. Buyer or its designated representative shall have reasonably sufficient audit rights with respect to the documentation and information pertaining to such change and Supplier shall furnish to Buyer, and/or its designated representatives, such records as may be required to enable Buyer to verify and evaluate direct and indirect costs, expenses, Requests for Payment, payments, or claims based on Supplier's or its Subcontractors' actual costs incurred, or number of man-hours, or man-days claimed in the performance of the change.

- (g) Process for Change Orders on Account of Excusable Events. If at any time Supplier believes it is entitled to a Change Order under this Contract, including as a result of an Excusable Event under Section 16(c), Supplier shall give Buyer written notice of its claim, along with its proposed Change Order in substantially the form of Exhibit P within fifteen days after Supplier becomes aware of the event(s) giving rise to the request for a Change Order, which claim shall include an appropriate statement setting forth the reasons for and basis of the claim, the additional work necessary as a result of the Excusable Event, the probable length of delay resulting from such Excusable Event, and the adjustments to the Contract Price, if any, on account of such Excusable Event; *provided, however*, with respect to Change Orders relating to Force Majeure Events, without limiting the requirements of Section 22, to preserve Supplier's claim for relief, Supplier may delay its issuance of the proposed Change Order until after the impact of the Force Majeure Event on the Work and/or the Project Schedule can be accurately quantified. For the avoidance of doubt, if the impact on the Work, the Contract Price, or the Project Schedule on account of an Excusable Event cannot be fully quantified when Supplier submits its proposed Change Order under this Section 16(g), Supplier has the right to issue additional notices and proposed Change Orders under this Section 16(g) to the extent the impact of the Excusable Event(s) necessitate.
- (i) If Supplier fails to notify Buyer of an Excusable Event within the fifteen-day period, such event or condition shall be deemed not to be an Excusable Event, as the case may be, and Supplier shall not be entitled to a Change Order as a result thereof, until such time as Supplier complies with the requirements of Section 16(g), and then only for the period of time and to the extent Supplier would otherwise have been entitled to a Change Order *less* the number of days by which Buyer's receipt of such notice exceeded fifteen days. By way of example, if Supplier would otherwise have been entitled to five days of time extension for an Excusable Event, but did not give notice until the seventeenth day, then Supplier's extension of the Project Schedule shall be reduced to three days.
- (ii) Buyer shall, within ten Business Days of receiving Supplier's claim and proposed Change Order under Section 16(g), either accept, execute, and deliver such Change Order, or object to such Change Order in writing, setting forth, in good faith, reasons for such objection based upon the

Contract, including objections as to whether an Excusable Event has occurred, the claimed relief set forth in the proposed Change Order, or procedural deficiencies of Supplier's claim. Upon execution of the Change Order, the Work, Project Schedule or Contract Price, as applicable, shall be adjusted in accordance with the terms of such Change Order. If Buyer objects, and such objection would not otherwise be resolved by Section 16(g)(iv), then either Party may refer such matter for resolution in accordance with Section 33. During pendency of such Dispute, Supplier shall continue to perform its obligations under the Contract, but the Parties shall operate as though the Project Schedule and all Guaranteed Dates have been extended in accordance with Supplier's proposed Change Order (provided such schedule relief set forth in the proposed Change Order is not frivolous and is made in good faith). Accordingly, no Liquidated Damages shall become due and payable by Supplier to Buyer, unless the same would otherwise be due based upon the Project Schedule, as extended for Supplier's proposed Change Order and any other Change Orders entered or deemed accepted under this Section 16 at the time Liquidated Damages are assessed. If it is determined upon resolution of the Dispute that Supplier is not entitled to all or a portion of the schedule relief it claimed, then Supplier shall promptly pay Liquidated Damages that are due and owed (if any) along with the Late Payment Rate from the date the Liquidated Damages began accruing, as determined via the Dispute resolution to the date of Supplier's payment, based upon the then-current Project Schedule, as adjusted for any partial schedule relief granted, and based upon the dates on which Supplier achieved the relevant Completion Milestones.

- (iii) If Buyer fails to so respond or request additional information regarding the requested Change Order in accordance with Section 16(g)(ii) within the ten Business Day period, Supplier's requested Change Order shall be deemed accepted as proffered under this Section 16(g), and Buyer shall immediately execute and return the proffered Change Order upon Supplier's request in order to document such acceptance.
- (iv) If Buyer agrees that a Change Order is warranted pursuant to this Section 16(g), but the Parties are unable to agree on the applicable adjustment to the Contract Price with respect to such Change Order, then the Parties shall adjust the Contract Price in the manner as set forth in Section 16(f). Supplier will promptly resubmit a proposed Change Order indicating that the Contract Price will be adjusted in accordance with Section 16(f), and Buyer shall execute and return such Change Order within two (2) Business Days of receipt.
- (h) Change Orders for Force Majeure Events Affecting Supplier. If Supplier seeks relief on account of a Force Majeure Event, Supplier may submit a proposed Change Order in accordance with Section 16(g), and Supplier shall be entitled to an extension of the Project Schedule and Guaranteed Dates. In no event shall Supplier be entitled to a change in the Contract Price or any other additional

compensation as a result of a Force Majeure Event claimed by Supplier. Supplier shall work diligently to mitigate the impacts of any Force Majeure Event.

- (i) Change Orders for Force Majeure Events Affecting Buyer. If Buyer seeks relief on account of a Force Majeure Event, within fifteen days following Buyer's delivery of notice under Section 22(b)(iv) regarding the cessation of such Force Majeure Event, Supplier may submit a proposed Change Order in accordance with Section 16(g), and Supplier shall also be entitled to an extension of the Project Schedule and Guaranteed Dates.

## 17. Warranty

- (a) Supplier Warranty. Supplier's warranty for the ESS Equipment and Work is set forth in Exhibit F-2.
- (b) No Implied Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT, SUPPLIER MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, AND SUPPLIER DISCLAIMS ANY WARRANTY OR GUARANTEE IMPLIED BY LAW, INCLUDING IMPLIED WARRANTIES OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES OF CUSTOM OR USAGE, OR ANY ASPECT OF ENGINEERING OR DESIGN. Supplier makes no representation or warranty with respect to: (i) any forecasts, projections, estimates or budgets delivered or made available to Buyer of future revenues, future results of operations (or any component thereof), future cash flows or future financial conditions (or any component thereof) of the ESS or Project, or (ii) any other information or documents made available to Buyer or its counsel, accountants or advisors with respect to the ESS or Project, except as expressly set forth in this Contract.
- (c) OEM Warranties.
  - (i) Copies. On or before the Final Acceptance Date (as stipulated in the Final Acceptance Certificate), Supplier shall provide Buyer with copies of the OEM Warranties set forth in Exhibit G.
  - (ii) Administration of Warranties. Supplier hereby agrees to administer such OEM Warranties in favor of Buyer during the Warranty Period, unless such warranties have been assigned to Buyer, at Buyer's written request, at an earlier date.
  - (iii) Assignment of OEM Warranties. Provided Supplier has been paid by Buyer for the relevant ESS Equipment, Supplier hereby assigns all OEM Warranties that extend beyond the Warranty Period to Buyer upon expiration of the Warranty Period or earlier termination of this Contract or shall otherwise procure for Buyer the right to proceed directly against the relevant Subcontractor under its OEM Warranty. Upon assignment of OEM Warranties to Buyer, Supplier shall be relieved of further liability with

respect to the ESS Equipment which are the subject of the assigned OEM Warranties.

## 18. Suspension

- (a) Buyer may at any time, by written notice, suspend all or part of the Work to be performed under this Contract for cause or for convenience. Supplier shall suspend performance of the Work specified in Buyer's notice as of the effective date specified therein.
- (b) Upon receipt of a notice to suspend from Buyer, Supplier shall, unless the notice requires otherwise:
  - (i) Immediately (but no sooner than prudent safety measures warrant) discontinue work on the date and to the extent specified in the notice;
  - (ii) Execute no additional Subcontracts with respect to suspended work other than to the extent required in the notice;
  - (iii) Promptly make reasonable efforts to obtain suspension on terms satisfactory to Buyer of all Subcontracts to the extent they relate to performance of suspended work;
  - (iv) Continue to protect and maintain the Work including those portions on which work has been suspended;
  - (v) Take any other reasonable steps to minimize costs associated with such suspension; and
  - (vi) Except in cases of a suspension for cause, provide Buyer with estimates of potential suspension costs.
- (c) Buyer may at any time withdraw the suspension of all or part of the suspended Work by written notice to Supplier, specifying the effective date and scope of work to be resumed. Following receipt of such notice, Supplier shall (i) promptly and with all diligence resume performance of the Work for which the suspension is withdrawn on the effective date of withdrawal specified in Buyer's written notice of withdrawal, and (ii) be entitled to a Change Order under Section 16(c)(iv).
- (d) Supplier may, without prejudice to any other right or remedy under this Contract, suspend performance of its obligations under this Contract where the Buyer has failed to pay an amount due and payable to the Supplier within thirty days after such amount was due and payable and such suspension shall, without limiting any other provision of this Contract, constitute a Buyer-Caused Delay.
- (e) If Buyer suspends the Work in whole or substantial part for one hundred twenty days (consecutively or in the aggregate) under Section 18(a), and, after receiving notice from Supplier demanding such suspension be withdrawn, Buyer fails to

withdraw the suspension of the suspended Work in accordance with Section 18(c) within ten Business Days, Supplier may, upon notice terminate this Contract. Such termination shall be deemed a Buyer's termination for convenience under Section 20. Should Buyer withdraw such suspension and thereafter proceed to suspend the Work for its convenience, in whole or in part, within six (6) months of the withdrawal of such suspension, then Supplier may, upon notice, terminate this Contract, and such termination shall be deemed a Buyer termination for convenience under Section 20.

## 19. Events of Default and Remedies

### (a) Supplier Events of Default; Buyer Remedies.

- (i) Supplier shall be considered in default of its contractual obligations under this Contract:
  - (A) if Supplier performs Work which fails to conform to the requirements of this Contract and fails to commence remedy of the same within ten days after receipt of notice from Buyer; *provided, however,* if such failure is incapable of being remedied within ten days, the Parties shall mutually agree on an extended remedy period, not to exceed one hundred eighty days, and Supplier shall have such additional time to remedy the failed work, provided Supplier diligently commences a remedy during the initial ten-day period and continues thereafter to remedy the failure;
  - (B) on the forty-fifth day after Supplier's liability for Liquidated Damages reaches the Liquidated Damages Cap unless Supplier agrees to pay the amount of such excess Liquidated Damages at the applicable Liquidated Damages rate without regard to the Liquidated Damages Cap;
  - (C) if Supplier fails to make payment of any undisputed amount when due under this Contract, which failure continues for twenty Business Days following receipt of written notice of such non-payment from Buyer;
  - (D) if Supplier makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of Supplier, or if Supplier files a petition seeking to take advantage of any other Applicable Law relating to bankruptcy, insolvency, reorganization, winding up or composition of or readjustment of debts and, in the case of any such proceeding instituted against Supplier (but not by Supplier) such proceeding is not dismissed within sixty days of such filing.
  - (E) if Supplier fails to timely prepare a Recovery Plan when requested by Buyer, or implement actions in such Recovery Plan pursuant to

Section 21, and thereafter fails to remedy the same within ten days after receipt of notice from Buyer; *provided, however*, for the avoidance of doubt, Supplier shall not be in breach or default under this Section if implementation of the Recovery Plan in accordance with its terms does not result in Supplier's recovery of the Project Schedule;

- (F) if any covenant or warranty of Supplier in this Contract shall prove to be false or misleading at the time such covenant or warranty is made, and such false or misleading covenant or warranty continues uncured for thirty days after receipt of written notice from Buyer containing the particulars thereof;
- (G) if Supplier or any Subcontractor becomes a Restricted Party; or
- (H) for any default not otherwise addressed in this Section 19(a)(i) above, if Supplier fails to materially fulfill or comply with any of the other material terms of this Contract, and within thirty days after receipt of written notice from Buyer, fails to commence a remedy of the same, and thereafter fails to diligently pursue the remedy within a timeframe mutually agreed by the Parties.

Each of the foregoing a "Supplier Event of Default."

(ii) Termination by Buyer for Supplier Event of Default.

- (A) Upon the occurrence of any Supplier Event of Default (except under Section 19(a)(i)(G)) Buyer shall notify Supplier in writing of the nature of the failure and of Buyer's intention to terminate this Contract or a specified portion of the Work for default. If Supplier does not commence to cure such failure within seven days from receipt of notification, or fails to provide satisfactory evidence to Buyer that such Supplier Event of Default shall be corrected within a longer timeframe acceptable to Buyer, Buyer may by written notice to Supplier terminate all or part of the Work.
- (B) Upon the occurrence of a Supplier Event of Default under Section 19(a)(i)(G), Buyer shall notify Supplier in writing of the event and the date termination is effective. In the event of termination under this Section 19(a)(ii), Buyer may complete the Work by any method deemed expedient, subject to Section 19(a)(iv), and Supplier's liability to Buyer shall be determined in accordance with Section 19(a)(iv).

(iii) Supplier Obligations on Termination. Upon termination for Supplier Event of Default, Supplier shall at its sole expense:



- (A) Immediately (but no sooner than prudent safety measures warrant) discontinue work on the date and to the extent specified in the notice and execute no additional Subcontracts to the extent that they relate to the performance of the terminated work;
  - (B) Inventory, maintain and turn over to Buyer all ESS Equipment, all Work Product, and all other materials, tools, and property furnished by Supplier or provided by Buyer for performance of the terminated Work;
  - (C) Promptly obtain cancellation on terms satisfactory to Buyer of all Subcontracts existing for performance of the terminated work or assign those agreements and Supplier's rights and claims thereunder, as may be directed by Buyer;
  - (D) Comply with other reasonable requests from Buyer regarding the terminated work;
  - (E) Assign all warranties to Buyer; and
  - (F) Continue to perform in accordance with all of the terms and conditions of this Contract such portion of the Work that is not terminated.
- (iv) Supplier's Liability on Termination. Subject to Section 23 if Buyer terminates this Contract pursuant to Section 19(a)(ii) and provided Buyer uses its commercially reasonable efforts to mitigate its damages, Buyer shall be entitled to, as its sole and exclusive remedy (in addition to termination) for a Supplier Event of Default, the sum of: (A) all direct costs in excess of the remaining unpaid portion of the Contract Price reasonably and necessarily incurred by Buyer to complete (or cure deficiencies in) the Work, as reasonably documented by Buyer; *plus* (B) all other reasonable, direct, documented fees and costs in retaining a substitute supplier; *minus* (C) the portion of the Contract Price not already paid or due to Supplier. Supplier shall not be entitled to any payment for the terminated Work, except for amounts due and not previously paid to Supplier for the ESS Equipment and Work completed in accordance with this Contract prior to such notice of termination for default. Upon termination of this Contract, payment of all amounts due Supplier for Work performed under this Contract may be withheld pending completion of the Work, and may be used to offset liabilities of Supplier under this Contract.
- (v) Impact on License. All licenses and rights granted to Buyer in Section 28 shall remain in effect and shall not terminate following termination of this Contract by Buyer for a Supplier Event of Default.
- (vi) Wrongful Termination by Buyer. If, after termination pursuant to this Section 19(a), it is determined for any reason that Supplier was not in

default, the rights and obligations of the Parties shall be the same as if the notice of termination had been issued pursuant to Section 20.

(b) Buyer Events of Default; Supplier Remedies.

- (i) Buyer shall be considered in default of its contractual obligations under this Contract if:
- (A) Buyer fails to pay an undisputed amount to Supplier that is properly presented, due, and payable and does not cure the failure to pay within thirty (30) days after written notice is made by Supplier;
  - (B) any representation or warranty of Buyer in this Contract shall prove to be false or misleading at the time such representation or warranty is made, and such false or misleading representation or warranty continues uncured for thirty days after receipt of written notice from Supplier;
  - (C) Buyer makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of the insolvency of Buyer, or if Buyer files a petition seeking to take advantage of any other Applicable Law relating to bankruptcy, insolvency, reorganization, winding up or composition of or readjustment of debts and, in the case of any such proceeding instituted against Buyer (but not by Buyer) such proceeding is not dismissed within sixty days of such filing;
  - (D) Buyer, except as expressly permitted under this Contract, assigns or otherwise transfers this Contract;
  - (E) Buyer becomes a Restricted Party; or
  - (F) except as otherwise addressed in this Section 19(b)(i), Buyer fails to materially fulfill or comply with any of the other terms of this Contract, and within thirty days after receipt of written notice from Supplier, fails to commence to remedy the same, and thereafter fails to diligently pursue the remedy.

Each of the foregoing a “Buyer Event of Default.”

- (ii) Non-Payment Due to Withholding or Offset. Where non-payment by Buyer is related to the exercise of a valid set-off or withholding right, the termination rights in Section 19(b)(i)(A) shall not apply.
- (iii) Supplier Remedies. Upon the occurrence of a Buyer Event of Default, Supplier may, until and unless the condition underlying the Buyer Event of Default is cured and without prejudice to other rights or remedies under this Contract or at law or equity: (A) terminate this Contract; (B) seek specific

performance of Buyer's obligations where monetary damages would be inadequate or as otherwise expressly permitted by this Contract, including seeking an injunction; or (C) suspend performance of the Work until Buyer cures such Buyer Event of Default. In the case of termination of this Contract by Supplier for reasons permitted under Section 19(b)(i), Buyer shall pay the Termination Payment.

**20. Buyer's Termination for Convenience**

- (a) Buyer may, at its option, terminate for convenience any of the Work under this Contract in whole or in part, at any time with three days' written notice to Supplier. Such notice shall specify the extent to which the performance of the Work is terminated and the effective date of such termination. Upon receipt of such notice Supplier shall:
- (i) Immediately discontinue the Work terminated on the date and to the extent specified in the notice and execute no additional Subcontracts for equipment, materials, services, or facilities, other than as may be required for completion of such portion of the Work that is not terminated;
  - (ii) Unless directed otherwise by Buyer, promptly obtain cancellation of all Subcontracts existing for the performance of the terminated Work, or assign those Subcontracts as directed by Buyer, *provided* that Buyer has paid the Termination Payment and thereafter assumes all future obligations of Supplier under such Subcontracts;
  - (iii) Assist Buyer in the maintenance, protection, and disposition of Work in progress, plant, tools, equipment, property, and materials acquired by Supplier or furnished by Buyer under this Contract;
  - (iv) Complete performance of such portion of the Work which is not terminated; and
  - (v) Assign the OEM Warranties to Buyer.
- (b) Upon any such termination under this Section 20, Supplier shall waive any claims for damages including loss of anticipated profits on account thereof, but as the sole right and remedy of Supplier, Buyer shall pay the Termination Payment within thirty days after issuing the notice of termination.
- (c) Payment of the Termination Payment constitutes Buyer's sole and exclusive liability to Supplier and Supplier's sole and exclusive remedy in the event that this Contract shall be terminated as provided in this Section 20. Supplier's acceptance of such Termination Payment constitutes an acknowledgment that Buyer has fully satisfied and discharged all obligations under this Contract.

**21. Recovery Plan**

Unless attributable to an Excusable Event, if the progress of Work is delayed or is foreseen to be delayed for more than fifteen days beyond any Guaranteed Date, Supplier, may on its own initiative, or if requested by Buyer, within five Business Days of such request, prepare a recovery schedule demonstrating how it shall perform Work (“Recovery Plan”). The Recovery Plan shall be prepared with a level of detail showing, where relevant, additional shifts, hiring additional personnel, paying or authorizing overtime, providing additional Supplier equipment, or resequencing activities. Any and all costs associated with preparing a Recovery Plan and executing Work under a Recovery Plan shall be at Supplier’s sole cost and expense.

## 22. **Force Majeure**

- (a) The Parties are each excused from performance of the affected part of an obligation of this Contract (except payment obligations) while performance is prevented by a Force Majeure Event unless the Force Majeure Event was contributed to by the fault of the Party making such claim or was due to circumstances that could have been avoided or mitigated by the exercise of reasonable diligence.
- (b) A Party seeking relief for a Force Majeure Event shall:
  - (i) If Supplier is the affected Party, advise Buyer, within the time period set forth in Section 16(g), of the occurrence of the event, or if Buyer is the affected Party, advise Supplier within fifteen days after Buyer becomes aware of the occurrence of the Force Majeure Event;
  - (ii) use all reasonable endeavors, without incurring additional cost, to mitigate the impact from the Force Majeure Event;
  - (iii) provide, on a regular basis, plans for resumed performance and revised schedules; and
  - (iv) after cessation of the Force Majeure Event, promptly notify the other Party in writing of the cessation, and promptly resume performance of its obligations under this Contract.

## 23. **Limitation of Liability**

- (a) SUBJECT TO SECTION 23(b), NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT, AND WITHOUT MODIFICATION OF OTHER LIMITS OF LIABILITY SET FORTH HEREIN (INCLUDING THOSE SET FORTH IN SECTION 10(c)), IN NO EVENT SHALL:
  - (i) SUPPLIER OR ITS AFFILIATES BE LIABLE, ALONE OR IN THE AGGREGATE, TO BUYER FOR ANY LOSSES, LIQUIDATED DAMAGES AND/OR OTHER LIABILITIES ARISING UNDER THIS CONTRACT IN EXCESS OF AN AMOUNT EQUAL TO: (A) PRIOR TO COMMISSIONING COMPLETION, ONE HUNDRED PERCENT

(100%) OF THE CONTRACT PRICE; AND (B) AFTER COMMISSIONING COMPLETION, THE LESSER OF: (1) THE REMAINING LIMIT OF LIABILITY EXISTING UNDER CLAUSE “(A)” AS OF COMMISSIONING COMPLETION, OR (2) TWENTY PERCENT (20%) OF THE CONTRACT PRICE; REGARDLESS OF WHETHER SUCH LIABILITY ARISES OUT OF BREACH OF CONTRACT, GUARANTY, WARRANTY, TORT (INCLUDING NEGLIGENCE) PRODUCT LIABILITY, INDEMNITY, CONTRIBUTION, STRICT LIABILITY OR ANY OTHER LEGAL THEORY. Except for liabilities excluded under Section 23(b), all amounts paid by Supplier to Buyer under this Contract, any Losses, the direct costs of Warranty parts, and other costs incurred by Supplier in connection with implementing any remedies required under this Contract and credits toward the Contract Price associated with liability for Liquidated Damages and/or other liabilities of Supplier arising under this Contract, shall be applied towards the foregoing aggregate liability cap (i.e., shall reduce Supplier’s liability under this Contract on a dollar-for-dollar basis).

- (ii) BUYER OR ITS AFFILIATES BE LIABLE, ALONE OR IN THE AGGREGATE, TO SUPPLIER FOR ANY LOSSES, LIQUIDATED DAMAGES AND/OR OTHER LIABILITIES ARISING UNDER THIS CONTRACT IN EXCESS OF AN AMOUNT EQUAL TO ONE HUNDRED PERCENT (100%) OF THE CONTRACT PRICE, REGARDLESS OF WHETHER SUCH LIABILITY ARISES OUT OF BREACH OF CONTRACT, GUARANTY, WARRANTY, TORT (INCLUDING NEGLIGENCE) PRODUCT LIABILITY, INDEMNITY, CONTRIBUTION, STRICT LIABILITY OR ANY OTHER LEGAL THEORY.
- (b) Neither Party’s liability shall be limited by Section 23(a) for any liabilities arising in connection with obligations in the following areas, and these amounts shall not be counted in assessing whether the limitation of liability has been reached:
- (i) third-party indemnity obligations set forth in this Contract;
  - (ii) obligations relating to title and liens set forth in Section 11;
  - (iii) amounts recovered from any applicable insurance;
  - (iv) violation of Applicable Laws or any illegal or unlawful acts;
  - (v) claims based on willful misconduct or gross negligence; or
  - (vi) any liability that cannot be excluded or limited under Applicable Laws.

**24. Waiver of Consequential Damages**

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS CONTRACT, BUT SUBJECT TO THE LAST SENTENCE OF THIS SECTION 24, NEITHER PARTY, NOR SUCH PARTY'S AFFILIATES OR ITS RESPECTIVE MEMBERS, SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS OR EMPLOYEES, SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES OF ANY NATURE WHATSOEVER, RESULTING FROM OR ARISING OUT OF THIS CONTRACT, INCLUDING LOSS OF PROFITS OR REVENUE, LOSS OF TIME, LOSS OF BUSINESS OPPORTUNITY, IDLE OR ADDITIONAL FACILITIES OR RESOURCES (INCLUDING EQUIPMENT AND OPERATING COSTS), LOSS (INCLUDING BY A THIRD PARTY) OF PROPERTY OR PROPERTY RIGHTS, LOSSES BASED ON CLAIMS OF CUSTOMERS OR OTHER LOSSES INCURRED BY A PARTY TO A THIRD PARTY (UNLESS EXPRESSLY SET FORTH IN THIS CONTRACT), COST OF CAPITAL, LOSS OF FINANCING, LOSS OF BONDING CAPACITY, LOSS OF TAX CREDITS, DAMAGE TO GOODWILL OR REPUTATION, DAMAGE TO CREDIT RATING, OR BUSINESS INTERRUPTION, AND REGARDLESS OF WHETHER SUCH LIABILITY ARISES IN CONTRACT, GUARANTY OR WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PRODUCT LIABILITY, INDEMNITY, CONTRIBUTION OR OTHERWISE. BUYER AND SUPPLIER WAIVE AND RELEASE ALL CLAIMS AGAINST EACH OTHER AND AGAINST THE AFFILIATES OF EACH, AND THEIR RESPECTIVE MEMBERS, SHAREHOLDERS, OFFICERS, DIRECTORS, AGENTS AND EMPLOYEES FOR SUCH DAMAGES. The Parties agree that the following items are excluded from the above waiver and release: (a) damages claimed by third parties, who are not Affiliates of a Party, for which a Party has a duty to indemnify the other Party or such Party's other Indemnified Parties under this Contract; (b) damages caused by gross negligence, willful misconduct, fraud or other unlawful acts; (c) damages arising out of a Party's violation of Section 26; and (d) any Liquidated Damages and PG Payments.

**25. Indemnity**

- (a) Subject to the provisions of Section 19, and to the fullest extent permitted by Applicable Law, each Party (the "Indemnifying Party") shall fully indemnify, and save harmless the other Party (along with its directors, officers, shareholders, partners, agents and employees, and Affiliates, the "Indemnified Parties") from and against, and shall defend the Indemnified Parties against claims, actions, demands or suits for, any and all loss, damage, fines, penalties, expense and liability whatsoever, including court costs, reasonable attorneys' fees, and interest (collectively, "Losses") incurred by any Indemnified Parties in connection with or arising from third party claims involving:
- (i) any claim for physical damage to or physical destruction of any real or personal property (excluding the Work), or death of or bodily injury to any person, to the extent caused by the negligence or willful misconduct of the Indemnifying Party arising out of or in connection with the performance of this Contract;

- (ii) any violation of Applicable Law by the Indemnifying Party or other persons for whom it is responsible;
  - (iii) any claims by a Governmental Authority to the extent claiming Taxes for which the Indemnifying Party is liable;
  - (iv) in the case of Supplier as the Indemnifying Party, violation of Section 31(b) or 42(e); and
  - (v) in the case of Buyer as the Indemnifying Party, the presence or release of Buyer Hazardous Substances (unless such release was caused by the negligence of Supplier or Subcontractors, in which case, Supplier shall indemnify Buyer and its Indemnified Parties for such release), or in the case of Supplier as the Indemnifying Party, the release of Supplier Hazardous Substances (unless such release was caused by the negligence of Buyer or any other Buyer Responsible Party, in which case, Buyer shall indemnify Supplier and its Indemnified Parties for such release).
- (b) The Indemnifying Party may not, without the prior written consent of the Indemnified Party, consent to any judgment or settlement that (i) provides for injunctive or other non-monetary relief affecting the Indemnified Party or (ii) does not provide for an unconditional and full release of the Indemnified Party. If the Indemnifying Party, within a reasonable time after receipt of a request for indemnification, fails to take reasonable steps to defend the Indemnified Party against a claim, the Indemnified Party may undertake the defense of such claim without waiving its rights and remedies under this Contract.
- (c) If any Loss subject to an indemnity obligation under this Section 25 is caused by the joint or concurrent negligence of Supplier and Buyer, the Loss shall be borne by each Party in proportion to its respective degree of fault or negligence.
- (d) If either Party becomes aware of any incident likely to give rise to an indemnity claim under this Section 25, that party shall notify the other Party, and both Parties shall cooperate fully in the investigation of the incident.
- (e) Notwithstanding the fact that any Indemnified Party may have the right to assert claims for indemnification under or in respect of more than one provision of this Contract, no Indemnified Party shall be entitled to recover the amount of any Losses suffered by such person more than once, regardless of whether such Losses may be as a result of a breach of more than one representation or warranty or covenant.

## **26. Confidentiality**

- (a) Definition; Non-Disclosure and Non-Use. “Confidential Information” means the Specifications and any drawings, designs, technical information, technical and performance data, standards, dimensions, equipment test results, computer software or programs (including source codes and object codes), business practices, shop procedures, improvements, know how, inventions, intellectual property, patent

applications, reports, financial information, financial data, commercial information, business strategies, customer lists, or customer contact information, information that is based on, contains or reflects any such Confidential Information, and any other information (whether written, verbal or otherwise and whether or not marked as “confidential,” “proprietary,” or similar language or orally designated) that is disclosed to a Party (the “Receiving Party”) by the other Party (the “Disclosing Party”). Confidential Information shall be treated as confidential by the Receiving Party and shall not be (i) disclosed to any third party without the Disclosing Party’s prior written consent, except as otherwise permitted in Section 26(b) or Section 26(f), nor (ii) used for any purpose other than as required in connection with performing or administering this Contract (or any dispute arising under this Contract) or owning, operating or maintaining the ESS or financing or selling the Project or any equity interest in Buyer. Each Party, as the Receiving Party, shall protect the other Party’s Confidential Information from disclosure and unauthorized use with the same degree of protection that is used by the Receiving Party to protect its own Confidential Information, but in no event less than reasonable care. Confidential Information shall be returned to the Disclosing Party whenever the Disclosing Party so demands. For clarity, this Contract is considered Confidential Information of both Parties.

- (b) Permitted Disclosures. Notwithstanding the foregoing, Receiving Party may disclose Confidential Information, without Disclosing Party’s written consent, to Receiving Party’s employees, directors, officers, representatives, legal counsel, accountants, auditors, insurers, other advisors (but solely with respect to the Project), Financing Parties, Subcontractors (in the case of Supplier as the Receiving Party), and Other Contractors (in the case of Buyer as the Receiving Party), in each case, who (i) reasonably need the Confidential Information for the performance of the Work under this Contract or to advise the Receiving Party on the Project, this Contract, or its business, and (ii) have been both informed of the confidential nature of the Confidential Information and either have a professional duty or contractual obligations to not further disclose such Confidential Information or use such Confidential Information in a manner not otherwise permitted under this Section 26. In the case of highly sensitive Confidential Information identified by Disclosing Party, Disclosing Party reserves the right to require Receiving Party to identify specific individuals intended to access said information that is clearly identified as such by Disclosing Party.
- (c) Survival of Obligations. The obligations of confidentiality and restricted use stipulated herein shall remain in full force and effect for a period of three years after the completion of this Contract or the earlier termination or cancellation of this Contract. Such obligations shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against the Receiving Party, nor by the rejection of this Contract in bankruptcy.
- (d) Liability for Breach by Others. The Receiving Party shall be liable for a breach of this Section 26 by any employee or other person to whom the Receiving Party has disclosed Disclosing Party’s Confidential Information. Supplier shall immediately



notify Buyer of any unauthorized access, disclosure, misuse, or misappropriation of Buyer's Confidential Information ("Data Breach") that comes to Supplier's attention. Such notification shall be made to Buyer no more than seventy-two (72) hours after Supplier learns of the Data Breach. Supplier shall also take the following actions in the event of a Data Breach: (a) designate a single individual employed by Supplier who must be available to Buyer twenty-four (24) hours per day, seven (7) days per week as a primary contact regarding Supplier's obligations under this Contract; (b) not provide any additional notification or disclosure to the public regarding the Data Breach which mentions Buyer or any of its Affiliates without first obtaining prior written approval from Buyer; (c) cooperate with Buyer in investigating, remedying, and taking any other action Buyer deems necessary regarding the Data Breach and any dispute, inquiry, or claim that concerns the Data Breach; (d) follow all reasonable instructions provided by Buyer regarding the Confidential Information affected or potentially affected by the Data Breach; (e) take any actions necessary to prevent future Data Breaches; and (f) notify Buyer of any third-party legal process relating to the Data Breach. Notwithstanding the foregoing, Supplier may disclose information relating to a Data Breach as required by Applicable Law or by proper legal or governmental authority. Supplier shall give Buyer prompt notice of any such legal or governmental demand and reasonably cooperate with Buyer in any effort to seek a protective order or otherwise to contest such required disclosure.

- (e) Exclusions from "Confidential Information". Confidential Information shall not include and the requirements of Section 26(a) shall not apply to any information that the Receiving Party can demonstrate: (i) is in the public domain through no breach of this Contract at the time or receipt thereof or which subsequently becomes part of the public domain by publication or otherwise, except by a wrongful act of such Party or any person to whom such Party disclosed such information; (ii) is already in the lawful possession of the Receiving Party at the time of the disclosure by Disclosing Party and were not acquired under a pledge of secrecy or confidentiality obligation, (iii) was independently developed by the Receiving Party without the use of any Confidential Information; or (iv) is approved for release by written authorization of the Disclosing Party, but only to the extent of and subject to such conditions as may be imposed in such written authorization.
- (f) Compelled or Required Disclosures. Each Party shall be permitted to disclose the Confidential Information to the extent required by Applicable Law, a judicial order, any securities exchange requirement, or control area or independent system operator rule, tariff or agreement; *provided* that the Receiving Party required to disclose such Confidential Information shall give prior notice to the Disclosing Party of such required disclosure and, if so requested by the Disclosing Party, shall cooperate with the Disclosing Party to use reasonable efforts to oppose the requested disclosure as appropriate under the circumstances or to seek, through a protective order or other appropriate mechanism, to maintain the confidentiality of the Confidential Information (the reasonable costs of which shall be reimbursed by the Disclosing Party). If a protective order or a similar order limiting disclosure is not obtained, the compelled Party shall furnish only that portion of the other Party's

Confidential Information that, upon the advice of its legal counsel, it is legally required to disclose. Further, each Party shall be permitted to file this Contract with the Securities and Exchange Commission, *provided* that such Party filing this Contract shall work with the other Party to determine what information (such as pricing and other proprietary business information) will be the subject of a confidential treatment request or “CTR.”

- (g) Ownership of Confidential Information. Each Party shall retain all right and title to, and interest in, its own Confidential Information. Except as expressly provided in this Contract, the Parties’ entry into this Contract is not intended to grant any rights to either Party under any intellectual property right or the Confidential Information of the other Party.
- (h) Equitable Relief. The Parties acknowledge that the covenants in this Section 26 are reasonable and necessary for the protection of the proprietary interests of each other. The Parties further agree that Confidential Information is valuable and unique and that the improper disclosure or use of one Party’s Confidential Information by the other Party in breach of this Contract will result in irreparable injury for which remedies at law may be inadequate. In the event of a breach or threatened breach of the terms of this Section 26, the Disclosing Party shall be entitled to, and the Receiving Party consents to, the granting of an injunction prohibiting any such breach, whether temporary, preliminary or final, without proof of actual damages and without posting of a bond. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of money damages. Each Party agrees to reimburse the other Party (if such other Party is successful on the merits) for all court costs and legal fees, including reasonable attorneys’ fees, incurred in enforcing this Contract or obtaining relief under this Section.

**27. Supplier Protection of Confidential Information and Intellectual Property While Subcontracting**

- (a) Consistent with Section 26(b), When work involving a Party’s Confidential Information is given to a Subcontractor (in the case of Supplier) or any Other Contractor (in the case of Buyer), an agreement incorporating nondisclosure and non-use clauses shall be required by Supplier and such Subcontractor or Buyer and such Other Contractor. The agreements shall include the following points:
  - (i) The entrusted Confidential Information is immediately returned to Supplier and Buyer or disposed of immediately after completion of the requested work;
  - (ii) Supplier-conducted audits to check Subcontractor as to whether stipulated measures are being complied with and Buyer-conducted audits to check Other Contractors as to whether stipulated measures are being complied with; and

- (iii) If a Subcontractor or Other Contractor entrusts the work to another or third party, it obtains permission in advance from Supplier and Buyer and ensures an agreement for nondisclosure of the same type is signed with that third party.

