

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

TONOPAH SOLAR ENERGY, LLC,¹

Debtor.

Chapter 11

Case No. 20-11884 (KBO)

Ref. Docket No. 46

NOTICE OF AMENDED EXHIBIT

PLEASE TAKE NOTICE that, on July 30, 2020, the above-captioned debtor and debtor in possession filed the *Debtor's Motion for Entry of an Order Authorizing the Debtor to Enter into Operation and Management Agreement* [Docket No. 46] (the “**Motion**”).

PLEASE TAKE FURTHER NOTICE that Exhibit B to the Motion was inadvertently omitted. A complete version of Exhibit B to the Motion is attached hereto as Exhibit 1.

[Signature page follows]

¹ The Debtor in this chapter 11 case, along with the last four digits of its federal tax identification number, is Tonopah Solar Energy, LLC (1316). The Debtor's headquarters is located at 11 Gabbs Pole Line Road, Tonopah, NV 89049.

Dated: August 10, 2020
Wilmington, Delaware

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Proposed Co-Counsel to the Debtor and Debtor in Possession

EXHIBIT 1

EXHIBIT B

Operating Agreement

EXECUTION COPY

**OPERATION AND MAINTENANCE AGREEMENT
BETWEEN
TONOPAH SOLAR ENERGY, LLC
AND
COBRA INDUSTRIAL SERVICES, INC.
DATED AS OF JULY 30, 2020**

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OPERATION AND MAINTENANCE AGREEMENT

THIS OPERATION AND MAINTENANCE AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, this “Agreement”), dated effective as of July 30, 2020 (the “Effective Date”), is entered into by and between TONOPAH SOLAR ENERGY, LLC, a Delaware limited liability company (the “Owner”), and COBRA INDUSTRIAL SERVICES, INC., a Delaware corporation (the “Operator”) (Owner and Operator each, individually, a “Party” and, collectively, the “Parties”).

RECITALS

(A) Owner owns the Facility;

(B) Operator desires to provide administrative, operating and maintenance services for the Facility on the terms and conditions set forth herein;

(C) Owner desires to retain Operator to provide administrative, operating and maintenance services for the Facility, and Operator is willing to perform such services upon the terms and conditions set forth in this Agreement; and

(D) Owner filed, on or around July 30, 2020, a voluntary petition for relief under Chapter 11 of Title 11 of the Bankruptcy Code, commencing a bankruptcy proceeding (the “Bankruptcy Case”), with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

NOW THEREFORE, in consideration of the foregoing premises and the mutual covenants, conditions, and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties hereby agree as follows:

ARTICLE 1 – DEFINITIONS AND INTERPRETATION

1.1 Definitions. Whenever used in this Agreement with initial capitalization, the following terms shall have the meanings specified or referred to in this Article 1.

“AAA” is defined in Section 7.3.

“Affiliate” means, with respect to any Person, a Person that controls, is controlled by or is under common control with such Person. As used in this definition, the terms “control,” “controlled by” or “under common control with” shall mean the ownership, directly or indirectly, of more than fifty percent (50%) of the voting securities of such Person or the power to direct the management or policies of such Person, whether by operation of Applicable Law, by contract or otherwise.

“Agreement” has the meaning provided in the introductory paragraph hereof.

“Applicable Law” means and includes any United States statute, license, law, rule, regulation, code, ordinance, judgment, arbitral award, decree, writ, legal requirement or order, of

any national, federal, provincial, state or local law, regulations, codes, judgments, orders, permits, court or other Government Authority, and the official, written judicial interpretations thereof applicable to the Work.

“Approved Capital Budget” means the Capital Budget recommended by Operator pursuant to Section 5.7 and approved by Owner pursuant to Section 5.7, as may be modified in writing in accordance with the terms of this Agreement.

“Approved Operating and Capital Repair Plan” means the Operating and Capital Repair Plan (including major maintenance and capital repairs, and recommended improvements and additions) prepared by Operator consistent with Owner’s proposed Dispatch Schedule of the Facility for the same period, pursuant to Section 5.1 and approved by Owner pursuant to Section 5.3, as may be modified in writing in accordance with the terms of this Agreement.

“Approved Operating Budget” means the Operating Budget prepared by Operator pursuant to Section 5.2 and approved by Owner pursuant to Section 5.3, as may be modified in writing in accordance with the terms of this Agreement.

“Bankruptcy” shall mean, with respect to any Person, the occurrence of any of the following events, conditions or circumstances: (i) such Person shall file a voluntary petition in bankruptcy or shall be adjudicated as bankrupt or insolvent, or shall file any petition or answer or consent seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under the Bankruptcy Code or any present or future applicable federal, state or other statute or law relating to bankruptcy, insolvency, reorganization or other relief for debtors, or shall seek or consent to, or acquiesce in, the appointment of any trustee, receiver, conservator or liquidator of such Person or of all or any substantial part of its properties (the term “acquiesce,” as used in this definition, includes the failure to file a petition or motion to vacate or discharge any order, judgment or decree within fifteen (15) days after entry of such order, judgment or decree); (ii) an involuntary case or other proceeding shall be commenced against such Person seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief with respect to such Person or its debts under the Bankruptcy Code or any present or future applicable federal, state or other statute or law relating to bankruptcy, insolvency, reorganization or other relief for debtors, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain un-dismissed for a period of sixty (60) consecutive days; (iii) a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against such Person seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the Bankruptcy Code, or any other present or future applicable federal, state or other statute or law relating to bankruptcy, insolvency, reorganization or other relief for debtors, and such Person shall acquiesce in the entry of such order, judgment or decree or such order, judgment or decree shall remain un-vacated and un-stayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or any trustee, receiver, conservator or liquidator of such Person or of all or any substantial part of its property shall be appointed without the consent or acquiescence of such Person and such appointment shall remain un-vacated and un-stayed for an aggregate of sixty (60) days (whether or not consecutive); (iv) such Person shall admit in writing its inability to pay its debts as they mature or shall generally not be paying its debts as they become due; or (v) such Person shall make

a general assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors.

“Bankruptcy Case” has the meaning set forth in the Recitals.

“Bankruptcy Code” shall mean the United States Bankruptcy Reform Act of 1978.

“Bankruptcy Court” has the meaning set forth in the Recitals.

“Business Day” means each calendar day excluding Saturday, Sunday and any day which is in the State of Nevada a legal holiday or another day on which banks are authorized to be closed.

“Capital Budget” means the two-Year capital budget recommended by Operator pursuant to Section 5.7.

“Capital Costs” means the actual costs directly, properly and reasonably incurred or paid for by Operator on behalf of Owner for capital expenditures, improvements, additions or replacements of Equipment for the Facility in accordance with Prudent Industry Practices.

“Chapter 11 Plan” or “Plan” has the meaning set forth in the Restructuring Support Agreement.

“Claims” means any and all claims, judgments, assertions, demands, actions, suits, investigations, inquiries and proceedings, including those that are judicial, administrative or third party.

“Consumables” means water treatment chemicals, reagents and other chemicals, lubrication fluids and filters, hydraulic fluids and filters, air filters, ordinary fasteners (nuts, bolts, nails and other consumable items that are customarily readily available on normal commercial terms), light bulbs and fluorescent tubes, ordinary gasket materials, pump and valve packing, fuses, gloves, flashlights, batteries, disposable safety equipment and first aid supplies, replacement hand tools, solder and welding rods, all supplies for maintenance and Facility cleaning materials, and all other items commonly considered to be consumables within operations of similar facilities.

“Contractor” means Cobra Thermosolar Plants, Inc.

“CPI” means the statistical amount quoted from time to time by the United States Bureau of Labor Statistics (“BLS”) as the “Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, All Items” for the relevant period. For purposes of this Agreement, the CPI for any particular period, or the rate of increase/decrease in the CPI with respect to such period, shall be ascertained (in order of priority) by reference to (i) the CPI as quoted in the “Money Rates” section of The Wall Street Journal (or in such other section of The Wall Street Journal in which the CPI is published from time to time), (ii) the CPI as quoted on the BLS website at “www.bls.gov/news.release/cpi.toc.htm” (or at such other website used by the BLS from time to time to publish the CPI) or (iii) the CPI as released from time to time by the BLS and quoted or published in any widely accepted commercially available publication or electronic source.

“Dispatch Schedule” means the schedule that shows the required generation for the relevant time period as published by Owner from time to time.

“Dispute Notice” is defined in Section 7.3.

“Effective Date” has the meaning provided in the introductory paragraph hereof.

“Effective Date of the Plan” has the meaning set forth in the Restructuring Support Agreement.

“Emergency” is defined in Section 3.4.2(h).