## **28. Use of Supplier's Intellectual Property**

### (a) Grant of License.

- (i) Upon Delivery (and Buyer's payment to Supplier of undisputed amounts then-due), Supplier hereby grants to Buyer a worldwide, perpetual, non-exclusive, royalty-free, non-transferable (except as permitted herein) right and limited license ("License") to use Supplier's intellectual property in the Licensed Technology as necessary to install and Commission the ESS at the Project Site and solely in accordance with the terms of this Contract.
- (ii) Upon Commissioning Completion (and Buyer's payment to Supplier of undisputed amounts then due), Supplier hereby grants to Buyer a worldwide, perpetual, non-exclusive, royalty free, non-transferable (except as permitted herein) right and limited license to use Supplier's intellectual property in the Licensed Technology as necessary to finance, own, operate, maintain and repair the ESS at the Project Site and solely in accordance with the terms of this Contract.

The Licensed Technology is licensed solely for use in the form delivered to Buyer, and may not be separated from any part of the ESS Equipment with which it may be integrated. Buyer may not modify, adapt, translate, display or distribute the Licensed Technology, or use the Licensed Technology to create a derivative work or sell, lease, loan, publish, disclose, sublicense, grant have made rights, rent assign, transfer, deploy or otherwise make available the Licensed Technology, in whole or in part, to any third party except as expressly permitted in this Contract. Buyer may disclose Licensed Technology, in whole or in part, as permitted in Section 26. The Licensed Technology is the "Confidential Information" of Supplier.

- (b) No Copies. Except as otherwise permitted by this Contract, including Section 26, or required in the ordinary course of business for purposes of the financing, ownership, repair, maintenance and operation of the Project, Buyer shall not make any copies of Manuals, use instructions and other documentation provided by Supplier to Buyer, all of which shall be deemed the Confidential Information of Supplier. For the avoidance of doubt, and subject to Section 26, Buyer may make copies for internal purposes.
- (c) Proprietary Notices. Buyer shall not, and shall cause all Buyer Responsible Parties to not, remove or alter any proprietary notices or legends that appear on or with the Licensed Technology.
- (d) No Reverse Engineering. The Licensed Technology includes trade secrets of Supplier or its Affiliates. In order to protect the Licensed Technology, Buyer shall

not modify, translate, decompile, reverse engineer, decrypt, extract or disassemble the Licensed Technology or otherwise reduce or attempt to reduce any software or firmware in the Licensed Technology to source code form. Notwithstanding the foregoing, solely in connection with the operation and maintenance of the Project, but subject in all respects to Section 26, Buyer shall be entitled to disassemble the ESS Equipment on and after the expiration or earlier termination of the Contract, to the extent necessary to troubleshoot problems, analyze Defects and faults, perform root cause analysis, perform repairs, replace parts and otherwise maintain and operate the ESS Equipment. Buyer shall ensure, both during and (if Buyer still has possession of the Licensed Technology) after the performance of this Contract, that (i) persons or entities who are not bound by a confidentiality agreement consistent with this Contract shall not have access to the Licensed Technology and (ii) persons or entities who are so bound are put on written notice that the Licensed Technology contains trade secrets, owned by and proprietary to Supplier or its Affiliates.

(e) Improvements to Licensed Technology.

- (i) By Supplier. Any improvement hereafter made by or for Supplier or any of its Affiliates in the Licensed Technology that is approved and adopted by Supplier for use by Buyer under this Contract shall be included in the “Licensed Technology” for purposes of the License. The Parties agree that due to the background and expertise of Supplier and its Affiliates in the Licensed Technology and its vested interest in maintaining the quality of its products, Supplier may decide in its sole discretion which improvements it shall approve and adopt for purposes of Buyer’s use under the License.
- (ii) By Buyer. Buyer may not modify the Licensed Technology. Buyer may suggest modifications in the Licensed Technology to Supplier. In order to maintain product quality, any modification in the Licensed Technology suggested by Buyer must first be approved by Supplier in its sole discretion in writing before it is used by Buyer hereunder. If Buyer develops any modification or improvement in the Licensed Technology (whether permitted or not) it shall promptly disclose it to Supplier in writing, and Buyer shall grant, and does hereby grant, all right, title and interest in and to such improvements in the Licensed Technology to Supplier. If and only if, and to the extent, Applicable Law mandates that Buyer own any modifications to or improvements in the Licensed Technology notwithstanding the terms of this Contract, Buyer shall grant and does hereby grant to Supplier and its Affiliates a non-exclusive, perpetual, irrevocable, worldwide, fully-paid, royalty-free, transferrable license to use and sublicense others to use these modifications or improvements for all purposes.

(f) Ownership.

- (i) By Supplier. As between the Parties, Supplier or its Affiliates shall own the Licensed Technology, including any modifications, discoveries, derivative works and improvements related to it, whether developed by Supplier, by Buyer, or by the Parties jointly, all intellectual property therein and any intellectual property developed during, or arising out of, the performance of Supplier's obligations under this Contract. Buyer acquires only the right to use the Licensed Technology and improvements under the License, strictly in compliance with the terms of this Contract, and does not acquire any ownership rights or title to it.
  - (ii) By Buyer. As between the Parties, Buyer or its Affiliates shall own any intellectual property developed or acquired by Buyer prior to or independently of this Contract and the relationship with Supplier created by this Contract, excluding, for the avoidance of doubt, any of the Licensed Technology incorporated therein. Buyer hereby grants to Supplier and its Affiliates a non-exclusive, perpetual, worldwide, royalty-free license to use and sublicense others to use any intellectual property owned by Buyer, as described above, that is used or incorporated in the Licensed Technology or the ESS Equipment or Work, through the last day of any obligations of Supplier under this Contract, for the sole purpose of Supplier's or its Affiliates' energy storage business and Supplier's performance under this Contract.
- (g) Data.
  - (i) Supplier retains all rights to, and ownership of, any Health-Monitoring Data. Upon request of Buyer, and in accordance with Exhibit J-2, Supplier shall provide a summary of Health-Monitoring Data (as described in Exhibit F-1) to the extent required solely for Buyer's validation of ESS use curtailment, Warranty violations, and Performance Guarantee violations. Buyer's use of this Health-Monitoring Data is subject to Section 26.
  - (ii) Buyer retains all rights to, and ownership of, all Operational Data, and hereby grants to Supplier a non-exclusive, royalty-free, non-transferrable license and right to access and utilize the Operational Data, *provided*, Supplier may not use such Operational Data for any purpose other than as required to perform its Work under this Contract, without the express written consent of Buyer. Supplier shall not use Operational Data for purposes including but not limited to tracking or reverse-engineering Buyer's energy market bidding strategies, and such use is subject to Section 26.
- (h) Duration and Transfers. The Licensed Technology is inseparable from the ESS Equipment furnished under this Contract. Accordingly, the License (i) shall continue for so long as Buyer or any successor retains ownership of the ESS Equipment and continues operating the same, (ii) shall terminate automatically if and when the ESS Equipment or portion thereof is permanently removed from

service, and (iii) shall transfer to any of Buyer's successors and assigns permitted under Section 35. If Buyer sells or transfers the Project, the ESS Equipment, or any portion thereof to a third party (other than to a Financing Party or as permitted under Section 35), such License will terminate as to Buyer, and Buyer must, as a condition thereof, notify Supplier in writing and assign to the transferee thereof the License, and procure from the transferee an assumption of the License, on substantially the same terms set forth in this Section 28 and in a form subject to Supplier's prior reasonable approval, to the extent the License is applicable to the assets being sold or transferred. The License shall not be assigned, transferred or sublicensed except as expressly permitted in this Section 28(h). Buyer shall be responsible for, and indemnify, defend and hold harmless Supplier and its Indemnified Parties from and against any damage, injury or loss resulting from the failure of Buyer to comply with the terms of this Section 28. Supplier may terminate the License, except with respect to any Licensed Technology that is integrated in any ESS Equipment that has been Delivered to Buyer and title to which has transferred to Buyer hereunder, on written notice to Buyer if Buyer fails to cure any material breach of an obligation in this Section 28 within thirty days after Supplier's written notice specifying the breach. Notwithstanding the foregoing, Supplier may terminate the License in respect of Supplier's software immediately upon written notice from Supplier to Buyer if Buyer breaches any provision of Section 28(b) or Section 28(d), *provided* that such breach relates to the software and Buyer fails to remedy such breach within five days after written notice from Supplier requesting a remedy. Upon a termination of the License as to the software under this Section 28(h), the License will continue in all other respects in accordance with its terms. Upon termination of the License in respect of the software as provided above, Buyer shall immediately discontinue use of the software and, at Supplier's option, return to Supplier or erase all complete or partial copies of the software from all forms of storage within ten days of the termination. Buyer shall provide a written certificate to Supplier verifying that the software and all complete or partial copies thereof have been destroyed, erased or returned to Supplier, and shall permit Supplier and its representatives the opportunity to verify such compliance.

- (i) No Transfer of Intellectual Property; Reservation of Rights. Except as expressly set forth in this Contract, no right or license to any of Supplier's intellectual property rights is granted by Supplier to Buyer under this Contract. Supplier reserves all rights in the Licensed Technology not expressly granted to Buyer in this Contract.
- (j) [RESERVED]

## **29. Intellectual Property Indemnity**

- (a) Indemnification. Supplier hereby indemnifies and shall defend and hold harmless Buyer from and against any and all Losses arising from any claim, whether rightful or otherwise, that any concept, product, design, equipment, material, process, copyrighted material or confidential information, or any part thereof, furnished by

Supplier under this Contract constitutes an infringement of any patent or copyrighted material or a theft of trade secrets. If use of any part of such concept, product, design, equipment, material, process, copyrighted material or confidential information is limited or prohibited, Supplier shall, at its sole expense, procure the necessary licenses to use the infringing or a modified but non-infringing concept, product, design, equipment, material, process, copyrighted material or confidential information or, with Buyer's prior written approval, replace it with substantially equal but non infringing concepts, products, designs, equipment, materials, processes, copyrighted material or confidential information; *provided, however:*

- (i) any such substituted or modified concepts, products, designs, equipment, material, processes, copyrighted material or confidential information shall meet all the requirements and be subject to all the provisions of this Contract; and
  - (ii) such replacement or modification shall not modify or relieve the indemnifying Party of its obligations under this Contract.
- (b) Buyer-Furnished Information. For any Buyer-furnished concept, product, design, equipment, material, process, copyrighted material or Confidential Information, Buyer shall indemnify Supplier against Losses arising from third-party claims that such Buyer-furnished material constitutes an infringement of any patent or copyrighted material or a theft of trade secrets; *provided, however,* Supplier has treated such Buyer-furnished material as Confidential Information.
- (c) Exceptions to Indemnification Obligations. Supplier's indemnification obligations under Section 29(a) shall not apply to the extent arising as a result of:
- (i) alteration of the ESS Equipment by Buyer or any Buyer Responsible Party (except for alterations at the express written direction or recommendation of Supplier);
  - (ii) the combination or use of the ESS Equipment with other products not provided by Supplier or at Supplier's express written direction or recommendation when the combination is part of any allegedly infringing process, except relief shall not apply to a combination of the ESS Equipment with Buyer-Furnished Equipment;
  - (iii) failure of Buyer to implement any update provided by Supplier that would have prevented the infringement and resulting Loss; or
  - (iv) the ESS Equipment (or portion thereof) was manufactured by Supplier (or Subcontractors) to custom specifications provided by Buyer, and such custom specifications caused the ESS Equipment to be infringing.
- (d) Entire Liability. THE FOREGOING PROVISIONS OF THIS SECTION 29 STATE THE ENTIRE LIABILITY AND OBLIGATION OF SUPPLIER AND ITS AFFILIATES AND THE EXCLUSIVE REMEDY OF BUYER, WITH

RESPECT TO ANY ALLEGED INFRINGEMENT OF PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY BY THE ESS EQUIPMENT OR THE LICENSED TECHNOLOGY OR ANY PART THEREOF, EXCEPT TO THE EXTENT THAT SUCH LIABILITY CANNOT BE EXCLUDED IN ACCORDANCE WITH MANDATORY LEGAL REQUIREMENTS.

**30. Compliance**

- (a) Supplier represents that it is familiar with and shall comply with all Applicable Laws in effect at the time the Work under this Contract is performed; *provided, however,* Supplier shall be entitled to a Change Order for the costs of complying with, and Project Schedule delays resulting from, Applicable laws requiring the payment of prevailing wages.
- (b) Supplier shall notify Buyer in writing of any material breaches of Applicable Laws related to the performance of this Contract and shall remedy (or cause its Subcontractors to remedy) any non-compliance promptly.
- (c) Supplier further warrants that all Work shall be in compliance with all Applicable Laws. Supplier shall execute and deliver to Buyer any documents as may be required to effect or to evidence such compliance. If any ESS Equipment is, or is likely to be, subject to any restriction arising from such Applicable Laws, Supplier shall promptly notify Buyer in writing and Supplier shall take any and all necessary actions to ensure that the ESS Equipment conforms to all Applicable Laws; *provided, however,* such actions may be eligible for relief under Section 16(c)(v).

**31. Export Compliance with United States Export Controls**

- (a) Export Restrictions. Buyer acknowledges that the ESS Equipment and the Licensed Technology may be subject to the export regulations of the United States of America regarding export and re-export of certain commodities, software, and technology from the United States, including, the *Export Administration Regulations*, 15 C.F.R. Parts 730-774, maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC"), 31 C.F.R. Parts 500 et seq., and the *International Traffic in Arms Regulations*, 22 C.F.R. Parts 120-130, maintained by the Department of State. Buyer shall not, directly or indirectly, sell, export, re-export, transfer, divert or otherwise dispose of the ESS Equipment or the Licensed Technology in violation of U.S. export control laws and regulations (including to any country or Restricted Party or for any use in violation of U.S. export control laws), nor shall Buyer export or re-export, either directly or indirectly, any information or data received from Supplier in connection with the performance under this Contract to any country or Restricted Party or for any use in contravention of said export control laws and regulations. Buyer shall indemnify Supplier to the fullest extent permitted by Applicable Law from and against any Losses that may arise as a result of Buyer's breach of this Section 31(a).



- (b) **Restricted Parties.** Each Party represents and certifies that it is not (and that its Subcontractors or Other Contractors, as the case may be, are not) a “**Restricted Party**”, which for the purposes of this Contract shall be deemed to include any person or entity that is:
- (i) named on applicable government lists of export or sanctions-related prohibited or restricted parties, including OFAC’s Specially Designated Nationals and Blocked Persons List or Sectoral Sanctions Identifications List; the Commerce Department’s Denied Persons List, Entity List or Unverified List; the State Department’s Debarred Parties List; or owned or controlled by any such person;
  - (ii) subject to nonproliferation sanctions under the laws of the United States;
  - (iii) designated as an institution of primary money laundering concern;
  - (iv) engaged in activities involving nuclear weapons materials, missile or rocket technologies, or the proliferation of chemical or biological weapons; or
  - (v) part of or affiliated with any non-U.S. military or paramilitary organization.
- (c) Each Party shall promptly notify the other Party if it or any of its Subcontractors becomes a Restricted Party.

### **32. Health and Safety**

Supplier shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to: (a) personnel of Supplier and Subcontractors performing Work; and (b) ESS Equipment during performance of the Work. Supplier shall also comply with the Buyer Requirements outlined in Exhibit U regarding health and safety.

### **33. Dispute Resolution**

- (a) **Generally.** Except for third-party claims and cross-claims filed by parties not governed by these dispute resolution provisions in which a Party must implead or otherwise join another Party, any claim, controversy, dispute or matter in question between the Parties arising out of or related to this Contract (a “**Dispute**”) shall be subject to and resolved solely pursuant to the dispute resolution process set forth in this Section 33 following compliance with any other requirements of this Contract concerning any such Dispute. The Parties agree that these Dispute resolution procedures are binding upon them and represent the exclusive procedures to resolve any Disputes. Except as set forth in Section 33(d), neither Party shall pursue court action unless and until permitted by these procedures, and any Party breaching this covenant shall be responsible for all costs, fees and expenses (including reasonable attorneys’ fees) incurred by the other Party in defending and disposing of such court action. All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while these procedures are pending.

- (b) Notice of Dispute; Meeting of Representatives. Any Dispute shall first be referred to Buyer's Representative and Supplier's Representative for negotiation and resolution by delivery of a notice by one Party to the other Party requesting such negotiation and resolution of the Dispute, which notice shall specify in reasonable detail the nature of the Dispute and the resolution sought by the Party giving the notice ("Party Representative Negotiations"). If the Parties do not reach a resolution of the Dispute within ten days following the receipt of such notice for Party Representative Negotiations by the other Party, or longer period of time agreed to by the Party Representatives, either Party may request by a notice to the other Party a meeting between senior representatives of each Party with decision making authority to attempt in good faith to negotiate a resolution of the Dispute ("Senior Representative Negotiations"), which meeting shall take place within ten Business Days of receipt of such notice requesting the Senior Representative Negotiations, or longer period of time agreed to by the Party Representatives.
- (c) Binding, Confidential Arbitration.
- (i) Generally. The arbitration procedures hereunder are self-executing, and it shall not be necessary to petition a court to compel arbitration. Any Dispute that has not been resolved through the Senior Representative Negotiations shall be settled by binding, confidential arbitration administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"); *however*, in the event of any conflict between this Section 33 and the AAA Rules, the procedures in this Section 33 shall control. The arbitration shall be conducted by three independent and impartial arbitrators, none of whom shall be current or previous officers, directors or employees of either Party or their respective Affiliates, or have any financial, legal, or other conflicts of interest with respect to the Parties. The Party who submits the Dispute to arbitration shall select and identify the first arbitrator in its notice of arbitration. The other Party shall identify the second arbitrator in a notice to be given not more than twenty-five days after it receives the notice of arbitration. The first two such arbitrators shall both be persons who are knowledgeable about the subject matter of the Dispute, shall have demonstrated experience in the electric utility industry, shall be attorneys with at least ten years of experience in the practice of law, and shall be licensed to practice law in the State of New Mexico; *however*, the Parties may waive any or all of the foregoing requirements by written agreement. Within twenty-five days of the second arbitrator's selection, the two arbitrators shall select a third arbitrator, who shall serve as chairperson of the arbitrators' panel. If the two selected arbitrators cannot agree on a third arbitrator within twenty-five days of the second arbitrator's selection, the third arbitrator shall be appointed by the AAA as provided in the AAA Rules. In that regard, the Parties hereby waive the right to nominate the third arbitrator and hereby accept the appointments by the AAA, as it deems best.

- (ii) Authority of Arbitral Tribunal. The arbitral tribunal shall determine all questions of fact and law relating to any Dispute submitted to arbitration, including whether or not any Dispute is ripe for arbitration or otherwise subject to arbitration. The arbitral tribunal shall have no authority or power to enter an award which is in conflict with any of the provisions of this Contract. The decision or award must be in writing and must contain findings of fact on which it is based. The decision and award of the arbitrator or arbitral panel shall be final and binding on the Parties, may be challenged only on the ground set forth on the Federal Arbitration Act, 9 U.S.C. §1 *et seq.*, and judgment on the award may be entered and enforced by any court having jurisdiction over the Parties or any of their assets.
- (iii) Joinder. If the Dispute involves substantially the same facts and circumstances and/or same questions of facts or law as exist within a dispute between Buyer and an Other Contractor, then the Parties shall not object to joining the Other Contractor into the arbitration for concurrent resolution of such other dispute or having the Dispute consolidated into an existing arbitration proceeding with the Other Contractor; *provided, however*, the parties joined must agree to resolution of the common dispute using the procedures set forth in this Section 33(c), unless Supplier and Buyer agree in writing to use different dispute resolution procedures.
- (iv) Costs; Attorneys' Fees. The expense of arbitration shall be shared equally by the Parties, but each Party shall be responsible for the fees of its own legal counsel, experts, and any witnesses.
- (v) Seat and Language. The seat of the arbitration shall be in Albuquerque, New Mexico. The language of the arbitration shall be English.
- (d) Confidentiality of Disputes. Any proceedings and negotiations between the Parties relating to any Dispute, offers of settlement, or other outcome thereof, and any information, documentation or materials produced for the purposes of or used in negotiations or resolution of any Dispute shall be confidential and shall not be disclosed to any other person without the other Party's prior written consent; *however*, disclosure of the foregoing may be made:
  - (i) in order to enforce the obligation to first comply with the dispute resolution procedures;
  - (ii) as necessary to enforce an arbitration award;
  - (iii) to such disclosing Party's auditors, legal advisers, consultants, insurers, employees, officers, directors, and Affiliates of that Party who have a legitimate need to know such information and are subject to the confidentiality provisions of this Contract, a separate agreement containing substantially similar confidentiality provisions, or another professional obligation of confidentiality; or

- (iv) where that Party is under a legal or regulatory obligation to make such disclosure, subject to the same requirements as set forth in Section 26(f) relating to compelled disclosures of Confidential Information. The arbitrator shall be bound by the same confidentiality requirements.
- (e) Equitable Remedies.
  - (i) Notwithstanding anything to the contrary in this Section 33, the Parties expressly reserve the right to, and nothing shall preclude a Party at any time from seeking or commencing any judicial proceeding for injunctive or equitable relief from a court of competent jurisdiction if in such Party's sole judgement such action is necessary to avoid irreparable damage or to preserve the status quo. Despite such action, the Parties shall continue to participate in good faith in the procedures specified in this Section 33. The Parties grant the arbitral tribunal the right to make final determination of the Parties' rights, including whether to make permanent or dissolve any court order for injunctive or equitable relief.
  - (ii) If a Party commences an action seeking equitable remedies as allowed by this Section 33(e), the Parties agree that the action may be brought in any state or federal court located in the state of New Mexico, and each Party unconditionally: (A) consents to nonexclusive personal jurisdiction in the state of New Mexico; (B) waives any objection as to jurisdiction or venue in the state of New Mexico, including on the basis of inconvenient forum; (C) agrees not to assert any defense based on lack of jurisdiction or venue in the aforesaid courts; and (D) irrevocably agrees to be bound by any judgment resulting from such an action.
- (f) Obligations Continue. Notwithstanding the existence of any Dispute, the Parties will continue to perform their respective obligations under the Contract, unless the Parties otherwise mutually agree in writing.

### **34. Governing Law**

Unless otherwise agreed, this Contract shall be governed by and construed in accordance with the laws of the state of New Mexico, without regard to principles of conflicts of laws (except N.M. Stat. Ann. Section 55-1-301) that would cause the application of the laws of any jurisdiction other than the internal laws of the State of New Mexico. IN ACCORDANCE WITH SECTION 6 OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS ("UN CONVENTION"), THE PARTIES AGREE THAT THE UN CONVENTION SHALL NOT APPLY TO THIS CONTRACT.

### **35. Assignment**

- (a) Restriction on Assignment. Subject to Sections 35(b) and 35(c), neither Party shall assign or in any other manner transfer any of its rights or obligations under this Contract without the prior written consent of the other Party which consent shall

not be unreasonably withheld. No such purported assignment or transfer without such consent, shall be valid or effective. This Contract, and any rights or obligations hereunder, may only be assigned in whole, and not in part. Nothing in this Section 35(a) shall prohibit a Party from delegating or subcontracting all or any portion of its obligations under this Contract to a Subcontractor (in the case of a delegation by Supplier) or Other Contractor (in the case of a delegation by Buyer) in accordance with this Contract, *provided* that no such delegating or subcontracting shall relieve the delegating Party of any obligation under this Contract.

- (b) Permitted Assignments by Buyer. Notwithstanding Section 35(a), Buyer may, without Supplier's consent but upon ten days' prior written notice to Supplier, assign this Contract to:
- (i) any Affiliate for the purpose of developing, financing or owning the Project,
  - (ii) a purchaser of all or substantially all of Buyer's assets or Buyer's successor in interest as part of a corporate reorganization, consolidation, take-over, merger, statutory share exchange or other business combination; *provided, however,* such person(s) are not a competitor of Supplier (or its Affiliates) in the manufacture and/or design of energy storage and related systems and such person(s) are not then-engaged in litigation or arbitration proceeding with Supplier, or
  - (iii) its Financing Parties by way of collateral assignment to secure financing of the Project.

Any assignment of this Contract by Buyer pursuant to this Section 35(b) (other than pursuant to clause "(iii)" above) shall release Buyer from its liabilities under this Contract, *however* such assignment shall not be valid (A) unless the assignee has equal or greater ability than Buyer to fulfill Buyer's obligations (including its financial obligations) under this Contract and (B) until the assignee delivers a written assumption of Buyer's rights and obligations under this Contract to Supplier. A permitted assignee of Buyer under this Section 35(b) (other than a collateral assignee, unless such collateral assignee assumes this Contract in writing) shall be bound by the obligations of this Contract.

- (c) Permitted Assignments by Supplier. Notwithstanding Section 35(a), Supplier may, without Buyer's consent but upon written notice, assign this Contract to:
- (i) any Affiliate, or
  - (ii) by way of collateral assignment, any Financing Parties.

Assignment of this Contract pursuant to Section 35(c)(i) shall release Supplier from its liabilities under this Contract, *however* such assignment shall not be valid (A) unless the assignee has equal or greater ability than Supplier to fulfill Supplier's obligations (including its financial obligations) under this Contract and (B) until the

assignee delivers a written assumption of Supplier's rights and obligations under this Contract to Buyer. A permitted assignee of Supplier under this Section 35(c) (other than a collateral assignee, unless such collateral assignee assumes this Contract in writing) shall be bound by the obligations of this Contract.

**36. Insurance**

During the entire term of this Contract, including the Warranty Period, the Parties shall maintain (or cause to be maintained) the insurance coverages set forth in Exhibit H.

**37. Independent Contractor**

Nothing in this Contract shall be deemed to constitute Supplier, nor any Subcontractors, nor their respective employees or agents to be the agent, representative or employee of Buyer. Supplier shall at all times be an independent contractor and shall have sole responsibility for and control over the details and means for performing the Work. Supplier covenants and agrees that in the performance of the Work, neither Supplier nor its Subcontractors shall perform any act or make any representation to any person to the effect that Supplier, or any of its agents, representatives or Subcontractors, or any of their respective employees, agents or representatives is an employee, agent, or representative of Buyer.

**38. Subcontracting**

- (a) Supplier guarantees that work by any of its Subcontractors shall conform with the terms of this Contract.
- (b) Notwithstanding the subcontracting of any portion of the Work by Supplier, Supplier shall remain primarily and fully responsible for the complete, proper and safe performance of the Work in strict conformity with the requirements of this Contract. Supplier shall be liable for any and all acts and omissions of its Subcontractors and their respective employees. Nothing contained in this Contract may be construed as imposing any obligation or liability on the part of Buyer toward the Subcontractors.

**39. Record Keeping and Audit**

Supplier shall maintain complete and accurate records and accounts in connection with the performance of this Contract and all related transactions as is consistent with Supplier's internal retention policies, unless a longer period is otherwise specified by Applicable Law. Supplier shall maintain its records and accounts in accordance with U.S. Generally Accepted Accounting Principles (U.S. GAAP) or with International Accounting Standards Committee (IASC) standards consistently applied, as applicable. Supplier's obligation to maintain complete and accurate records under this Section shall include, but is not limited to, records relating to compliance with Applicable Laws relating to (subject to Section 7(c)) employee certifications and qualifications, drug and alcohol use, and, if applicable, United States Department of Transportation requirements. Buyer, or its representatives shall have the right to examine and copy, at Buyer's expense, at all reasonable times (but no more

frequently than once per calendar quarter) and with advance notification, such records and accounts for the purposes of confirming compliance with Contract provisions, verifying payments or requests for payment when costs are the basis of such payment and evaluating the reasonableness of proposed Contract Price adjustments and claims. Except as set forth in this Contract, Buyer and its representatives shall have no right to audit, investigate, analyze, copy or otherwise review documents related to the value of Subcontracts, cost of the ESS Equipment, or Supplier's build-up or components of any hourly rates charged where costs are the basis of payment.

#### 40. **Publicity**

(a) **Trademarks.**

- (i) Except as set forth herein, neither Party shall issue any news release or permit any publicity or advertisement, or otherwise use the other Party's trade name, logo, trademark, trade device, service mark or symbol owned by such Party (the foregoing, "Trademarks").
  - (ii) Buyer acknowledges and agrees that certain of the ESS Equipment is branded with Supplier's Trademarks, which Buyer will not obscure, remove, or otherwise modify.
- (b) Within approximately thirty days of the Effective Date, the Parties will issue a press release related to the Project (the "Press Release"). Supplier will draft the Press Release and provide to Buyer for review and comment. The Press Release shall not be issued without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed. In the Press Release, Supplier may use Buyer's Trademark. During performance of the Work, Supplier may, through any media, use Buyer's Trademarks in promotional materials, case studies or lists (the "Publicity"); *provided*, that Supplier shall include protective legends necessary to protect Buyer's rights in and to its Trademarks. Supplier will draft the Publicity and provide it to Buyer for its written approval, *provided*, that if Buyer does not disapprove of such Publicity in writing within ten days of its delivery by Supplier, Buyer will be deemed to have approved of Publicity.

#### 41. **No Waiver**

- (a) Neither Party's failure to enforce any provisions of this Contract shall in any way be construed as a waiver of such provisions nor in any way affect the rights of that Party thereafter to enforce any such provisions. No waiver by a Party of any default of the other Party hereunder shall constitute a waiver of any subsequent default, whether or not the subsequent default is of a similar or different nature. Any waiver by a Party under this Contract must be in writing and signed by the Party's representative to be effective.
- (b) None of the following shall operate as, or be deemed to be, a waiver or release of a Party's obligations under this Contract:

- (i) Failure by a Party to insist upon strict performance of any terms or conditions of this Contract;
- (ii) Failure or delay to exercise any rights or remedies provided herein or by Applicable Law;
- (iii) Failure to properly notify a Party in the event of breach of any obligation;
- (iv) With respect to Supplier's obligations, the acceptance of or payment for any portion of the Work;
- (v) With respect to Supplier's obligations, the review or failure to review any Supplier submissions;
- (vi) With respect to Supplier's obligations, any inspection or test by Buyer or the failure to inspect or test any aspect of the Work; and
- (vii) The termination either in whole or in part of this Contract.

#### **42. Miscellaneous**

- (a) Survival. Notwithstanding the completion of the Work, or the earlier termination of this Contract, the Parties shall continue to be bound by the provisions of this Contract which by their terms survive such completion or termination, including the provisions of Section 17(c), Assignment of OEM Warranties (in the event of termination); Section 17, Warranty (shall survive completion of the Work but not earlier termination of the Contract); Section 19, Events of Default and Remedies; Section 20, Buyer's Termination for Convenience; Section 23, Limitation of Liability; Section 24, Waiver of Consequential Damages, Section 25, Indemnity; Section 26, Confidentiality; Section 28, Use of Supplier's Intellectual Property; Section 30, Compliance with Applicable Law; Section 31, Export Compliance with United States Export Controls; Section 33, Dispute Resolution; Section 34, Governing Law; Section 40, Publicity; Section 41, No Waiver; and this Section 42, Miscellaneous.
- (b) Entire Agreement. This Contract shall constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes any other agreements or statements pertaining to the same subject matter. The Parties shall not be bound by any statement, representation, promise, inducement, or understanding of any kind not set forth in this Contract. No change, amendment, or modification of any of the provisions of this Contract or waiver of any of the provisions shall be effective unless in writing and signed by Buyer Representative. No acknowledgment form or other form of Supplier containing terms and conditions submitted by Supplier shall have the effect of modifying the terms and conditions hereof.
- (c) Headings. Titles and headings are for convenience of reference only. They shall not be taken into consideration in interpreting this Contract.



- (d) Language. The language to be used in all documents comprising or relating to this Contract and in all other communications relating to this Contract shall be English, unless otherwise required in writing by Buyer.
- (e) IRCA Compliance: Supplier agrees to comply with the Immigration and Reform Control Act of 1986 (IRCA) and all other federal and state laws governing identity and employment authorization verification. Supplier agrees to require immigration compliance in all Major Subcontracts. Supplier agrees to provide Buyer with a copy of their Edit Company Profile page in E-Verify, which can be printed directly from E-Verify. No performance under this Contract may take place until a copy of the Edit Company Profile page is provided to Buyer. Failure to submit this document within thirty (30) days of the Effective Date shall render this Contract void.
- (f) RESERVED
- (g) Reservation of Rights. The Parties retain their rights and remedies under Applicable Laws, subject to any provisions in this Contract that provide otherwise.
- (h) Counterparts. This Contract may be signed in any number of counterparts, including via electronic signatures, all of which constitute a single instrument. Delivery hereof may be performed by electronic transmission of scanned signature pages.
- (i) Rules of Interpretation.
- (i) References to Articles, Sections and Exhibits are, unless otherwise indicated, to Articles of, Sections of and Exhibits to this Contract. All Exhibits attached to this Contract are incorporated herein by this reference and made a part hereof for all purposes. References to an Exhibit shall mean the referenced Exhibit and any sub-exhibits, sub-parts, components or attachments included therewith.
- (ii) As used in this Contract, the masculine gender shall include the feminine and neuter and the singular number shall include the plural, and vice versa unless the context requires otherwise.
- (iii) Unless expressly stated otherwise, references to a person or entity includes its successors and permitted assigns and, in the case of a Governmental Authority, any person succeeding to its functions and capacities.
- (iv) As used in this Contract, references to “days” shall mean calendar days, unless the term “Business Day” is used. If the time for performing an obligation under this Contract expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day.
- (v) As used in this Contract, where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding

meanings; the words “herein,” “hereunder” and “hereof” refer to this Contract, taken as a whole, and not to any particular provision of this Contract; “including” means “including, for example and without limitation,” and other forms of the verb “to include” are to be interpreted similarly; and the word “or” is not exclusive.

- (vi) As used in this Contract, all references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made. Any term defined or provision incorporated in this Contract by reference to another document, instrument or agreement shall continue to have the meaning or effect ascribed thereto whether or not such other document, instrument or agreement is in effect.
- (vii) Preparation of this Contract has been a joint effort of the Parties and the resulting document shall not be construed more severely against one of the Parties than against the other. Any rule of construction that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendments or Change Orders.
- (j) Commencement of Claims. Any legal action of either Party arising under this Contract must be commenced:
  - (i) within twelve months after the Final Acceptance Date, except with respect to claims or actions arising under Section 17, Section 25, Section 26, Section 28, Section 29 or Section 40;
  - (ii) with respect to claims or actions by Buyer arising under Section 17, within six months after the expiration or termination of the Warranty Period, *provided* that notice of the Defect was made during the Warranty Period; and
  - (iii) with respect to claims or actions arising under Section 25, Section 26, Section 28, Section 29, or Section 40, prior to the expiration of the statute of limitations provided by Applicable Laws respecting such claims. To the maximum extent permitted by Applicable Law, the Parties hereby waive any right to commence any claim or action after such period.
- (k) Releases Valid in All Events. The Parties intend that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and indemnity and hold harmless provisions expressed throughout this Contract shall apply even in the event of the negligence (in whole or in part), strict liability, tort liability, fault or breach of contract (including other legal bases of responsibility such as fundamental breach) of the Party whose liability is released, disclaimed or limited by any such provision, and shall extend to such Party’s Affiliates and their respective partners, shareholders, directors, officers, employees and agents, and

even if such disclaimers, releases, limitations and apportionments would cause a remedy to fail of its essential purpose.

- (l) Severability. If any provision of this Contract is determined to be illegal or unenforceable: (i) such provision shall be deemed restated in accordance with Applicable Laws to reflect, as nearly as possible, the original intention of the Parties and (ii) such determination shall not affect any other provision of this Contract and all other provisions shall remain in full force and effect.
- (m) Notice. All notices or other communications under this Contract must be in English and in writing, and:
- (i) delivered by hand;
  - (ii) sent by recognized overnight mail or prepaid courier service;
  - (iii) sent by certified mail, return receipt requested; or
  - (iv) sent by email with confirmation of receipt by response email

Notices to Buyer shall be sent to:

Nicholas Pollman  
2401 Aztec Rd NE Albuquerque, NM 87107  
Email: nicholas.pollman@pnm.com

With copy to:

John Verheul  
414 Silver Ave SW  
Albuquerque, NM 87102  
Attn.: Legal Department  
Email: lawdept@pnmresources.com

Notices to Supplier shall be sent to:

Powin, LLC  
20550 SW 115th Avenue  
Tualatin, OR 97062  
Attn.: Legal Department  
Email: notice@powin.com

With copy to:

Justin D. Markell  
Winthrop & Weinstine, P.A.  
225 South Sixth Street, #3500  
Minneapolis, MN 55402

Email: jmarkell@winthrop.com

Any technical or other communications pertaining to the Work shall be between Supplier's Representative and Buyer's Representative, or such other representatives as agreed to by both Parties.

The date of receipt of each such notice, demand or other communication will be (A) the date of delivery thereof if delivered by hand, overnight mail, or courier, (B) the date of the return receipt, if sent by certified mail, or (C) if sent by electronic mail, the date of delivery shall be the date sent, *provided* that the sender does not receive an automated undeliverable or out-of-office message and, if the notice involves any matter under Section 19 or Section 33, the sending Party sends notice by other permitted means within two Business Days of sending notice by electronic mail. Each Party shall have the right to change the place to which notice shall be sent or delivered or to specify additional addresses to which copies of notices may be sent pursuant to this Section 42(1), in either case by similar notice sent or delivered in like manner to the other Party.

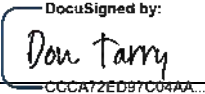
26272652v2

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Contract in the spaces provided below, effective as the Effective Date.

**Buyer: Public Service Company of New Mexico**

**Supplier: Powin, LLC**

By:  \_\_\_\_\_  
CCCA72ED97C04AA...

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

Print: Don Tarry

Print: Geoff Brown

Title: President and COO

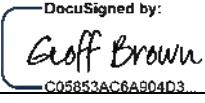
Title: Chief Executive Officer

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Contract in the spaces provided below, effective as the Effective Date.

**Buyer: Public Service Company of New Mexico**

**Supplier: Powin, LLC**

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

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

Print: \_\_\_\_\_

Print: Geoff Brown

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

Title: Chief Executive Officer

**Exhibit A**  
**Scope of Work**

*[See Attached]*

## Exhibit A

### Scope of Work

*Capitalized terms not defined herein have the meaning given them in the Contract*

#### **1.1 General Scope and Project Management**

- 1.1.1 Supplier shall be responsible for providing all adequate labor, supervision, tools (including all specialty tools, if required), equipment, components, installed and consumable materials, testing and each and every item and service necessary for the design, engineering, supply, fabrication, inspection, shop testing, shipping, Commissioning and field testing of the ESS.
- 1.1.2 Supplier's design shall be based on the requirements of the Contract, including, the Specifications, this Exhibit A, and Standards of Practice.
- 1.1.3 All Deliveries, testing and Commissioning activities shall comply with the Specifications and the Contract
- 1.1.4 Supplier shall provide the appropriate personnel to manage all aspects of the Work, including at least one OSHA "competent" person for activities at the Project Site. Supplier shall supply [a] technician[s] to advise and assist Buyer and Other Contractors at the Project Site during receiving, off-loading, and installation of the ESS Equipment, [b] technicians to perform the startup, Commissioning, and Performance Testing of the ESS Equipment, and [c] qualified trainers to train Buyer's personnel on the operations and maintenance of the ESS Equipment as required per the Contract.
- 1.1.5 Weekly progress meetings shall be held in person or via teleconference during the performance of the Work on dates mutually agreeable to Buyer and Supplier. Weekly progress meetings shall be held in person or via teleconference during the performance of the Work at the Project Site on dates mutually agreeable to Buyer and Supplier. As of the Installation Acceptance Date, Supplier shall provide a daily Commissioning report which will include at a minimum: current progress and location of Commissioning activities.
- 1.1.6 Supplier shall adhere to Buyer's project site safety plan (or the plan of Other Contractors), and Supplier shall maintain a safety plan and observe all safety practices required for performing its Work, including OSHA standards.
- 1.1.7 Buyer or its Other Contractor(s) shall provide trash disposal and recycling services and associated facilities for debris generated during Supplier's activities on the Project Site, which shall include the removal and disposal of all ESS Equipment shipping and packaging material.

#### **1.2 Project Site**

665 Manzano Expressway, Belen, NM 87002

#### **1.3 Supplier Engineering and Overview Scope of Supply**



1.3.1 Supplier shall perform all necessary engineering and design work required for the design, fabrication, Commissioning and operation of the ESS. The ESS Equipment as further described in Exhibits C and J, will consist of the following primary elements:

- 38 Energy Segments including:
  - UL 1973 certified battery architecture based on LFP cells
  - UL 9540A certified cells, battery pack/modules and stacks
  - IP55 rated enclosure
  - Integrated gas + fire detection, dedicated active ventilation system that meets the NFPA 69 standard providing NFPA 855 compliance
  - Dual field-swappable, forced air HVAC with humidity control
  - Cable tray with pre-cut and pre-terminated AC auxiliary and DC cabling
  - RJ45 Communications cabling between units
  - Router, UPS, StackOS communication gear
  - Color: off-white
  - L-brackets to install per Exhibit L-Installation Manual.
- 2 Collection Segments containing:
  - IP55 rated enclosure
  - AC circuit breakers panel for auxiliary distribution
  - 2 DC Disconnects, each protected by a 2000A, 1500V fuse with DC busbars for PCS connection
  - UPS (for safety control circuit)
  - Communication and control systems
  - Ground fault detector for each DC Disconnect
  - HVAC Controls
  - Fire Panel
  - Color: off-white
  - L-brackets to install per Exhibit L-Installation Manual.
- StackOS:
  - Integrated Battery Management System (“BMS”) and EMS software running on a local hardened computer provided within one of the Collection Segments above
  - Local Modbus API for SCADA integration and control. Including availability of all control and monitoring points identified in Exhibits C and J
  - Simple local HMI for monitoring and maintenance; remote UI accessible. Allows enabling and disabling of StackOS applications.
  - Secure device integration, including PCS and enclosure systems
  - Basic warranty tracking and violation prevention
- 2 SMA - MVPS-4600-S2-US-10 PCS / MVT Sets including:
  - SMA Sunny Central Storage SCS 3950 UP- -US
  - Oil-Filled SMA 4.1MVA 12.47kV Step-up Medium Voltage Transformers
  - Close-coupled LV connection
  - MV switchgear

1.3.2 The PCS and MVT Sets, Collection Segments and Energy Segments will be subject to factory acceptance testing (“FAT”) and Supplier shall transmit relevant FAT

documentation & results to Buyer upon receipt. Buyer (or Buyer designee) may attend the FAT, subject to Section 12 of the Contract.

1.3.3 The ESS shall meet requirements of Exhibit C.

1.3.4 Buyer will obtain, or cause to be obtained and pay for all operational, environmental and land use permits including other permits requiring approval of designs, drawings and specifications by Governmental Authorities. Supplier shall be responsible for supporting all Buyer permitting activities in a timely manner and shall prepare reasonably requested Supplier standard documentation relating to the ESS Equipment in support of Buyer's permitting activities. Any inspections by Governmental Authorities will be arranged by Buyer, and Supplier shall accommodate such inspections wherever practicable.

1.3.5 As-Manufactured Drawings and Test Report Submission:

- a) Within thirty days of Commissioning Completion, Supplier shall furnish a complete set of as-manufactured information showing the ESS Equipment as installed by Buyer and verified by Supplier. Issued for Construction design drawings, as listed in Section 1.3.5(c) shall also be provided.
- b) Supplier shall promptly furnish all relevant test reports and test certificates as they become available.
- c) Within 45 days of the Effective Date of the EPA, Supplier to provide the following initial design drawings for review:
  - a. PCS/MVT Package:
    - i. Skidded solution drawings (electrical drawings from PCS to MVT and switchgear)
  - b. Electrical Drawings, including:
    - i. Single Line Diagram (including DC cabling from stacks to collection segment and collection segment to PCS)
    - ii. AC Auxiliary Distribution
    - iii. Network design behind Powin firewall (including Modbus map)
  - c. Fire System Drawing Package
    - i. Fire system design layout and product specifications
  - d. Mechanical Drawings, including:
    - i. General Arrangement (Collection Segments, Energy Segments)
    - ii. Anchoring and penetration locations
    - iii. Customer interfaces (Ground Pads, Aux Power, and DC combiner/switch connections)

**1.4 ESS Equipment Procured and Delivered to the Project Site by Supplier.** Supplier shall perform, but not be limited to, the following services as part of the Work:

1.4.1 Supplier shall design, furnish and Commission all Energy Segments, Collection Segments and PCS and MVT sets needed for the Project.

1.4.2 Subject to the terms of the Contract, Supplier shall be responsible for all transportation and Delivery of the ESS Equipment. Buyer shall be responsible for the unloading and unpacking of Delivered ESS Equipment in accordance with Supplier's Installation Manual. Transportation and Delivery shall be performed without violating the requirements for

transportation of the battery module OEM, the battery cell OEM or any other requirements of an OEM including those set forth in OEM Warranties.

1.4.3 Supplier shall design, furnish, and commission all applicable heating, ventilation and air conditioning (“HVAC”) units in accordance with Exhibit C.

1.4.4 Supplier shall design, furnish, and commission the ESS, including the BMS, and specifically the StackOS software.

## **1.5 Technical Support by Supplier.**

1.5.1 **Pre-construction & Planning Phase:** Early pre-construction support shall include “desktop-type” support and shall be provided by Supplier through a Request for Information (RFI) process. Where possible, Supplier responses to any submitted RFIs shall be submitted within five (5) Business Days. Supplier shall coordinate with Buyer on ESS Equipment structural loading to allow Buyer to design foundation details.

1.5.2 **Installation Phase:** Supplier shall provide installation technical support, including the following:

- a) Supplier shall provide a “page-turn” of the Installation Manual with Buyer and its Other Contractor(s) during negotiation of the installation contract and again prior to first installation of ESS Equipment. At Buyer request, Supplier shall participate in full installation of the first unit of each component of ESS Equipment to establish a “golden installation” that is intended to set the expectation for future installations and any installation-type questions or conflicts to be resolved early in the installation phase.
- b) Supplier’s construction support includes technical oversight during construction from commencement of Delivery through Installation Acceptance.
- c) Sixty days prior to the Installation Acceptance Date, Supplier shall provide a draft Commissioning Checklist (Exhibit I) which shows the system commissioning activities with prerequisite conditions. The overall startup sequence shall be developed by Supplier such that all ESS Equipment are completed in the proper sequence to support a safe and orderly startup. This draft plan will be used to create the final Commissioning Checklist as a collaborative exercise between Buyer and Supplier.

## **1.6 Commissioning and Testing Services.**

1.6.1 Upon Installation Acceptance, Supplier shall be responsible for the Commissioning of the ESS, including the Energy Segments, Collection Segments, PCS and MVT Sets. Commissioning covers all activities relating to the startup, operation, or simulated operation, of equipment and systems through completion of testing that is detailed in Exhibit F-1. Supplier will provide commercially reasonable support for the testing of the Buyer-supplied RTU for the purposes of remote control and monitoring of the system.

- 1.6.2 Supplier shall be responsible to design, procure, program, install, and test the StackOS system. Supplier shall also be responsible for ensuring that StackOS shall be fully functional prior to the Installation Acceptance Date, with the ability to operate as required in the Contract.
- 1.6.3 Supplier shall perform all testing identified in Exhibit I and verify ability of the system to meet the functional requirements of the Project identified in Exhibit F-1.
- 1.6.4 The Supplier's commissioning staffing shall include adequate personnel, as required to meet the Project Schedule.
- 1.6.5 As part of Commissioning, Supplier shall perform all performance and demonstration testing required by Exhibit F-1.
- 1.6.6 Supplier will provide support for UL 9540 field certification of the installed ESS and PCS system.

## **1.7 Fire Safety**

- 1.7.1 Supplier shall provide an emergency response plan related to the ESS that details proper procedures for Buyer and emergency responder actions during a fire, thermal runaway or other related event.
- 1.7.2 Supplier shall provide support for a Buyer-led hazard mitigation analysis (HMA) of the ESS Equipment to support local permitting requirements.
- 1.7.3 Supplier shall provide a fire safety response training session with local fire responder personnel prior to Commissioning.
- 1.7.4 The training session will be held at the Project Site and will include a site tour of the ESS, overview of ESS Equipment, review of the emergency response plan and walkthrough of emergency response process.

## **1.8 Site Specific Project Requirements**

- 1.8.1 In accordance with Exhibit B and the Contract, Supplier shall include all activities associated with engineering, design, supply, manufacture, delivery to site, and technical support services associated with the installation of ESS Equipment by the Contractor and Commissioning of the ESS Equipment by the Supplier at the Project Site. Supplier shall provide a list of recommended spares prior to the Effective Date of the EPA.
- 1.8.2 The scope of Work to be provided by the Supplier includes an equipment package meeting the energy storage capacity requirements described herein for installation by the Contractor on the Buyer's Project Site. The Supplier shall furnish ESS Equipment for the Project meeting the following requirements:
  - a) Contracted Power, Contracted Energy, and Contracted Duration as defined in Exhibit F-1.
  - b) Designed for outdoor installation in Supplier furnished enclosures.

- c) Once installed is capable of receiving P and Q commands for charge and discharge from Buyer.
- d) Has a maximum rate of charge equivalent to its rate of discharge.
- e) Total cycle-life equivalent of 365 annual equivalent full charge and discharge cycles with an Ending SOH as defined in Exhibit F-1, and with the ability to meet varying annual cycling requirements over the resource life within the limits of StackOS.
- f) The number of cycles per day shall not be limited
- g) Is dispatchable across the entire operating range in accordance with Exhibit F-1 (Contracted Duration, Contracted Power and Contracted Energy) and Exhibit J (Product Manual)
- h) Have control systems in place with the ability to respond to dispatch and disconnection signals that originate remotely from Buyer operations centers.
- i) ESS Equipment needed for integrated operation in parallel with existing solar PV system at the existing distribution system connection at 12.47 kV.
- j) Configured for remote control and monitoring and shall not require any on-site operations staff.
- k) The ESS Equipment shall also have capabilities to support the following:
  - a. When the grid is available ESS Equipment shall be available for contingency reserve upon the occurrence of Buyer generating unit outage.
  - b. Regulation-up and regulation-down.
  - c. Respond to frequency events and comply with NERC standard BAL-003-1.
  - d. Charge/discharge to support renewable generation variability, be available for system peak, and to avoid curtailment of Buyer's system.
  - e. Discharge during system peaks to offset peak demand.
  - f. Voltage and reactive/active power control performance for a Category B system as defined in IEEE 1547-2018 for a Distributed Energy Resource.
  - g. The normal and abnormal performance category as defined in IEEE 1547-2018 for a Distributed Energy Resource (DER) shall be Category II minimum.
  - h. Meets or exceeds the recommended performance specifications defined in IEEE 1547 – 2020 and UL 1741 Schedule B.

**Exhibit B**  
**Division of Responsibility**

*[See Attached]*

**Powin and Buyer Working DOR Centipede**

Index	Category	Buyer	Powin	Comments
<b>1.00</b>	<b>Requirements and Specification</b>			
1.01	Definition of Buyer requirements for project Power & Energy capacity	X		
1.02	Buyer requirements for project operational philosophy and strategy	X		Powin to support system configuration/programming and commissioning of Powin-Furnished Equipment to support Buyer operational philosophy and strategy , including integration with Power Plant Controller ("PPC"), limited to the system capability as defined in the StackOS Manual.
1.03	Energy Segments, Stacks, Battery Management System (BMS) specifications		X	
1.04	Collection Segment(s) & protection specifications		X	
1.05	PCS to MV Transformer AC collection & protection specifications		X	PCS to MVT will be close coupled and supplied by Powin as part of the Skid.
1.06	MV Transformer requirements for Seller procured PCS (close coupled PCS-MV Transformer connections, alarms)		X	
1.07	MV Transformer to switchgear/POI AC collection and protection specifications	X		
1.08	Collection Segment internal auxiliary panelboard and protection specifications (all segments)		X	
1.09	Project auxiliary power service and protection specifications	X		Buyer to provide auxiliary power to a single terminal point for each Powin Collection Segment.
1.10	Battery enclosure or Segment foundation and anchoring specifications		X	
1.11	Battery enclosure or Segment HVAC / thermal controls		X	
1.12	Battery enclosure or Segment fire protection		X	
1.13	Fire protection equipment external to Seller battery enclosure or Segment such as routing to fire station (if required)	X		
1.14	PCS / inverter specifications (only for AC coupled systems)		X	
1.15	PCS foundation and anchoring design specifications (only for AC coupled systems)		X	
1.16	[Not Used]			
1.17	MV transformer procured by Seller		X	
1.18	MV transformer foundation and anchoring requirements for Seller procured MV Transformer		X	
1.19	12.47 kV Switchgear, metering, -ESS meter, relays, etc.	X		
1.20	All other switchgear, metering, relays, etc. (including 12.47 kV at each MVT HV side)		X	
1.21	Grounding grid	X		
1.22	Battery grounding grid requirements (if applicable)		X	
1.23	Cabling between EMS and Collection Segments and beyond Powin Firewall	X		
1.24	Communication equipment & cabling between PCS and Network	X		
1.25	Communication equipment between Network & utility/off-taker	X		
1.26	Energy Management System (EMS) software platform		X	
1.27	System dispatch signal, SCADA	X		
1.28	Internet service		X	
<b>2.00</b>	<b>Studies and Permitting</b>			
2.01	Geotechnical study	X		
2.02	Interconnection/Impact study	X		Seller to provide commercially reasonable support services and documentation to support interconnection studies and applications prepared by Buyer.
2.03	Noise assessment study (if applicable)	X		
2.04	Environmental/Buyer impact assessments (if applicable)	X		
2.05	Electrical permits	X		
2.06	Building permits	X		
2.07	Civil and construction permits	X		
2.08	Environmental permits (if applicable)	X		
2.09	AC Arc flash analysis	X		
2.10	DC ESS Arc Flash Study and Labels at Stack level up to Collection Segment		X	
2.11	DC ESS Short Circuit Analysis up to Collection Segment		X	
<b>3.00</b>	<b>Engineering and Design Deliverables</b>			

3.01	Site layout	X		
3.02	Enclosure/Segment layout and design specifications		X	
3.03	Electrical drawings: DC - Battery stacks up to PCS side of Collection Segment		X	
3.04	Electrical drawings: AC high side of transformer to POI	X		
3.05	Electrical drawings: Auxiliary and station service	X		
				Buyer to provide auxiliary power to a single terminal point for each Powin collection segment.
3.06	Electrical drawings: Overall site cable layout / schedule	X		
3.07	Electrical drawings: Grounding design/grid	X		
3.08	Communication drawings: System Network design	X		
3.09	Communication drawings: network design behind Powin firewall		X	Powin to provide communication cables behind Powin's firewall.
3.10	Communication drawings: System communication schematic	X		
3.11	Communication drawings: communication schematic behind Powin Firewall		X	
3.12	Civil drawings: System level (foundations, anchoring, trenching)	X		
3.13	Civil drawings: Site level (topographic, excavation, stormwater)	X		
3.14	Battery system Ground fault detection and protection		X	
<b>4.00</b>	<b>Procurement</b>			
4.01	Battery Stacks including BMS, Battery and Collection Segments		X	
4.02	Battery enclosure		X	
4.03	Battery enclosure or Segment HVAC / thermal controls		X	
4.04	Battery enclosure or Segment fire protection and suppression systems		X	
4.05	External fire protection and suppression systems such as routing to fire station	X		
4.06	PCS (Inverter, DC-DC Converter)		X	
4.07	MV transformer for skidded inverter systems		X	
	Not Used			
4.08	12.47 kV Switchgear, metering, relays, etc.	X		
4.09	12.47 kV switchgear at each MVT HV side of skid		X	
4.10	Battery to PCS DC connection (conductoring, conduit, underground work)	X		
4.11	Collection or Battery Segment internal cabling (DC, aux, communications, fire protection)		X	cabling pre-cut and terminated by Seller, connection by Buyer
4.12	Communication and Safety Cables from each Centipede Collection Segment to the 'Main' Collection Segment housing	X		
4.13	PCS to transformer AC collection and protection		X	
4.14	MV switchgear on skid with PCS and MVT to facilitate disconnect and coupling of multiple PCS skids		X	
4.15	Transformer to switchgear/POI AC collection and protection	X		
4.16	Collection Segment and Energy Segment foundation and anchoring	X		
4.17	PCS foundation and anchoring (only for AC coupled systems)	X		
4.18	MV transformer foundation and anchoring for Powin procured MV Transformer	X		
4.19	Battery auxiliary power collection and protection for aux systems internal to the Centipede/Enclosure		X	cabling pre-cut and terminated by Seller, connection by Buyer
4.20	Battery auxiliary power collection and protection to Centipede/Enclosure	X		
4.21	Grounding grid	X		
4.22	Cabling between EMS and Collection Segments and beyond Powin Firewall	X		
4.23	Communication equipment between Network and utility/off-taker	X		
4.24	EMS software platform		X	
4.25	Internet service	X		
4.26	Transportation of all ESS Equipment DDP to Delivery Location		X	
4.27	Transportation of Buyer-Furnished Equipment to the Project Site	X		
<b>5.00</b>	<b>Rigging and Offloading</b>			
5.01	Battery Stacks including BMS, Battery and Collection Segments	X		
5.02	Battery enclosure or Segment	X		
5.03	PCS (Inverter, DC-DC Converter)	X		Skidded solution, installed as a package.



5.04	Transformer	x		Skidded solution, installed as a package.
5.04	Buyer Furnished Equipment	x		
<b>6.00</b>	<b>Installation</b>			Powin enter a description for what is considered as completion of installation for each of these activities (i.e. what level of testing / verification is required for installation to be considered complete). Should there be an installation checklist to delineate turnover to Commissioning completed by Powin.
6.01	Battery Stacks including BMS, Battery and Collection Segments	x		
6.02	Battery enclosure or Segment	x		
6.03	Battery enclosure or Segment HVAC / thermal controls		x	
6.04	Battery enclosure or Segment fire protection and suppression systems		x	
6.05	External fire protection and suppression systems such as routing to fire station	x		
6.06	PCS (Inverter, DC-DC Converter)	x		Skidded solution, installed as a package.
6.07	MV transformer	x		Skidded solution, installed as a package.
6.08	12.47 kV Switchgear, metering, relays, etc.	x		
6.08	12.47 kV switchgear at each MVT HV side of skid		x	
6.09	Collection or Battery Segment internal cabling (DC, aux, communications, fire protection)	x		
6.10	Communication Cables from each Centipede Collection to the 'Main' Collection Segment housing	x		
6.11	Battery to PCS DC collection and protection	x		
6.12	PCS to transformer AC collection and protection		x	
6.13	Transformer to switchgear/POI AC collection and protection	x		
6.13	Collection Segment and Energy Segment foundation and anchoring	x		
6.13	PCS foundation and anchoring (only for AC coupled systems)	x		
6.13	MV transformer foundation and anchoring for Powin procured MV Transformer	x		
6.14	Battery auxiliary power collection and protection for aux systems internal to the Segment		x	
6.14	Battery auxiliary power collection and protection to the Segment	x		
6.15	Grounding grid	x		
6.16	Cabling between EMS and Collection Segments and beyond Powin Firewall	x		
6.18	Communication equipment between Network and utility/off-taker	x		
6.19	EMS software platform		x	
6.20	Internet service	x		
<b>7.00</b>	<b>Commissioning</b>			
7.01	Battery Stacks including BMS, Battery and Collection Segments		x	
7.01	Energy Segment and Collection Segment		x	
7.01	Energy Segment and Collection Segment HVAC / thermal controls, including ducting		x	
7.01	Energy Segment and Collection Segment fire protection system till FSS Panel		x	Connection from FSS panel to AHJ required system is responsibility of Buyer
7.01	External fire protection and suppression systems such as routing to fire station	x		
7.02	PCS (Inverter, DC-DC Converter) when procured by Seller		x	
7.03	Not Used			
7.04	MV transformer energization when procured by Seller	x		
7.05	Not Used			
7.05	12.47 kV Switchgear, metering, relays, etc.	x		
7.05	12.47 kV switchgear at each MVT HV side of skid		x	
7.05	ESS to PCS DC connection and protection (conductoring, conduit, underground work)	x		
7.05	Collection and Energy Segment internal cabling (DC, aux, communications, fire protection)		x	
7.05	PCS to transformer AC collection and protection		x	
7.05	MV switchgear on skid with PCS and MVT to facilitate disconnect and coupling of multiple PCS skids		x	
7.05	Transformer to switchgear/POI AC collection and protection	x		
7.05	ESS auxiliary power collection and protection for aux systems internal to the Segment/Enclosure		x	
7.05	ESS auxiliary power collection and protection to Segment/Enclosure	x		
7.05	Grounding grid	x		
7.05	Cabling between EMS and Collection Segments and beyond Powin Firewall	x		

7.05	Communication equipment between Network and utility/off-taker	X		
7.05	EMS software and hardware platform		X	
7.05	Internet service	X		
7.07	FSS		X	
7.08	HVAC		X	
7.09	Contract and performance testing		X	Refer to Exhibit F-1
<b>8.00</b>	<b>Equipment Warranty</b>			
8.01	Batteries and containers - 3 year workmanship		X	
8.02	Communication and controls		X	
8.03	Plant controller, SCADA and other controls external to Powin battery system	X		
8.04	PCS (Inverter, DC-DC Converter) when procured by Powin		X	AC coupled systems - Seller responsible for PCS Skid
8.05				
	<del>Not Used</del>			
8.06	MV transformer for inverter systems procured by Seller		X	
8.07	<del>Not Used</del>			
8.08	Performance Guarantee		X	

**Exhibit C**  
**Technical Specifications**

*[See attached]*

**Exhibit C****Technical Specifications****A. Design Statement:**

The ESS shall be designed to interact with the AC Grid.

**B. ESS characteristics at the ESS Meter inclusive of auxiliary power consumed by the ESS shall be as follows;**

- i) Beginning of Life (“BOL”) Contracted Energy: As set forth in Exhibit F-1
- ii) Contracted Power: is defined as the maximum real AC charge or discharge power deliverable by the ESS at the ESS Meter as set forth in Exhibit F-1 inclusive of auxiliary power at a 0.95 power factor.
- iii) BOL discharge duration: as set forth in Exhibit F-1 at the Contracted Power
- iv) BOL Roundtrip efficiency: as set forth in Exhibit F-1
- v) ESS shall be designed to be AC coupled.

“BOS Losses” to the ESS Meter is as shown in the table below, inclusive of all cabling and equipment. Detailed estimate of all BOS losses is shown in the table below. If the BOS Losses for Buyer responsible equipment is proven to be higher than the values stated in the table below, then the Buyer and Seller shall coordinate and come to a mutually agreeable solution to ensure Guaranteed Capacity is met. Such mutually agreeable solution may be subject to Article 16– Change Orders, of the Agreement.

Table A:

<b>BOS Loss Assumptions</b>		
DC Cabling between Energy Segment and Collection Segment	0.25%	Seller
DC Collection Segment	0.1%	Seller
DC Cabling between Collection Segment and Inverter	0.25%	Buyer
Inverter (PCS)	1.5%	Seller
LV Cabling	0.75%	Seller
Transformer (MVT)	0.95%	Seller
MV Collection	0.25%	Buyer
MV Cabling	0.05%	Buyer
Aux Power consumption	2.22%	Seller
<b>BOS Losses</b>	<b>6.16%</b>	

- C. During Commissioning, Seller requires the ability to deploy control applications that manage the ESS state of charge and maximize usable energy. Failure to provide this solution as described is a Buyer-Caused Commissioning Delay.
- D. D. Thermal management is designed to allow ESS Equipment to provide Contracted Power and Guaranteed Capacity for one full cycle. StackOS may automatically derate the ESS if any rest period between cycles is too short.
- E. The ESS shall be designed for a life of twenty (20) years. The ESS shall be designed to accommodate local conditions at its final installation location at or near longitude as detailed in Exhibit A. Buyer, Buyer's Contractor, and Seller shall coordinate the final installation location of the ESS.
- i) F. Site Environmental Conditions Site environmental conditions for design shall be as indicated below:

Temperature	Site Ambient [ -6 °F to 106 °F ]	
ASCE 7 10 Site Seismic Design Requirements	Type	Value
	S <sub>S</sub>	0.451
	S <sub>1</sub>	0.135
	S <sub>MS</sub>	0.65
	S <sub>MI</sub>	0.305
	S <sub>DS</sub>	0.433
	S <sub>DI</sub>	0.203
	Risk Category: [III] Site Class: [D – Default]	
Relative Humidity	0% to 100%	
Location	665 Manzano Expressway, Belen NM 87002	
ASCE 7 10 Ground Snow Load	10 psf	
ASCE 7 10 Wind Speed	120 mph	

- ii) Site elevation will be established at nominal feet above mean sea level, as indicated below:

<b>Site</b>	<b>Elevation [ft] <sup>1</sup></b>
Rio Del Oro Solar	5,010

iii) Site precipitation is as indicated below:

<b>Site</b>	<b>Precipitation [in]</b>				
	Annual Average Total <sup>1</sup>	10 year, 24-hour <sup>2</sup>	25 year, 24-hour <sup>2</sup>	100 year, 24-hour <sup>2</sup>	Average Snowfall Total <sup>3</sup>
Rio Del Oro Solar	9.45	1.88	2.22	2.76	9.6

<sup>1</sup> Based on NOAA Normals 1981-2010 data for Albuquerque, NM, or nearest weather station

<sup>2</sup> Based on NOAA Atlas 14 point precipitation frequency estimates (using nearest station based on site coordinates)

<sup>3</sup> Based on database for NM (<https://www.currentresults.com/Weather/New-Mexico/annual-snowfall.php>)

iv) All structures shall comply with the New Mexico Building Code (NMBC) 2015 (or latest revision as applicable).

v) Ice loads shall be in accordance with the NMBC 2015 and ASCE 7.

Equivalent uniform radial thickness,  $t = 0.25$  in  
Importance factor,  $I_i = 1.25$

E. The ESS shall be designed to meet all seismic requirements of the ASCE 7-16 category.

F. The ESS shall be designed to allow full Contracted Power for one full cycle. If there is no adequate rest period prior to the next cycle, then automatic deration may occur via StackOS.

G. Key Operational Parameters

The ESS shall be designed to accommodate the following “Key Operational Parameters”:

<b>Key Operational Parameters</b>	<b>Values</b>
Contracted Energy	Exhibit F-1
Contracted Power	Exhibit F-1

## ESS Component Specifications

Set forth herein are the Specifications for all Energy Segments, Collection Segments, StackOS, and PCS and MVT Sets.

### I. Energy Storage System Specifications

Equipment Information:

Energy Segment	
<b>Electrical</b>	
Model	Stack750
Cell chemistry	LFP
Stack Auxiliary Power Consumption	0.25kW / 5.6 kW (Standby/peak)
Auxiliary Power Voltage	480 Vac Line-Line, 3phase to Collection Segment
Auxiliary Power Frequency	60 Hz
DC Voltage Range	1,210 – 1,491 V
Rated Voltage (Nominal)	1,344 V
Rated Energy (Nominal)	740.4 kWh DC
Rated Power	185.1 kW @ 4 Hrs
Usable SOC Range	0 – 100%
Discharging Mode	CP
Maximum Charge/Discharge Current	160 A
Short Circuit Current	13.5 kA (will be verified by experiment)
Communication Type	Modbus TCP
Cycle Life (25 °C, [0.25P])	7,300 cycles based on one cycle per day.
<b>Environmental</b>	
Operating Temperature Range	-30°C to 50°C

Energy Segment		
Operating Relative Humidity Range	0-100% (Non-Condensing)	
Storage Humidity Range (during installation and commissioning)	0 - 100% (non-condensing)	
<b>Mechanical</b>		
Dimension (LxWxH)	8'1" W x 5'2" D x 10'8"	
Weight	20,000 lbs.	
Paint Color	Off-white	
<b>Protection</b>		
BMS Model	Powin Stack OS	
Grounding	Terminals floating, enclosure grounded.	
GFCI/Surge (Stack)	Yes	
Grounding/Bonding	Yes	
Fire Suppression and detection	Heat/Smoke Detectors	Y
	UL Certified Fire Panel with StackOS annunciation	Y
Hydrogen Gas Detection	Yes	
Ventilation	Yes	
Remote Stop/Shut-Off	StackOS	
Labeling	ANSI Z535.4-2011 (R2017)	
<b>Structural</b>		



Energy Segment	
Floor Load	Not rated for load bearing. All equipment is supported by structural framing.
Roof Load	50 psf
Wind Load Rating and Code (ASCE 7-16)	180mph; ASCE 7-16
Seismic Parameters	Sds: 1.58 Sd1: 0.94 Ie: 1.25

**Storage Conditions**

The following details the acceptable temperature conditions and corresponding durations within which the Energy Segment can be stored without connection to auxiliary power supply and/or climate control functionality. For the sake of clarity, Energy Segments should not be intentionally stored onsite without auxiliary power and climate control operational, but such storage does not violate the warranty provided it complies with the below table. Stack doors must remain always shut while stored onsite except during installation.

Maximum Storage Duration	Running Average Temperature
1 Day	-20 C to 45 C
7 Days	-20 C to 40 C
30 Days	-10 C to 30 C
180 Days	0 C to 25C

**Running Average Temperature (RAT)** refers to the rolling mean of the National Oceanic and Atmospheric Administration (NOAA) daily average ambient temperature at the site since delivery or loss of climate control.

**Storage Duration** refers to the maximum time, measured in consecutive days, during which the ESS may be stored without climate control in a specified RAT band and remain in specification. The clock starts at Stack delivery or loss of aux power and resets if climate control is restored, and cell temperatures are returned to 25 C.

The acceptable Storage Duration may become more restrictive or less restrictive with changes in the RAT. For example, if the RAT increases such that the allowable storage period goes from 180 days to 30 days, then ambient temps subsequently decrease, the allowable storage period may go back to 180 days.

**Example:**

In the following example, auxiliary power and climate control must be provided/restored by Day 8:

Energy Segment				
Days in Storage	Daily Average Temp (C)	Running Average Temp (C)	Acceptable Storage Duration	Max Days Remaining in Storage
1	27.0	27.0	30	29
2	29.0	28.0	30	28
3	30.0	28.7	30	27
4	34.2	30.1	7	3
5	33.0	30.6	7	2
6	27.0	30.0	30	24
7	31.0	30.2	7	0
8	31.0	30.3	7	-1
9	35.0	30.8	7	-2
10	35.0	31.2	7	-3

Note that the Storage Duration moves between 30 days and 7 days based on changes in the RAT.

Collection Segment	
<b>Electrical</b>	
Model	Powin Centipede Collection Segment
Aux Power Supply Voltage Range	480V Line – Line, 3phase
Frequency	60 Hz
<b>Environmental</b>	
Operating Temperature Range	-30°C to 50°C
Operating Relative Humidity Range	0-100%
<b>Mechanical</b>	
Dimension (L x W x H)	8'1" W x 7'3" D x 10'8"
Weight	11,000 lbs
Thermal Insulation	Rockwool panel with 30mm thickness throughout the enclosure (R-4.48)
Ingress Protection	NEMA 3R / IP 55

Collection Segment		
Cooling System	Forced Air HVAC	
Fire Suppress System	Alarm Panel	Y
	Horn/ Lights	Y
	Backup Power / UPS	Y
<b>Additional Equipment</b>		
DC Cabinets	Quantity 1-3 1500V rated DC cabinets. Each includes DC fusing, isolation meter, and [400-4200]A non-loadbreak manual disconnect switch	
Emergency Stop	Yes. Located outside Collection Segment door.	
AC Load Panel	Size <u>480V/208V, 180kVA</u>	
Environmental Controller	Quantity 1	
Fire Panel	Quantity 1	
Network Communication Devices	Quantity 1, Modbus IP	
Energy Segment configuration	3 buses with 7 Energy Segments maximum on each bus, or 2 buses with 10 Energy Segments maximum on each bus	
Circuit Protection	Fuses. Automatic Disconnects	
Backup Power/UPS	Quantity 1, 120V UPS – [2.2] kW (Collection segments)	
	Quantity 1-3, 208V UPS – [5] kW (Energy segments)	
Controller	StackOS	
HMI & Web Interface	Quantity 1 available in Collection Segment. There is also a display in every Energy Segment.	
Labeling	ANSI Z535.4-2011 (R2017)	
<b>Structural</b>		

Collection Segment	
Floor Load	Not rated for load bearing. All equipment is supported by structural framing.
Roof Load	50 psf
Wind Load Rating and Code	180mph; ASCE 7-16
Seismic Parameters	Sds: 1.58 Sd1: 0.94 Ie: 1.25

Inverter	
Manufacturer	SMA
Model	Sunny Central Storage 3950 UP-US
Nominal Active Power at 25°C at 1200Vdc	3,950 kW
AC Apparent Power at 50°C at 1200Vdc	3,365 kVA
Maximum AC Output Current	3,320 A
Nominal AC Voltage	690 Vac
Operating Frequency	60 Hz Nominal
Power Factor	0.8 leading ... 0.8 lagging
Harmonic Distortion (THDi)	< 3% at nominal power
DC Voltage Range	1,003 Vdc to 1,500 Vdc
Maximum DC Current	4,750 A
Maximum Efficiency	98.8%
Enclosure Rating	NEMA 3R
Weight (Approximate)	8,200 lbs
Air Flow	6,500 m <sup>3</sup> /hr
Type of Ventilation	Forced air cooling
Operating Temperature Range	-25°C to +60°C
Relative Humidity	95% to 100% (Condensing)/ 0% to 95% (Non-Condensing)

Inverter / Transformer Skid (if applicable)	
Manufacturer	SMA
Model	MV Power Station MVPS – 4600 – S2-US-10
Weight	<18 tons
Dimensions [L x W x H] mm	238.5” x 96.0” x 114.0”
Vector Configuration	YNd11

## II. Design Standards / Codes

Standard/ Code	Title
UL 1973	Standard for Batteries for Use in Stationary, Vehicle Auxiliary Power and Light Electric Rail (LER) Applications
UL 9540A	Test Method for Evaluating Thermal Runaway Fire Propagation in Energy Storage Systems
UL 1741SA	Inverters, Converters, Controllers and Interconnection System Equipment for Use with Distributed Energy Resources
IEEE C62.41-1991	IEEE Recommended Practice for Surge Voltages in Low-Voltage AC Power Circuits
NEC 2017	National Electrical Code
NFPA 855	Standard for the Installation of Stationary Energy Storage Systems
UN38.3	Certification for Lithium Batteries
UL9540 (Field Certification)	Standard for Energy Storage Systems and Equipment

In addition to this list, all state and federal codes must be followed.