“Environmental Law” means any United States, State of Nevada or local statute, rule, regulation, order, code, permit, directive or ordinance and any binding judicial or administrative interpretation or requirement pertaining to (i) the regulation and/or protection of employee health and safety and public health and safety, or the indoor or outdoor environment; (ii) the conservation, management, development, control or use of land, natural resources, or wildlife; (iii) the protection or use of surface water or ground water; (iv) the management, manufacture, possession, presence, use, generation, treatment, storage, disposal, transportation, or handling of, or any exposure to, any Hazardous Material; or (v) pollution (including release of any hazardous substance to air, land, surface water and ground water), including the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendments and the Reauthorization Act of 1986, the Hazardous Material Transportation Act, the Federal Water Pollution Control Act, the Clean Water Act, the Clean Air Act, the Occupational Safety and Health Act and any so-called “Superlien” law, all as for now or hereafter amended or supplemented and any regulations promulgated thereunder, and any other similar federal, state, or local statutes, rules and regulations.

“EPC Agreement” means that certain Engineering, Procurement and Construction Agreement by and between Owner and Contractor, dated September 20, 2011, as amended and in effect as of the Effective Date, and as the same may be further amended, amended and restated, supplemented or otherwise modified from time to time in accordance with its terms.

“Equipment” means all of the mechanical and electrical equipment, pumps, piping, Motorized Vehicles, tanks, spare parts, tools, special tools, machinery instruments, communication and control equipment and software and other goods of the Facility owned or controlled by Owner and used or intended to be used or useable in the production of steam and generation of electric power.

“Event of Default” means the occurrence of one of the events listed in Section 7.1.

“Exempt Wholesale Generator” or “EWG” means an exempt wholesale generator pursuant to Section 32 of the Public Utility Holding Company Act of 2005, as such Law may be amended or superseded.

“Existing Capital Budget” means the most recent two-year Capital Budget prepared by the Existing Service Provider for approval by Owner and covering the first Year of the Term.

“Existing Operating Budget” means the most recent two-year Operating Budget prepared by the Existing Service Provider for approval by Owner and covering the first Year of the Term.

“Existing Service Provider” means PIC Group, Inc., a Georgia corporation.

“Facility” means the thermosolar electric generating facility nominally rated at 110 megawatts with molten salt storage, located at the Site, including the solar field, power island and all associated systems and facilities and other associated equipment, systems and structures, water treatment, cooling, supply wells and wastewater discharge systems and 230kV generator tie line, facilities, and plant auxiliary and support facilities, all other real property, fixtures and other associated property, both real and personal, and all additions, replacements, appurtenances, spare parts, structures and equipment, owned or leased by, or under the control of, Owner, located or to be located at the Site, as more fully described in Exhibit J.

“Facility Data” means any and all information obtained by Operator during the course of conducting the Work pursuant to this agreement, whether in electronic or any other format that is generated or used in the course of performing the Work or that controls, schedules, directs, organizes, reflects, or records any Work performed or to be performed at the Facility.

“Facility Environmental Program” means the environmental program developed by the Existing Service Provider as reviewed and revised by Operator and approved by Owner during the Transition Period and implemented by Operator during the performance of the Services under this Agreement, which shall include environmental procedures and an environmental manual.

“Facility Safety and Security Program” means the safety and security program developed by the Existing Service Provider as reviewed and revised by Operator and approved by Owner during the Transition Period and implemented by Operator during the performance of the Services under this Agreement, which shall include provisions for third-party access to the Site and Facility, safety procedures, a safety manual and fire and explosion safety measures.

“Financing Documents” means all financing agreements with any Lenders in connection with the Facility.

“Force Majeure” means any event that occurs subsequent to the Effective Date and before the termination or expiration of the Term of this Agreement that delays or prevents a Party’s performance of its obligations under this Agreement, but only to the extent that (a) such event of Force Majeure is not attributable to fault or negligence on the part of that Party or any of its Affiliates, including (in the case of Operator) Contractor, (b) such event of Force Majeure is caused by factors beyond that Party’s reasonable control, or beyond the reasonable control of any of its Affiliates, including (in the case of Operator) Contractor, (c) despite taking all reasonable technical and commercial precautions and measures to prevent, avoid, mitigate or overcome such event and the consequences thereof, the Party affected has been unable to prevent, avoid, mitigate or overcome such event or consequences, and (d) such Party has satisfied the requirements of Section 10.2, including, without limitation, the following:

- (a) Acts of God such as storms, hurricanes, floods, lightning, fire, explosion, quarantine, earthquakes or other natural disasters;

(b) sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement;

(c) war, riot, acts of a public enemy or other civil disturbance; and

(d) strike, walkout, lockout or other significant labor dispute; provided that none of the following shall constitute an event of Force Majeure:

(i) economic hardship of either Party;

(ii) the non-availability of the resource supply to generate electricity from the Facility, including non-availability of the resource supply due to weather or climate conditions; or

(iii) a Party's failure to obtain any Permit, license, consent, agreement or other approval from a Government Authority required to construct the Facility, except to the extent it is caused by an event listed in subsection (a) or (c) above.

"GAAP" is defined in Section 3.4.2(d).

"General Manager" means the Person appointed by Owner from time to time to be Owner's representative with respect to this Agreement.

"GO" means "Generator Owner" as defined by the North American Electric Reliability Corporation in its "Glossary of Terms Used in Reliability Standards," as may be revised from time to time.

"GOP" means "Generator Operator" as defined by the North American Electric Reliability Corporation in its "Glossary of Terms Used in Reliability Standards," as may be revised from time to time.

"Government Authority" means any United States, State of Nevada, municipal, local, territorial, or other governmental department, commission, board, bureau, agency, regulatory authority, instrumentality, judicial or administrative body, or any industry self-regulation body authorized by law.

"Hazardous Material" means (a) any petroleum or petroleum products, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls; (b) any chemicals, materials or substances that are now or hereafter become defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous wastes", "restricted hazardous wastes", "toxic substances", "toxic pollutants", "pollution", "pollutants", "regulated substances", or words of similar import under Applicable Law; or (c) any other chemical, material, substance or waste declared to be hazardous, toxic or polluting material by any Government Authority and exposure to which is now or hereafter prohibited, limited or regulated by any Government Authority.

“ICC Arbitration” means the arbitration pending before the Arbitral Tribunal constituted under the Rules of Arbitration of the International Court of Arbitration of the International Chamber of Commerce, captioned Cobra Thermosolar Plants, Inc. (USA) v. Tonopah Solar Energy, LLC (USA), Case No. 23247/MK.

“Independent Public Accountant” means the firm of independent public accountants of nationally recognized standing selected by Owner to perform a Yearly financial audit pursuant to the terms of this Agreement.

“Intellectual Property” means all intellectual property and similar proprietary rights held by any Person in any jurisdiction, including all such rights in and to (i) computer software or hardware, whether or not copyrightable, including all databases, source codes, object codes, programs, applications, tables, models, repositories, specifications and documentation; (ii) original works of authorship, whether copyrightable or not, copyrights, and all renewals, modifications, and translations thereof, and any moral rights relating thereto; (iii) patents; (iv) trademarks, service marks, brand names, certification marks, trade dress, assumed names, trade names and other indications of origin; and (v) know-how and other business information, trade secrets, ideas, concepts, methodologies, processes, development tools, techniques, inventions, innovations, diagrams, sketches, drawings, models, manuals, photographs, calculations, maps, notes, reports, data, models, samples and documentation, in each case to the extent proprietary, confidential and not in the public domain.

“Lender” means any Person (or any agent thereof) providing or proposing to provide debt, lease, bond or other financing for the Facility, including credit enhancement and security arrangements and any refinancing.

“Losses” means all losses, damages, liabilities and reasonable expenses (including reasonable legal fees).

“Maintenance Program” is defined in Section 3.2.1(h).

“Major Expense Line Item” has the meaning set forth in Exhibit C.

“Management Fee” is defined in Section 4.1.1(b).

“Mobilization Date” means the date upon which Owner issues a Notice to Proceed to Operator to begin the provision of the Mobilization Services.

“Mobilization Services” means the services provided by Operator to Owner during the Transition Period as more specifically described in Section 3.2.1.

“Motorized Vehicles” means front-end loaders, forklifts, mobile cranes, manlifts, pickup trucks, tractors, trailers, trucks, other vehicles, automated sweeping equipment and the like, purchased or leased by Owner for use at the Facility.

“Motorized Vehicle Expenses” means expenses, such as fuel, maintenance and materials, licenses (if required), lease payments, insurance, and backup equipment for the Motorized Vehicles.

“Notice” is defined in Section 13.10.

“Notice of Termination” means a Notice issued by Owner or Operator pursuant to Sections 2.2 or 2.3 of this Agreement.

“Notice to Proceed” means a Notice issued by Owner to Operator, following approval of this Agreement by the Bankruptcy Court, to begin the provision of the Mobilization Services.

“O&M Manuals” means the operating manuals for the Facility provided by any construction contractor or original equipment manufacturer pursuant to any contract for the construction of the Facility, and the operating data, designs, drawings, specifications, vendor manuals and similar materials provided by Owner or any construction contractor to Operator with respect to the Facility.

“Operating Budget” means the two-Year operating budget to be prepared by Operator pursuant to Section 5.2 and which shall include the Major Expense Line Items in Exhibit C.