<b>Internet Requirements:</b>	
Downlink Bandwidth	10Mbps ↓ (regardless of system size)
Uplink Bandwidth:	System Size < 250 MWh: 6 Mbps ↑
Monitoring data usage:	~0.25 GB/MWh/Day

**Exhibit D**  
**Project Schedule**

*[See attached]*

**Exhibit D**  
**Project Schedule**

<b>Milestone</b>	<b>Responsible Party</b>	<b>Buyer's Responsible Date</b>	<b>Supplier's Target Completion Date</b>	<b>Guaranteed Date</b>
Shipment of First Collection Segment(s) (ex-works ("EXW"))	Supplier	N/A	March 27, 2024	None
Site Readiness Date	Buyer	April 9, 2024	N/A	None
Delivery of Collection Segment <i>Delivery of no more than 2 Collection Segment to the Delivery Location per week*</i>	Supplier	N/A	Starting April 10, 2024 Complete April 11, 2024	April 25, 2024 (the "Guaranteed Collection Segment Delivery Date")
Delivery of PCS/MVT Sets:	Supplier	N/A	Starting April 10, 2024 Complete April 11, 2024	April 25, 2024 (the "Guaranteed PCS/MVT Sets Delivery Date")
Shipment of first Energy Segments-EXW	Supplier	N/A	April 29, 2024	None
Energy Segment Readiness Date (i.e., internet service & Aux. Power connected & energized)	Buyer	May 1, 2024	N/A	None
Delivery of Energy Segments <i>Delivery of no more than 16 Energy Segments to the Delivery Location per day*</i>	Supplier	N/A	Starting May 13, 2024 Complete May 15, 2024	May 29, 2024 (“Guaranteed Energy Segments Delivery Date”)
Backfeed Power available (and the ability to discharge and accept energy)	Buyer	May 29, 2024	N/A	None
Installation Acceptance Date	Buyer	14 Days after Delivery of Energy Segments	N/A	None
Commissioning Completion Date	Supplier	N/A	29 Days after Installation Acceptance Date	43 Days after Installation Acceptance Date (“Guaranteed Commissioning Completion Date”)

\*Provided that Supplier has not exceeded the maximum delivery rates stated above, Buyer may also be liable for

*any demurrage or standby charges incurred by Supplier for Buyer's failure to unload ESS Equipment within 2 hours of a truck's arrival at the Delivery Location*



**Exhibit E**  
**Payment and Termination Payment Schedule**

*[See attached]*

**Exhibit E**

**Payment and Termination Payment Schedule**

[REDACTED] consisting of the following components:

Cost Scope	Cost
Equipment	[REDACTED]
3 <sup>rd</sup> Party Equipment	[REDACTED]
Technical Support	Incl. per Exhibit A
Installation Support	[REDACTED]
Commissioning Support	[REDACTED]
Buyer Training Support	Incl. per Exhibit A
Delivery to Site - DDP Cost Amount (subject to DDP Cost Adjustment per Section 9(h)(ii) of the Contract)	[REDACTED]
<b>Total Contract Price</b>	[REDACTED]

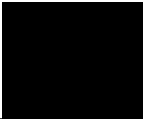
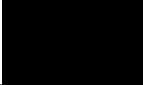

The Contract Price does not include costs for New Mexico Gross Receipts Taxes or other local sales and excise taxes.

- 2. Payment of Contract Price.** The Contract Price is payable progressively upon the achievement of the following payment milestones:

#	Milestone	Price (USD)	Estimated Dates	Contract Price %	Cumulative %	Payment Term
1	LNTP Payment	[REDACTED]	3/9/2023	[REDACTED]	[REDACTED]	Net 7 Business Days
2	Effective Date*	[REDACTED]	4/20/2023	[REDACTED]	[REDACTED]	Net 30 Days
	[REDACTED]	[REDACTED]	4/20/2023	[REDACTED]	[REDACTED]	
3	90 Days After Effective Date	[REDACTED]	7/19/2023	[REDACTED]	[REDACTED]	Net 30 Days
	[REDACTED]	[REDACTED]	7/19/2023	[REDACTED]	[REDACTED]	
4	Completion of Delivery of all ESS Equipment	[REDACTED]	5/29/2024	[REDACTED]	[REDACTED]	Net 30 Days
	[REDACTED]	[REDACTED]	5/29/2024	[REDACTED]	[REDACTED]	
5	Commissioning Completion	[REDACTED]	6/27/2024	[REDACTED]	[REDACTED]	Net 30 Days
6	Final Acceptance	[REDACTED]	7/11/2024	[REDACTED]	[REDACTED]	Net 30 Days

\*refers to Effective Date of the Contract

**Termination Payment.** In the event Supplier terminates the Contract in accordance with Section 19(b)(iii) or Buyer terminates the Contract for convenience pursuant to Section 20, Buyer shall make the following payment to Supplier:

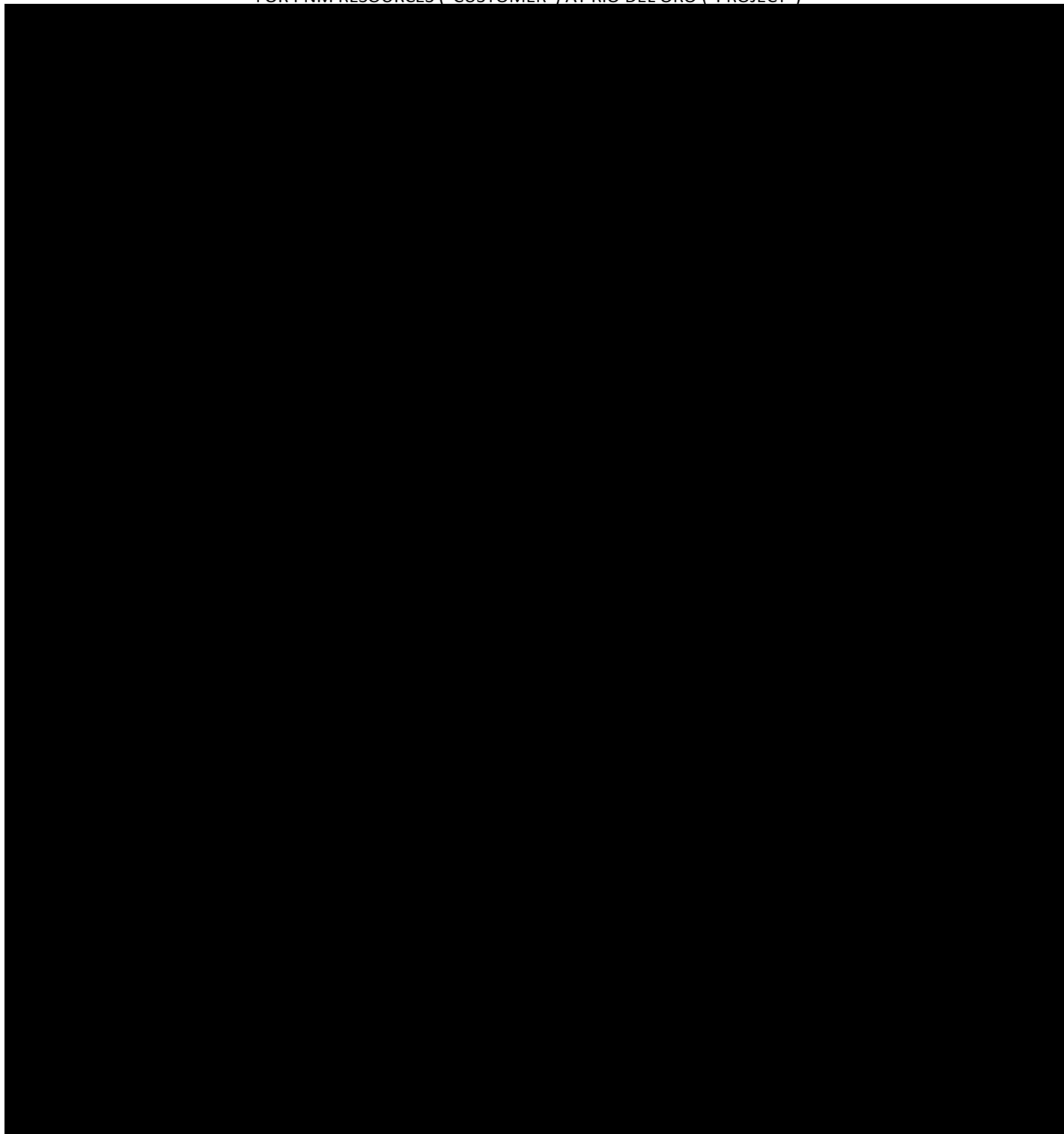
#	Timing of Termination Notice	Total Termination Payment as Percentage of Contract Price
1	After Effective Date but prior to notification of manufacturing start	
2	After notification of manufacturing start	
3	After Supplier's notification of ESS Equipment leaving manufacturing Worksite(s)	

**Exhibit F-1**  
**Performance Guarantee**

*[See attached]*

**Exhibit F-1**  
**Performance Guarantee**

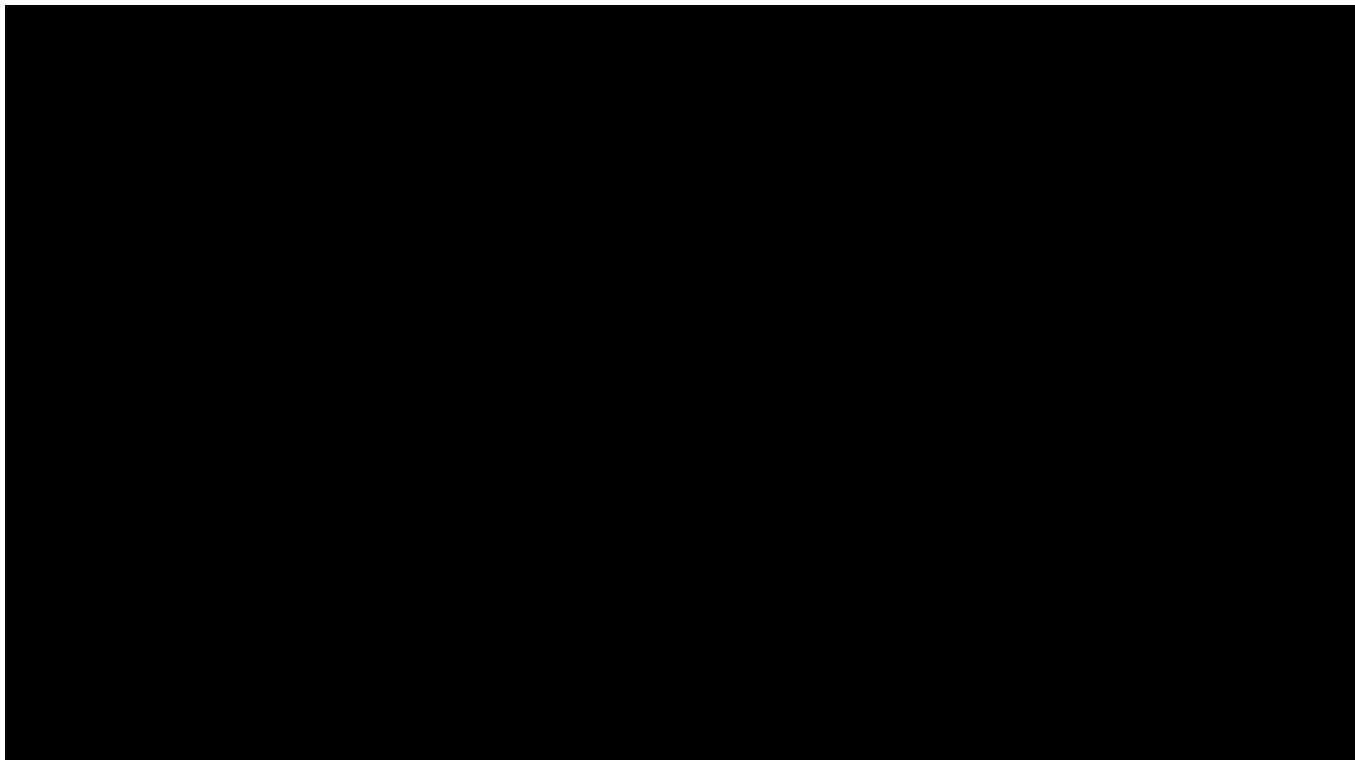
POWIN STACK PERFORMANCE GUARANTEE  
FOR PNM RESOURCES ("CUSTOMER") AT RIO DEL ORO ("PROJECT")



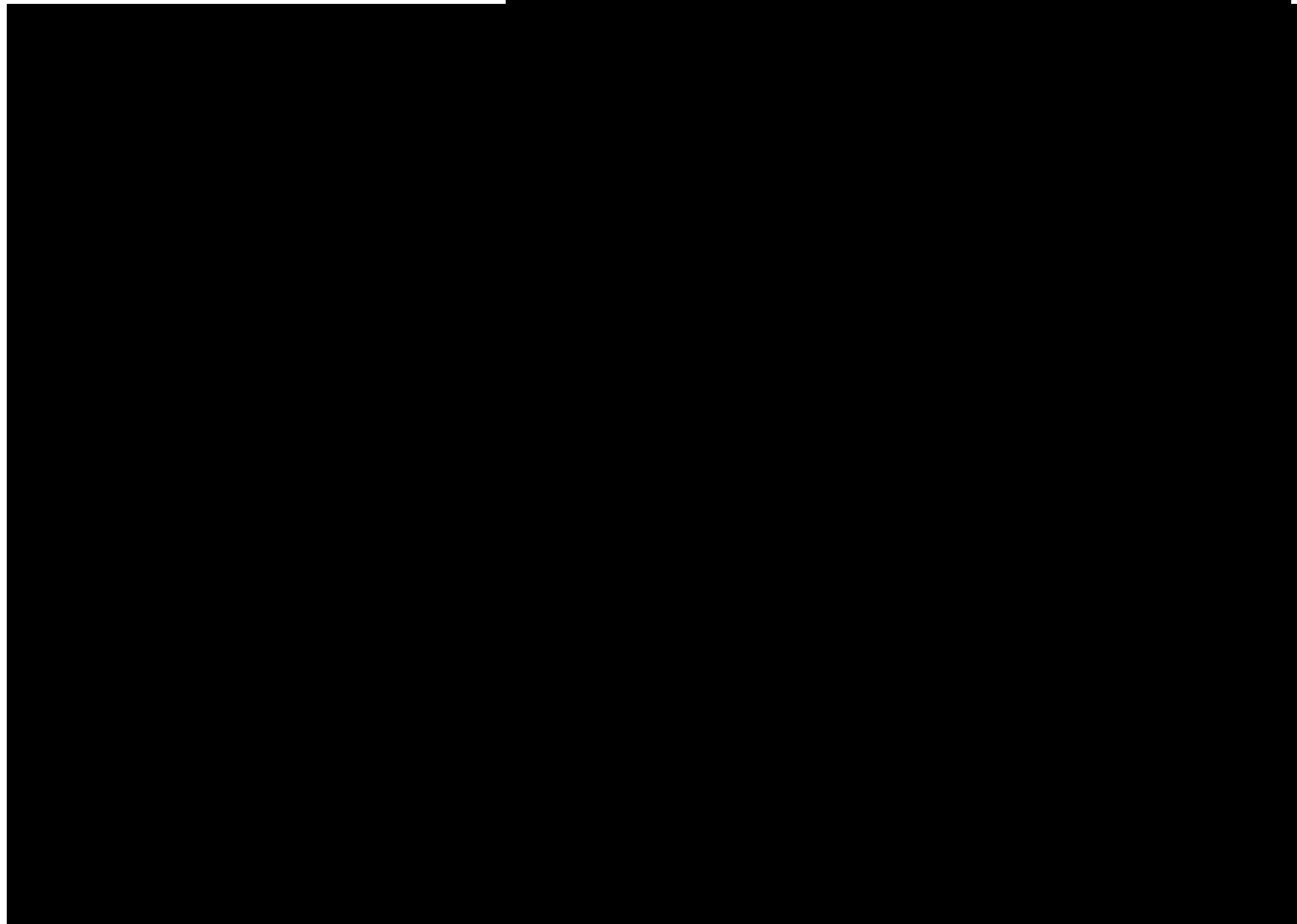
**Energy Capacity Guarantee:**

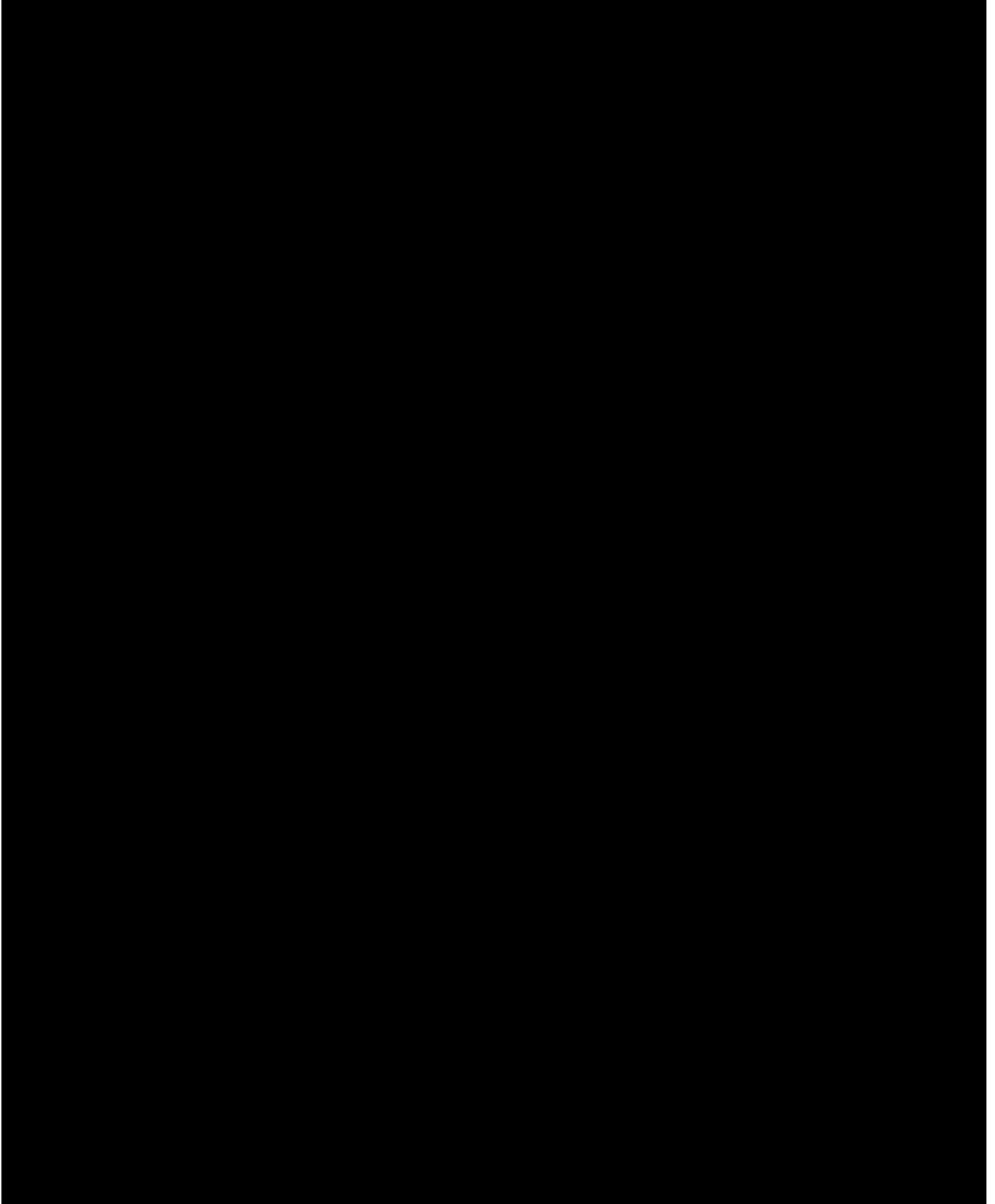
**StackOS Guarantee:**

**Capacity Test Procedure:**



**Electrical Conversion Efficiency Guarantee:**



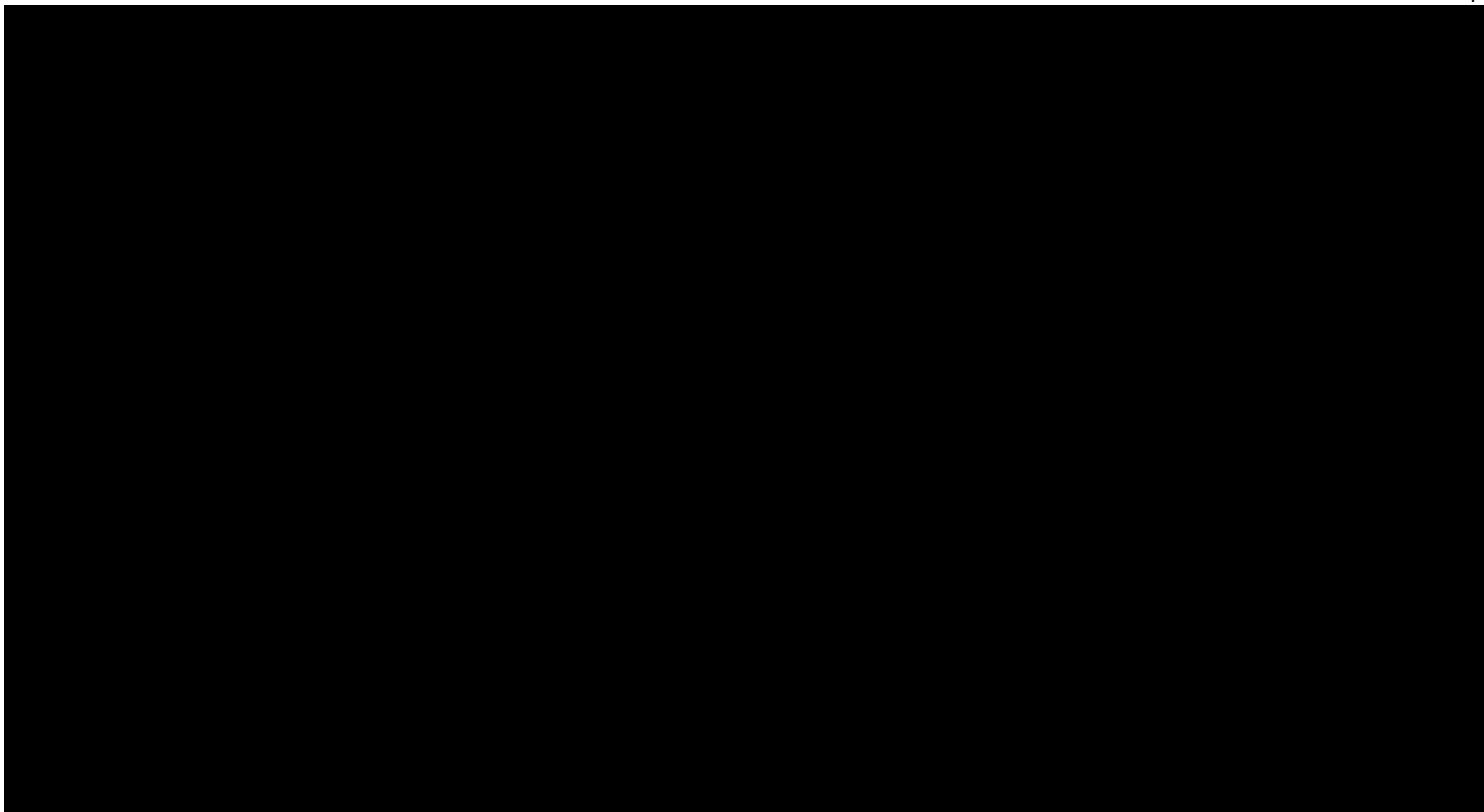


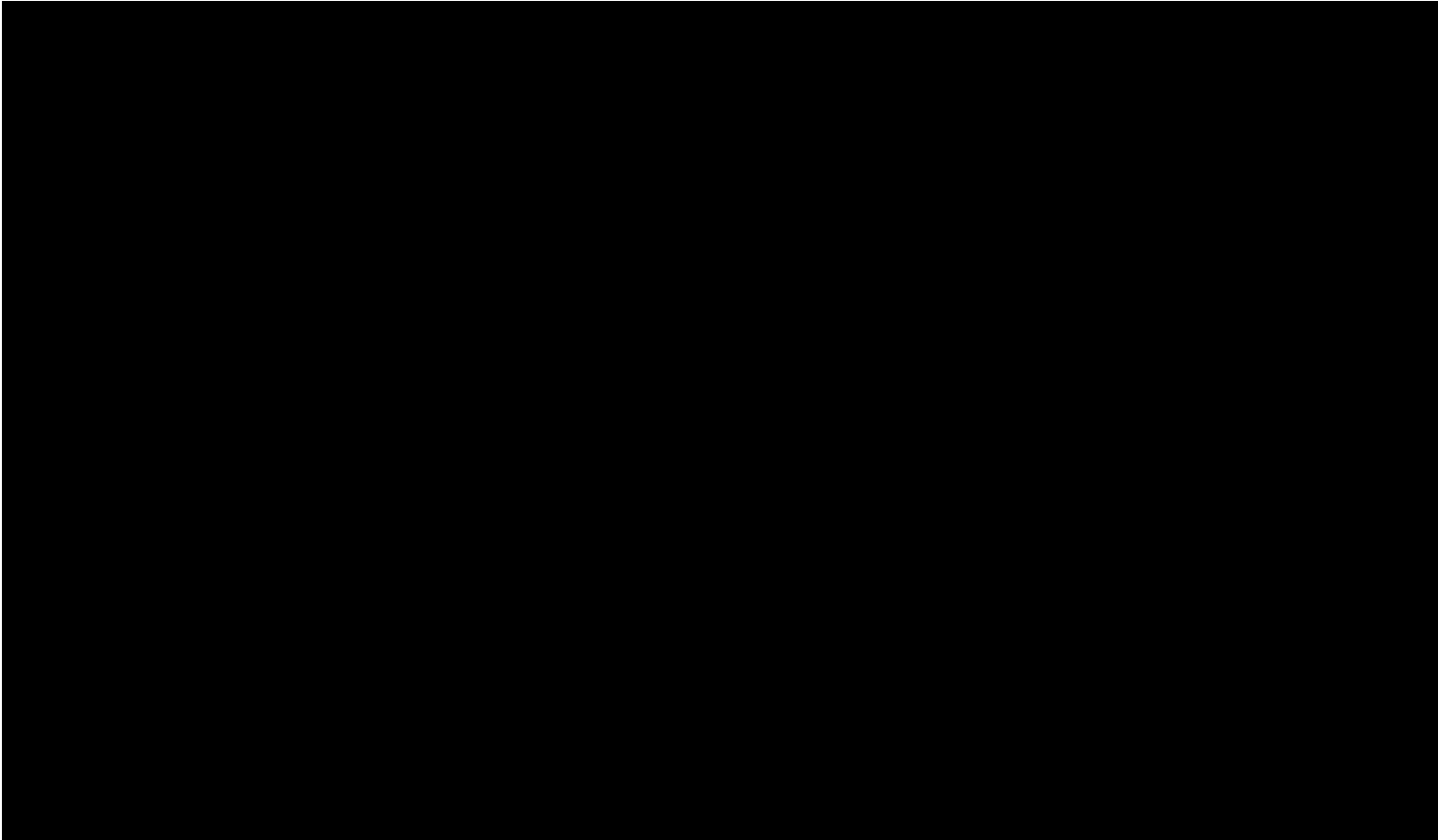


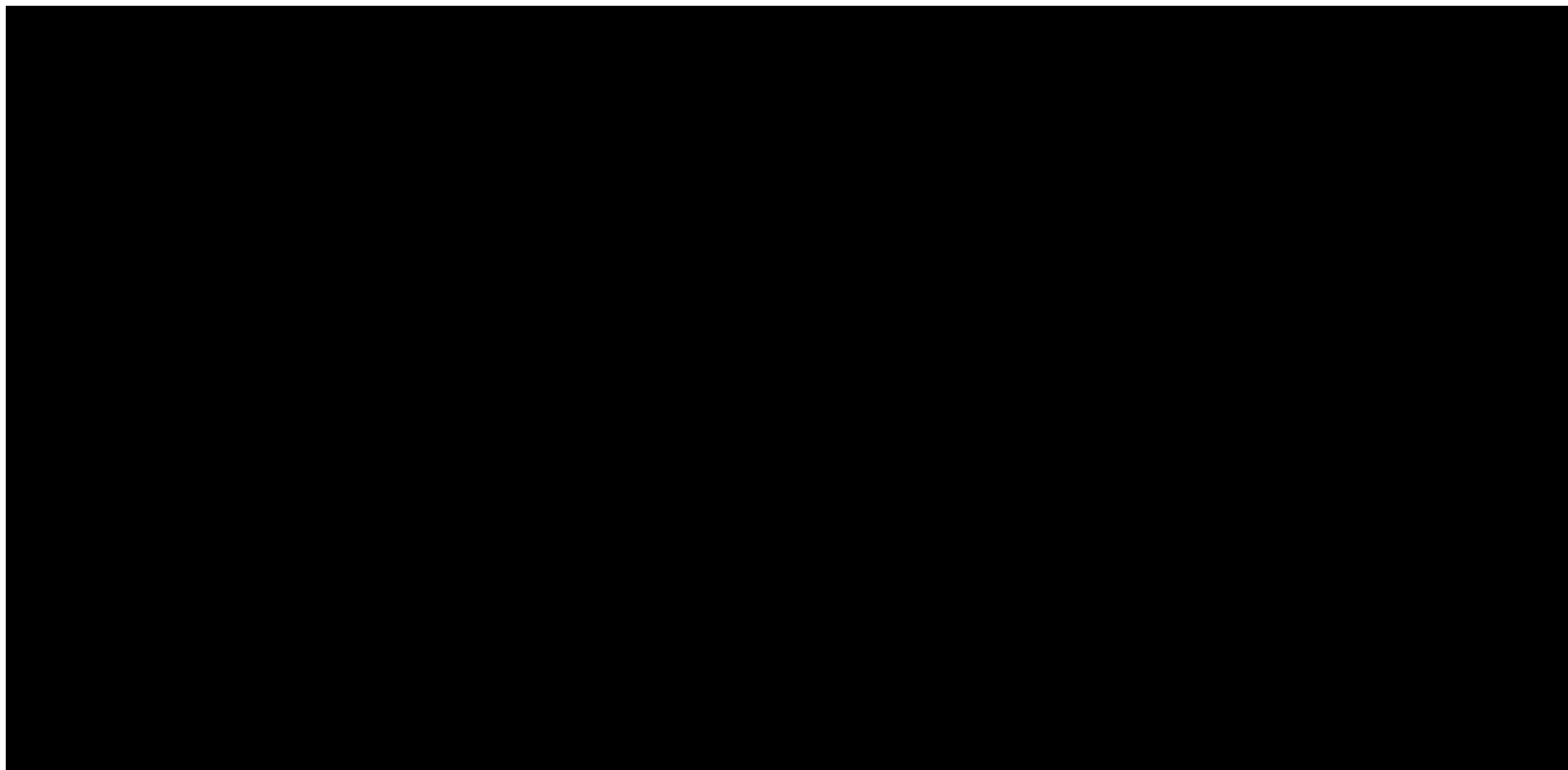
**Additional Terms:**

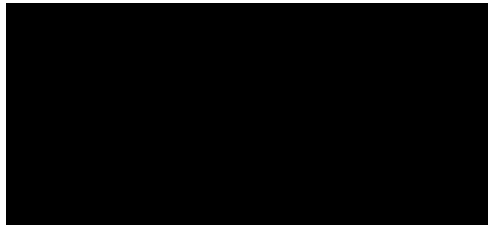




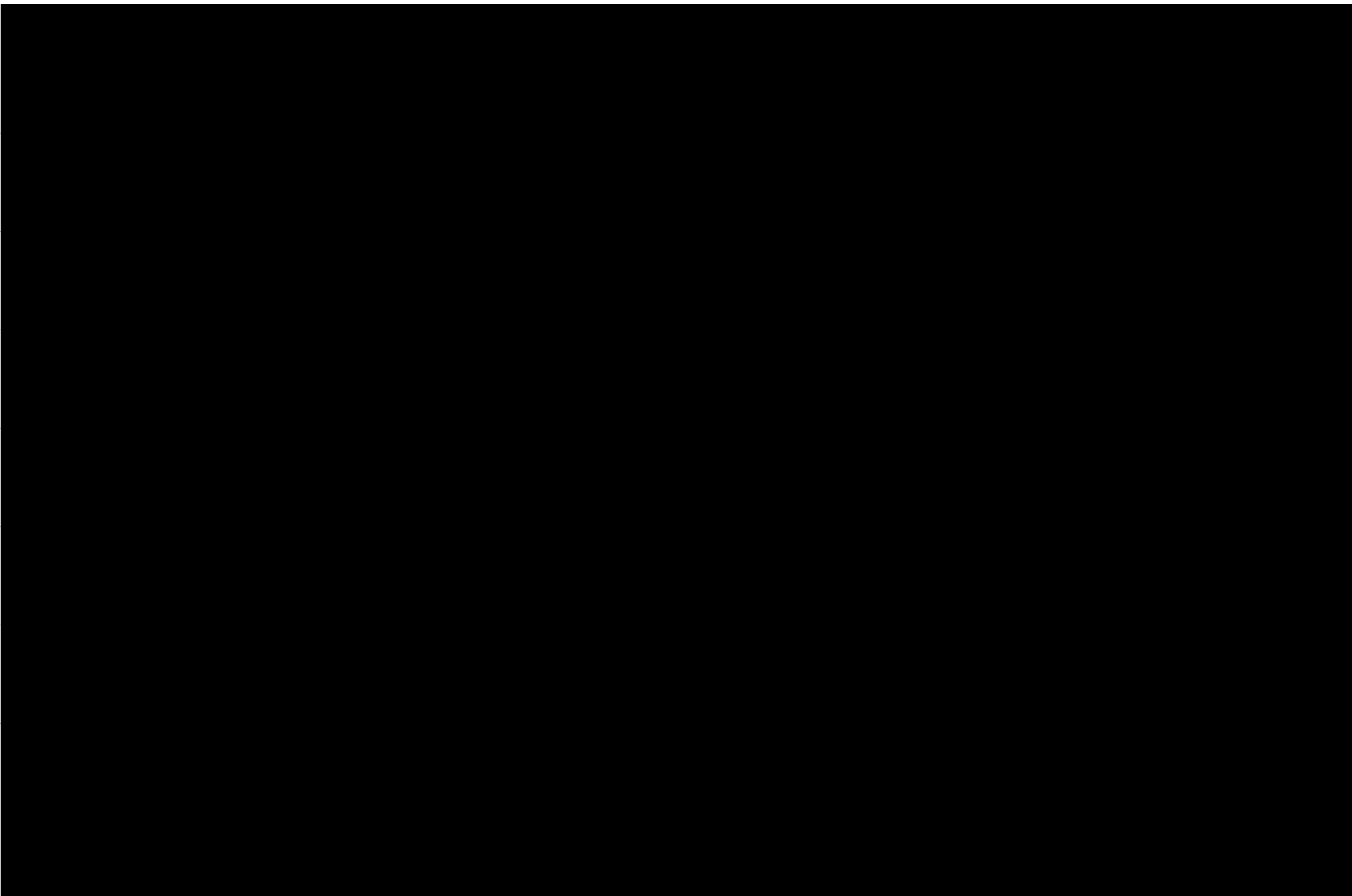














**Exhibit F-2**  
**Limited Commercial Warranty**

*[See attached]*

## Exhibit F-2

### Limited Commercial Warranty

POWIN LIMITED COMMERCIAL WARRANTY  
FOR PNM RESOURCES (“CUSTOMER”) AT RIO DEL ORO (“PROJECT”)

This “Commercial Warranty”, (the “Warranty” or “LCW”), covers defects and breakage in the ESS Equipment.

**Limited Commercial Warranty:** The workmanship and performance of all equipment manufactured by Powin and supplied to the Customer are guaranteed during the period commencing on commencement of Guarantee Period in the Performance Guarantee and ending on the earlier of the date that is 36 months thereafter or the date that the Performance Guarantee ends (the “Warranty Period”). During the Warranty Period, the ESS Equipment shall perform according to the Performance Guarantee and be free from any workmanship or material defects. The Warranty applies to all materials and equipment supplied by Powin, as listed in Schedule A (the “Warranty Eligible Equipment”).

In satisfaction of its obligations under the Warranty, Powin will, at its election, repair or replace the defective component(s) free of charge, as long as Customer notifies Powin of the defect during the Warranty Period. The Warranty will cover all costs of material, labor and travel necessary to dismantle, inspect, transport, repair or replace, install, and verify proper operation of the ESS Equipment.

Powin may use new and/or reconditioned parts in its performance of warranty-related service. Powin reserves the right to use parts or products of original or improved design in the repair or replacement, provided such components are (i) in new unused condition, or (ii) if reconditioned of quality not less than the component being replaced (including with respect to costs of ownership, operation and maintenance and system performance), and (iii) in no way void any applicable equipment warranties (or any portion thereof). If Powin repairs or replaces a component, that component’s performance shall be guaranteed for the later of the remaining portion of the original Warranty or 365 days from the date of repair. In no event shall the Warranty exceed 48 months from the commencement of the Guarantee Period. All replaced products and all parts removed from the repaired product as the result of a Warranty claim become the property of Powin.

Powin reserves the right to inspect the faulty component(s) and determine if the defect is due to material or manufacturing flaws. Powin also reserves the right to charge for material and time expended at industry standard rates if the defect is excluded from the Warranty, as described below. The Warranty does not cover costs related to inspection, removal, installation, or repair of ESS components not included in Schedule A. Where the Warranty Eligible Equipment that gave rise to the Warranty claim causes damage to other Warranty Eligible Equipment, Powin will be responsible (up to the limitation of liability set forth in the Agreement); provided, however, to the extent Buyer receives insurance proceeds (net of any deductible) arising from a Warranty claim, Buyer shall reimburse Powin in an amount equal to such proceeds.

The Warranty does not cover any defect or damage caused by any of the following occurrences: normal wear and tear; shipping or transportation; rigging and offloading; exposure to unsuitable environmental conditions, including but not limited to damage due to lightning strikes; unauthorized or abnormal use or operation; negligence or accidents, including but not limited to lack of maintenance or improper maintenance; material or workmanship not provided by Powin or its representatives; force majeure events or other acts of God such as fire, flood, earthquake; or terrorism, or war. In no event shall the occurrence of any of the above be excluded from the Warranty to the extent they were caused by, or the responsibility of, Powin or any of its affiliates. This Warranty will terminate if the ESS is ever operated or experiences conditions defined in Exhibit F-1 that void the Performance Guarantee.

Warranty claims or questions can be submitted to the Powin Service Hotline at 855-888-3659 or via email at [service@powin.com](mailto:service@powin.com).

SCHEDULE AWARRANTY ELIGIBLE EQUIPMENT

- Powin Stack product and all subcomponents
- Powin provided enclosure and subcomponents:
  - Lighting system
  - Hydrogen detection system
  - Fire detection and suppression system
  - AC breaker panel for comms and aux loads
  - HVAC and associated control equipment and ducting
  - DC collection, fusing, cabling, and cable trays
  - Auxiliary power cabling
  - Excluded as Warranty Eligible Equipment
    - Uninterruptable power supplies
    - Networking equipment, including StackOS computer, HMI, switches, and routers
- PCS
- MVT

**Exhibit G**  
**OEM Warranties**

*[See Attached]*

**SMA Solar Technology AG** | Sonnenallee 1 | 34266 Niestetal | Germany  
 Phone: +49 561 9522-0 | Fax: +49 561 9522-100 | Internet: www.SMA.de | E-Mail: info@SMA.de  
 Amtsgericht Kassel (District court) Kassel HRB (registration number) 3972  
 Vorsitzender des Aufsichtsrats (Chairman of the Supervisory Board): Uwe Kleinkauf  
 Vorstand (Managing Board): Dr.-Ing. Jürgen Reinert, Thomas Pixa



## SMA Limited Factory Warranty

Note: this description of SMA Solar Technology AG's (hereinafter "SMA") Limited Factory Warranty is effective and applies to all purchases of the Product Types stated below conducted after **2022-06-01** and to that extent supersedes all prior SMA Limited Factory Warranty rights.

The SMA Limited Factory Warranty is not a guarantee of durability and does not include device availability. It applies exclusively to new devices of the following Product Types:

SUNNY CENTRAL: SC-xxxx-UP, SC-xxxxUP-US, SC xxxCP-JP, SC-xxxx, SC-xxxx-US, SCxxxx-EV, SC-xxxx-EV-US

SUNNY CENTRAL STORAGE: SCS xxxx, SCS-xxxx-US, SCS-xxxx-EV, SCS-xxxx-EV-US, SCS-xxxx-UP, SCS-xxxx-UP-US, SCS-xxxx- UP-XT, SCS-xxxx- UP-XT-US

SMA DC/DC CONVERTER: DPS-500

MEDIUM VOLTAGE BLOCK: MVB-US, MVB-EV-US

MEDIUM VOLTAGE POWER STATION: MVPS-xxxx, MVPS xxxSC, MVPS xxxSC-JP, MVPS-xxxx-S2, MVPS-xxxx-S2-US, MVPSxxxx-S4-US, MVPS-xxxx-S-AU

SMA POWER PLANT CONTROLLER: PPC-10

SMA REDUNDANCY CONNECTOR: PPM-RC-10

SMA HYBRID CONTROLLER: HYBRID-CONTROLLER

POWER PLANT MANAGER: PPM-10

SMA DATA MANAGER L: EDML-10

SUNNY HIGHPOWER PEAK3 ("SHP PEAK3"): SHP xxx-20, SHP xxx-US-20, SHP xxx-JP-20

### No Restriction on Statutory Warranty Rights or other National Statutory Rights

The statutory warranty obligation of the device seller and the corresponding statutory warranty rights of the buyer which may not lawfully be excluded or limited are not affected by this SMA Limited Factory Warranty. Furthermore, should this SMA Limited Factory Warranty violate any national statutory rights which may not lawfully be excluded or limited and which grant the warranty claimant any rights in addition to the SMA Limited Factory Warranty, then such national statutory rights shall not be affected by the provisions of this SMA Limited Factory Warranty.

### Warrantor

The warrantor is SMA. SMA reserves the right to have the services specified in this SMA Limited Factory Warranty conducted by SMA authorized partners.

## Warranty Eligibility

The persons who are eligible to raise claims under this SMA Limited Factory Warranty are only (i) buyers that have purchased the devices themselves and have put them into operation for the first time (herein "Initial Operator") and (ii) buyers that have acquired the devices legitimately and with no modifications from the Initial Operator or the Initial Operator's legal successor(s). The persons eligible under this SMA Limited Factory Warranty are herein referred to as "warranty claimant". Other persons are not authorized to assert claims against SMA under this SMA Limited Factory Warranty unless authorized by the warranty claimant. Assigning and/or transferring these rights to persons other than a warranty claimant is not permitted.

### **Optional: Corrective Maintenance – 1 Component Exchange by Customer**

Under the SMA Limited Factory Warranty the Customer has the option to perform the Corrective Maintenance -1 component exchange for the Sunny Central/Sunny Central Storage products after successfully completing the Preventative and Corrective Maintenance training offered by SMA for purchase. If this option is selected for the Factory Warranty period all components and Corrective Maintenance – 2 component exchange will be warranted and performed by SMA. An additional appendix will be provided concerning the process, training and requirements to perform the Corrective Maintenance – 1 component exchange if this option is selected.

## Warranty Period

For the devices of the Product Types mentioned above, including their standard feature options and factory built customizations, the warranty claimant receives a **63-MONTH** SMA Limited Factory Warranty from delivery date per agreed Incoterm in the sales contract from SMA unless a different warranty period has been agreed to between Warrantor and Buyer.

If structural or unauthorized changes or unauthorized (attempted) repairs of the device have been made, and SMA has not requested these changes or repairs, the SMA Limited Factory Warranty will be terminated on the date these structural or unauthorized changes or unauthorized (attempted) repairs were made, regardless of the period mentioned above. If damage has been sustained to any structurally altered or (attempted) repaired devices that were not altered or (attempted) repaired at SMA's request, the costs incurring in order to repair the damages, regardless of whether these structural changes were cause of these damages, are not covered by this SMA Limited Factory Warranty. SMA will inform the warranty claimant in advance about these costs. The repair will be performed depending on the warranty claimant's consent to cover these costs.

### **Specific Warranty Period Information for the SUNNY HIGHPOWER PEAK3**

Independent of the duration of the SMA Limited Factory Warranty, for the SHP PEAK3 the warranty period begins when the device is first commissioned (in line with the commissioning report) or the invoice date by the first warranty claimant. The requirement for this is a product registration on the SMA homepage ([www.my.sma-service.com/s/product-registration](http://www.my.sma-service.com/s/product-registration)) within 12 months after commissioning or the invoice date for the first warranty claimant. If the product registration does not occur, the factory warranty period for the SHP PEAK3 will begin on the delivery date per agreed Incoterm in the sales contract from SMA.

## Geographic Scope of Application

This SMA Limited Factory Warranty applies worldwide. Warranty coverage may vary in certain countries within the geographic scope of application (see below).

## Warranty Coverage

This SMA Limited Factory Warranty covers the costs of defects in workmanship and materials during the warranty period according to these conditions. SMA will, at its own discretion, repair or replace the defective part(s) or the device according to the specific conditions as mentioned below, provided that:

- a trained person properly maintains the equipment according to the published SMA and/or manufacturer maintenance documents including, without limitation, any protocols, regulations, and intervals required therein, (the type label on the device must be completely legible), and;
- the warranty claimant promptly notifies SMA of a device fault or defect as soon as an indication of such a fault or defect occurs, and;
- SMA, through remote diagnosis or inspection, establishes the existence of such a defect covered by this SMA Limited Factory Warranty.

SMA will, at its option, use new and/or equal to new condition parts of original or improved design in the repair or replacement of the warranty claimant's device.

### Specific Information for the SUNNY HIGHPOWER PEAK3

If a SHP PEAK3 becomes defective during the warranty period, the device will be (at the discretion of SMA):

- replaced with a device of equivalent value with regard to product type and age, or
- repaired on-site by SMA or a service partner appointed by SMA (when SMA reasonably concludes that the geographical area in which the system is operated is deemed too risky to render on-site services, SMA's obligations to render these services for said area are suspended for the period in which such risk is reasonably deemed to exist), or
- repaired at SMA's premises by SMA or a service partner appointed by SMA, or the warranty claimant must accept a replacement device of equivalent value with regard to product type and age even if it has cosmetic defects that do not affect energy production, or safety compliance. SMA will, at its option, use new and/or equal to new condition parts of original or improved design in the repair or replacement of the warranty claimant's device.

### Specific Information if SMA chooses to Supply a Replacement Device (specific for SHP PEAK3)

If SMA decides to replace the device, SMA will at its discretion either send in advance a replacement device or send a replacement device after prepayment of the value of the replacement device and the costs of delivery, or send a replacement device after receipt of the defective device. As required by SMA, the warranty claimant must return the defective device at its own risk in a packaging that is suitable for its transportation to an address defined by SMA that will be located within the same country that the replacement device is shipped from. The costs for removal and replacement of the device, as well as the transportation costs for sending the replacement device and returning the defective device (including, but not limited to, export certifications, inspections, and customs duties) are to be borne entirely by the warranty claimant. However, if the device is installed in a **SMA Primary Support Country**, (see table below) the SMA Limited Factory Warranty will also cover transportation costs, export certifications, inspections, and customs duties for replacement and returned devices.

SMA will retain ownership of the replacement device that has been delivered until it receives the defective device.

If SMA has decided to request from the warranty claimant the prepayment of the value of the replacement device before delivery of the replacement device, SMA will refund to the warranty claimant the amount received by the warranty claimant as prepayment of the value of the replacement device once the warranty claimant has returned to SMA the defective device and this defective device does not have any further defects not previously made known to SMA.



If the warranty claimant returns the defective device more than thirty (30) calendar days after receipt of the replacement device, then SMA has the right to charge the warranty claimant for the cost of administering the overdue RMA (Return Material Authorization) account. Return items will not be accepted without a valid RMA number obtained from SMA that is clearly displayed on the returned items packaging.

### **Specific Information if SMA chooses to Repair a Device at SMA's Premises (specific for SHP PEAK3)**

If the device is to be repaired at SMA's premises, the warranty claimant must remove the defective device and send it for repair to SMA in Kassel, Germany at its own risk in a packaging that is suitable for the transportation. Once the device has been repaired at SMA's premises, SMA will return the repaired device to the warranty claimant. The costs for removal and replacement of the device, as well as the costs for sending the device to SMA's facilities in Kassel, Germany and returning it to the warranty claimant including, but not limited to, transportation costs, export certifications, inspections, and customs duties are to be borne entirely by the warranty claimant. However, if the device is installed in a **SMA Primary Support Country**, (see table below), the SMA Limited Factory Warranty will also cover transportation costs, export certifications, inspections, and customs duties for the returned and repaired device.

### **Specific Requirements regarding Commissioning**

The SMA Limited Factory Warranty only applies to devices which have been commissioned by an employee of the SMA group itself or a SMA authorized partner. This restriction does not apply to the SMA Data Manager L (EDML-10) and the SHP PEAK3 which can be commissioned by the warranty claimant or third parties.

### **Specific Requirements regarding Operation and Preventative Maintenance**

The following provisions apply to operation, preventative maintenance and required documentation thereof:

- The SMA Limited Factory Warranty requires that the device is operated within applicable specifications, and maintained per the manufacturer's maintenance manuals and protocols.
- To determine the validity of the SMA Limited Factory Warranty, SMA reserves the right to request documented proof of true records of proper preventative maintenance before servicing, as well as true records showing the devices have been operated in compliance with their specifications. If a copy of each protocol of the preventive maintenance from the start of the Factory Warranty period is not provided to SMA upon request, the SMA Limited Factory Warranty is void. This also applies should no operational records be provided confirming compliant device operation.
- If remote or on-site diagnostics are performed in response to damage, defect, or reduced performance and the underlying cause of the reported issue is determined to be the result of improper operation or preventative maintenance (either lack thereof, performed at irregular intervals, or physical damage caused negligently or otherwise), SMA will require payment for services not covered under this SMA Limited Factory Warranty prior to any repair activity taking place, included but not limited to the cost of any parts, labor and transportation that may be necessary to make a complete repair.

### **Specific Information regarding Repair Coverage**

When devices are installed in a **SMA Primary Support Country** (see table below), the SMA Limited Factory Warranty includes replacement parts and/or exchange devices, repair labor costs, transportation costs, export certifications, and inspection as well as travel, accommodations, and expenses for SMA Service personnel for on-site repairs. If the installation site is not in a SMA Primary Support Country, the warranty claimant shall bear costs, including, but not limited to packaging, transportation, export certifications, inspections, taxes, and customs duties costs for replacement and return parts, as well as the travel, accommodations, and expenses of SMA Service personnel for on-site repairs.

### Specific Information on the Coverage of Other Costs

SMA will inform the warranty claimant of any costs (including, but not limited to transportation, customs duties, travel, and/or accommodation to the extent they are not covered by this SMA Limited Factory Warranty) that require payment in advance of the repair action. The repair will be performed depending on the warranty claimant's consent to cover these costs.

### SMA Primary Support Countries (Countries in **bold** are in addition and specific only for the SHP PEAK3)

SMA Primary Support Countries are the following countries, however excluding their associated islands and overseas territories:

Australia	Austria	Brazil	Bulgaria	Canada*	Chile	Denmark
France	Germany	Greece	Hungary	India	Israel	Italy
Japan	Jordan	<b>Liechtenstein</b>	Mexico	<b>Monaco</b>	Netherlands	<b>New Zealand</b>
<b>Other EU countries</b>	Philippines	Poland	Portugal	Puerto Rico	Romania	<b>San Marino</b>
Slovakia	South Africa	South Korea	<b>Switzerland</b>	Spain	<b>Taiwan</b>	Thailand
Turkey	United Arab Emirates	United Kingdom	United States of America	<b>Vatican City</b>	Vietnam	

\* Applies exclusively to Ontario and Quebec provinces

### Warranty Exclusions

#### Temporary exclusion of SMA services in high risk areas:

Following international best practices as well as its employee security policy, SMA constantly evaluates the risk potential of areas in which on-the-ground and other services are likely to be rendered for SMA devices (hereinafter the "Services"). Such risk evaluation is based on international assessment standards, in particular the City/Country Security Assessment Rating (CSAR) as applied by iJET® or comparable institutions (hereinafter the "Area Risk Assessment"). Aspects considered in such Area Risk Assessment include inter alia risk of war (whether undeclared or not), terrorism, riots, kidnapping or comparable threats.

Against this background, the following stipulations apply:

- (1) In case that an Area Risk Assessment leads to the conclusion that an iJET® rating of 5 (very high), a similar rating from a comparable institution or a travel ban from the German Federal Foreign Office applies for a particular area, SMA's obligations under this SMA Limited Factory Warranty to render on-site Services like repair works are suspended for the period during which such very high risk rating or such travel ban applies.
- (2) In case that such an Area Risk Assessment leads to an iJET® rating of 4 (high) or a similar rating from a comparable institution and there is no travel ban from the German Federal Foreign Office, SMA will render on-site Services under this SMA Limited Factory Warranty only if:
  - the warranty claimant ensures full security (including possible evacuation) for the SMA personnel during its entire stay in such area, and
  - the warranty claimant bears the costs of such full security protection, and
  - travel to the area is not withheld due to concerns by SMA's Security Officer made in its reasonable discretion.

The warranty claimant has to provide SMA in due time (at least 30 days) before any Services shall be rendered with a written communication including a detailed protection plan on how full security for SMA personnel will be ensured for the Services as well as a statement that the warranty claimant will cover the respective cost directly and in full. In case the warranty claimant does not provide for a satisfactory protection plan on time or denies covering such security costs, SMA's on-site obligations under this SMA Limited Factory Warranty shall be suspended for the period during which such high-risk rating applies.

- (3) In both scenarios (1. and 2. above), SMA shall not be deemed to be in breach of its obligations under this SMA Limited Factory Warranty.
- (4) SMA will duly provide the warranty claimant with a written communication describing the result of the Area Risk Assessment as well as its obligations it is prevented from performing, and the effective date of such suspension.

**The SMA Limited Factory Warranty does not cover damages or performance issues that occur due to:**

- Failure to observe the technical documents and manuals, and/or the protocols and/or requirements therein
- Damage related to improper handling, transportation, storage, or repackaging not provided by SMA
- Incorrect installation, unauthorized commissioning, or incorrect parameter settings not provided by SMA
- Non-SMA authorized tests or component disassembly/reassembly during installation and or commissioning
- Non-SMA authorized modifications, changes, or attempted repairs
- Insufficient ventilation of the device and any consequential thermal damage
- Corrosion due to exposure to sea coast/saltwater atmospheres or other aggressive atmospheres or environmental conditions outside the scope of design as defined in the customer manual of the device
- Failure to observe the applicable safety regulations (UL, CSA, VDE, IEC, etc.)
- Improper forced shutdown
- Accidents and external influences
- Force majeure, examples including, but not limited to: overvoltage, lightning strikes, floods, fires, earthquakes, storm damage, pest damage and rodents damage
- Incorrect function of upstream protection systems including, but not limited to, switchyards, substations or other electric equipment between SMA devices and the grid connection of the site including such connection
- Incorrect function of the warranty claimant's SCADA or other site control and measurement systems
- Operating conditions of the warranty claimant's plant infrastructure that are outside the specifications of SMA devices, including but not limited to, excessive high or low voltage, voltage spikes or dips, harmonics, frequency deviations, and network faults.
- Insufficient or insecure protection of the communication network or device interfaces against unauthorized access

**The items below are expressly not covered by this SMA Limited Factory Warranty:**

- All items not purchased from SMA including, but not limited to, medium-voltage transformers, medium-voltage switchgear, disconnect units, re-combiners, combiners, disconnects, installed cables, controllers, batteries, current transformers, voltage transformers and communications devices.
- Consumables and parts subject to regular wear and tear, including but not limited to, fuses, filters, (rechargeable) batteries, overvoltage protection devices.
- Cosmetic or finish defects which do not directly influence energy production, or degrade form, fit, function.

## Impact of Warranty Coverage on the (Remaining) Warranty Period

If device components are replaced under this SMA Limited Factory Warranty, the components used will be covered by the same remainder of the warranty period as the repaired device. If the entire device is replaced under this SMA Limited Factory Warranty, the remainder of the warranty period will be transferred to the replacement device.

## Procedure to Exercise Rights under this SMA Limited Factory Warranty

To determine the warranty entitlement, the warranty claimant must submit the device serial number and a copy of the commissioning report if not on file with SMA. The type label on the device must be completely legible. Otherwise, SMA will refuse to perform warranty services in accordance with this SMA Limited Factory Warranty.

The warranty claimant or the warranty claimant's Authorized Representative (Warranty claimant's Authorized Representative is defined as an individual determined by the warranty claimant who is qualified to safely access the equipment and who meets the latest local jurisdiction requirements and definitions of an "Authorized Person". Examples: EN 50110 (European Standard), NFPA 70 (NEC) and NFPA 70E (Electrical Safety), CSA Z462 (Canada)) must report a failure to the SMA Service Center while at or near the equipment being reported, using the procedure as described below. Warranty service is also available by accessing SMA's Online Support at [www.SMA-Solar.com](http://www.SMA-Solar.com) under the heading SERVICE & SUPPORT.

Reporting a failure shall constitute a "Qualified Service Case" when fully completed:

- Name of the person reporting the failure, date and time of failure, company name, phone number, and email
- Site name, address, contact name, and phone number (if different from fault reporter)
- Serial number of all defective device(s), and their local equipment designation (i.e. Station 3B, Inverter-A)
- If applicable, battery manufacturer and battery type
- Error code(s) or diagnostic light patterns displayed or recorded
- Description of any actions or maintenance protocols performed prior to failure
- The warranty claimant may be requested to provide remote access (incl. appropriate internet connection and necessary login credentials) to the plant and to the SMA devices to enable remote troubleshooting
- The warranty claimant may be required to send an email to the local SMA Service Center to confirm the above details along with a zipped download of files from SMA devices.

The warranty claimant, in a timely manner, must grant SMA and/or SMA authorized partners the necessary access, and time to remedy the defect. For unattended sites, SMA may require that the warranty claimant provide, and pay for, a site escort. The warranty claimant must ensure that the device and related equipment can be accessed safely and immediately with a light vehicle (4 metric tons) or, in the case of work required on medium voltage equipment also heavy vehicles and cranes in any weather. Should it be necessary to work on medium voltage equipment, the warranty claimant is responsible to isolate, disconnect/bypass and reconnect both the medium voltage grid and low voltage inverter side termination points from the affected equipment, in order for SMA to diagnose and make repairs.

The warranty claimant is fully responsible for creating and implementing its own site safety policy(s) and informing SMA and/or SMA authorized partner personnel about all relevant safety protocols applicable on the site. Under no circumstances shall SMA or SMA authorized partners be responsible for the safety of warranty claimant's technicians, representatives or contractors while working on SMA devices and equipment. The warranty claimant will provide SMA personnel at no cost any required site-specific protective clothing or protective equipment that is not part of SMA's standard safety equipment. SMA may charge the warranty claimant for waiting times on site and for costs incurred to provide a safe working environment caused by the warranty claimant's failure to observe their obligations. SMA reserves the right not to enter the site should SMA personnel consider it unsafe to do so or weather conditions are unacceptable to perform the work requested.

The warranty claimant is responsible to make available at its costs cranes or any other resources needed in order for SMA personnel to gain access to perform diagnosis and repairs. The warranty claimant is obliged to provide at its costs lifting tools determined by SMA to enable on-site repairs regarding the following devices: Utility Power Systems (UPSys), Utility Power Racks (UPR), Power Skids Australia (PSAU), Medium Voltage Power Stations (MVPS), Medium Voltage Stations (MVS) or Transformer Compact Stations (TCS). The warranty claimant will supply at its costs to SMA personnel electrical power, lubricants, fuels, water, lighting and any other energy required by SMA personnel to remedy the defect.

SMA will make a determination if defective parts can be disposed of or must be returned to SMA. If SMA does not get the requested defective part back within 30 days of the warranty claimant's repair action, SMA has the right to charge the warranty claimant the value of the delivered replacement part. If the defective part is returned after the 30-day period SMA has the right to charge the warranty claimant for the cost of administering the overdue RMA (Return Material Authorization) account. Return items will not be accepted without a valid RMA number obtained from SMA that is clearly displayed or included in the returned items packaging. All defective parts shall become the property of SMA upon receipt at SMA's return facility.

Replacement Medium Voltage Transformers or Switch Gear as well as other components installed in SMA's medium voltage devices may require significant lead time.

The services to be rendered by SMA in accordance with this SMA Limited Factory Warranty that are free of charge for the warranty claimant apply only if the course of action is agreed with and confirmed in writing by SMA in advance. Written documents and electronic messages, such as fax or e-mail, satisfy the requirement that confirmation be given in writing.

### **Specific Information to Exercise Rights under this SMA Limited Factory Warranty for the SHP PEAK3**

The warranty claimant must notify SMA of a device fault or defect within the warranty period. To determine if the device is covered by the SMA Limited Factory Warranty, the warranty claimant must – in addition to the requirements stated below - submit a copy of the commissioning report which must include the serial number of the defective device. SMA reserves the right to request a copy of other documents including, but not limited to, the purchasing invoice, which must include the serial number of the device. SMA only accepts documents in the following languages: Arabic, Czech, Dutch, English, French, German, Greek, Hindi, Italian, Japanese, Mandarin, South Korean, Spanish, and Thai. A certified translation in one of the mentioned languages will also be accepted. The type label on the device must be completely legible. If the aforementioned requirements are not fully met, SMA is not obliged to perform any obligations under the SMA Limited Factory Warranty. The warranty claimant or their electrically qualified representative must report a failure to their local SMA Service Center using the following procedure as described below.

- Proper fault diagnosis may require a qualified service technician to be at the SMA device location and equipped with a quality digital AC/DC voltmeter and required tools as specified in SMA device manual.
- The on-site qualified service technician may be asked to take voltage measurements and provide error codes from the inverter.
- Additional information may be required, including, but not limited to:
  - Model type number
  - Installation site name
  - Original date of commissioning
  - PV array configuration
  - Battery manufacturer and battery type
  - Description of any modifications that have been performed on the inverter
- Safely remove any interface option modules from the inverter to be returned, and retain them for reinstallation on the replacement device.

- SMA will provide instructions for proper return or disposal of the defective device.
- If no failure is found when the device is tested by the SMA Service Repair Department, the warranty claimant may be charged an inspection fee and transportation costs.

If the services are to be rendered by SMA free of charge in accordance with this SMA Limited Factory Warranty, these are only free of charge if the course of action is agreed with and confirmed in writing by SMA in advance. Written documents and electronic messages, including, but not limited to, fax or e-mail, satisfy the requirement that confirmation be given in writing. All costs incurred by the warranty claimant to exercise its rights under this SMA Limited Factory Warranty shall be borne by the warranty claimant.

## Final Validity

The rights mentioned in this SMA Limited Factory Warranty reflect the rights of the warranty claimant in accordance with this SMA Limited Factory Warranty. No other claims are covered by the SMA Limited Factory Warranty including, but not limited to:

- Claims for compensation for direct or indirect damage caused by the defective device, including, but not limited to, consequential, punitive or special damages, interest and other financing expenses, cost of purchase or replacement power, loss of information or data
- Claims for compensation for costs arising from warranty claimant's personnel (such as, but not limited to working hours, travel expenses, accommodation)
- Claims for compensation for costs arising from disassembly or installation
- Claims for compensation for any hazardous, controlled or otherwise unnatural material discharge, cleanup, or disposal related to defects or damage from, but not limited to, medium voltage transformers/switchgear or insulating fluids/gases contained within
- Claims for loss of power production or loss of profits

If the warranty claimant requests unnecessary or unjustified service work under this SMA Limited Factory Warranty, SMA shall be entitled to invoice the warranty claimant for the costs incurred as a result.

## Firmware Disclaimer

SMA periodically provides firmware updates at SMA's sole discretion on SMA purchased products. Such firmware updates are made available to the warranty claimant "as is" and normally at no additional cost. SMA does not assume any obligation for the reimbursement of expenses and providing any maintenance, support, further updates, or configuration changes resulting out of or in connection with the SMA firmware update. Unless there is evidence of willful or grossly negligent fault on the part of SMA, SMA does not assume any liability for direct, indirect, incidental, or consequential damages, including loss of production, loss of profits or any additional expenses, which resulted from or in connection with the SMA firmware update, regardless of whether it is carried out remotely or manually, even if the user has been informed of the possibility of such damage.

## Applicable Law and Place of Jurisdiction

All claims arising from or in connection with this SMA Limited Factory Warranty are subject to German law with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Kassel, Germany, is the exclusive place of jurisdiction for all disputes arising from or in connection with this SMA Limited Factory Warranty provided that the warranty claimant is a Merchant according to the German Civil Code, a legal entity under public law or a person governed by public law.

**For more information, please visit the "Service" section of our website at [www.SMA-Solar.com](http://www.SMA-Solar.com)**

**Exhibit H**  
**Insurance Requirements**

*[See attached]*

## Exhibit H

### Insurance Requirements

#### 1. Supplier's Insurance

(a) Without limiting Supplier's liability under this Agreement, Supplier shall maintain, in full force and effect during the term of this Agreement, at its sole cost and expense, the insurance described below from insurers having an A.M. Best Insurance Reports rating of "A-" / X or better and licensed to conduct business in the US state of the Project Site.

(i) Workers' Compensation

(1) Worker's Compensation (including coverage for occupational disease) and such other forms of insurance as may be required by (and in the amounts required by) the Applicable Law at the Worksite.

(2) Employer's Liability coverage (including occupational disease, injury or death) which shall cover all of Supplier's employees, whether full-time, leased, temporary or casual, who are engaged in the Work and shall have limits not less than:

- \$1,000,000 each accident for bodily injury by accident;
- \$1,000,000 each employee for bodily injury by disease; and
- \$1,000,000 policy limit bodily injury by disease

(ii) Commercial General Liability

Commercial General Liability, written on an ISO "occurrence" form CG 00 01, covering all liability arising out of the ESS Equipment and/or Work furnished by Supplier, and shall include Broad Form Contractual Liability, Products and Completed Operations Liability, explosion, collapse and underground hazards, sudden and accidental pollution liability, and Broad Form Property Damage Liability coverage, including, but not limited to resulting and/or downstream damage caused to equipment and property. Supplier will maintain coverage for Products and Completed Operations Hazards for a minimum of four years beyond Commissioning. The limits of coverage shall not be less than \$1,000,000 per occurrence and \$1,000,000 in the aggregate.

(iii) Business Automobile Liability

Business Automobile Liability (including coverage for owned, hired and non-owned automobiles) covering all vehicles used by Supplier in connection with the performance of this Contract, with limits not less than \$1,000,000 per occurrence combined single limit for bodily injury and



property damage and \$1,000,000 in the aggregate. Such coverage shall be at least as broad as the most recent Insurance Services Office Business Auto Coverage form covering Automobile Liability and shall otherwise comply with Applicable Laws.

(iv) Umbrella/Excess Liability Insurance

Supplier shall maintain umbrella/excess insurance covering claims in excess of the underlying Commercial General Liability and Business Automobile Liability, and Employers Liability insurance maintained by Supplier. The coverage shall be written on a follow form basis, or the coverage shall be written on terms at least as broad as the underlying policies and shall have limits of not less than \$20,000,000 per occurrence and \$20,000,000 aggregate. Such coverage shall not contain any endorsements that restrict the underlying policies..

(v) Professional Liability Insurance

Supplier shall provide Professional Liability Insurance which shall include coverage for all professional services provided by Supplier or on Supplier's behalf, with limits not less than \$1,000,000 per claim and \$1,000,000 aggregate, with a deductible not to exceed \$250,000. Notwithstanding anything to the contrary, Supplier shall, at a minimum, maintain the professional liability insurance from the Effective Date through the date that is four (4) years after the date on which Commissioning is achieved.

(vi) Ocean marine/Inland Transit Cargo Insurance

(1) Supplier shall maintain Ocean marine/Inland Transit Cargo Insurance insuring the ESS Equipment against loss or damage from "all risk" perils, with limits not less than \$11,000,000 per claim (vessel and aircraft) and \$500,000 per claim domestic land. Coverage shall include all modes of transportation, including land, air, marine, inland and ocean transit, and shall commence from the time the ESS Equipment is first moved at the originating Worksite for the purpose of immediate loading into or onto the carrying vehicle or other conveyance for the commencement of transit and shall thereafter remain in force, including during shipment deviation, delay, forced discharge, temporary storage, re-shipment and transshipment, until completion of unloading within the legal boundaries of the Project Site. Such insurance shall cover all risks of loss or damage, including war risk, strikes, riots, civil commotion, theft, pilferage, non-delivery, charges of general average, sacrifice or contribution, salvage expenses, consolidation, repackaging, refused and returned shipments, contain a replacement by air extension clause, 50/50 clause, non-vitiation clause, debris removal and shall include extra/expediting expense coverage.

- (2) Supplier shall cause the Ocean marine/Inland Transit Cargo Insurance policy to be endorsed to include Buyer, Owner and Owner's designees, if any, and "loss Payees" as their interest may appear. Additionally, Supplier shall cause the policy to be endorsed to provide the insurer(s)' waiver of any and all rights of recovery, by subrogation, setoff or otherwise, against Buyer, Owner and Owner's designees, if any, and the respective directors, officers, employees, and agents of each of the foregoing. Any required payments of deductibles under the ocean marine/cargo insurance shall be the responsibility of Supplier, and Supplier shall be responsible for the cost of all surveys required by the Cargo Insurers and compliance with the Survey Warranty Clause required by such insurers.
- (b) Supplier shall cause its policies required under Sections 1(a)(ii) through (iv), above, to name Buyer, Owner, any other party designated by Owner, if any, and the respective directors, officers, employees, and agents of each of the foregoing, as additional insureds. The commercial general liability policy shall be endorsed with ISO industry standard Additional Insured endorsement forms CG 20 10 and CG 20 37. The insurance required under Sections 1(a)(ii) through (iv), above, shall be primary to and in excess of or in addition to any insurance or self-insurance maintained by the additional insured parties and the policy forms shall include or be endorsed to include a cross liability and severability of interest clause or ISO standard separation of insureds clause. Additionally, all of Supplier's policies required under Sections 1(a)(ii) through (v) shall be endorsed to provide the insurer(s)' waiver of any and all rights of recovery, by subrogation, setoff or otherwise, against Buyer, Owner, Owner's designees, if any, and the respective directors, officers, employees, and agents of each of the foregoing.
- (c) Supplier shall ensure its insurance will not be canceled, changed or not renewed until the expiration of at least thirty days (ten (10) days in the case of cancellation due to non-payment of premiums) after Notice of such cancellation, change or non-renewal has been received by Supplier. Supplier shall provide written notice to Buyer no later than five (5) days following receipt of any such notice.
- (d) Supplier shall ensure its liability insurance will not be canceled, changed or not renewed until the expiration of at least thirty days (ten (10) days in the case of cancellation due to non-payment of premiums) after Notice of such cancellation, change or non-renewal has been received by Supplier. Supplier shall provide written notice to the Buyer no later than five (5) business days following receipt of any such notice
- (e) Within five (5) business days after the Effective Date, Supplier shall deliver Certificate(s) of Insurance to Buyer evidencing the coverage's and features required under Sections 1(a)(i) through (vi)(1) and all of the requirements set forth in Section 1(a)(vi)(2) and in Section 1(b). Additionally, copies of all endorsements required

in Section 1(a)(vi)(2) and in Section 1(b), shall be attached to the Certificate(s) of Insurance.