“Operating Costs” means the actual costs directly, properly and reasonably incurred or paid for by Operator or incurred on behalf of Owner in the ordinary course of business solely for the administration, operation and maintenance of the Facility in accordance with Prudent Industry Practices, including, without duplication: (i) wages and overhead costs for employees of Operator at the Facility, including retirement plans, medical and life insurance, disability and occupational hazard insurance, employee benefits, employee savings plan, and employee taxes; (ii) overtime; (iii) employee training, including tuition, travel, meals and lodging; (iv) maintenance costs and expenses, including scheduled, routine, preventative and unscheduled maintenance; (v) the cost of Consumables, new and replacement spare parts, unloading, handling and taking inventory of same; (vi) Plant Office Expenses; (vii) care and handling of any Hazardous Material; (viii) Motorized Vehicle Expenses; (ix) cost of utility services for the Facility not covered by Owner; (x) costs of outside legal, accounting and consulting services, including labor negotiations; (xi) cost of compliance with the Permits and Applicable Laws; (xii) lease payments for property or easements; (xiii) reasonable and customary transition expenses payable upon termination of the Term for employees at the Facility; (xiv) expenses incurred in response to an Emergency pursuant to Section 3.4.2(h); and (xv) the difference between (A) Operator’s cost of paying insurance premiums for the excess liability insurance required by Section 8.3.1(d), less (B) Operator’s cost of paying insurance premiums for the excess liability insurance required by Section 8.3.1(d) except with such excess liability insurance having an aggregate policy limit of \$25,000,000 (instead of \$30,000,000); provided, however, that Operating Costs shall not include the following: (a) any costs covered by the Management Fee, (b) any employee bonuses or similar incentives, (c) any costs incurred or paid by Operator to any Affiliate of Operator not in accordance with Section 6.2.3, and (d) Capital Costs.

“Operating and Capital Repair Plan” means the five-Year operating plan to be prepared by Operator pursuant to Section 5.1.

“Operator” has the meaning provided in the introductory paragraph hereof.

“Operator Hazardous Materials” is defined in Section 9.1.

“Operator IP” is defined in Section 12.3.4.

“Operator Letter of Credit” means the letter of credit to be delivered to Owner in accordance with Section 3.5, in the amount of \$3 million and substantially in the form attached hereto as Exhibit E.

“Outage” means a loss, failure or removal of the Facility’s generating capability.

“Owner” has the meaning provided in the introductory paragraph hereof.

“Party” and “Parties” have the meaning provided in the introductory paragraph hereof.

“Peak Season” means the contiguous period comprising the calendar months of June, July, August and September.

“Permits” means all of the consents, approvals, authorizations, directions, licenses, waivers and permits issued by any federal, state or local agency or authority to Owner or Operator with respect to the ownership, construction, operation and maintenance of the Facility in a safe and commercially sound manner.

“Person” means any individual, corporation, company, voluntary association, partnership, joint venture, trust, limited liability company, unincorporated organization or Government Authority.

“Plant Office Expenses” means costs and expenses associated with and incurred at the administrative offices at the Facility, including telephone and telecopy services, heat, electricity, postage and overnight mail services, paper, envelopes, file folders, computer paper, computer software, copy paper, copier and computer supplies, maintenance and replacement of computer and office equipment, supplies, office cleaning and maintenance (including light bulbs and fluorescent tubes), miscellaneous office supplies, internet and cellular telephone services, and any other expenses related to Operator’s use of the plant office, plant office equipment and plant office operation pursuant to this Agreement for the benefit of the Facility.

“Project Agreements” means agreements between Owner and various third parties as provided to Operator by Owner from time to time, including those agreements listed in Exhibit A hereto.

“Prudent Industry Practices” means those practices, methods, equipment, materials, specifications and standards of safety and performance engaged in or approved by a significant portion of the electric power generating industry during the applicable time in respect of the operation and maintenance (as applicable) of electric power generation facilities similar to (or with material components similar to) the Facility, which in the exercise of professional judgment and in light of the facts known at the time that the relevant Work was initiated were considered good, safe and prudent in connection with the operation and maintenance of such facilities with commensurate standards of safety, performance, dependability, efficiency and economy, and as

are in accordance with generally accepted standards of professional care, skill, diligence, and competence applicable to the operation and maintenance practices in the United States. Prudent Industry Practices is not intended to be the optimum practice, method or acts to the exclusion of all others, but rather is intended to be any of the practices, methods or actions generally accepted in the United States that meet the foregoing standards.

“Quarter” means the three-month periods commencing January 1, April 1, July 1 and October 1.

“Restructuring Support Agreement” means the Restructuring Support Agreement, dated as of July 29, 2020, by and among Owner, Contractor, Cobra Energy Investment, LLC, and ACS Servicios Comunicaciones y Energía S.L.

“Scheduled Outage” means a removal of the Facility’s generating capability that (i) has been scheduled and budgeted for in advance in accordance with the Approved Operating and Capital Repair Plan, Approved Operating Budget and Approved Capital Budget, and (ii) is for regularly scheduled inspection, testing, preventive maintenance, corrective maintenance, repairs, replacement or improvements.

“Services” means all work, services and other functions to be provided and performed by Operator for the operations and maintenance of the Facility during the Term, as more particularly described in Section 3.4.

“Site” means the land shown in Exhibit G.

“Subcontractor” means any Person that performs work for Owner at the request and direction of Operator pursuant to the terms of this Agreement, and is qualified by Operator’s evaluation of credentials and qualifications in accordance with a qualification program approved by Owner.

“Term” has the meaning provided in Section 2.1.

“Transition Period” means the period starting on the Mobilization Date and ending on the Transition Period End Date.

“Transition Period End Date” shall be the date that the Owner delivers written notice to Operator of the conclusion of the Transition Period, which is estimated to occur on September 30, 2020 or as soon as reasonably practicable thereafter.

“Unscheduled Outage” means any Outage that is not a Scheduled Outage.

“Work” means, collectively, the Mobilization Services and the Services.

“Year” means the twelve (12) month period from January 1 to December 31 inclusive, excluding, if applicable, any periods outside the Term.

1.2 **Interpretation.** Unless otherwise specified in this Agreement:

1.2.1 the singular includes the plural and the plural includes the singular;

1.2.2 a reference to an Article, Section, Party or Exhibit is a reference to that Article or Section of, or that Party or Exhibit to, this Agreement;

1.2.3 a reference to a Person includes its successors and permitted assigns;

1.2.4 the words “include,” “includes,” and “including” are not limiting;

1.2.5 where a term or expression is defined, another part of speech or grammatical form of that term or expression shall have a corresponding meaning; and

1.2.6 references to any Applicable Law shall be construed as a reference to such Applicable Law and to all regulations and rulings promulgated thereunder, as each may be in effect from time to time, and all statutory or regulatory provisions consolidating, amending or replacing such Applicable Law.

ARTICLE 2 – TERM AND TERMINATION

2.1 Term. Subject to Section 2.2 and Section 6.3, Operator will provide (i) the Mobilization Services during the Transition Period and (ii) the Services from the Transition Period End Date until December 31 of the Year in which the fifth (5th) anniversary of the Transition Period End Date occurs (the period described in clause (ii) of this Section 2.1 being referred to herein as the “Term”). At Owner’s election, Owner may extend the Term for up to three (3) additional twenty-four (24) month periods and Operator shall continue to provide the Services under this Agreement during such extended term.

2.2 Termination for Convenience. Owner may at any time and in its sole discretion terminate this Agreement (i) pursuant to Section 6.3 by delivering a Notice of Termination to Operator which shall be effective immediately, (ii) prior to the Transition Period End Date by delivering a Notice of Termination to Operator which shall be effective immediately and (iii) at any time following the Transition Period End Date (other than pursuant to Section 6.3) with at least one hundred twenty (120) days’ prior written notice by delivering a Notice of Termination to Operator and this Agreement shall thereupon terminate on the date set forth in such Notice of Termination. In the event of any such termination for convenience prior to the Transition Period End Date, Owner shall have no further liability to Operator. In the event of any such termination for convenience following the Transition Period End Date, Owner shall pay to Operator any earned but unpaid Management Fee prorated to the date of termination, then due and owing.

2.3 Termination for Cause. Pursuant to Section 7.2.1, Operator may terminate this Agreement for Owner’s failure to remedy an Event of Default. Pursuant to Section 7.2.2, Owner may terminate this Agreement for Operator’s failure to remedy an Event of Default. Subject to Section 2.4, upon any termination of this Agreement by Operator or Owner pursuant to this Section 2.3, the terminating Party’s liability for any payments that would otherwise be due hereunder after the date of such termination, including the Management Fee, shall cease as of such termination date.

2.4 **Survival.** Expiration or termination of this Agreement under this Article 2 or under Article 7 shall not affect any rights or obligations which have arisen or accrued before such expiration or termination, including any in respect of antecedent breach. In addition, (and without limiting Section 12.4.9) the provisions (i) of Sections 2.4, 2.5, 2.6 and 13.3, and Articles 9 and 14, shall survive in full force such expiration or termination, and (ii) of Sections 13.1 and 13.2 shall survive in full force for a period of five (5) years following the date of such expiration or termination.