(f) No Representation of Coverage Adequacy.

By requiring insurance herein, Buyer does not represent that coverage and limits will necessarily be adequate to protect Supplier and such coverage and limits shall not be deemed as a limitation on Supplier's liability under the indemnities granted to Buyer in this Agreement.

It is expressly acknowledged, understood and agreed that regardless of whether Supplier provides a satisfactory or an unsatisfactory certificate of insurance pursuant to this Exhibit H, Buyer fails to identify a deficiency from evidence that is provided, or whether Buyer allows Supplier to perform the Services, such acts or omissions by Buyer shall not be construed as a waiver of Supplier's obligation to maintain such insurance nor preclude Buyer from asserting against Supplier, any claim or claims alleging Supplier's breach of any of its insurance procurement or maintenance obligations under this Agreement.

2. Buyer's Insurance

(a) From insurers licensed to conduct business in the US state where the Project, for which the ESS Equipment and/or Work are furnished hereunder, is located and having an A.M. Best Insurance Reports rating of "A-" or better

(i) Commercial General Liability

Owner shall maintain commercial general liability insurance in limits of \$1,000,000 per occurrence and \$2,000,000 annual aggregate. Such insurance shall include coverage for products/completed operations, broad form/blanket contractual liability for written contracts, broad form property damage and personal injury liability, premises/operations explosion, independent contractor liability, and collapse and underground hazards coverage and hostile fire liability.

(ii) Builder's All-Risk Insurance

As a condition of achieving Site Readiness, Buyer shall obtain and maintain, or cause to be maintained, builder's all-risk insurance in relation to the Project. Builder's all-risk shall cover all property in the course of transit or construction, including all property stored at the Project Site or any temporary Delivery Locations, including the Work, ESS Equipment and Buyer-Furnished Equipment (other than ESS Equipment properly covered under Supplier's equipment floater), from physical loss or damage caused by perils covered by a builder's all-risk form or equivalent coverage for projects similar in size and scope similar to the Project. Should any property in transit by ocean, air, rail or road not be covered under the builders all risk policy, then Buyer shall obtain and maintain cargo

insurance to provide coverage for all such property in transit, unless such property is insured for transit under purchase agreement terms. Such builders all risk insurance shall: (a) include “extended coverage” (including earthquake, flood, collapse, sinkhole, subsidence), (b) include mechanical and electrical breakdown coverage during start-up and testing, including Acceptance Tests and other operations of the Project prior to Substantial Completion, (c) cover the Project and the Site for removal of debris and (d) otherwise cover damage to property and other claims arising out of the unloading, lifting, lowering or other handling of property at the Site, in an amount to cover materials and equipment to be used. Coverage shall be on a full replacement cost valuation basis (with sublimits as appropriate), and not on an actual costs valuation or depreciated basis. Except as set forth in the next sentence, all deductibles for builders all-risk insurance shall be the responsibility of Supplier. Buyer shall bear the deductible under the builders all risk insurance for damage to the Work caused by Buyer or the Other Contractors, or damage to the Work caused by Force Majeure Events (except to the extent that Supplier’s actions or omissions result in or contributes to any loss or damage arising from Force Majeure Events). The builder’s all-risk coverage shall not contain an exclusion for resultant damage caused by faulty workmanship, design or materials. Supplier shall, at the direction of Buyer, assist in preparing all claim forms and coordinating with the various underwriters with respect to all claims to be made under the builder’s all risk policy, all without increase to the Contract Price.

(iii) Permanent Property Insurance

Upon Commissioning, Buyer shall provide special form property insurance at a replacement cost basis (without a deduction for depreciation) and with no co-insurance provisions, covering the Project (including all real and personal property whether fixed, in transit, or off site). If the policies of insurance referred to in this paragraph require an endorsement or consent of the insurance company to provide for continued coverage where there is a waiver of subrogation, then Buyer will cause them to be so endorsed or obtain such consent.

- (b) Buyer shall cause its policies required under Sections 2(a) above, to name Supplier as additional insured as their interests may appear. Additionally, all of Buyer’s policies required under Sections 2(a) shall provide the insurer(s)’ waive of any and all rights of recovery, by subrogation, setoff or otherwise, against Supplier and Supplier’s designees, if any, and the respective directors, officers, employees, and agents of each of the foregoing.
- (c) Within five (5) business days after obtaining the evidence required above, Buyer shall deliver Certificate(s) of Insurance to Supplier evidencing the coverages and features required under Sections 2(a) and all of the requirements set forth in Section 2(b).

- (d) Buyer shall ensure its insurance will not be canceled, changed or not renewed until the expiration of at least thirty days (60 days for builder's all-risk; ten (10) days in the case of cancellation due to non-payment of premiums) after Notice of such cancellation, change or non-renewal has been received by Buyer. Buyer shall provide written notice to Supplier no later than five (5) days following receipt of any such notice.

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**Exhibit I**  
**Commissioning Checklist**

*[See attached]*



## **Commissioning Checklist**



# S750 Collection Segment Functional Performance Test Commissioning Checklist

Date Checklist Completed: \_\_\_\_\_

Onsite Work Completed by: \_\_\_\_\_

Remote Work Completed by: \_\_\_\_\_

Station Code: \_\_\_\_\_ Site Name: \_\_\_\_\_

Site Location: \_\_\_\_\_

Enclosure #: \_\_\_\_\_

**PER COLLECTION SEGMENT**

*For the test procedure, consider HVAC 1 to mean Lead and HVAC 2 to mean Lag.*

1.0	Before Functional Testing	Comments	Initials
<input type="checkbox"/>	a. Confirm the Commissioning HVAC - Pre-Functional Checklist has been completed with NO outstanding items		
<input type="checkbox"/>	b. Confirm the Auxiliary Power for the TEAM Controller, HVAC units and all necessary components are powered and ready for testing		
<input type="checkbox"/>	c. Confirm TEAM controller has been updated with the most recent firmware and programming.		
<input type="checkbox"/>	d. Confirm a computer is connected to the TEAM controller and has access to the User Interface.		
<input type="checkbox"/>	e. Confirm, during testing, that all door switches are in the closed position		
<input type="checkbox"/>	f. Confirm All network parameters (IP address) are configured for all devices		
<input type="checkbox"/>	g. Record Network Parameters for the Segment: a. IP Address b. Subnet c. Gateway		
2.0	Initial Conditions (Confirm expected Values)	Comments (Record readings from UI and Physical Unit)	Initials
<i>This section is to confirm that the sensors are communicating, and all values equal what is expected.</i>			
<input type="checkbox"/>	a. Record OAT sensor value (°C)		
<input type="checkbox"/>	b. Record OAH sensor value (°C)		
<input type="checkbox"/>	c. Record Space Temp sensor value (°C)		
<input type="checkbox"/>	d. Record Space RH sensor value (%)		





# S750 Collection Segment Functional Performance Test Commissioning Checklist

PER COLLECTION SEGMENT		
<input type="checkbox"/>	e. Record SAT value (°C)	
<input type="checkbox"/>	f. Record HVAC 1 Current (amps)	
<input type="checkbox"/>	g. Record HVAC 2 Current (amps)	
<input type="checkbox"/>	h. Confirm all the points above are equal to what is expected	
<input type="checkbox"/>	i. Confirm DC Door status is correct	
<input type="checkbox"/>	j. Confirm AC Door status is correct	
<input type="checkbox"/>	k. Confirm Lower Topcap status is correct	
<input type="checkbox"/>	l. Confirm Electric Heater 1 & 2 status is OFF	
<input type="checkbox"/>	m. Confirm Freeze Sensor 1 & 2 status is OFF (closed)	
<input type="checkbox"/>	n. Confirm all HVAC outputs are set to OFF (adjust setpoints as needed)	
3.0	Cooling, Phase 1	Comments
		Initials
<i>Make the space temperature read 10 degrees above the cooling setpoint (Note: The HVAC units operate on Lead/Lag, expect delays between HVAC 1 and HVAC 2 operations).</i>		
<input type="checkbox"/>	a. Confirm HVAC 1 Reversing Valve is OFF	
<input type="checkbox"/>	b. Confirm HVAC 2 Reversing Valve is OFF	
<input type="checkbox"/>	c. Confirm HVAC 1 Electric Heater is OFF	
<input type="checkbox"/>	d. Confirm HVAC 2 Electric Heater is OFF	
<input type="checkbox"/>	e. Confirm HVAC 1 FAN HIGH call initiates before the compressors	
<input type="checkbox"/>	f. Confirm HVAC 2 FAN HIGH call initiates before the compressors	
<input type="checkbox"/>	g. Confirm HVAC 1 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	h. Confirm HVAC 2 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	i. Confirm the SAT value is adequate for cooling	
<input type="checkbox"/>	j. Record SAT value (°C)	
<input type="checkbox"/>	k. Confirm the Current for unit 1 is approximately 15 amps [compressor=13amps; fan=2amps]	
<input type="checkbox"/>	l. Record HVAC 1 Current (amps)	



# S750 Collection Segment Functional Performance Test Commissioning Checklist

PER COLLECTION SEGMENT		
<input type="checkbox"/>	m. Confirm the Current for unit 2 is approximately 15 amps [compressor=13amps; fan=2amps]	
<input type="checkbox"/>	n. Record HVAC 2 Current {amps}	
<input type="checkbox"/>	o. Record Space Temp sensor value (°C)	
<input type="checkbox"/>	p. Record Space RH sensor value (%)	
4.0	Cooling, Phase 2	Initials
<i>Make the space temperature below the Cooling setpoint and above the Heating setpoint.</i>		
<input type="checkbox"/>	a. Confirm the Compressor for both units stage OFF	
<input type="checkbox"/>	b. Confirm the FAN HIGH call remains energized after the compressor OFF command	
<input type="checkbox"/>	c. Confirm the FAN HIGH call stages OFF	
<input type="checkbox"/>	d. Release All overrides and set system to Normal operation	
5.0	Heating, Phase 1	Initials
<i>Make the space temperature read 5 degrees below the heating setpoint (Note: The HVAC units operate on Lead/Lag, expect delays between HVAC 1 and HVAC 2 operations).</i>		
<input type="checkbox"/>	a. Confirm HVAC 1 Reversing Valve energizes ON	
<input type="checkbox"/>	b. Confirm HVAC 2 Reversing Valve energizes ON	
<input type="checkbox"/>	c. Confirm the compressor call initiates before the HIGH FAN call	
<input type="checkbox"/>	d. Confirm HVAC 1 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	e. Confirm HVAC 2 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	f. Confirm HVAC 1 FAN HIGH call energizes and operates as expected	
<input type="checkbox"/>	g. Confirm HVAC 2 FAN HIGH call energizes and operates as expected	
<input type="checkbox"/>	h. Confirm the SAT value is adequate for heating	
<input type="checkbox"/>	i. Record SAT value (°C)	
<input type="checkbox"/>	j. Confirm the Current for unit 1 is approximately 15 amps [compressor=13amps; fan=2amps]	



# S750 Collection Segment Functional Performance Test Commissioning Checklist

PER COLLECTION SEGMENT		
<input type="checkbox"/>	k. Record HVAC 1 Current (amps)	
<input type="checkbox"/>	l. Confirm the Current for unit 2 is approximately 15 amps [compressor=13amps; fan=2amps]	
<input type="checkbox"/>	m. Record HVAC 2 Current (amps)	
<input type="checkbox"/>	n. Make the OAT read 2°C	
<input type="checkbox"/>	o. Confirm the Compressors stage OFF before Electric Heaters energize	
<input type="checkbox"/>	p. Confirm HVAC 1 Electric Heater energizes ON	
<input type="checkbox"/>	q. Confirm HVAC 2 Electric Heater energizes ON	
<input type="checkbox"/>	r. Confirm the SAT value is adequate for heating	
<input type="checkbox"/>	s. Record SAT value (°C)	
<input type="checkbox"/>	t. Confirm the Current for unit 1 is approximately 2 amps [fan=2amps] [Note: the electric heaters are not measured by the CT-1 sensor]	
<input type="checkbox"/>	u. Record HVAC 1 Current (amps)	
<input type="checkbox"/>	v. Confirm the Current for unit 2 is approximately 2 amps [fan=2amps] [Note: the electric heaters are not measured by the CT-2 sensor]	
<input type="checkbox"/>	w. Record HVAC 2 Current (amps)	
6.0	Heating, Phase 2	Comments
<i>Make the space temperature below the Cooling setpoint and above the Heating setpoint.</i>		
<input type="checkbox"/>	a. Confirm the Compressor for both units stage OFF	
<input type="checkbox"/>	b. Confirm HVAC 1 Reversing Valve stages OFF	
<input type="checkbox"/>	c. Confirm HVAC 2 Reversing Valve stages OFF	
<input type="checkbox"/>	d. Confirm the FAN HIGH call remains energized until after the compressor OFF command	
<input type="checkbox"/>	e. Confirm the FAN HIGH call stages OFF for both units	
<input type="checkbox"/>	f. Release All overrides and set system to Normal operation	



# S750 Collection Segment Functional Performance Test Commissioning Checklist

PER COLLECTION SEGMENT		
7.0	Dehumidification, Phase 1	Comments
Initials		
<i>Make the space temperature read 1 degree below the cooling setpoint.</i>		
<i>Make the Dehumidification/RH% setpoint 1% or at least 20% below current space RH%.</i>		
<input type="checkbox"/>	a. Confirm HVAC 1 Reversing Valve is OFF	
<input type="checkbox"/>	b. Confirm HVAC 2 Reversing Valve is OFF	
<input type="checkbox"/>	c. Confirm HVAC 1 FAN LOW call initiates before the compressors	
<input type="checkbox"/>	d. Confirm HVAC 2 FAN LOW call initiates before the compressors	
<input type="checkbox"/>	e. Confirm HVAC 1 compressor call energizes and operates as expected	
<input type="checkbox"/>	f. Confirm HVAC 2 compressor does not energize; ONLY ONE COMPRESSOR SHOULD OPERATE FOR DEHUMIDIFICATION.	
<input type="checkbox"/>	g. Confirm HVAC 1 Electric Heater energizes ON	
<input type="checkbox"/>	h. Confirm HVAC 2 Electric Heater energizes ON	
<input type="checkbox"/>	i. Confirm the SAT value is adequate for Dehumidification (Supply air temp should approximately equal the Space Temperature)	
<input type="checkbox"/>	j. Record SAT value (°C)	
8.0	Dehumidification, Phase 2	Comments
Initials		
<i>Make the Dehumidification/RH% setpoint 10% above the current space RH% value.</i>		
<input type="checkbox"/>	a. Confirm the Compressor for both units stage OFF	
<input type="checkbox"/>	b. Confirm the Electric Heater for both units stages OFF	
<input type="checkbox"/>	c. Confirm the FAN LOW call remains energized after the compressor and OFF command	
<input type="checkbox"/>	d. Confirm the FAN LOW call stages OFF	
<input type="checkbox"/>	e. Release All overrides and set system to Normal operation	
9.0	Alarms	Comments
Initials		
<i>Adjust the space temperature to place the HVAC units into cooling mode and allow time for the units to properly energize.</i>		
<input type="checkbox"/>	a. Simulate a FSS Alarm to the TEAM controller (ioLogic E1242: AI 1+)	
<input type="checkbox"/>	b. Confirm an ALARM is issued to the UI	



# S750 Collection Segment Functional Performance Test Commissioning Checklist

PER COLLECTION SEGMENT		
<input type="checkbox"/>	c. Confirm ALL outputs to the HVAC units are OFF, nothing should operate from the HVAC units	
<input type="checkbox"/>	d. Clear the Alarm	
<input type="checkbox"/>	e. Simulate a FSS Trouble to the TEAM controller (ioLogic E1242: DI 3)	
<input type="checkbox"/>	f. Confirm an ALARM is issued to the UI	
<input type="checkbox"/>	g. Confirm ALL outputs to the HVAC units are OFF, nothing should operate from the HVAC units	
<input type="checkbox"/>	h. Clear the Alarm	
<input type="checkbox"/>	i. Confirm the TEAM controller returns to normal operation	
<input type="checkbox"/>	j. OPEN and CLOSE the DC doors	
<input type="checkbox"/>	k. Confirm ALL outputs to the HVAC units are OFF when door is open, nothing should operate from the HVAC units	
<input type="checkbox"/>	l. Confirm the status is displayed correctly in the UI	
<input type="checkbox"/>	m. OPEN and CLOSE the AC doors	
<input type="checkbox"/>	n. Confirm ALL outputs to the HVAC units are OFF when door is open, nothing should operate from the HVAC units	
<input type="checkbox"/>	o. Confirm the status is displayed correctly in the UI	
<input type="checkbox"/>	p. OPEN and CLOSE the Lower Topcap Doors	
<input type="checkbox"/>	q. Confirm ALL outputs to the HVAC units are OFF when door is open, nothing should operate from the HVAC units	
<input type="checkbox"/>	r. Confirm the status is displayed correctly in the UI	
<input type="checkbox"/>	s. Return all setpoints to normal, release ALL overrides and make sure all testing equipment changes have been cleared from the Segment.	





# S750 Energy Segment Functional Performance Test Commissioning Checklist

Date Checklist Completed: \_\_\_\_\_

Onsite Work Completed by: \_\_\_\_\_

Remote Work Completed by: \_\_\_\_\_

Station Code: \_\_\_\_\_ Site Name: \_\_\_\_\_

Site Location: \_\_\_\_\_

Enclosure #: \_\_\_\_\_

## PER ENERGY SEGMENT

*For the test procedure, consider HVAC 1 to mean Lead and HVAC 2 to mean Lag.*

1.0	Before Testing	Comments	Initials
<input type="checkbox"/>	a. Confirm the TEAM Cx - Pre-Functional Checklist has been completed with NO outstanding items		
<input type="checkbox"/>	b. Confirm the Auxiliary Power for the TEAM Controller, HVAC units and all necessary components are powered and ready for testing		
<input type="checkbox"/>	c. Confirm TEAM controller has been updated with the most recent firmware and programming		
<input type="checkbox"/>	d. Confirm a computer is connected to the TEAM controller and has access to the User Interface Energy Segment Main Page, Energy Segment Simulation Page, and the Collection Segment Main Page for the line-up		
<input type="checkbox"/>	e. Confirm during testing that all door switches are in the closed position		
<input type="checkbox"/>	f. Record Network Parameters for the Segment: <ul style="list-style-type: none"> <li>a. IP Address</li> <li>b. Subnet</li> <li>c. Gateway</li> </ul>		
2.0	Initial Conditions	Comments	Initials
<i>This section is to confirm that the sensors are communicating, and all values equal what is expected.</i>			
<input type="checkbox"/>	a. Record OAT sensor value (°C from CS)		
<input type="checkbox"/>	b. Record OAH sensor value (°C from CS)		
<input type="checkbox"/>	c. Record Hydrogen Sensor (PPM)		
<input type="checkbox"/>	d. Record Hydrogen Sensor Status		
<input type="checkbox"/>	e. Record Space Temp sensor value (°C)		



# S750 Energy Segment Functional Performance Test Commissioning Checklist

PER ENERGY SEGMENT		
<input type="checkbox"/>	f. Record Space RH sensor value (%)	
<input type="checkbox"/>	g. Record SAT value (°C)	
<input type="checkbox"/>	h. Record HVAC 1 Current (amps)	
<input type="checkbox"/>	i. Record HVAC 2 Current (amps)	
<input type="checkbox"/>	j. Confirm all the points above are equal to what is expected?	
<input type="checkbox"/>	k. Confirm Battery Door status is correct	
<input type="checkbox"/>	l. Confirm Lower Topcap status is correct	
<input type="checkbox"/>	m. Confirm Emergency Ventilation status is OFF	
<input type="checkbox"/>	n. Confirm Electric Heater 1 & 2 status is OFF	
<input type="checkbox"/>	o. Confirm Freeze Sensor 1 & 2 status is OFF (closed)	
<input type="checkbox"/>	p. Confirm all HVAC outputs are set to OFF (adjust setpoints as needed)	
3.0	Cooling, Phase 1	Comments
Initials		
<i>Make the space temperature read 10 degrees above the cooling setpoint (Note: The HVAC units operate on Lead/Lag, expect delays between HVAC 1 and HVAC 2 operations).</i>		
<input type="checkbox"/>	a. Confirm HVAC 1 Reversing Valve is OFF	
<input type="checkbox"/>	b. Confirm HVAC 2 Reversing Valve is OFF	
<input type="checkbox"/>	c. Confirm HVAC 1 Electric Heater is OFF	
<input type="checkbox"/>	d. Confirm HVAC 2 Electric Heater is OFF	
<input type="checkbox"/>	e. Confirm HVAC 1 FAN HIGH call initiates before the compressors	
<input type="checkbox"/>	f. Confirm HVAC 2 FAN HIGH call initiates before the compressors	
<input type="checkbox"/>	g. Confirm HVAC 1 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	h. Confirm HVAC 2 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	i. Confirm the SAT value is adequate for cooling	
<input type="checkbox"/>	j. Record SAT value (°C)	
<input type="checkbox"/>	k. Confirm the Current for unit 1 is approximately 15 amps [compressor=13amps; fan=2amps]	
<input type="checkbox"/>	l. Record HVAC 1 Current (amps)	





# S750 Energy Segment Functional Performance Test Commissioning Checklist

PER ENERGY SEGMENT		
<input type="checkbox"/>	m. Confirm the Current for unit 2 is approximately 15 amps [compressor=13amps; fan=2amps]	
<input type="checkbox"/>	n. Record HVAC 2 Current {amps}	
<input type="checkbox"/>	o. Record Space Temp sensor value (°C)	
<input type="checkbox"/>	p. Record Space RH sensor value (%)	
4.0	Cooling, Phase 2	Initials
<i>Make the space temperature below the Cooling setpoint and above the Heating setpoint.</i>		
<input type="checkbox"/>	a. Confirm the Compressor for both units stage OFF	
<input type="checkbox"/>	b. Confirm the FAN HIGH call remains energized after the compressor OFF command	
<input type="checkbox"/>	c. Confirm the FAN HIGH call stages OFF	
<input type="checkbox"/>	d. Release All overrides and set system to Normal operation	
5.0	Heating, Phase 1	Initials
<i>Make the space temperature read 5 degrees below the heating setpoint (Note: The HVAC units operate on Lead/Lag, expect delays between HVAC 1 and HVAC 2 operations).</i>		
<input type="checkbox"/>	a. Confirm HVAC 1 Reversing Valve energizes ON	
<input type="checkbox"/>	b. Confirm HVAC 2 Reversing Valve energizes ON	
<input type="checkbox"/>	c. Confirm the compressor call initiates before the HIGH FAN call	
<input type="checkbox"/>	d. Confirm HVAC 1 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	e. Confirm HVAC 2 compressor (Y) call energizes and operates as expected	
<input type="checkbox"/>	f. Confirm HVAC 1 FAN HIGH call energizes and operates as expected	
<input type="checkbox"/>	g. Confirm HVAC 2 FAN HIGH call energizes and operates as expected	
<input type="checkbox"/>	h. Confirm the SAT value is adequate for heating	
<input type="checkbox"/>	i. Record SAT value (°C)	
<input type="checkbox"/>	j. Confirm the Current for unit 1 is approximately 15 amps [compressor=13amps; fan=2amps]	



# S750 Energy Segment Functional Performance Test Commissioning Checklist

PER ENERGY SEGMENT		
<input type="checkbox"/>	k. Record HVAC 1 Current (amps)	
<input type="checkbox"/>	l. Confirm the Current for unit 2 is approximately 15 amps [compressor=13amps; fan=2amps]	
<input type="checkbox"/>	m. Record HVAC 2 Current (amps)	
<input type="checkbox"/>	n. Make the OAT read 2°C	
<input type="checkbox"/>	o. Confirm the Compressors stage OFF before Electric Heaters energize	
<input type="checkbox"/>	p. Confirm HVAC 1 Electric Heater energizes ON	
<input type="checkbox"/>	q. Confirm HVAC 2 Electric Heater energizes ON	
<input type="checkbox"/>	r. Confirm the SAT value is adequate for heating	
<input type="checkbox"/>	s. Record SAT value (°C)	
<input type="checkbox"/>	t. Confirm the Current for unit 1 is approximately 2 amps [fan=2amps] [Note: the electric heaters are not measured by the CT-1 sensor]	
<input type="checkbox"/>	u. Record HVAC 1 Current (amps)	
<input type="checkbox"/>	v. Confirm the Current for unit 2 is approximately 2 amps [fan=2amps] [Note: the electric heaters are not measured by the CT-2 sensor]	
<input type="checkbox"/>	w. Record HVAC 2 Current (amps)	
6.0	Heating, Phase 2	Comments
<i>Make the space temperature below the Cooling setpoint and above the heating setpoint.</i>		
<input type="checkbox"/>	a. Confirm the Compressor for both units stage OFF	
<input type="checkbox"/>	b. Confirm HVAC 1 Reversing Valve stages OFF	
<input type="checkbox"/>	c. Confirm HVAC 2 Reversing Valve stages OFF	
<input type="checkbox"/>	d. Confirm the FAN HIGH call remains energized until after the compressor OFF command	
<input type="checkbox"/>	e. Confirm the FAN HIGH call stages OFF for both units	
<input type="checkbox"/>	f. Release All overrides and set system to Normal operation	
		Initials



# S750 Energy Segment Functional Performance Test Commissioning Checklist

PER ENERGY SEGMENT			
7.0	Dehumidification, Phase 1	Comments	Initials
<i>Make the space temperature read 1 degree below the cooling setpoint.</i>			
<i>Make the Dehumidification/RH% setpoint 1% or at least 20% below current space RH%.</i>			
<input type="checkbox"/>	a. Confirm HVAC 1 Reversing Valve is OFF		
<input type="checkbox"/>	b. Confirm HVAC 2 Reversing Valve is OFF		
<input type="checkbox"/>	c. Confirm HVAC 1 FAN LOW call initiates before the compressors		
<input type="checkbox"/>	d. Confirm HVAC 2 FAN LOW call initiates before the compressors		
<input type="checkbox"/>	e. Confirm HVAC 1 compressor call energizes and operates as expected		
<input type="checkbox"/>	f. Confirm HVAC 2 compressor does not energize; ONLY ONE COMPRESSOR SHOULD OPERATE FOR DEHUMIDIFICATION.		
<input type="checkbox"/>	g. Confirm HVAC 1 Electric Heater energizes ON		
<input type="checkbox"/>	h. Confirm HVAC 2 Electric Heater energizes ON		
<input type="checkbox"/>	i. Confirm the SAT value is adequate for Dehumidification (Supply air temp should approximately equal the Space Temperature)		
<input type="checkbox"/>	j. Record SAT value (°C)		
8.0	Dehumidification, Phase 2	Comments	Initials
<i>Make the Dehumidification/RH% setpoint 10% above the current space RH% value.</i>			
<input type="checkbox"/>	a. Confirm the Compressor for both units stage OFF		
<input type="checkbox"/>	b. Confirm the Electric Heater for both units stages OFF		
<input type="checkbox"/>	c. Confirm the FAN LOW call remains energized after the compressor and OFF command		
<input type="checkbox"/>	d. Confirm the FAN LOW call stages OFF		
<input type="checkbox"/>	e. Release All overrides and set system to Normal operation		
9.0	Emergency Ventilation, Alarms, and Dampers	Comments	Initials
<i>Adjust the space temperature to place the HVAC units into cooling mode and allow time for the units to properly energize.</i>			
<input type="checkbox"/>	a. Confirm there is power to the Ventilation Damper actuator motor		



# S750 Energy Segment Functional Performance Test Commissioning Checklist

PER ENERGY SEGMENT		
<input type="checkbox"/>	b. Confirm the ventilation damper is CLOSED when powered	
<input type="checkbox"/>	c. Turn OFF power to the actuator motors	
<input type="checkbox"/>	d. Confirm the dampers OPEN on power fail	
<input type="checkbox"/>	e. Turn ON power to the actuator motors	
<input type="checkbox"/>	f. Adjust the space temperature to place the HVAC units into cooling mode and allow time for the units to properly energized	
<input type="checkbox"/>	g. Press and hold the Hydrogen sensor test button to trigger a Hydrogen Alarm	
<input type="checkbox"/>	h. Confirm ALL outputs to the HVAC units are OFF, nothing should operate from the HVAC units	
<input type="checkbox"/>	i. Confirm the Ventilation dampers fully OPEN	
<input type="checkbox"/>	j. Confirm the ventilation intake fan energizes and blows air into the unit.	
<input type="checkbox"/>	k. Confirm an ALARM is issued to the UI	
<input type="checkbox"/>	l. Clear the Hydrogen Alarm	
<input type="checkbox"/>	m. Confirm the dampers fully CLOSE	
<input type="checkbox"/>	n. Confirm the Ventilation fan turns OFF	
<input type="checkbox"/>	o. Confirm the TEAM controller goes back to normal operation and engages cooling operations	
<input type="checkbox"/>	p. Simulate an FSS ALM/TBL or SMOKE Alarm to the TEAM controller (ioLogic E1242: AI 1+)	
<input type="checkbox"/>	q. Confirm an ALARM is issued to the UI	
<input type="checkbox"/>	r. Confirm ALL outputs to the HVAC units are OFF, nothing should operate from the HVAC units	
<input type="checkbox"/>	s. Clear the Alarm	
<input type="checkbox"/>	t. Confirm the TEAM controller returns to normal operation	
<input type="checkbox"/>	u. OPEN and CLOSE both sides of Battery doors	
<input type="checkbox"/>	v. Confirm ALL outputs to the HVAC units are OFF when door is open, nothing should operate from the HVAC units	



# S750 Energy Segment Functional Performance Test Commissioning Checklist

PER ENERGY SEGMENT		
<input type="checkbox"/>	w. Confirm the status is displayed correctly in the UI	
<input type="checkbox"/>	x. OPEN and CLOSE the Lower Topcap Doors on both sides	
<input type="checkbox"/>	y. Confirm ALL outputs to the HVAC units are OFF when door is open, nothing should operate from the HVAC units	
<input type="checkbox"/>	z. Confirm the status is displayed correctly in the UI	
<input type="checkbox"/>	aa. Return all setpoints to normal, release ALL overrides and make sure all testing equipment changes have been cleared from the Segment.	



**Exhibit J-1**  
**ESS Product Manual**

*[See attached]*

**[REDACTED]**



**POWIN**

September 2022

**CENTIPEDE STACK750  
A MODULAR BATTERY ENERGY STORAGE  
PLATFORM  
PRODUCT MANUAL**

CONFIDENTIAL

MP-S750 Rev 0



**Exhibit J-2**  
**Operational Data & Health-Monitoring Data Manual**

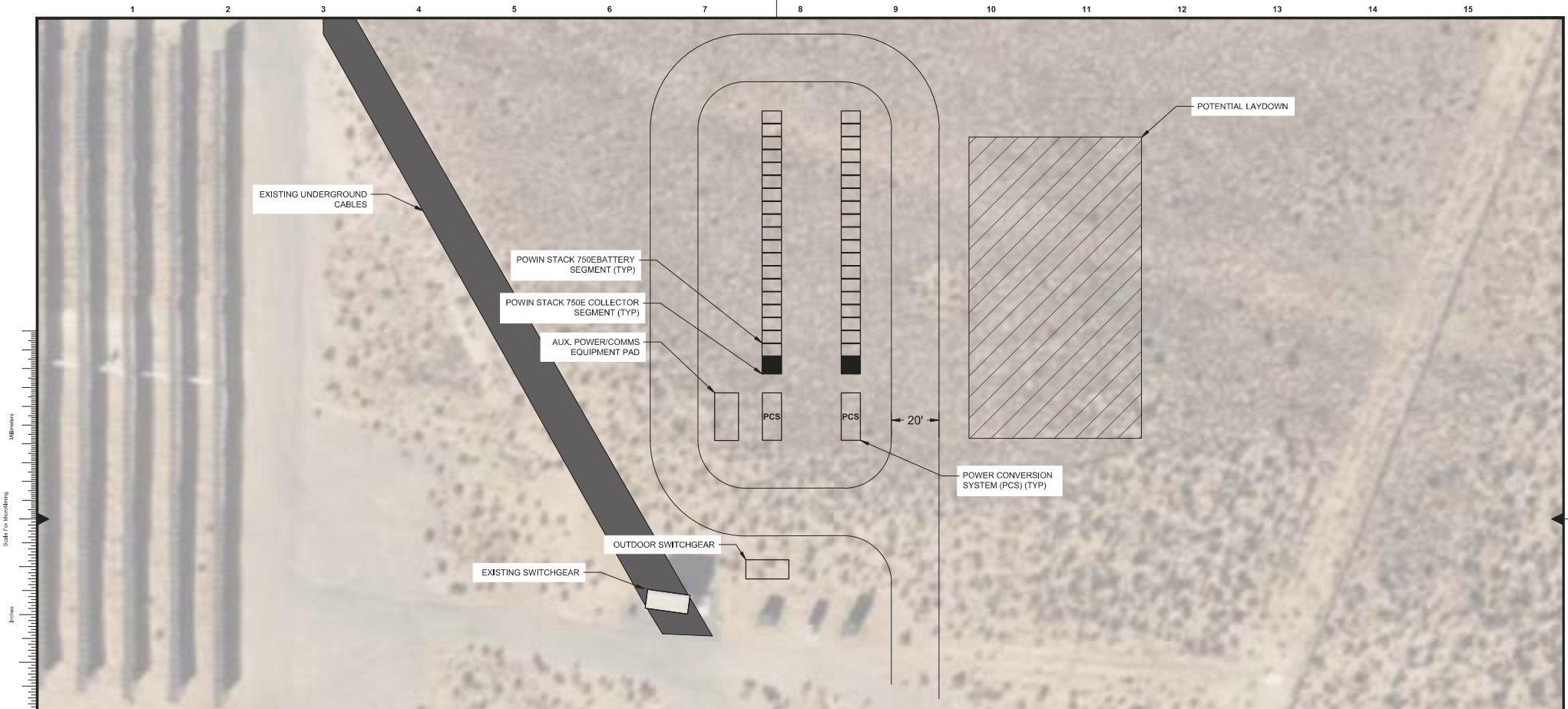
*[See attached]*

**[REDACTED]**

**Exhibit K**  
**Project Site Layout**

*[See attached]*





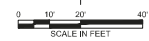
**PLAN VIEW**

**ABBREVIATION LIST:**

MVPS - MEDIUM VOLTAGE POWER SYSTEM  
TYP - TYPICAL

**NOTES:**

1. FINAL LAYOUT SUBJECT TO CHANGE BASED ON FINAL ENVIRONMENTAL AND CIVIL SETBACK DISTANCES.
2. EQUIPMENT QUANTITIES, CONFIGURATION, AND FOOTPRINT SUBJECT TO CHANGE BASED ON FINAL BESS TECHNOLOGY SELECTION AND ADDITIONAL PROJECT DUE DILIGENCE.



**CONCEPTUAL ONLY**

ENERGY STORAGE SYSTEM DESCRIPTION	
NAMEPLATE	6 MW / 24 MWh

BESS MATERIAL LIST	
NUMBER OF POWIN STACK750E BATTERY SEGMENTS	38
NUMBER OF POWIN STACK750E COLLECTION SEGMENTS	2
NUMBER OF SMA MVPS-4600-S2 PCS SKIDS	2

no.	date	by	ckd	description
A	07/29/22	RCPV	JAG	ISSUED FOR REVIEW - 30% DESIGN PACKAGE

**BURNS & MCDONNELL**  
 9400 WARD PARKWAY  
 KANSAS CITY, MO 64114  
 816-333-9400  
 Burns & McDonnell Engineering Co, Inc.

RIO DEL ORO BESS  
 VALENCIA COUNTY, NEW MEXICO

BESS SITE PLAN	
project 147387	contract
drawing <b>G100</b>	rev. <b>A</b>
sheet	of sheets
file: PNM RioDelOro_Layout.dwg	

**Exhibit L-1**  
**Installation Manual**

*[See Attached]*

**[REDACTED]**



**POWIN**

March 2023

# **STACK750 INSTALLATION PROCEDURE**

CONFIDENTIAL

PI-S750 (Rev 7)

**Exhibit L-2**  
**Installation Checklist**

*[See Attached]*



# S750 Lineup Mechanical Installation Checklist

Project Name:

Project Number:

Date of Arrival:

Name of Company Performing Installation

Name of Installer:

Lineup Identification:

Signature of Installer Responsible:

## Serial Numbers

Location ID	Item	Date Set on Foundation	Segment Serial Number	Initials
	Collection Segment			
	Energy Segment 1			
	Energy Segment 2			
	Energy Segment 3			
	Energy Segment 4			
	Energy Segment 5			
	Energy Segment 6			
	Energy Segment 7			
	Energy Segment 8			
	Energy Segment 9			
	Energy Segment 10			
	Energy Segment 11			
	Energy Segment 12			
	Energy Segment 13			
	Energy Segment 14			
	Energy Segment 15			
	Energy Segment 16			
	Energy Segment 17			
	Energy Segment 18			
	Energy Segment 19			
	Energy Segment 20			
	Energy Segment 21			

## Pre-Installation Requirements

	Comments	Initials
<input type="checkbox"/> a. Foundations in place per IFC Drawing; plane drainage does not exceed 1°	Date Completed:	





# S750 Lineup Mechanical Installation Checklist

## Pre-Installation Requirements

<input type="checkbox"/>	b. Conduits In place per IFC Drawing	Date Completed:	
<input type="checkbox"/>	c. Site Grounding Grid installed and tested	Results:	Date Completed:
<input type="checkbox"/>	d. AC Power available to Point of Interconnect	Date Completed:	
<input type="checkbox"/>	e. Internet available to Point of Interconnect	Date Completed:	
<input type="checkbox"/>	f. Lift Plan, Lifting Materials, and Equipment Specified	Date Completed:	
<input type="checkbox"/>	g. Verify painted surfaces are coated	Date Completed:	
<input type="checkbox"/>	h. Verify all markings and labels are affixed without signs of peeling	Date Completed:	
<input type="checkbox"/>	i. Verify all segments are facing corresponding side (i.e., Side A or Side B)	Date Completed:	
<input type="checkbox"/>	j. On last Energy Segment, verify there is a Ladder Tray Cover Plate.	Date Completed:	

## Collection Segment Installation to Foundation

		Comments	Initials
<input type="checkbox"/>	a. Set on foundation	Date Completed:	
<input type="checkbox"/>	b. Verify alignment of incoming conduits for DC, AC, and Communication cables	Date Completed:	
<input type="checkbox"/>	c. Verified as level within 3mm of adjacent section	Date Completed:	
<input type="checkbox"/>	d. Shims used per engineer recommendation	Date Completed:	
<input type="checkbox"/>	e. Anchor Plates installed to segment and torqued to 876.0 in-lbs. (+0/-4.0)	Date Completed:	
<input type="checkbox"/>	f. Anchor Plates affixed to foundation per IFC Drawing/Design	Date Completed:	

## Collection Segment Incoming Cable Installation

		Comments	Initials
<input type="checkbox"/>	a. Incoming conduit floor access panel opened	Date Completed:	
<input type="checkbox"/>	b. Conduit extended into Segment	Date Completed:	
<input type="checkbox"/>	c. Cable floor access panel sealed	Date Completed:	



# S750 Lineup Mechanical Installation Checklist

Segment HVAC Exhaust Vent Installation			
		Comments	Initials
<input type="checkbox"/>	a. Installation and Sealing of HVAC Exhaust Vent Collection Segment	Date Completed:	
<input type="checkbox"/>	b. Installation and Sealing of HVAC Exhaust Vent Energy Segment 1	Date Completed:	
<input type="checkbox"/>	c. Installation and Sealing of HVAC Exhaust Vent Energy Segment 2	Date Completed:	
<input type="checkbox"/>	d. Installation and Sealing of HVAC Exhaust Vent Energy Segment 3	Date Completed:	
<input type="checkbox"/>	e. Installation and Sealing of HVAC Exhaust Vent Energy Segment 4	Date Completed:	
<input type="checkbox"/>	f. Installation and Sealing of HVAC Exhaust Vent Energy Segment 5	Date Completed:	
<input type="checkbox"/>	g. Installation and Sealing of HVAC Exhaust Vent Energy Segment 6	Date Completed:	
<input type="checkbox"/>	h. Installation and Sealing of HVAC Exhaust Vent Energy Segment 7	Date Completed:	
<input type="checkbox"/>	i. Installation and Sealing of HVAC Exhaust Vent Energy Segment 8	Date Completed:	
<input type="checkbox"/>	j. Installation and Sealing of HVAC Exhaust Vent Energy Segment 9	Date Completed:	
<input type="checkbox"/>	k. Installation and Sealing of HVAC Exhaust Vent Energy Segment 10	Date Completed:	
<input type="checkbox"/>	l. Installation and Sealing of HVAC Exhaust Vent Energy Segment 11	Date Completed:	
<input type="checkbox"/>	m. Installation and Sealing of HVAC Exhaust Vent Energy Segment 12	Date Completed:	
<input type="checkbox"/>	n. Installation and Sealing of HVAC Exhaust Vent Energy Segment 13	Date Completed:	
<input type="checkbox"/>	o. Installation and Sealing of HVAC Exhaust Vent Energy Segment 14	Date Completed:	
<input type="checkbox"/>	p. Installation and Sealing of HVAC Exhaust Vent Energy Segment 15	Date Completed:	
<input type="checkbox"/>	q. Installation and Sealing of HVAC Exhaust Vent Energy Segment 16	Date Completed:	
<input type="checkbox"/>	r. Installation and Sealing of HVAC Exhaust Vent Energy Segment 17	Date Completed:	
<input type="checkbox"/>	s. Installation and Sealing of HVAC Exhaust Vent Energy Segment 18	Date Completed:	



# S750 Lineup Mechanical Installation Checklist

## Segment HVAC Exhaust Vent Installation

<input type="checkbox"/>	t. Installation and Sealing of HVAC Exhaust Vent Energy Segment 19	Date Completed:	
<input type="checkbox"/>	u. Installation and Sealing of HVAC Exhaust Vent Energy Segment 20	Date Completed:	
<input type="checkbox"/>	v. Installation and Sealing of HVAC Exhaust Vent Energy Segment 21	Date Completed:	

## Collection Segment UPS Installation

		Comments	Initials
<input type="checkbox"/>	a. Verify site layout and confirm quantity of UPS to be installed into Collection Segment	Date Completed:	
<input type="checkbox"/>	b. Unpackage UPS and inspect for damage	Date Completed:	
<input type="checkbox"/>	c. Lift UPS into designated position and fasten to network rack	Date Completed:	

## Collection Segment Exterior Strobe Mounting

		Comments	Initials
<input type="checkbox"/>	a. Install Exterior Strobe per work instruction: WI-041	Date Completed:	

## Collection Segment External DC Disconnect Switch Installation

		Comments	Initials
<input type="checkbox"/>	a. Install External DC Disconnect Switch handle	Date Completed:	
<input type="checkbox"/>	b. Validate functionality with Internal DC Connect Switch	Date Completed:	

## Energy Segment Stand-Pipe Connection (optional)

		Comments	Initials
<input type="checkbox"/>	a. Check stand-pipe threads for damage.		





# S750 Lineup Pre-Energization Electrical Installation Checklist

Project Name:

Project Number:

Name of Company Performing Installation

Name of Installer Responsible:

Lineup Identification:

Signature of Installer Responsible:

Serial Numbers			
Location ID	Item	Segment Serial Number	Initials
	Collection Segment		
	Energy Segment 1		
	Energy Segment 2		
	Energy Segment 3		
	Energy Segment 4		
	Energy Segment 5		
	Energy Segment 6		
	Energy Segment 7		
	Energy Segment 8		
	Energy Segment 9		
	Energy Segment 10		
	Energy Segment 11		
	Energy Segment 12		
	Energy Segment 13		
	Energy Segment 14		
	Energy Segment 15		
	Energy Segment 16		
	Energy Segment 17		
	Energy Segment 18		
	Energy Segment 19		
	Energy Segment 20		
	Energy Segment 21		

Grounding Connections		
Item	Comments	Initials
<input type="checkbox"/> a. Collection Segment - Connection to Grounding Grid	Date Completed:	



# S750 Lineup Pre-Energization Electrical Installation Checklist

Grounding Connections		
<input type="checkbox"/> b. All Energy Segments - Connection to Grounding Grid A side (if applicable)	Date Completed:	
<input type="checkbox"/> c. All Energy Segments - Connection to Grounding Grid B side (if applicable)	Date Completed:	
<input type="checkbox"/> d. Transformer – Torque Check and Verification	Date Completed:	
<input type="checkbox"/> e. All segment-to-segment ground harnesses are installed and torqued.	Date Completed:	
<input type="checkbox"/> f. All cable trays are grounded by grounding washers or equipment ground conductor.	Date Completed:	

Collection Segment - Bottom Entry Connections		
Item	Comments	Initials
<input type="checkbox"/> g. Cables from PCS to DC Combiner 1 Installed per IFC Drawings and tested with passing results	Date Completed:	
<input type="checkbox"/> h. Cables from PCS to DC Combiner 2 Installed per IFC Drawings and tested with passing results	Date Completed:	
<input type="checkbox"/> i. Cables from PCS to DC Combiner 3 Installed per IFC Drawings and Tested with passing results	Date Completed	
<input type="checkbox"/> j. Cables from AC Point of Connection to AC Main Breaker Collection Segment, installed per IFC Drawings and tested with passing results	Date Completed:	
<input type="checkbox"/> k. Phase rotation at AC main Breaker <input type="checkbox"/> Clockwise <input type="checkbox"/> Counterclockwise	Date Completed:	
<input type="checkbox"/> l. Communication cables (Ethernet or Fiber Optic) from Point of Connection to Collection Segment Connection Point	Date Completed:	

UPS – Collection Segment to Energy Segments		
Item	Comments	Initials
<input type="checkbox"/> m. UPS 1 - Connect Cable to ES 1-7 into Group 2	Date Completed:	
<input type="checkbox"/> n. UPS 2 - Connect Cable to ES 8-14 into Group 2	Date Completed:	
<input type="checkbox"/> o. UPS 3 - Connect Cable to ES 15-21 into Group 2	Date Completed:	

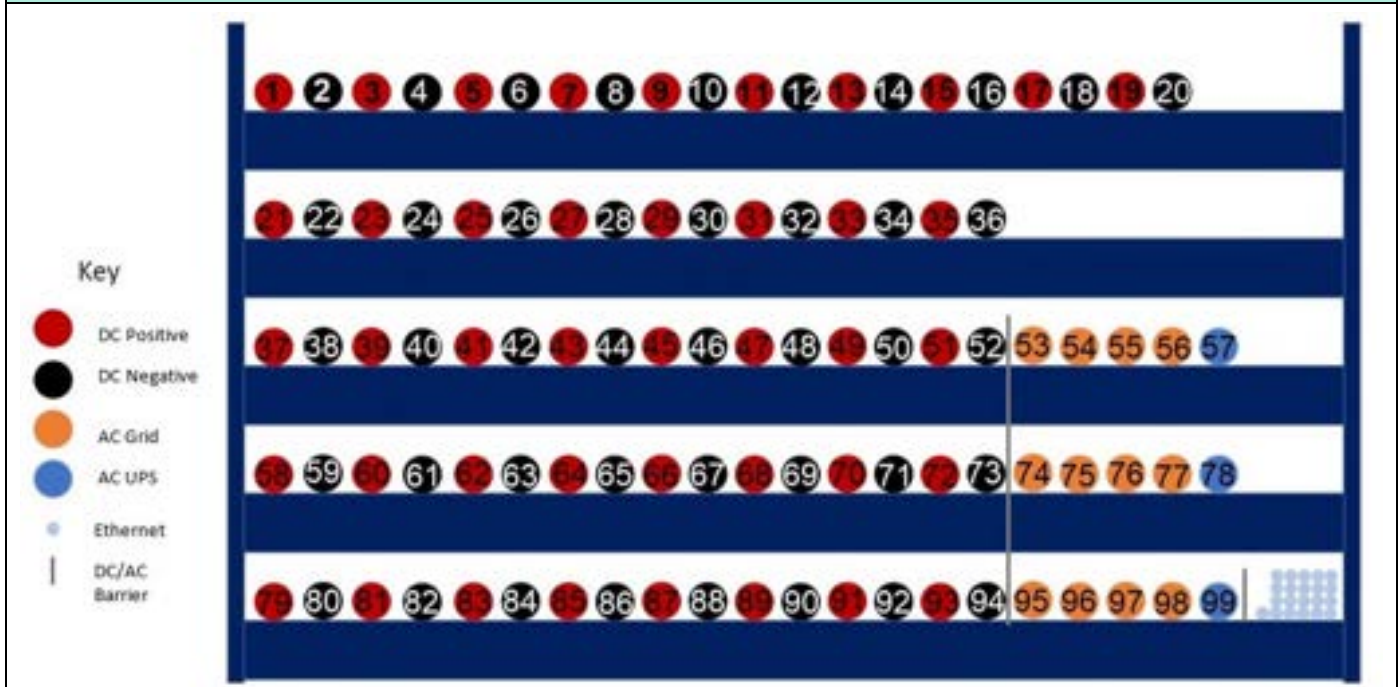


# S750 Lineup Pre-Energization Electrical Installation Checklist

## UPS – Collection Segment to Energy Segments

<input type="checkbox"/> p. UPS - Collection Segment UPS to Network Rack*	Date Completed:	
<input type="checkbox"/> q. UPS - Master Collection UPS (EMS) to UPS Circuit (if applicable)	Date Completed:	

## Collection Segment to Energy Segments – Cable Layout



Cable Location	ES Location	Cable Location	ES Location	Cable Location	ES Location
1		2		3	
4		5		6	
7		8		9	
10		11		12	
13		14		15	
16		17		18	
19		20		21	
22		23		24	
25		26		27	
28		29		30	
31		32		33	
34		35		36	



# S750 Lineup Pre-Energization Electrical Installation Checklist

## Collection Segment to Energy Segments – Cable Layout

37		38		39	
40		41		42	
43		44		45	
46		47		48	
49		50		51	
52		53		54	
55		56		57	
58		59		60	
61		62		63	
64		65		66	
67		68		69	
70		71		72	
73		74		75	
76		77		78	
79		80		81	
82		83		84	
85		86		87	
88		89		90	
91		92		93	
94		95		96	
97		98		99	

## AC-GRID – Connections

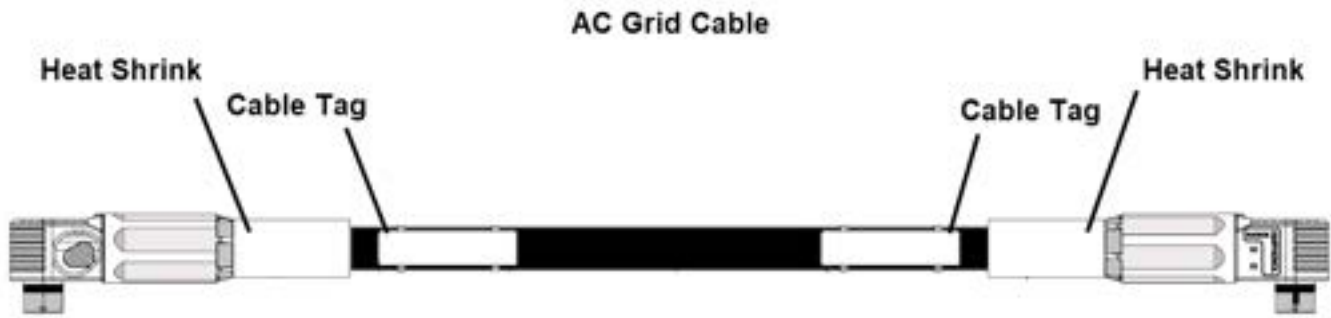
Item	Comments	Initials
<input type="checkbox"/> r. Cables installed into the correct location and secured in place at distances not exceeding 6-feet.	Date Completed:	
<input type="checkbox"/> s. Cables tested at each Energy Segment.	Date Completed:	





# S750 Lineup Pre-Energization Electrical Installation Checklist

## AC-GRID – Connections



Segment	Upstream Point	Segment Connection	Cable ID	Megger Date	Results	Connection Date	Performed by
Segments 1-7 can be tested together from QA2 secondary terminals. <ol style="list-style-type: none"> <li>Open QA2 in CS.</li> <li>Open QA1, QA14, and QA7 in ES 1-7.</li> <li>Disconnect String controller -AS1 terminal on each ES 1-7.</li> <li>Disconnect HVAC Power socket in upper section -AS21 and -AS22 in ES1-7.</li> <li>Confirm 1 megaohm resistance at 500V for 60 seconds from each phase to phase and all phases to ground.</li> <li>Repeat steps 1-5 for CS-QA3 and for ES8-14.</li> <li>Repeat steps 1-5 for CS-QA4 and for ES15-21.</li> </ol>							
ES1	CS:AS104	ES1:AS1					
ES1	CS:AS105	ES1:AS2					
ES1	CS:AS106	ES1:AS3					
ES1	CS:AS107	ES1:AS4					
ES2	ES1:AS5	ES2:AS2					
ES2	ES1:AS6	ES2:AS3					
ES2	ES1:AS7	ES2:AS1					
ES2	ES1:AS8	ES2:AS4					
ES3	ES2:AS5	ES3:AS2					
ES3	ES2:AS6	ES3:AS3					
ES3	ES2:AS7	ES3:AS1					
ES3	ES2:AS8	ES3:AS4					
ES4	ES3:AS5	ES4:AS2					
ES4	ES3:AS6	ES4:AS3					
ES4	ES3:AS7	ES4:AS1					
ES4	ES3:AS8	ES4:AS4					
ES5	ES4:AS5	ES5:AS2					
ES5	ES4:AS6	ES5:AS3					
ES5	ES4:AS7	ES5:AS1					
ES5	ES4:AS8	ES5:AS4					



# S750 Lineup Pre-Energization Electrical Installation Checklist

Segment	Upstream Point	Segment Connection	Cable ID	Megger Date	Results	Connection Date	Performed by
ES6	ES5:AS5	ES6:AS2					
ES6	ES5:AS6	ES6:AS3					
ES6	ES5:AS7	ES6:AS1					
ES6	ES5:AS8	ES6:AS4					
ES7	ES6:AS5	ES7:AS2					
ES7	ES6:AS6	ES7:AS3					
ES7	ES6:AS7	ES7:AS1					
ES7	ES6:AS8	ES7:AS4					
ES8	CS:AS108	ES8:AS01					
ES8	CS:AS109	ES8:AS02					
ES8	CS:AS110	ES8:AS03					
ES8	CS:AS111	ES8:AS04					
ES9	ES08:AS5	ES9:AS2					
ES9	ES08:AS6	ES9:AS3					
ES9	ES08:AS7	ES9:AS1					
ES9	ES08:AS8	ES9:AS4					
ES10	ES09:AS5	ES10:AS2					
ES10	ES09:AS6	ES10:AS3					
ES10	ES09:AS7	ES10:AS1					
ES10	ES09:AS8	ES10:AS4					
ES11	ES10:AS5	ES11:AS2					
ES11	ES10:AS6	ES11:AS3					
ES11	ES10:AS7	ES11:AS1					
ES11	ES10:AS8	ES11:AS4					
ES12	ES11:AS5	ES12:AS2					
ES12	ES11:AS6	ES12:AS3					
ES12	ES11:AS7	ES12:AS1					
ES12	ES11:AS8	ES12:AS4					
ES13	ES12:AS5	ES13:AS2					
ES13	ES12:AS6	ES13:AS3					
ES13	ES12:AS7	ES13:AS1					
ES13	ES12:AS8	ES13:AS4					
ES14	ES13:AS5	ES14:AS2					
ES14	ES13:AS6	ES14:AS3					
ES14	ES13:AS7	ES14:AS1					
ES14	ES13:AS8	ES14:AS4					
ES15	CS:AS112	ES15:AS1					



# S750 Lineup Pre-Energization Electrical Installation Checklist

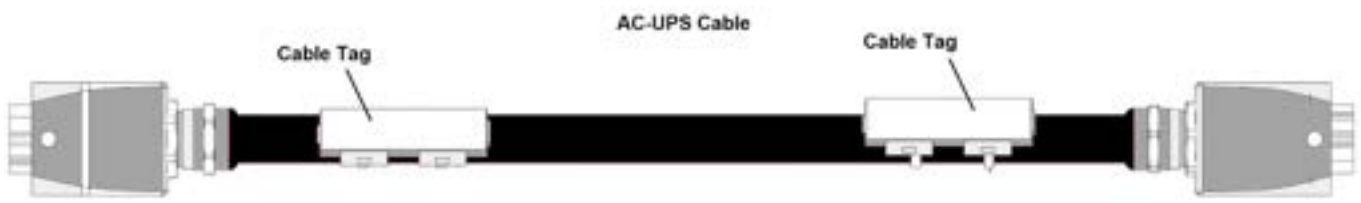
Segment	Upstream Point	Segment Connection	Cable ID	Megger Date	Results	Connection Date	Performed by
ES15	CS:AS113	ES15:AS2					
ES15	CS:AS114	ES15:AS3					
ES15	CS:AS115	ES15:AS4					
ES16	ES15:AS5	ES16:AS2					
ES16	ES15:AS6	ES16:AS3					
ES16	ES15:AS7	ES16:AS1					
ES16	ES15:AS8	ES16:AS4					
ES17	ES16:AS5	ES17:AS2					
ES17	ES16:AS6	ES17:AS3					
ES17	ES16:AS7	ES17:AS1					
ES17	ES16:AS8	ES17:AS4					
ES18	ES17:AS5	ES18:AS2					
ES18	ES17:AS6	ES18:AS3					
ES18	ES17:AS7	ES18:AS1					
ES18	ES17:AS8	ES18:AS4					
ES19	ES18:AS5	ES19:AS2					
ES19	ES18:AS6	ES19:AS3					
ES19	ES18:AS7	ES19:AS1					
ES19	ES18:AS8	ES19:AS4					
ES20	ES19:AS5	ES20:AS2					
ES20	ES19:AS6	ES20:AS3					
ES20	ES19:AS7	ES20:AS1					
ES20	ES19:AS8	ES20:AS4					
ES21	ES20:AS5	ES21:AS2					
ES21	ES20:AS6	ES21:AS3					
ES21	ES20:AS7	ES21:AS1					
ES21	ES20:AS8	ES21:AS4					

AC-UPS - Connections		
Item	Comments	Initials
<input type="checkbox"/> t. Cables installed into the correct location and secured at distances not exceeding 6-feet.	Date Completed:	
<input type="checkbox"/> u. Cables tested at each Energy Segment	Date Completed:	



# S750 Lineup Pre-Energization Electrical Installation Checklist

## AC-UPS - Connections



Segment	Upstream Point	Segment Connection	Cable ID	Megger Date	Results	Connection Date	Performed by
---------	----------------	--------------------	----------	-------------	---------	-----------------	--------------

Segments 1-7 can be tested together from QA20 secondary terminals.

1. Open QA20 in CS.
2. Open QA10 in ES 1-7.
3. From QA20 secondary terminals, check insulation resistance is greater than 1Megaohm with Megger at 500V for 60 seconds across phase to phase and each phase to ground.
4. Repeat steps 1-3 for QA21 breaker in CS for segments 8-14.
5. Repeat steps 1-3 for QA22 breaker in CS for segments 15-21.

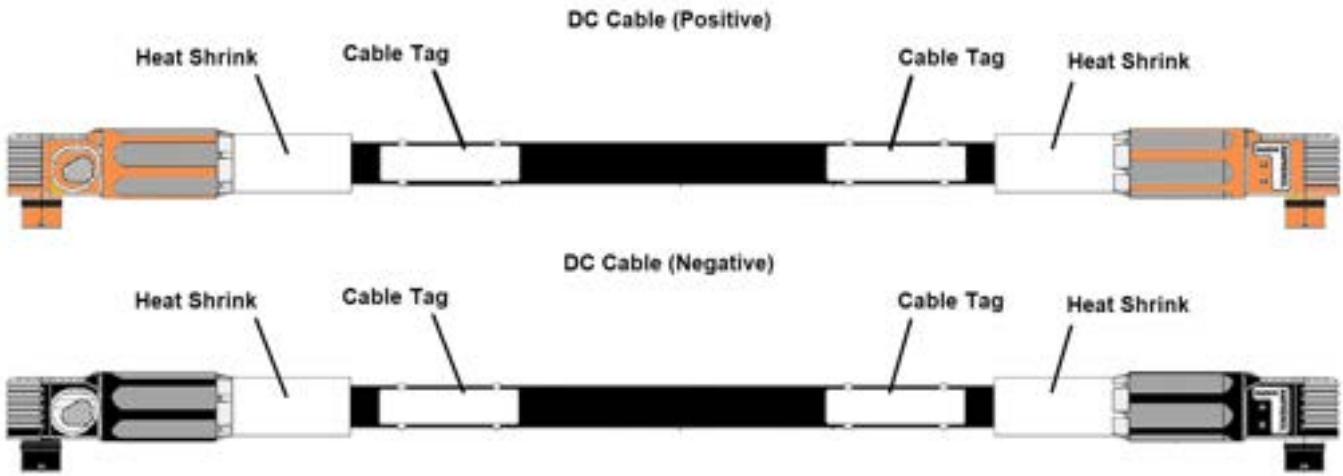
ES1	CS:AS116	ES1:AS9					
ES2	ES1:AS10	ES2:AS9					
ES3	ES2:AS10	ES3:AS9					
ES4	ES3:AS10	ES4:AS9					
ES5	ES4:AS10	ES5:AS9					
ES6	ES5:AS10	ES6:AS9					
ES7	ES6:AS10	ES7:AS9					
ES8	CS:AS117	ES8:AS9					
ES9	ES8:AS10	ES9:AS9					
ES10	ES9:AS10	ES10:AS9					
ES11	ES10:AS10	ES11:AS9					
ES12	ES11:AS10	ES12:AS9					
ES13	ES12:AS10	ES13:AS9					
ES14	ES13:AS10	ES14:AS9					
ES15	CS:AS118	ES15:AS9					
ES16	ES15:AS10	ES16:AS9					
ES17	ES16:AS10	ES17:AS9					
ES18	ES17:AS10	ES18:AS9					
ES19	ES18:AS10	ES19:AS9					
ES20	ES19:AS10	ES20:AS9					
ES21	ES20:AS10	ES21:AS9					



# S750 Lineup Pre-Energization Electrical Installation Checklist

## DC Connections – Collection Segment to Energy Segments

Item	Comments	Initials
<input type="checkbox"/> v. Cables installed into the correct location and secured in place at distances not exceeding 6-feet.	Date Completed:	
<input type="checkbox"/> w. Cables tested at each Energy Segment	Date Completed:	



Segment	Upstream Point	Segment Connection	Cable ID	Megger Date	Results	Connection Date	Performed by
ES1	CS:AS20	ES1:AS11					
ES1	CS:AS21	ES1:AS12					
ES1	CS:AS22	ES1:AS13					
ES1	CS:AS23	ES1:AS14					
ES2	CS:AS24	ES2:AS11					
ES2	CS:AS25	ES2:AS12					
ES2	CS:AS26	ES2:AS13					
ES2	CS:AS27	ES2:AS14					
ES3	CS:AS28	ES3:AS11					
ES3	CS:AS29	ES3:AS12					
ES3	CS:AS30	ES3:AS13					
ES3	CS:AS31	ES3:AS14					
ES4	CS:AS32	ES4:AS11					
ES4	CS:AS33	ES4:AS12					
ES4	CS:AS34	ES4:AS13					
ES4	CS:AS35	ES4:AS14					
ES5	CS:AS36	ES5:AS11					
ES5	CS:AS37	ES5:AS12					
ES5	CS:AS38	ES5:AS13					
ES5	CS:AS39	ES5:AS14					



# S750 Lineup Pre-Energization Electrical Installation Checklist

Segment	Upstream Point	Segment Connection	Cable ID	Megger Date	Results	Connection Date	Performed by
ES6	CS:AS40	ES6:AS11					
ES6	CS:AS41	ES6:AS12					
ES6	CS:AS42	ES6:AS13					
ES6	CS:AS43	ES6:AS14					
ES7	CS:AS44	ES7:AS11					
ES7	CS:AS45	ES7:AS12					
ES7	CS:AS46	ES7:AS13					
ES7	CS:AS47	ES7:AS14					
ES8	CS:AS48	ES8:AS11					
ES8	CS:AS49	ES8:AS12					
ES8	CS:AS50	ES8:AS13					
ES8	CS:AS51	ES8:AS14					
ES9	CS:AS52	ES9:AS11					
ES9	CS:AS53	ES9:AS12					
ES9	CS:AS54	ES9:AS13					
ES9	CS:AS55	ES9:AS14					
ES10	CS:AS56	ES10:AS11					
ES10	CS:AS57	ES10:AS12					
ES10	CS:AS58	ES10:AS13					
ES10	CS:AS59	ES10:AS14					
ES11	CS:AS60	ES11:AS11					
ES11	CS:AS61	ES11:AS12					
ES11	CS:AS62	ES11:AS13					
ES11	CS:AS63	ES11:AS14					
ES12	CS:AS64	ES12:AS11					
ES12	CS:AS65	ES12:AS12					
ES12	CS:AS66	ES12:AS13					
ES12	CS:AS67	ES12:AS14					
ES13	CS:AS68	ES13:AS11					
ES13	CS:AS69	ES13:AS12					
ES13	CS:AS70	ES13:AS13					
ES13	CS:AS71	ES13:AS14					
ES14	CS:AS72	ES14:AS11					
ES14	CS:AS73	ES14:AS12					
ES14	CS:AS74	ES14:AS13					
ES14	CS:AS75	ES14:AS14					
ES15	CS:AS76	ES15:AS11					



# S750 Lineup Pre-Energization Electrical Installation Checklist

Segment	Upstream Point	Segment Connection	Cable ID	Megger Date	Results	Connection Date	Performed by
ES15	CS:AS77	ES15:AS12					
ES15	CS:AS78	ES15:AS13					
ES15	CS:AS79	ES15:AS14					
ES16	CS:AS80	ES16:AS11					
ES16	CS:AS81	ES16:AS12					
ES16	CS:AS82	ES16:AS13					
ES16	CS:AS83	ES16:AS14					
ES17	CS:AS84	ES17:AS11					
ES17	CS:AS85	ES17:AS12					
ES17	CS:AS86	ES17:AS13					
ES17	CS:AS87	ES17:AS14					
ES18	CS:AS88	ES18:AS11					
ES18	CS:AS89	ES18:AS12					
ES18	CS:AS90	ES18:AS13					
ES18	CS:AS91	ES18:AS14					
ES19	CS:AS92	ES19:AS11					
ES19	CS:AS93	ES19:AS12					
ES19	CS:AS94	ES19:AS13					
ES19	CS:AS95	ES19:AS14					
ES20	CS:AS96	ES20:AS11					
ES20	CS:AS97	ES20:AS12					
ES20	CS:AS98	ES20:AS13					
ES20	CS:AS99	ES20:AS14					
ES21	CS:AS100	ES21:AS11					
ES21	CS:AS101	ES21:AS12					
ES21	CS:AS102	ES21:AS13					
ES21	CS:AS103	ES21:AS14					

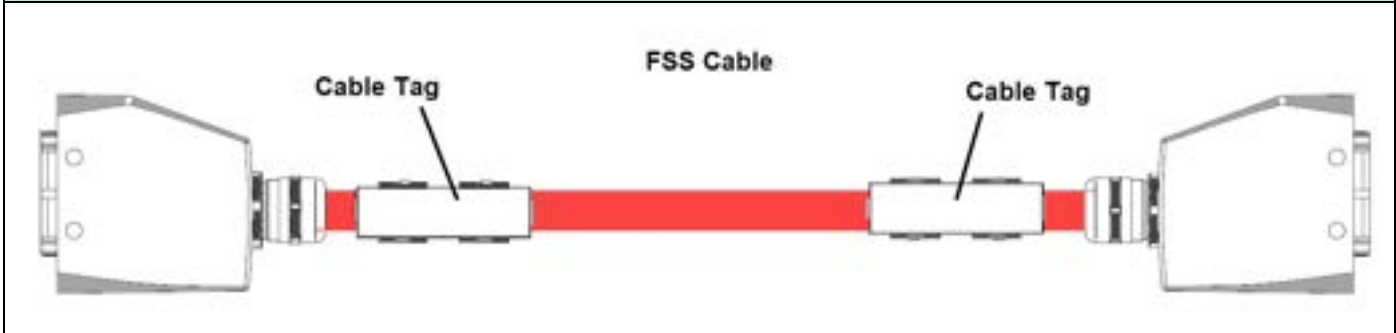
## FSS – Connections

Item	Comments	Initials
<input type="checkbox"/> x. Cables installed into the correct location and secured in place at distances not exceeding 6-feet.	Date Completed:	
<input type="checkbox"/> y. Cables tested at each Energy Segment	Date Completed:	
<input type="checkbox"/> z. Cables visually inspected.	Date Completed:	



# S750 Lineup Pre-Energization Electrical Installation Checklist

## FSS – Connections



Segment	Upstream Point	Segment Connection	Cable ID	Visual Inspection	Results	Connection Date	Performed by
ES1	CS:AS146	ES1:AS17					
ES2	ES1:AS18	ES2:AS17					
ES3	ES2:AS18	ES3:AS17					
ES4	ES3:AS18	ES4:AS17					
ES5	ES4:AS18	ES5:AS17					
ES6	ES5:AS18	ES6:AS17					
ES7	ES6:AS18	ES7:AS17					
ES8	ES7:AS18	ES8:AS17					
ES9	ES8:AS18	ES9:AS17					
ES10	ES9:AS18	ES10:AS17					
ES11	ES10:AS18	ES11:AS17					
ES12	ES11:AS18	ES12:AS17					
ES13	ES12:AS18	ES13:AS17					
ES14	ES13:AS18	ES14:AS17					
ES15	ES14:AS18	ES15:AS17					
ES16	ES15:AS18	ES16:AS17					
ES17	ES16:AS18	ES17:AS17					
ES18	ES17:AS18	ES18:AS17					
ES19	ES18:AS18	ES19:AS17					
ES20	ES19:AS18	ES20:AS17					
ES21	ES20:AS18	ES21:AS17					

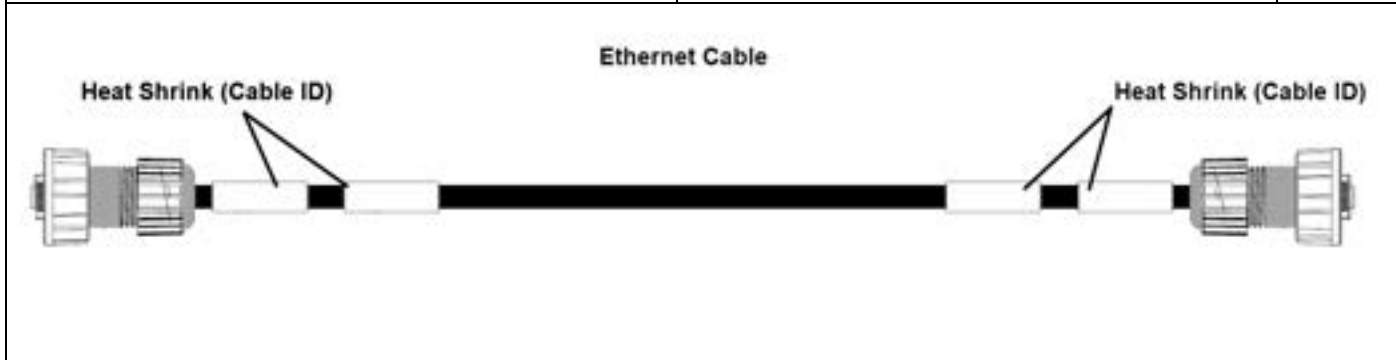




# S750 Lineup Pre-Energization Electrical Installation Checklist

## Ethernet - Collection Segment to Energy Segments

Item	Comments	Initials
Using Fluke Networks LIQ-100 Link IQ Cable and Network Tester:		
1. Cable qualification to IEEE 802.3: Verify if a 4-pair cable with continuity on all 4 pairs can support 1000BASE-T (1G) data rate throughput.		
2. Verify wire connectivity end-to-end to verify there are no:		
a. Opens		
b. Shorts		
c. Split Pairs		
d. Mis-wires		
3. Verify cable length measurement of tester matches actual lengths.		
4. Document results.		
<input type="checkbox"/> aa. Cables installed into the correct location and secured in place at distances not exceeding 6-feet.	Date Completed:	
<input type="checkbox"/> bb. Cables tested at each Energy Segment.	Date Completed:	
<input type="checkbox"/> cc. Verify network port mapping using end to end network cable tester.	Date Completed:	