2.5 **Condition at the End of the Term or at Termination.** Upon expiration of the Term or termination of this Agreement, Operator shall remove its personnel from the Facility consistent with the takeover of the Facility by Owner's personnel. Operator shall leave the Facility in substantially as good a condition as at the Mobilization Date, normal wear and tear excepted. All special tools, improvements, inventory of supplies, spare parts, safety equipment and O&M Manuals (in each case as provided to or obtained by or provided by Operator during the term of this Agreement) and any other items furnished as an Operating Cost under this Agreement will be left at the Facility and will become or remain the property of Owner without additional charge. If Operator has entered into any subcontracts for performance of any portion of the Work in its own name and not as agent for Owner, then Owner shall have the right, in its sole discretion, to directly assume and become liable for any such subcontracts, and Operator shall execute all documents and take all other reasonable steps requested by Owner that may be required to assign to and vest in Owner all rights, benefits, interests and title in connection with such subcontracts.

2.6 **Successor Operator.** Upon the expiration of the Term, or the termination of this Agreement for any reason, Operator shall fully cooperate with Owner in the transfer of the performance of Operator's obligations under this Agreement and in the training, at Owner's expense, of a replacement operator. Subject to any previous transfer to Owner pursuant to Section 2.5, Operator shall assign to this replacement operator, at Owner's request, all contracts it has entered into with third parties in connection with the provision of the Work. Furthermore Operator shall provide Owner or such replacement operator with the right to continue to use any and all patented and/or proprietary information as may be reasonably necessary for the continued provision of the Work and the safe and proper operation and maintenance of the Facility.

2.7 **No Successor Operator.** If on the expiration of any Notice of Termination of this Agreement pursuant to Section 7.2, Owner has not appointed a successor operator to provide the Work as specified in this Agreement, Operator shall, if so required by Owner, continue to perform the Work subject to the terms and conditions of this Agreement, until the expiration of a further period of ninety (90) days and subject to payment by Owner for the Work during such period in accordance with the terms of this Agreement.

ARTICLE 3 – STATUS OF OPERATOR; OPERATOR WORK SCOPE

3.1 Status of Operator.

3.1.1 Subject to the provisions of Section 4.1, Owner hereby appoints Operator, and Operator hereby accepts such appointment and agrees to operate and maintain the Facility during the Term in accordance with and subject to the terms and conditions of this Agreement. Operator shall perform and execute the provisions of this Agreement as an independent contractor

and shall not be, and is not, an agent or employee of Owner; provided that any construction or other service contracts or purchase orders for Equipment entered into by Operator as provided herein, will (subject to the provisions of Section 3.1.3 and Article 4) be issued by Operator as agent for Owner. Operator shall have the power and authority to administer such contracts and purchase orders on behalf of and as the agent for Owner, but such contracts and purchase orders shall be between Owner and the seller of the goods or services, and Owner and the seller will be obligated directly to each other thereunder.

3.1.2 The Facility shall be operated by Operator's employees and Operator shall be fully responsible for all the acts and omissions of all of its employees and agents in connection with the performance, nonperformance or misperformance of the Work.

3.1.3 Except as expressly authorized by this Agreement (including Section 3.1.1), the Approved Operating Budget, the Approved Capital Budget or as otherwise provided for by Owner in writing from time to time, Operator shall not be the agent or representative of Owner, shall have no authority to undertake any transaction or incur any expenditure for which Owner would be independently liable, and Operator shall not:

- (a) describe itself as agent or representative of Owner;
- (b) pledge the credit of Owner in any way in respect of any commitments for which it has not received express written authorization from Owner;
- (c) make any warranty or representation relating to or on behalf of Owner;
- (d) sell, lease, pledge, mortgage, encumber, convey, license, exchange or make any other transfer, assignment or disposition of the Facility or the Site or any other property or assets of Owner (other than removal and disposal of waste);
- (e) settle, compromise, assign, pledge, transfer, release, waive or consent to the compromise, assignment, settlement, pledge, transfer, waiver or release of, any Claim against or due by Owner, or submit any such Claim, dispute or controversy to arbitration or judicial process, or stipulate to a judgment or consent with respect thereto;
- (f) make, enter into, execute, amend, modify or supplement any contract or agreement on behalf of, or in the name of, Owner, or otherwise engage in any other transaction on behalf of, or in the name of, Owner; or
- (g) undertake any line of business at the Facility or Site other than the provision of the Work under this Agreement and other activities incidental thereto.

3.1.4 Subcontracts.

(a) Subject to the provisions of Article 5, Operator shall have the right to have certain of the Work (but not the whole of the Work) accomplished by Subcontractors pursuant to subcontracts executed by Operator and such Subcontractors. Operator shall not enter into any subcontract for any Equipment or any part of the Work to be provided for the Facility

with any Subcontractor without the prior written approval of Owner (or as may be provided expressly in the Approved Operating Budget or the Approved Capital Budget), if (i) the aggregate value of such subcontract exceeds Five Thousand Dollars (\$5,000.00), (ii) the aggregate value under the proposed subcontract when taken together with all other subcontracts previously entered into by Operator exceeds Twenty-Five Thousand Dollars (\$25,000.00) for the applicable Year or (iii) such subcontract cannot be terminated at any time without significant penalty.

(b) Operator will remain fully responsible for the performance or non-performance of any Work performed by a Subcontractor as if such Subcontractor and Subcontractor personnel were employees of Operator, and Owner will look solely to Operator for the performance or non-performance of such Work.

(c) Owner may review and approve, such approval not to be unreasonably withheld or delayed, any subcontract and any forms used by Operator to be entered into between Operator and any Subcontractor and, if provided to Operator by Owner, Operator shall use Owner's form of subcontract or purchase order (with such modifications as Owner may approve, such approval not unreasonably to be withheld or delayed). Neither Operator nor any of its affiliates shall receive any fee, commission, administration charge, overhead, or other mark-up on any agreement with any Subcontractor.

(d) Operator shall not be relieved of any of its obligations or liabilities under this Agreement by reason of any contract entered into with a Subcontractor. Operator shall manage the performance by Subcontractors of their obligations under all such contracts.

(e) No Subcontractor or Affiliate of Operator is intended to be or shall be deemed a third-party beneficiary of this Agreement.

3.1.5 Subcontractor Warranties. Operator, for the benefit of Owner, shall obtain from all Subcontractors customary guarantees and warranties to the extent available with respect to Equipment, subcontracted services, and other items used or installed in the Facility or in connection with the Work.

3.1.6 Subcontractor Insurance. Operator shall require all Subcontractors to obtain, maintain and keep in force during the time in which they are engaged in supplying Equipment to or performing Work for the Facility hereunder insurance coverages reasonably satisfactory to Owner in accordance with Owner's customary procedures.

3.1.7 Subcontractor's Waiver. Operator shall require all Subcontractors to include in all policies of insurance maintained in connection with the Work clauses providing that each underwriter shall waive all of its rights of recovery, under subrogation or otherwise, against Owner and Operator.

3.1.8 Representatives.

(a) Operator shall provide to General Manager a copy of all reports, notices, documents, or other communications provided to Operator hereunder, contemporaneously with its delivery to Owner.

(b) Operator shall give General Manager notice of, and General Manager shall be entitled to attend, all meetings between Operator and any Subcontractor.

(c) In connection with any matters provided in this Agreement to be approved by Operator, Operator shall designate one representative who shall have the authority to give such approvals and on whose approval Owner shall be entitled to rely. Operator may change its authorized representative at any time by Notice to Owner and General Manager.

3.1.9 Subject to the terms of this Agreement, during the Transition Period and the Term, Owner hereby grants Operator the non-exclusive right (which shall not constitute an easement or other restriction on the Facility) to enter on the Site and the premises on which the Facility is located and to occupy and have free access to use the same for solely the purposes set forth in this Agreement. Operator agrees that in its capacity as Operator it does not have and shall not claim at any time any interest or estate of any kind or extent whatsoever in the Facility or the Site by virtue of this Agreement or Operator's occupancy or use of the Facility or Site hereunder.

3.1.10 Operator covenants that it will not cause or permit any destruction of, or damage to, the Facility, and shall not use or permit the use of the Facility other than as described in this Agreement, and that it will not suffer to be maintained any nuisance or unlawful or improper use or occupation of the Facility.

3.2 Transition Period.

3.2.1 Transition Period. Prior to the Mobilization Date, the Parties may mutually agree to comprise a coordination task force to discuss the transition of the Services from the Existing Service Provider to Operator. From and after the Mobilization Date, Operator shall provide to Owner the Mobilization Services until the Transition Period End Date. The Mobilization Services shall include:

- (a) review and complete staffing of the Facility based upon a transition plan subject to review and reasonable consultation with Owner;
- (b) assign key personnel to represent Operator;
- (c) prepare on-Site office for utilization;
- (d) prepare weekly and monthly progress reports to Owner concerning Mobilization Services in the form of Exhibit F;
- (e) respond, in a timely manner, to requests for Facility information from Owner or General Manager that concern Mobilization Services;
- (f) work with the Existing Service Provider and General Manager to review and revise (as necessary), by the Transition Period End Date, the existing communications protocol for plant dispatch and communication of Facility derates and forced/Scheduled Outages;

(g) coordinate and cooperate with Owner, the Existing Service Provider and General Manager with respect to all aspects of the turnover of the Facility from the Existing Service Provider to Operator;

(h) work with the Existing Service Provider to review and revise (as necessary), subject to Owner's approval, the existing computerized routine, preventive, predictive and major maintenance program that is in accordance with Exhibit H, intended to minimize maintenance costs and maximize intervals between major maintenance Outages, and consistent with Equipment manufacturers' warranties, instructions and recommendations, Prudent Industry Practices and the requirements of the authorized insurance inspector (the "Maintenance Program"); and

(i) work with the Existing Service Provider to review and revise (as necessary), for Owner's approval, the existing Facility Environmental Program and the Facility Safety and Security Program.