Segment	Upstream Point	Segment Connection	Cable ID	Testing Date	Results	Connection Date	Performed by
ES1	CS:AS119	ES1:AS15					
ES2	CS:AS120	ES2:AS15					
ES3	CS:AS121	ES3:AS15					
ES4	CS:AS122	ES4:AS15					
ES5	CS:AS123	ES5:AS15					
ES6	CS:AS124	ES6:AS15					
ES7	CS:AS125	ES7:AS15					
ES8	CS:AS126	ES8:AS15					
ES9	CS:AS127	ES9:AS15					
ES10	CS:AS128	ES10:AS15					
ES11	CS:AS129	ES11:AS15					
ES12	CS:AS130	ES12:AS15					
ES13	CS:AS131	ES13:AS15					



# S750 Lineup Pre-Energization Electrical Installation Checklist

ES14	CS:AS132	ES14:AS15				
ES15	CS:AS133	ES15:AS15				
ES16	CS:AS134	ES16:AS15				
ES17	CS:AS135	ES17:AS15				
ES18	CS:AS136	ES18:AS15				
ES19	CS:AS137	ES19:AS15				
ES20	CS:AS138	ES20:AS15				
ES21	CS:AS139	ES21:AS15				

## Grounding – Connections Section to Section

Item	Comments	Initials
<input type="checkbox"/> dd. Cables installed into the correct location	Date Completed:	
<input type="checkbox"/> ee. Cables tested at each Energy Segment	Date Completed:	
<input type="checkbox"/> ff. All M10 hardware torqued to 18 - 23 Nm (13 - 17 ft-lbs).	Date Completed:	



Segment	Upstream Point	Segment Connection	Cable ID	Continuity Date	Results	Connection Date	Performed by
ES1	CS:Right Grounding Block	ES1:Left Grounding Block					
ES2	ES1:Right Grounding Block	ES2:Left Grounding Block					
ES3	ES2:Right Grounding Block	ES3:Left Grounding Block					
ES4	ES3:Right Grounding Block	ES4:Left Grounding Block					
ES5	ES4:Right Grounding Block	ES5:Left Grounding Block					
ES6	ES5:Right Grounding Block	ES6:Left Grounding Block					



# S750 Lineup Pre-Energization Electrical Installation Checklist

Segment	Upstream Point	Segment Connection	Cable ID	Continuity Date	Results	Connection Date	Performed by
ES7	ES6:Right Grounding Block	ES7:Left Grounding Block					
ES8	ES7:Right Grounding Block	ES8:Left Grounding Block					
ES9	ES8:Right Grounding Block	ES9:Left Grounding Block					
ES10	ES9:Right Grounding Block	ES10:Left Grounding Block					
ES11	ES10:Right Grounding Block	ES11:Left Grounding Block					
ES12	ES11:Right Grounding Block	ES12:Left Grounding Block					
ES13	ES12:Right Grounding Block	ES13:Left Grounding Block					
ES14	ES13:Right Grounding Block	ES14:Left Grounding Block					
ES15	ES14:Right Grounding Block	ES15:Left Grounding Block					
ES16	ES15:Right Grounding Block	ES16:Left Grounding Block					
ES17	ES16:Right Grounding Block	ES17:Left Grounding Block					
ES18	ES17:Right Grounding Block	ES18:Left Grounding Block					
ES19	ES18:Right Grounding Block	ES19:Left Grounding Block					



# S750 Lineup Pre-Energization Electrical Installation Checklist

Segment	Upstream Point	Segment Connection	Cable ID	Continuity Date	Results	Connection Date	Performed by
ES20	ES19:Right Grounding Block	ES20:Left Grounding Block					
ES21	ES20:Right Grounding Block	ES21:Left Grounding Block					

## Cable Tray Grounding

Item	Comments	Initials
<input type="checkbox"/> gg. Cables Trays installed in each section	Date Completed:	
<input type="checkbox"/> hh. Inspect and confirm that the ground washer is installed and torqued to specification.	Date Completed:	
<input type="checkbox"/> ii. Complete a continuity check from ground washer to frame.	Date Completed:	

## Cable Tray Access Cover

Item	Comments	Initials
<input type="checkbox"/> jj. Top covers installed and tightened	Date Completed:	
<input type="checkbox"/> kk. Cable Tray Transition Piece between segments installed and sealed	Date Completed:	
<input type="checkbox"/> ll. Cable Tray side covers installed and all hardware torqued (see WI-024 for torque values)	Date Completed:	

## Pre-Energization Collection Segment Bottom Entry Connections Voltage Check\*

Item	Comments	Initials
<input type="checkbox"/> mm. Voltage verified at Transformer AC Main Breaker on the terminals for AS01 on Primary Side of Collection Segment Transformer: Phase 1-2 ___ vac Phase 2-3 ___ vac Phase 1-3 ___ vac Phase 1-Ground ___ vac Phase 2 -Ground ___ vac	Date Completed:	



# S750 Lineup Pre-Energization Electrical Installation Checklist

Pre-Energization Collection Segment Bottom Entry Connections Voltage Check*		
Phase 3 - Ground ____ vac		
<input type="checkbox"/> nn. Phase rotation at Terminals AS01 <input type="checkbox"/> Clockwise <input type="checkbox"/> Counterclockwise	Date Completed:	
<input type="checkbox"/> oo. Voltage Verified at: QA8 (A-N) ____ vac QA7 (C-N) ____ vac QA5 (B-N) ____ vac	Date Completed:	
* Procedures are detailed in PC-S006 Stack750 Line Up Configuration & Commissioning		



**Exhibit L-3**  
**Form of Notice of Installation Completion**

*[See Attached]*



(Powin Form)

Exhibit L-3

Form of Notice of Installation Completion

**Notice of Installation Completion**

**Project Name:** \_\_\_\_\_  
**Contract Title and Number:** \_\_\_\_\_  
**Buyer:** \_\_\_\_\_  
**Contract Date:** \_\_\_\_\_

Buyer Completion of Installation. Buyer hereby certifies and represents that the requirements to Installation Completion are satisfied in accordance with the Contract as of [\_\_\_\_\_, 20\_\_].

Supplier Review of Installation Completion. Supplier has reviewed Buyer’s installation work, and (*check one*):

Supplier accepts Buyer’s Notice of Installation Completion. Installation Completion has occurred as of [\_\_\_\_\_] (the “**Installation Acceptance Date**”).

Supplier rejects Buyer’s Notice of Installation Completion due to the reason(s) specified below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**Supplier:**  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Signature: \_\_\_\_\_

**Buyer:**  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Signature: \_\_\_\_\_



**Exhibit M**  
**Form of Request for Payment**

*[See Attached]*

**Exhibit M**  
**Form of Request for Payment**

The content set forth on Attachment 1 to this Exhibit M will be in all invoices:

### Exhibit M – Attachment 1



# Invoice

**Invoice #**  
**Date:**  
**Due Date:**

**Bill To**

**Project Location**

**PO #**

**Terms**

Project	Item	Amount
---------	------	--------

Subtotal

Tax Total

Total

Amount Paid

Amount Due

Status

**Bank Information**

Bank name: HSBC Bank USA, NA  
 Bank address: 452 5th Avenue, New York, NY 10018  
 For Wire (ABA): 021001088  
 For ACH (ABA): 022000020  
 SWIFT Code (for international wires): MRMDUS33  
 Beneficiary name: Powin, LLC  
 Beneficiary account #: 963022679

**Tax ID:**  
86-2270504

**Exhibit N-1**  
**Form of Delivery Acceptance Certificate**

*[See Attached]*



(Powin Form)

Exhibit N-1  
Form of Delivery Acceptance Certificate

**Delivery Acceptance Certificate**

**Project Name:** \_\_\_\_\_

**Contract Title and Number:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_

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

Supplier hereby certifies and represents that as of the date set forth below Delivery of the following ESS Equipment has been achieved in accordance with the Contract.

ESS Equipment that has achieved Delivery: \_\_\_\_\_

The Date of Delivery for such ESS Equipment is hereby established as: \_\_\_\_\_

\_\_\_\_\_  
[DATE]

Signing of this Delivery Acceptance Certificate by Buyer in no way alters the responsibility of Supplier to complete their obligations in accordance with the Contract. Buyer agrees that the above ESS Equipment has achieved Delivery as of:

\_\_\_\_\_  
[DATE]

**Supplier:**

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

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

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

Signature: \_\_\_\_\_

**Buyer:**

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

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

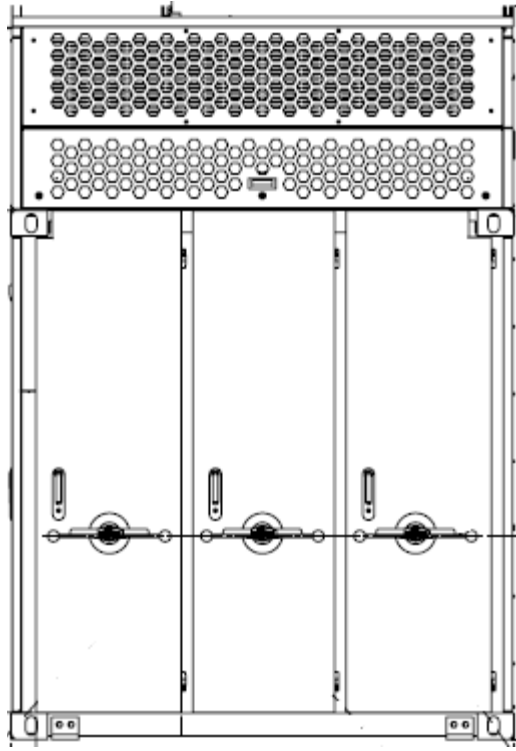
Date: \_\_\_\_\_

Signature: \_\_\_\_\_



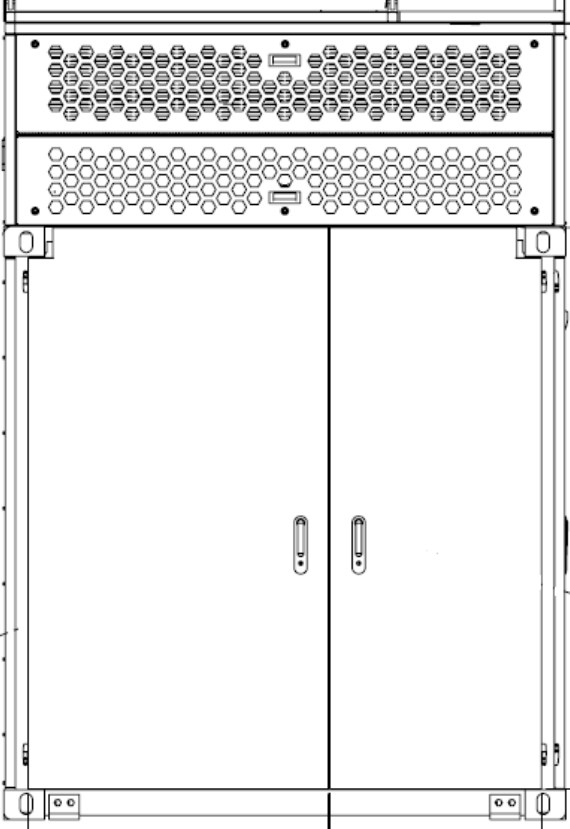
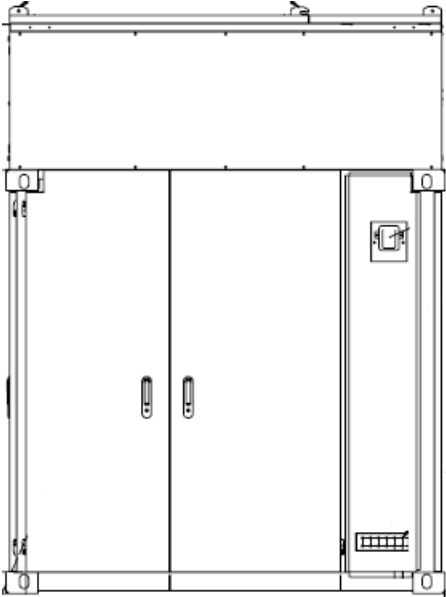
# Collection Segment Receiving Checklist

Project Name:	Project Number:
Date of Arrival:	Company Name of Inspector:
Transport Company:	Name of Inspector:
Segment Serial Number:	Signature of Inspector:

Transportation		
Item	Comments	Initials
<input type="checkbox"/> a. Bill of Lading		
<input type="checkbox"/> b. Packaging In good condition		
<input type="checkbox"/> c. Transportation Cover Intact		
<input type="checkbox"/> d. Note Damage Below in each area		
<p style="text-align: center;"><b>Front View</b></p> 	<p>Items to Verify</p> <ul style="list-style-type: none"> <li>• All Side Paneling is not dented or scratched</li> <li>• Grounding Bar Intact and Undamaged</li> <li>• Door Handles Un Damaged and Open Freely</li> <li>• Keys Delivered with Unit</li> </ul>	

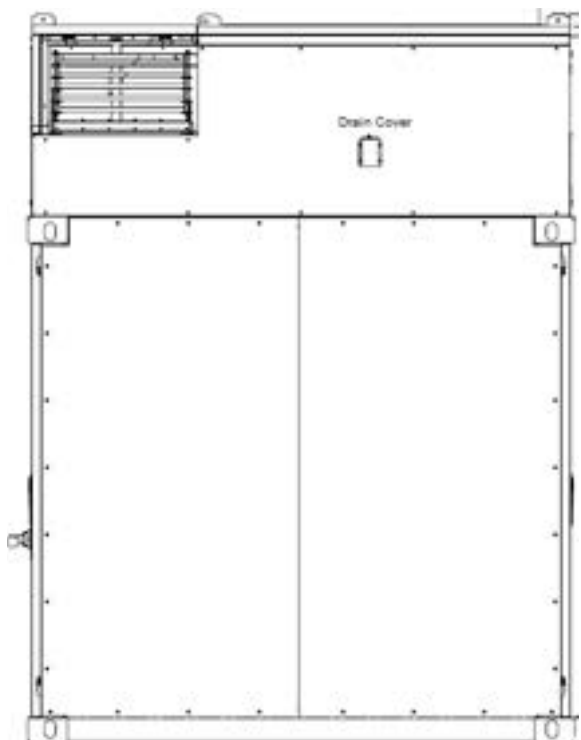
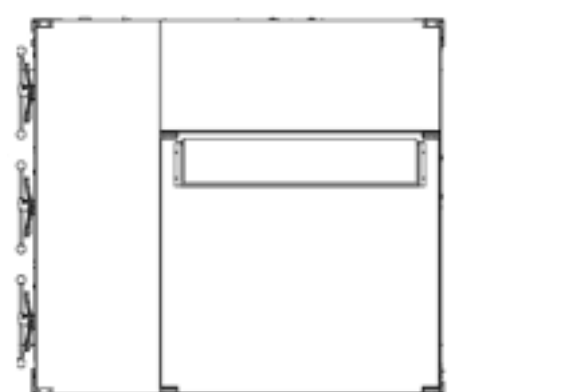


# Collection Segment Receiving Checklist

<p style="text-align: center;"><b>Back View</b></p> 	<p><b>Items to Verify</b></p> <ul style="list-style-type: none"> <li>• All Paneling is not dented or scratched</li> <li>• Grounding Bar Intact and Undamaged</li> <li>• Door Handles Un Damaged and Open Freely</li> <li>• Keys Delivered with Unit</li> <li>• Doors Open and Close.</li> <li>• Door Handles Lock and Unlock</li> </ul>	
<p><b>Left Side View</b></p> 	<p><b>Items to Verify</b></p> <ul style="list-style-type: none"> <li>• All Side Paneling is not dented or scratched</li> <li>• Bus Bar Installed and intact</li> <li>• Exterior FSS Strobe</li> <li>• Doors Open and Close.</li> <li>• Door Handles Lock and Unlock</li> </ul>	



# Collection Segment Receiving Checklist

<p>Right Side View</p> 	<p>Items to Verify</p> <ul style="list-style-type: none"> <li>• All Side Paneling is not dented or scratched</li> <li>• Cable Tray Access is sealed and no water ingress is visible</li> <li>• Drain Cover is intact and not damaged</li> </ul>	
<p>Top View</p> 	<p>Items to Verify</p> <ul style="list-style-type: none"> <li>• Roof Paneling not dented or scratched</li> <li>• HVAC Lifting Points Intact and not damaged</li> <li>• Exhaust Duct Sealed and no water ingress is visible</li> </ul>	
<input type="checkbox"/>		
<p><b>2.0 Loose Items Shipped with Unit</b></p>	<p><b>Comments</b></p>	<p><b>Initials</b></p>
<input type="checkbox"/> a. 4 x Anchor Plates		
<input type="checkbox"/> b. Exhaust Hood		
<input type="checkbox"/> c. 3 x Exterior DC Disconnect Switch		
<input type="checkbox"/> d. Grounding Equipment		
<input type="checkbox"/> e.		








# Energy Segment Receiving Checklist

Project Name:	Project Number:
Date of Arrival:	Name of Inspector:
Segment Serial Number:	Signature of Inspector:

## Transportation

	Comments	Initials
<input type="checkbox"/> Bill of Lading		
<input type="checkbox"/> Packaging In good condition		
<input type="checkbox"/> Transportation Cover Intact		
<input type="checkbox"/> Note Damage Below in each area		

<p style="text-align: center;"><b>Front View</b></p> 	<p><b>Items to Verify</b></p> <ul style="list-style-type: none"> <li>All Side Paneling is not dented or scratched</li> <li>LCD CONTROL PANEL Intact and Not Damaged</li> <li>Grounding Bar Intact and Undamaged</li> <li>Door Handles Un Damaged and Open Freely</li> <li>Keys Delivered with Unit</li> </ul>
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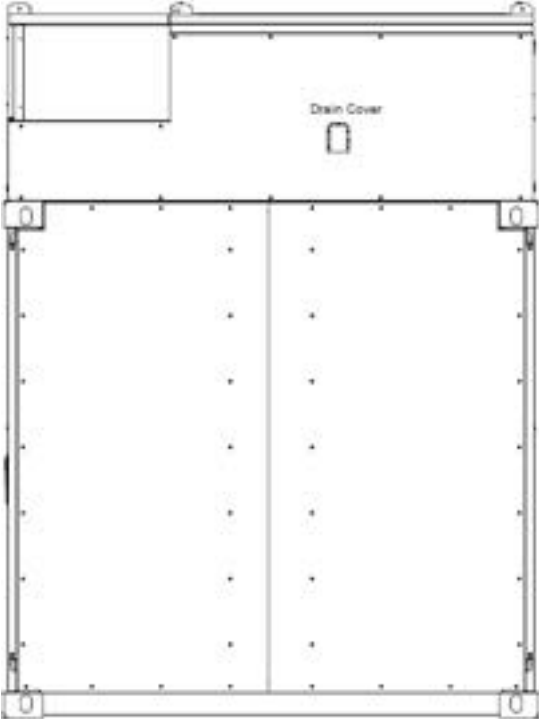



# Energy Segment Receiving Checklist

<p style="text-align: center;"><b>Back View</b></p>	<p>Items to Verify</p> <ul style="list-style-type: none"> <li>• All Side Paneling is not dented or scratched</li> <li>• LCD CONTROL PANEL Intact and Not Damaged</li> <li>• Grounding Bar Intact and Undamaged</li> <li>• Door Handles Un Damaged and Open Freely</li> <li>• Keys Delivered with Unit</li> </ul>	
<p><b>Left Side View</b></p>	<p>Items to Verify</p> <ul style="list-style-type: none"> <li>• All Side Paneling is not dented or scratched</li> <li>• Cable Tray Access is sealed and no water ingress is visible</li> </ul>	



# Energy Segment Receiving Checklist

<p>Right Side View</p> 	<p>Items to Verify</p> <ul style="list-style-type: none"> <li>• All Side Paneling is not dented or scratched</li> <li>• Cable Tray Access is sealed and no water ingress is visible</li> <li>• Drain Cover is intact and not damaged</li> </ul>	
<p>Top View</p> 	<p>Items to Verify</p> <ul style="list-style-type: none"> <li>• Roof Paneling not dented or scratched</li> <li>• HVAC Lifting Points Intact and not damaged</li> <li>• Exhaust Duct Sealed and no water ingress is visible</li> </ul>	
<p><input checked="" type="checkbox"/></p>		
<p>2.0 Loose Items Shipped with Unit</p>	<p>Comments</p>	<p>Initials</p>
<p><input type="checkbox"/> a. 4 x Anchor Plates</p>		
<p><input type="checkbox"/> HVAC Exhaust Hood</p>		
<p><input type="checkbox"/> Cable Tray Extender?</p>		



**Exhibit N-2**  
**Form of Commissioning Certificate**  
*[See Attached]*



(Powin Form)

**Exhibit N-2**  
**Form of Commissioning**  
**Completion Certificate**

**Project Name:** \_\_\_\_\_

**Contract Title and Number:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_

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

Supplier hereby certifies and represents that as of the date set forth below Commissioning has been completed in accordance with the Contract:

**(Date)**

\_\_\_\_\_

Buyer's Review of Commissioning Completion. Buyer has reviewed Supplier's Commissioning Work, and (*check one*):

Buyer accepts Supplier's Notice of Commissioning Completion. Commissioning Completion has occurred as of [\_\_\_\_\_] (the "**Commissioning Completion Date**").

Buyer rejects Supplier's Notice of Commissioning Completion due to the reason(s) specified below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

The approved Punchlist of items to be completed or corrected is appended hereto. Corrections or changes called for in this Punchlist will be made within [ \_\_\_\_\_ days] from the date of this Commissioning Completion Certificate.

Signing of this Commissioning Completion Certificate by Buyer in no way alters the responsibility of Supplier to complete its obligations in accordance with the Contract. Buyer accepts the Work and will assume full possession thereof on:

(Date)

\_\_\_\_\_

-

**Supplier:**

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

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

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

Signature: \_\_\_\_\_

**Buyer:**

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

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

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

Signature: \_\_\_\_\_

**Exhibit N-3**  
**Form of Final Acceptance Certificate**  
*[See Attached]*





(Powin Form)

**Exhibit N-3  
Form of Final Acceptance  
Certificate**

**Project Name:** \_\_\_\_\_

**Contract Title and  
Number:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_

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

Supplier hereby certifies and represents that as of the date set forth below, all requirements for achievement of Final Acceptance have been completed in accordance with the Contract:

\_\_\_\_\_ ***[DATE]*** \_\_\_\_\_

The Work has been reviewed by Buyer and Buyer hereby deems Final Acceptance to have occurred in accordance with the Contract. The Final Acceptance Date is hereby established as:

\_\_\_\_\_ ***[DATE]*** \_\_\_\_\_

**Supplier:**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Signature: \_\_\_\_\_

**Buyer:**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Signature: \_\_\_\_\_

**Exhibit O**

**Liquidated Damages**

*[See Attached]*

## Exhibit O

### Liquidated Damages

For any Completion Milestone not achieved by its Guaranteed Date, Supplier shall pay Buyer, as liquidated damages, according to the following table:

Form of Liquidated Damages	Liquidated Damages Amount per day	LD Cap
<b>Delivery LDs</b>		
Collection Segment Delivery LDs  (% of Contract Price, pro rated per Collection Segment Undelivered)	For Days 1 through 15	
	For Days 16 through 30	
	For Days 31 through 60	
	For Days 61+	
Energy Segment Delivery LDs  (% of Contract Price, pro rated per Energy Segment Undelivered)	For Days 1 through 15	
	For Days 16 through 30	
	For Days 31 through 60	
	For Days 61+	
PCS/MVT Set Delivery LDs  (% of Contract Price, pro rated per PCS/MVT Set Undelivered)	For Days 1 through 15	
	For Days 16 through 30	
	For Days 31 through 60	
	For Days 61+	
<b>Commissioning LDs</b>		
Commissioning LDs	For Days 1 through 15	
	For Days 16 through 30	
	For Days 31 through 60	
	For Days 61+	

The aggregate Liquidated Damages Cap is [REDACTED] of the Contract Price.

**Exhibit P**  
**Form of Change Order**

*[See Attached]*



AGREEMENT. EXCEPT AS SPECIFICALLY MODIFIED HEREIN, ALL THE TERMS AND CONDITIONS OF THE CONTRACT, AS AMENDED, REMAIN IN FULL FORCE AND EFFECT.

IN WITNESS WHEREOF, Buyer and Supplier have executed this Change Order as of the date first above written.

**BUYER**

[\_\_\_\_\_]

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

**SUPPLIER**

[POWIN, LLC]

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

**Exhibit Q**  
**Form of Lien Waiver**

*[See Attached]*

**UNCONDITIONAL WAIVER AND RELEASE**  
**UPON FINAL PAYMENT**

Property Name: \_\_\_\_\_  
Property Location: \_\_\_\_\_  
Undersigned's Customer: \_\_\_\_\_  
Invoice/Payment Application Number: \_\_\_\_\_  
Payment Amount: \_\_\_\_\_  
Amount of Disputed Claims: \$ \_\_\_\_\_

The undersigned has been paid in full for all work, materials and equipment furnished to their Customer for the above described Property and does hereby waive and release any notice of lien, any private bond right, any claim for payment and any rights under any similar ordinance, rule or statute related to payment rights that the undersigned has on the above described Property, except for the payment of Disputed Claims, if any, noted above. The undersigned warrants that they either have already paid or will use the money received from this final payment promptly to pay in full all laborers, subcontractors, materialmen and suppliers for all work, materials and equipment that are the subject of this waiver and release.

DATED on \_\_\_\_\_, 20

(Claimant name)

By:

Its:

Address:

Phone:

Fax: \_\_\_\_\_

**Notice: This document waives rights unconditionally and states that you have been paid for giving up those rights. This document is enforceable against you if you sign it to the extent of the Payment Amount or the amount received. If you have not been paid, use a conditional release form.**

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

Sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Notary: \_\_\_\_\_

Commission Expires: \_\_\_\_\_



**Exhibit R**  
**Account Setup Form**

*[See attached]*



## Account Setup For

**1: Ship To Address: (Name, Address, City, State, Pos**

PNM Rio Del Oro Solar  
665 Manzano Expy  
Belen, NM 87002

Coordinates: 34°41'22.98"N, 106°41'6.92"W

**2: Physical Site Address: (Installation of Equipment and SC.**

[pnm.accountspayable@pnmresources.com](mailto:pnm.accountspayable@pnmresources.com)

**If for any reason there is a change to any address, any such cost Powin incurs due to the change will be passed through to the buyer.**

**5: Invoicing**

Referenced PO Number: TBD

**All invoices will be emailed in PDF format.**

Please list Accounts Payable contact information: (Name, Phone #, Email Address)

Public Service Company of New Mexico (PNM)  
414 Silver Ave. SW, MS 1055  
Albuquerque, New Mexico 87102

Attention: Accounts Payable  
pnm.accountspayable@pnmresources.com  
Shalene Sharp (505)241-2243

Please list any additional email addresses you would like copied on invoice submittals

Nicholas.Pollman@pnm.com

**6: Tax**

**Powin collects sales tax based on the Physical Site Address.** (Please fill out the below)

- We are exempt (Please attach or email certificate as noted above)
- We are not exempt

Employer Identification Number (EIN)

85-0019030

**I certify that the information on this document is complete and accurate and I assume all responsibility for providing such representations.**

**Shelia Mulligan** Digitally signed by Shelia Mulligan  
Date: 2023.03.29 05:58:53 -06'00'

**INTERNAL COMPLETION SECTION**

**Customer**

**Project Name**

**Project Number**

**Exhibit S**

**Buyer Furnished Equipment**

*[See attached]*

**Exhibit S**

- 1. Meter - Schweitzer Engineering Laboratories Model SEL-735**

**Exhibit T**

**[RESERVED]**

**Exhibit U**

**Buyer Requirements**

*[See attached]*

## **Exhibit U**

### **Buyer Requirements**

#### **U.1 Safety**

PNM strives for the highest safety standards on our projects and it is our goal to provide an accident and injury free environment. In support of this, Supplier will be expected to work diligently to maintain safety and occupational health standards when performing its Services on and off the Project Site. Supplier shall comply with all Applicable Codes and Standards including but not limited to OSHA, NFPA, ANSI, FAA, ACOE, and DOT safety and health regulations, as applicable.

It is the obligation of Supplier to ensure that all of its employees and Subcontractors are knowledgeable of the standards established by these agencies and to implement the rules and regulations contained therein for Services performed under its direction.

Supplier's safety responsibilities shall include, but not be limited to:

- Protecting and promoting the health and safety of employees, Subcontractors, Buyer's Representative, Buyer's Responsible Parties and others who may be affected by the Supplier's activities.
- Complying with and continually and diligently monitoring and enforcing all Applicable Codes and Standards during its performance of Services on the Project Site, including but not limited to ESS Equipment inspections, construction field support and Commissioning of the Project.
- Assuring that safety, health, environmental, and loss-control programs in place for the Project are given the proper priority and attention, and are achieving the required results.
- Participating in detailed safety orientations provided by Buyer's Other Contractors.
- Participating in daily safety meetings, safety audits, and job safety task analyses on the Project Site.
- Cooperating with and contributing to regular safety audits and inspections performed by Buyer's Other Contractors including in-depth field inspections and record auditing to ensure proper documentation is maintained and the requirements of the Applicable Codes and Standards are being followed.

#### **U.2 Cybersecurity**

**Definitions.** As used in this Exhibit –



“Buyer Data” means all Buyer, Affiliate and third-party data and information processed or stored on computers or other electronic media, as well as any data and information derived from such data and information or data otherwise collected, produced, or generated by or provided to Supplier under this Contract, regardless of the form in which obtained, processed, or stored. Buyer Data includes, without limitation: (a) information on paper or other non-electronic media provided to Supplier for computer processing or storage, or information formerly on electronic media; (b) information provided to Supplier by Buyer or other users or by other third parties; and (c) Privacy Restricted Data.

“Consultant” means a mutually agreed upon, independent third-party consultant.

“Privacy Restricted Data” means any information about Buyer’s existing or prospective customers, users, or third parties or any information, including protected health information, relating to an identified or identifiable person and that, either by itself or in combination with other pieces of information, identifies, or can be used to identify a person. Privacy Restricted Data includes information regarding any customer’s, user’s or other person’s identity, social security number, telephone number, credit card number, e-mail address, and in the case of customers, such customer’s account information, service purchase and usage information and all Customer Proprietary Network Information (“CPNI”) as that term is used in 47 U.S.C. § 222.

“Security Breach” means unauthorized access, use, disclosure, distribution, modification, contamination, loss, damage, destruction, or loss of availability or integrity of any Buyer Data or Confidential Information within Supplier systems.

“Systems or Facilities” means Supplier systems that store or process Buyer Data or interconnect with Buyer systems

“Virus(es)” means computer instructions (a) that adversely affect or disable the operation, security or integrity of a computing, telecommunications or other digital operating or processing system or environment, including programs, data, databases, computer libraries and computer and communications equipment, by altering, destroying, disrupting or inhibiting such operation, security or integrity; (b) that without functional purpose, self-replicate without manual intervention; or (c) that purport to perform a useful function but which actually perform either a destructive or harmful function, or perform no useful function and utilize substantial computer, telecommunications or memory resources.

Other capitalized terms as used in this Exhibit shall have the meanings set forth in the Equipment Purchase Agreement (the "Contract") between Buyer and Supplier.

**Security Breach/Compromise Notification.** Promptly, but in no event later than required by Applicable Law, Supplier will report to Buyer any Security Breach. Supplier will report to Buyer any Security Breach via telephone to Buyer's Service Desk at 505-241-2678 and by email to securitynotifications@pnmresources.com. Such notice shall summarize in reasonable detail the effect on Buyer, its Affiliates, and any third parties, the nature of the Security Breach (including the categories and approximate number of individuals and personal information records affected, and the likely consequences of the Security Breach), and the corrective actions taken or to be taken by Supplier. Supplier shall promptly and at its sole cost and expense take all necessary and advisable corrective actions and shall cooperate fully with Buyer in all reasonable and lawful efforts to prevent, mitigate, or rectify such Security Breach. As part of the foregoing, Supplier shall (i) investigate such Security Breach and if applicable, Consultant will perform a root cause analysis thereon; (ii) except to the extent that the Security Breach is conclusively and finally determined to be caused by Buyer, remediate the effects of such Security Breach and prevent such Security Breach from recurring; and (iii) if requested by Buyer, assist Buyer and its Affiliates in notifying relevant government authorities and affected individuals about the Security Breach. The content of any filings, communications, notices, press releases or reports related to any Security Breach that identifies Buyer or its Affiliates must be approved in writing by Buyer prior to any publication or communication thereof.

Further, Supplier shall at its sole cost and expense, work with its subcontractors to: (i) in the event of any Security Breach, cooperate fully with Buyer to limit the unauthorized access, disclosure or use of the Buyer Data, seek the return of any such Buyer Data, investigate and, except to the extent that the Security Breach is conclusively and finally determined to be caused by Buyer's errors or omissions, remedy the Security Breach and any related dispute, inquiry, claim or action; (ii) in the case of a breach of Supplier, assist and support Buyer in the event of an investigation by a regulator, data protection authority, judicial process or similar authority, if and to the extent that such investigation relates to any Buyer Data; and (iii) comply with all requirements of Applicable Laws, rules, and regulations (including those that are applicable to Supplier as a processor of Privacy Restricted Data) that apply with respect to any Buyer Data. Supplier shall comply with industry best practices with respect to such Applicable Laws, rules, and regulations relating to the protection of information that identifies or can be used to identify an individual and shall not cause Buyer to be out of compliance with any of such Applicable Laws, rules, and regulations.

**Security, Data Confidentiality, Integrity and Availability Compliance.** Supplier shall exercise commercially reasonable efforts to prevent unauthorized exposure or disclosure of Buyer Data. Supplier represents and warrants that its collection, access, use, storage, disposal, and disclosure of Buyer Data does and will comply with all applicable federal, state, and foreign privacy and data protection laws, as well as all other applicable regulations and directives.

Supplier and Buyer shall use commercially reasonable efforts to not insert or, permit to be coded or inserted, any Virus(es) into the Buyer Data, Systems or Facilities. If a Virus is found in Buyer Data, Systems or Facilities due to a breach of the foregoing obligation, then a Consultant will be engaged by the Parties to determine responsibility for the Virus. If the Consultant finds Supplier to be the responsible Party and that Buyer took commercially reasonable efforts to ensure that Buyer Systems and Facilities are protected from Virus(es) then Supplier will be responsible for the costs to remediate the effects of the Virus on Buyer's, its Affiliates' and their respective third party providers' information systems and software, and will remediate the Virus from the Buyer Data, all at Supplier's sole cost and expense.

**Subcontractors.** Supplier shall not permit any Subcontractor to access Buyer Data, Systems or Facilities unless such Subcontractor is subject to a written contract with Supplier protecting Buyer Data, Systems or Facilities, with terms reasonably consistent with those of this Contract. Supplier shall exercise reasonable efforts to ensure that each Subcontractor complies with all of the terms of this Exhibit related to Buyer Data. As between Supplier and Buyer, Supplier shall pay any fees or costs related to each Subcontractor's compliance with such terms.

**Ongoing monitoring.** Buyer shall have the right to monitor all internet traffic inline and unencrypted at the appropriate location through the use of Gatekeeper. If Gatekeeper does not provide Buyer-required monitoring solution, Supplier will use commercially reasonable efforts to assist Buyer in achieving Buyer-required monitoring solution.

**Security Reviews.** Supplier shall annually perform, in its normal course of business, reviews of security processes and procedures, architecture and/or data flow documentation and diagrams.

Any report or other result generated through the reviews allowed by this provision will be Supplier's confidential information. If any review referenced above uncovers deficiencies or identifies suggested changes in Supplier's performance of the Services, Supplier shall exercise reasonable efforts promptly to address such identified deficiencies and suggested changes and shall keep Buyer reasonably informed of the progress of the remediation of such deficiency or implementation of such change. In the event Buyer does not agree with the remediation/implementation efforts or progress on the part of Supplier, Buyer has existing rights

and remedies under the Contract.

**Vulnerability Scanning.** Supplier shall maintain and apply a reasonable vulnerability scanning policy and practice during the Term of this Agreement. The vulnerability scanning policy shall include Supplier, at its sole cost and expense, engaging third party to conduct external and internal vulnerability scans on at least an annual basis of: (i) any equipment used by or for Supplier that stores and/or processes any Buyer, its Affiliates and third parties Data and (ii) unrelated devices used by or for Supplier that share common network resources with the equipment described above in subclause (i). The third party shall be commercially recognized within the industry for conducting vulnerability assessments of computer platforms with such assessments scored under the National Institute of Standards and Technology (NIST) Common Vulnerability Scoring System (CVSS). Supplier shall promptly provide Buyer with the results of each such vulnerability assessment. Supplier agrees to remediation of any high vulnerability risks as measured by standard NIST CVSS scale identified through any such vulnerability scans within sixty (60) days' time from a high-risk vulnerability notification/determination and shall continually keep Buyer reasonably informed of the progress of the remediation efforts.

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**Exhibit V**



*[See Attached]*

**[REDACTED]**