3.3 Operator Work Scope. During the Term, Operator shall, in consideration of the Management Fee, operate and maintain the Facility in accordance with the Approved Operating and Capital Repair Plan, the Approved Operating Budget, the Approved Capital Budget, the Dispatch Schedule, Prudent Industry Practice, Applicable Law (including the Facility's certification as an EWG), the Project Agreements, the Financing Documents (and Operator acknowledges the receipt of a copy of each such agreement), the O&M Manuals and the relevant insurance policies (after such policies are provided to Operator). Operating Costs and Capital Costs directly incurred or paid by Operator shall be reimbursable in accordance with Section 4.1.2.

3.4 Services. Without limiting the generality of the first sentence of Section 3.3, during the Term, Operator shall perform the Services, which shall include:

3.4.1 Perform all administrative work related to the operation and maintenance of the Facility, including:

(a) plan, schedule and conduct all business related to the operation and maintenance of the Facility;

(b) prepare a proposed Operating and Capital Repair Plan and Operating Budget for the Facility each Year during the Term pursuant to Sections 5.1 and 5.2;

(c) identify and determine the necessity of and cost of capital improvements and recommend a Capital Budget to Owner pursuant to Section 5.7;

(d) maintain the spare parts and inventory in a manner that prudently balances carrying costs of Owner with risks due to shortages of inventory;

(e) based on such spare parts and inventory program, and as provided for in the Approved Operating Budget, purchase and inventory spare parts, materials, and supplies (including Consumables and items covered by Plant Office Expenses and Motorized Vehicle Expenses), and review and approve invoices for same;

(f) based on the Dispatch Schedule (i) maintain the required level of performance as favorably as possible in the context of Prudent Industry Practices and (ii) advise Owner of risks associated with dispatch issues, including any recommended curtailments;

(g) provide such operating and maintenance consulting services to Owner as Owner may deem necessary or desirable;

(h) respond in a timely manner to written requests for Facility information from Owner;

(i) implement and regularly update the existing Facility Safety and Security Program;

(j) review and revise (as necessary) the existing qualification program for evaluating the qualifications and credentials of Subcontractors, and an 'R Stamp' program for boiler and pressure vessel repair, changes to which are both subject to Owner's approval, and after such approval, maintain such programs;

(k) cooperate with and assist Owner in performing Owner's obligations, and the obligations of any party acting for or as the assignee of Owner, under the Project Agreements;

(l) develop and implement an employee relations strategy;

(m) obtain and maintain such workers' compensation, unemployment and other employee-related insurance as is required under applicable state law;

(n) administer hiring and training of the Facility workforce to achieve continuity of labor forces, labor harmony and efficient use of labor forces in accordance with the Approved Operating Budget;

(o) jointly with Owner provide for good community relations;

(p) prepare and provide periodic reports on behalf of and at the request of Owner, including a monthly report in the form attached as Exhibit I (to be delivered by Operator to Owner not later than ten (10) days after the end of each month);

(q) provide recommendations to Owner to increase reliability and reduce expenses;

(r) obtain and maintain required and appropriate levels of insurance pursuant to Section 8.3 with respect to its activities hereunder;

(s) obtain and maintain all necessary Permits in connection with the performance of the Work; and

(t) read and confirm readings of all meters associated with the Facility.

3.4.2 Perform all work associated with the Approved Operating Budget and Approved Capital Budget, including:

(a) provide accounting records and data to support monthly, quarterly, year-end or other reports;

(b) provide weekly, monthly and quarterly detailed financial and operating reports with Approved Operating Budget comparison;

(c) review and revise (as necessary) the existing invoice approval procedures during the Transition Period, changes to which shall be subject to Owner's approval. Review and approve all invoices as per agreed upon invoice approval procedures. Obtain Owner's approval for changes or modifications that are outside of the Approved Operating Budget or Approved Capital Budget;

(d) maintain true, complete and accurate Operating Cost ledgers and accounting records in accordance with generally accepted accounting principles ("GAAP") utilized by Owner regarding the services provided and expenses paid or incurred by it pursuant to this Agreement;

(e) cooperate with the Independent Public Accountant authorized by Owner to perform yearly financial audits;

(f) provide Notice to Owner promptly if Operating Costs or Capital Costs, as applicable, (i) exceeds two percent (2%) or are expected to exceed two percent (2%) of the Approved Operating Budget or Approved Capital Budget, as applicable or (ii) are ten percent (10%) below or are expected to be ten percent (10%) below the Approved Operating Budget or Approved Capital Budget, as applicable, pursuant to Section 5.4;

(g) provide proposed revisions to the Approved Operating Budget or Approved Capital Budget based on changes in Owner's expected Dispatch Schedule for the relevant period and/or other contracts; provided that items approved by Owner will be considered approved additions to the Approved Operating Budget and Approved Capital Budget, as applicable; and

(h) notify Owner of and, in reasonable consultation with Owner, initiate work in response to, an emergency condition that constitutes a safety or environmental hazard or something that could damage the Facility (an "Emergency") or an Unscheduled Outage. The Operator shall immediately notify the Owner of such an event (but within 24 hours of the event), such notice to describe in reasonable detail the circumstances of the event, the proposed remedial measures and the probable duration of the Emergency or Unscheduled Outage. The Operator shall act in accordance with Prudent Industry Practices to address the Emergency or the Unscheduled Outage.

3.4.3 Perform operation and maintenance services at the Facility, including:

(a) develop an effective and sufficient operating work force through appropriate ongoing hiring, training, administration and compensation programs in conjunction with Owner;

(b) operate and maintain the Facility in a clean, safe and efficient manner in accordance with the Approved Operating Budget, Approved Capital Budget, Dispatch Schedule, Prudent Industry Practices, the Project Agreements, Equipment manufacturers' instructions and recommendations and warranty terms, Applicable Law and the Facility Environmental Program. Such operation shall economically limit the use of emission allowances;

(c) maintain true, complete and accurate operating logs, records and reports necessary or required by Applicable Law or the Project Agreements or beneficial for proper operation and maintenance of the Facility in accordance with Prudent Industry Practices;

(d) review the Owner-provided drawings, instruction books and operating and maintenance manuals and procedures to determine if they are in as-built conditions and, to the extent they are not, in coordination with Owner shall make any appropriate revisions and ensure that such documents are maintained and updated in accordance with any future modification that the Owner may instruct or that the Operator suggests (to the extent that Owner approves of such suggestion). All such material, including all revisions and updates, regardless of medium used, shall remain Owner's property;

(e) maintain and calibrate all tools and instruments necessary to operate and maintain the Facility;

(f) maintain and regularly update the Maintenance Program;

(g) schedule and perform, or cause to be performed, the work specified in the maintenance program in accordance with the Dispatch Schedule, the Approved Operating Budget, the Approved Capital Budget, Prudent Industry Practices, the Project Agreements, and Applicable Law;

(h) perform periodic operational checks and tests of Equipment, at the direction of Owner, in accordance with the Equipment manufacturers' instructions and recommendations, Prudent Industry Practices and/or Applicable Law, and arrange for required environmental or other required specialized Equipment tests to be performed. Maintain records of the foregoing, including: (i) a register of all Equipment subject to inspection by Government Authorities; (ii) a register of all test dates and results; and (iii) a register of Facility operating performance data including operating hours and adjustments to expired hours and expired life, all measurements and records required by the Permits and the Project Agreements, and maintenance of Facility generating and protective Equipment. Allow for inspections of the Facility and Operator's books and records by Owner, its agents and Lender or its agents;

(i) cooperate with Owner and any independent engineers appointed by Owner to evaluate the nature and impact of any Equipment failure, and if the failure is major or material, promptly provide Notice to Owner, provide all background materials related to such Equipment failure to Owner, and review the situation with Owner and mutually agree on a reasonable remedy of the matter;

(j) comply with Applicable Law, and cooperate with and assist Owner in (i) obtaining and maintaining any Permits not required for the Work and (ii) complying with Applicable Law;

(k) promptly provide Notice to Owner of grid disturbances and any curtailments affecting the Facility;

(l) operate the Facility in accordance with the Approved Operating Budget and Approved Capital Budget for such items, and if a new budget is not timely approved by Owner, operate in accordance with the preceding Approved Operating Budget and Approved Capital Budget, as applicable, until a new Operating Budget is approved by Owner, which approval shall be subject to dispute resolution pursuant to Section 7.3 in a timely manner;

(m) provide for building, structural and yard maintenance;

(n) order, receive and maintain adequate inventories and supplies (parts and Consumables);

(o) provide Owner, General Manager and Owner's other designees with unrestricted access to the Facility in accordance with the Facility Safety and Security Program and cooperate with Owner and its representatives and designees in all Owner inspections of the Facility. Such inspections may occur without Notice at any time and shall not jeopardize personnel safety or unreasonably interfere with the operation or maintenance of the Facility;

(p) operate and maintain the Facility in such a way as to satisfy Applicable Law and the Project Agreements, taking such samples and performing and reporting such tests as are required, and promptly provide Notice to Owner of any areas of conflict, violations or unsatisfactory conditions or test results, regarding Applicable Law or the Project Agreements. Perform all necessary testing and reporting in accordance with Applicable Law and the Project Agreements;

(q) administer and verify that all parties providing warranties for the Facility under the Project Agreements comply promptly and diligently with all of their respective warranty obligations and provide such parties prompt and timely notice of all matters affecting their respective warranty obligations;

(r) implement and regularly update the Facility Environmental Program. Dispose of all waste materials, including Hazardous Materials, in accordance with Applicable Law and Owner's waste disposal agreements, if any;

(s) keep the Facility free of any liens or encumbrances (including those arising from Operator's performance hereunder); and

(t) operate and maintain all interconnection facilities (including the gen-tie line) that are owned by Owner.

3.5 Operator Letter of Credit. On or prior to the Effective Date, Operator shall have caused the delivery to Owner of the Operator Letter of Credit.

3.6 **Labor.** Operator shall at all times maintain appropriate discipline and good order among its staff and shall require that similar standards are applied by Subcontractors. Owner may request that Operator remove and replace any of its staff for poor performance by Notice stating the reasons for its dissatisfaction with that Person and its view that demonstrable cause exists for the removal and replacement of that Person. Operator shall take such requests under consideration and promptly replace such Person or Persons with another suitably qualified, competent and experienced Person or Persons or explain to Owner's satisfaction why the replacement is not necessary. Prior to hiring, Owner shall interview Operator-selected candidates for Facility manager and provide Operator with its comments regarding each candidate. Owner may not direct Operator to select a particular individual for a particular position; provided, however, that Owner's written consent (not to be unreasonably withheld, conditioned or delayed) is required prior to Operator hiring the plant manager, plant engineer, operations manager and maintenance manager (and any other Person with responsibilities customarily associated with persons having similar titles). Operator shall provide Notice to Owner if Operator's employees initiate efforts toward the formation or recognition of a union or other collective bargaining effort at the Facility. Owner shall have input into the labor strategy and be briefed on the finally approved strategy and goals of negotiation prior to starting negotiations. Operator shall provide the necessary number of suitably qualified, competent and experienced personnel as may be required to satisfactorily carry out the Work. Owner shall review labor costs as a part of the approval process for the Operating Budget.

ARTICLE 4 – RESPONSIBILITIES OF OWNER

4.1 **Owner Responsibilities.** Owner shall have exclusive control and decision making authority with respect to the overall load dispatch (Dispatch Schedule) of the Facility. In addition, Owner shall be responsible for the following:

4.1.1 Payments to Operator.

(a) During the Term, Owner shall pay a fixed monthly payment for management of the Facility (the "**Management Fee**") to Operator in the amount of \$15,000.37 (prorated for any partial monthly period between the Transition Period End Date and the first day of the next full month), due and payable on the first day of the following month until such time as this Agreement is terminated as provided for in Article 2 or Article 7. Operator shall invoice Owner each month during the Term for the Management Fee;

(b) The amounts payable to Operator as the Management Fee pursuant to Section 4.1.1(a) shall, effective as of January 1 of the first calendar year subsequent to the Transition Period End Date, be subject to annual increases or decreases, as applicable, by a percentage equal to the trailing twelve (12) month average percentage increase or decrease in the CPI as of January 1 of such year (and if no CPI is available for January 1 of such year, then the first day thereafter for which the CPI is available); provided, however, the Management Fee shall never be decreased below the amounts set forth in Section 4.1.1(c);

(c) Either Party may at any time, but shall be under no obligation to, set off any and all sums due from the other Party against sums due to such Party hereunder.

4.1.2 Reimbursement of Operating Costs and Capital Costs. From and after the Effective Date of the Plan (except with respect to clause (i) of the definition of “Operating Costs”), Operator shall invoice Owner each month for any Operating Costs and Capital Costs that Operator pays or incurs directly. Within thirty (30) days after receipt of such invoice, but subject to Sections 5.6.1 and 5.7, Owner shall promptly reimburse Operator for Operating Costs and Capital Costs paid or incurred by Operator in accordance with this Agreement. Amounts due under contracts entered into by Operator as agent for Owner pursuant to Section 3.1.1 will be paid directly by Owner.

4.1.3 Accounting Guidelines. Owner shall provide Operator with accounting policies, directives and procedures as necessary at Owner’s direction so that Operator can perform its responsibilities in Article 3.

4.1.4 Approval of Submittals. Owner shall promptly review the proposed Operating and Capital Repair Plan, Operating Budget, and Capital Budget submitted by Operator pursuant to Article 5. Owner shall meet with Operator to discuss the same and, if Owner determines that any item proposed should be changed and if the Parties are unable to resolve a dispute in good faith with respect to the submittals, the same shall be submitted to dispute resolution pursuant to Section 7.3.

4.1.5 Remedy of Major Equipment Failures; Capital Improvements. Owner shall promptly meet with Operator to determine the course of action to be taken to remedy or repair major Equipment failures; provided, however, that Operator shall take such action as it deems prudent to protect life or property in the event of an Emergency involving failure of Equipment. At its election, Owner may separately contract for any major maintenance replacements or capital improvements that are outside of the scope of the Services.

4.1.6 Preparation of Annual Dispatch Schedules by Month. Owner shall be responsible to provide to Operator during the first twelve (12) months of the Term a proposed monthly Dispatch Schedule for the next Year. The Dispatch Schedule shall show expected load cycling duty as well as periods of time and corresponding generation levels required for Owner’s revenues.

4.1.7 Insurance. Owner shall obtain and maintain required and appropriate levels of insurance pursuant to Section 8.2 with respect to its activities hereunder.

4.1.8 Copies of Permits and O&M Manuals. Owner shall provide to Operator copies of all O&M Manuals in Owner’s possession (including the corresponding drawings and engineering documents) and Permits obtained by Owner.

4.1.9 Safety. Owner shall be responsible for ensuring that there is adequate funding available for safety-related capital improvements, and the implementation of the Facility Safety and Security Program.

4.1.10 Applicable Law. Owner shall work with Operator to ensure that the Facility complies with Applicable Law.

4.1.11 Reports. Owner shall ensure that any applicable requirements of Government Authorities regarding bilateral and income statement accounting (including closing the books monthly, Quarterly and Yearly) are performed and required reports are issued, including the Independent Public Accountant's Yearly report.

4.1.12 Invoices. Owner shall ensure that invoices are properly reviewed and, if in accordance with this Agreement, approved in a prompt and timely manner.

4.1.13 Taxes. Owner shall (a) jointly with Contractor, provide for community relations and (b) pay property taxes.

4.1.14 Environmental. Owner shall be responsible for ensuring that there is adequate funding available for environmentally related capital improvements, and for implementing the Facility Environmental Program.

4.2 **Owner's Representative**. Subject to Sections 3.4.1(d), 3.4.3(q) and 3.4.3(r), General Manager shall be responsible for ensuring that Owner's obligations under the Project Agreements are performed. General Manager shall act as the liaison between Owner and Operator. Owner may change its General Manager at any time by Notice to Operator.

ARTICLE 5 – PLANS AND BUDGETS

5.1 **Operating and Capital Repair Plan**. Subject to Section 6.3.3, Operator shall prepare the Operating and Capital Repair Plan and Operating Budget based on the Dispatch Schedule and proposed Scheduled Outage information. Operator shall deliver to Owner, no later than ninety (90) days prior to the beginning of each Year (or, for the first Year, no later than two (2) months prior to the Transition Period End Date), an Operating and Capital Repair Plan, including budget estimates, which shall set forth on a monthly basis all underlying assumptions (including emissions data) and implementation plans in connection with the operation and maintenance of the Facility. The Operating and Capital Repair Plan shall include: (a) routine operational services; (b) routine repairs and maintenance for each part of the Facility; (c) information regarding the inventory and proposed procurement of equipment, spare parts, tools and, in the case of major Equipment, the residual life thereof; (d) routine operational information, general operating data and other Facility data; (e) the Dispatch Schedule; (f) Scheduled Outages; (g) Consumables; (h) staffing plans and details regarding the number of part-time and temporary staff and consultants; (i) Operator's environmental plan describing any actions necessary to ensure that the Facility will comply with all applicable Environmental Laws; and (j) Operator's recommendations on matters affecting the operation and maintenance of the Facility, including: (1) any relevant capital improvements, capital additions or Capital Costs for the Year; (2) the inventory of, and proposed plan for procuring, all spare parts, tools, rigging, and workshop and other Equipment required for the operation and maintenance of the Facility during the Year; and (3) the inventory of, and proposed plan for procuring, all Consumables required for the operation and maintenance of the Facility during the Year, in each case together with the reasons for such recommendations and the expected Capital Costs and net change in operating cost. Operator shall not schedule any Scheduled Outage during the Peak Season without the express prior written approval of Owner.

5.2 Operating Budget.

5.2.1 Initial Operating Budget. Operator will deliver to Owner, within thirty (30) days following the Effective Date of the Plan, a revised twelve (12) month Operating Budget based upon the Existing Operating Budget, which upon the approval of Owner shall be the Approved Operating Budget for the first Year of the Term.

5.2.2 Subsequent Operating Budget. Not later than one hundred twenty (120) days prior to the beginning of each subsequent Year, Operator shall submit to Owner, for Owner's review and approval, the proposed Operating Budget for the following two (2) Years. The Operating Budget shall be itemized on a monthly GAAP basis and shall incorporate all project Operating Costs to be incurred during the following two (2) Years.

5.3 Approval of Operating and Capital Repair Plan and Operating Budget. Within thirty (30) days of Owner's receipt of a proposed Operating and Capital Repair Plan and Operating Budget, Owner shall provide written comments to Operator with respect thereto and request any additions, changes or modifications to such Operating and Capital Repair Plan and Operating Budget. Not more than ten (10) days following Operator's receipt of Owner's comments on the proposed Operating and Capital Repair Plan and Operating Budget, Owner and Operator shall meet to discuss the terms of such Operating and Capital Repair Plan and Operating Budget and Owner's requested changes thereto. Owner and Operator shall use reasonable efforts to reach agreement thereon by the date forty-five (45) days prior to the applicable Year. Upon approval by Owner, such Operating and Capital Repair Plan and Operating Budget shall be the Approved Operating and Capital Repair Plan and the Approved Operating Budget for the applicable Year.

5.4 Operating and Capital Budget Overruns/Underruns. If, at any time, Operator reasonably anticipates that the aggregate Operating Costs or Capital Costs may exceed, on a monthly basis, the amount set forth in the applicable Approved Operating Budget or Approved Capital Budget, as applicable, by more than 2%, or be 10% below the amount set forth in the applicable Approved Operating Budget or Approved Capital Budget, as applicable, Operator shall promptly advise Owner of such situation by Notice and, pursuant to Section 5.5, propose for Owner's approval any changes to the Approved Operating Budget or Approved Capital Budget, as applicable, which Operator considers necessary.

5.5 Revisions to Operating and Capital Repair Plan and Operating Budget. At the request of Owner, or to the extent Operator itself determines necessary or appropriate, Operator shall update the applicable Operating and Capital Repair Plan or Operating Budget at such times as may be appropriate to reflect changes in assumptions made in their preparation. These updates shall be submitted to Owner for its approval. In addition, Operator may, at any time, provide proposed revisions to any Approved Operating and Capital Repair Plan or Approved Operating Budget to Owner for consideration. Unless otherwise specified by Owner, such revisions shall become effective for purposes of this Agreement from the date of Owner's approval thereof (if approved), and shall be applied to the first calendar month to which such revision relates following such approval or resolution.

5.6 Limitations.

5.6.1 Operator shall have no authority, without the prior written approval of Owner, which written approval shall be requested via a completed request for expenditure form based on Exhibit D hereto, to undertake any transaction or incur any expenditure in the name of or on behalf of Owner or otherwise, which (i) is not specified in the Approved Operating Budget, (ii) exceeds with respect to any single expenditure the lesser of Five Thousand Dollars (\$5,000.00) or any level specified in the Approved Operating Budget, (iii) exceeds by more than five percent (5%) the cost of any Major Expense Line Item as per Exhibit C in the Approved Operating Budget, or (iv) is a Capital Cost not specified in the Approved Capital Budget. Except as set forth in Section 5.6.2, any costs or expenses incurred by Operator in connection with any such transaction or expenditure shall be solely for the account of Operator.

5.6.2 The restrictions set forth in Section 5.6.1 shall not apply to expenditures necessary to remedy or respond to an Emergency; provided, however, that Operator shall use all reasonable efforts to give Owner prompt notice of any such emergency.

5.7 **Approved Capital Budget.** Subject to Section 6.3.3, in conjunction with the preparation of the Operating and Capital Repair Plan and Operating Budget, Operator shall develop a two-year capital budget that sets forth necessary Capital Costs (the “Capital Budget”). Major capital projects and routine annual capital improvements shall be included in the Operating and Capital Repair Plan. The Capital Budget shall be prepared and submitted for Owner’s approval by Operator at the time of submission of the Operating and Capital Repair Plan and Operating Budget under Sections 5.1 and 5.2; provided that the initial Capital Budget prepared by Operator in respect of the first Year of the Term shall be based upon the Existing Capital Budget. Capital Costs may only be incurred pursuant to the Approved Capital Budget. The provisions of Sections 5.3 and 5.4 shall be applicable to Owner’s review and approval of each Capital Budget.

ARTICLE 6 – REPRESENTATIONS, WARRANTIES, COVENANTS AND BANKRUPTCY MATTERS

6.1 **Representations and Warranties.** Owner and Operator each hereby represents and warrants to the other (insofar as any such representation and warranty applies to itself) that the following statements are true and correct as of the date hereof and shall be true and correct at all times that it is a Party hereto.

6.1.1 It is duly formed, validly existing, and in good standing under the laws of the jurisdiction of its incorporation or formation; to the extent required by Applicable Law, it is duly qualified and in good standing in the jurisdiction of its principal place of business, if different from its jurisdiction of incorporation or formation; and it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and all necessary actions by the officers, managers, members or other applicable Persons necessary for the due authorization, execution, delivery, and performance of this Agreement by it have been duly taken.

6.1.2 It has duly executed and delivered this Agreement and the other documents contemplated herein, and they constitute its legal, valid and binding obligations enforceable against it in accordance with their terms (except as may be limited by bankruptcy, insolvency or

similar laws of general application and by the effect of general principles of equity, regardless of whether considered at law or in equity).

6.1.3 Its authorization, execution, delivery, and performance of this Agreement does not and will not (a) conflict with, or result in a breach, default or violation of, (i) its organizational documents, (ii) any contract or agreement to which it is a party or is otherwise subject, or (iii) any Applicable Law to which it is subject; or (b) require any consent, approval or authorization from, filing or registration with, or notice to, any Government Authority (including any approvals required by the Federal Energy Regulatory Commission) or other Person, except as set forth in this Agreement and unless such requirement has already been satisfied.

6.1.4 It is not a party to any litigation the outcome of which could reasonably be expected to adversely affect its ability to perform its obligations hereunder or to have a material adverse effect on its properties, business or financial condition.

6.1.5 In the case of Operator, it will have inspected the Facility on or before the Transition Period End Date and, based on its experience and knowledge, finds that it is reasonably safe, healthful, and suitable for the performance of Operator's obligations hereunder.

6.1.6 In the case of Owner, it is or will be an EWG and GO when required by Applicable Law.

6.1.7 In the case of Operator (including its agents, representatives, employees and other personnel available to it), it is fully qualified to operate and maintain the Facility in accordance with the terms hereof.

6.2 Covenants. Owner and Operator covenant and agree that:

6.2.1 Each will timely acquire and maintain all Permits (including GO and GOP status for Owner and Operator, respectively) required by any state or federal regulatory authority in order for it to perform its obligations hereunder.

6.2.2 Each will at all times abide by Applicable Law in the conduct of the Parties or the performance of their obligations hereunder.

6.2.3 Operator will not acquire any assets or services from any Affiliate except in the ordinary course of Operator's business upon terms no less favorable to Operator than would be obtained in a comparable arms'-length transaction with a Person not an Affiliate and then only with the written consent of Owner after receiving a reasonable description in writing of each of the terms thereof. Affiliate services shall also be subject to Operator's Subcontractor qualification program.

6.2.4 During the pendency of any dispute arising under this Agreement, unless otherwise agreed between the Parties, Operator shall continue to operate the Facility without default or interruption in service.

6.3 Bankruptcy Matters.

6.3.1 Owner and Operator acknowledge that (a) this Agreement and the Chapter 11 Plan are subject to Bankruptcy Court approval, (b) Owner shall have no obligation to issue a Notice to Proceed prior to receipt of Bankruptcy Court approval of this Agreement (and such Bankruptcy Court approval may occur prior to the Effective Date), and (c) this Agreement may be immediately terminated by Owner without any liability to Owner (i) in the event the Bankruptcy Court fails to provide its approval of this Agreement, or (ii) in the event (x) the Bankruptcy Court fails to provide its approval of the Chapter 11 Plan or the Chapter 11 Plan is withdrawn or (y) the Restructuring Support Agreement is terminated.

6.3.2 Operator agrees that it will promptly take such actions as are reasonably requested by Owner to assist in obtaining Bankruptcy Court approval of this Agreement and the Chapter 11 Plan, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court, and making witnesses available to testify.

6.3.3 Prior to the Bankruptcy Court's approval of this Agreement, the obligations of Operator in Article 5 related to the development of an Operating Budget, Capital Budget or Operating and Capital Repair Plan by Operator shall not apply; provided that between the date of the Bankruptcy Court's approval of this Agreement and the Effective Date of the Plan, Operator acknowledges and agrees that the Bankruptcy Court-approved budget shall be the exclusive budget for operations (including, without limitation, Mobilization Services), capital and capital repairs and that Operator shall be paid in accordance with such budget. Prior to the Effective Date of the Plan, all independent actions of Operator under Section 3.4 shall require coordination with and prior approval by Owner.

ARTICLE 7 – EVENTS OF DEFAULT AND DISPUTE RESOLUTION

7.1 Events of Default.

7.1.1 An Event of Default under this Agreement with respect to Owner shall have occurred in the event of:

(a) a failure by Owner to pay any amount due under this Agreement, which failure is not cured within thirty (30) days after Notice of such default;

(b) failure by Owner to perform any of its other obligations under this Agreement, which failure (a) has a material and adverse effect on Operator and (b) is not cured within thirty (30) days after Notice of such default or, if such cure requires a longer period, within such period of time as is reasonably necessary to accomplish such cure and Owner diligently commences and continues to pursue such cure in such period); or

(c) any representation or warranty made or deemed made by Owner in this Agreement shall prove to be false or misleading in any material respect as of the time made or deemed made, confirmed or furnished, and such condition or circumstance would reasonably be expected to have a material and adverse effect on Operator; provided that such misrepresentation or such false statement shall not constitute an Event of Default if such condition

or circumstance is (a) subject to cure and (b) remedied within forty-five (45) days after written Notice of such default.

7.1.2 An Event of Default under this Agreement with respect to Operator shall have occurred in the event of:

- (a) Bankruptcy of Operator;
- (b) a work stoppage by Operator's on-site personnel and the failure by Operator to provide a complement of workers within ten (10) days thereof as necessary to operate the Facility and perform the Work in all material respects as required by this Agreement;
- (c) a failure by Operator to pay any amount due under this Agreement, which failure is not cured within thirty (30) days after Notice of such default;
- (d) a failure by Operator to perform any of its other material obligations under this Agreement, which failure is not cured within thirty (30) days after Notice of such default; provided that if Operator demonstrates to Owner's reasonable satisfaction that such failure can be cured but that additional time is required for such cure, Owner shall grant Operator an additional period of time, not to exceed sixty (60) days from Notice of such default, to cure such default so long as Operator commences such cure within the initial thirty (30) day period and thereafter diligently completes such cure within the additional cure period;
- (e) the actual and aggregate Operating Costs and Capital Costs for the Facility exceed twenty percent (20%) of the aggregate Approved Operating Budget and Approved Capital Budget during any Year due to reasons within the control of Operator;
- (f) any representation or warranty made or deemed made by Operator in this Agreement shall prove to be false or misleading in any material respect as of the time made or deemed made, confirmed or furnished, and such condition or circumstance would reasonably be expected to have a material and adverse effect on Owner;
- (g) an act or omission by Operator that results in the failure to obtain, renew, maintain or comply in all material respects with any material Permit or any such material Permit shall be rescinded, terminated, suspended, withdrawn or withheld or shall be determined to be invalid or shall cease to be in full force and effect; or any proceedings shall be commenced by or before any Government Authority for the purpose of rescinding, terminating, suspending, modifying, withdrawing or withholding any such material Permit due to causes or circumstances attributable to Operator;
- (h) Operator operates, or takes any other action in respect of, the Facility in such a manner that Owner ceases to be an EWG, and Owner reasonably concludes that as a result thereof it may, or will, be subject to regulation pursuant to the Public Utility Holding Company Act of 1935, as the same may be amended, modified or replaced from time to time; or
- (i) Operator incurs the maximum liability under Section 9.2.

7.2 **Rights Upon Default.**

7.2.1 **Rights of Operator.** Upon the occurrence and continuance of an Event of Default described in Section 7.1.1, Operator may, at its option, terminate this Agreement by delivering a Notice of Termination to Owner, which Notice of Termination shall be effective if Owner has not cured such Event of Default within forty-five (45) days after the date it is received by Owner. In the event of such termination, Owner shall pay all amounts due Operator, including the Management Fee and any non-reimbursed costs advanced by Operator for Operating Costs and Capital Costs then due. In such event, Operator shall take all necessary steps to shut down and protect the Facility, leaving the same in an orderly and safe condition, prior to leaving the Facility. The rights and remedies of Operator (and of any Person acting on behalf of or claiming through Operator) under this Section 7.2.1 shall not be Operator's (and any such Person's) exclusive right or remedy for any breach of or default under the terms of this Agreement.

7.2.2 **Rights of Owner.** Upon the occurrence and continuance of an Event of Default described in Sections 7.1.2(a) or 7.1.2(b), Owner may, at its option, terminate the Agreement, in accordance with Section 2.3, by delivering a Notice of Termination to Operator, which Notice of Termination shall be effective immediately. Upon the occurrence and continuance of an Event of Default described in Sections 7.1.2(c) through 7.1.2(k), Owner may, at its option, terminate the Agreement, in accordance with Section 2.3, by delivering a Notice of Termination to Operator, which Notice of Termination shall be effective thirty (30) days after the delivery thereof to Operator. In such event, Operator shall take all necessary steps to shut down and protect the Facility, leaving the same in an orderly and safe condition, prior to leaving the Facility. The rights and remedies of Owner (and of any Person acting on behalf of or claiming through Owner) under this Section 7.2.2 shall not be Owner's (and any such Person's) exclusive right or remedy for any breach of or default under the terms of this Agreement.

7.3 **Operator Letter of Credit Draw Conditions.** The Owner shall be permitted to draw on the Operator Letter of Credit subject to the following draw conditions:

(a) Upon the occurrence and continuance of an Event of Default with respect to Operator described in Section 7.1.2 herein, the Owner may draw under the Operator Letter of Credit in an amount (not to exceed the amount of the Operator Letter of Credit) equal to the amount that Owner is required to expend in order to remedy such Event of Default; or

(b) If (i) the bank that issued the Operator Letter of Credit has notified the Owner at least forty-five (45) days prior to the then scheduled expiration date for the Operator Letter of Credit that the Operator Letter of Credit will not be renewed at its then scheduled expiration date and (ii) the Operator has not provided to the Owner a replacement letter of credit or alternative security reasonably satisfactory to the Owner within ten (10) Business Days prior to the expiration of the Operator Letter of Credit, then the Owner may draw under the Operator Letter of Credit in an amount equal to the remaining stated amount available to be drawn under the Operator Letter of Credit. In the event a drawing under the Operator Letter of Credit is made under this Section 7.3(b), the Owner shall (w) hold the amounts drawn in an interest-bearing account separate and apart from its other funds, property and assets, (x) not commingle such amounts with any of its other funds, assets or property, (y) withdraw and use such amounts solely for the purpose of reimbursing itself for the amounts it is required to expend to remedy any Event of Default with

respect to Operator described in Section 7.1.2 herein (and upon any such withdrawal and use, it shall promptly notify the Operator thereof, specifying in reasonable detail the purpose for such withdrawal and use and itemizing each amount so used) and (z) upon termination of this Agreement, promptly pay to Operator any amounts remaining in such account (including without limitation all interest remaining in such account). Notwithstanding the foregoing, if at any time after a drawing under the Operator Letter of Credit is made under this Section 7.3(b) the Operator provides to the Owner a replacement Operator Letter of Credit or alternative security reasonably satisfactory to the Owner, then the Owner shall promptly pay to the Operator any amounts remaining in the account established pursuant to the immediately preceding sentence (including without limitation all interest remaining in such account).

7.4 Dispute Resolution. In the event a dispute arises between Owner and Operator regarding the application or interpretation of this Agreement, the aggrieved Party shall promptly notify the other Party of its intent to invoke this dispute resolution procedure (such notice, a “Dispute Notice”) within ten (10) Business Days after such dispute arises. If the Parties shall have failed to resolve the dispute within ten (10) Business Days after delivery of such Dispute Notice, each Party shall, within five (5) Business Days thereafter, nominate a senior officer of its management to meet at the Facility, or at any other mutually agreed location, to resolve the dispute. Should the Parties be unable to resolve the dispute to their mutual satisfaction within ten (10) Business Days after such nomination, the respective chief executive officers of each Party will meet within two (2) Business Days thereafter to resolve the dispute.

7.4.1 If, prior to the final resolution of the Bankruptcy Case, the dispute remains unresolved within thirty (30) Business Days after delivery of such Dispute Notice, each Party, without further delay, shall submit the dispute to the Bankruptcy Court for final resolution. Each Party shall bear its own costs and fees, including attorneys’ fees and expenses. The Parties shall each provide the Bankruptcy Court with all non-confidential and non-privileged information and documentation and all other assistance reasonably required to resolve the dispute.

7.4.2 If, following the final resolution of the Bankruptcy Case, the dispute remains unresolved within thirty (30) Business Days after delivery of such Dispute Notice, each Party, without further delay, shall submit to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“AAA”) and shall form an arbitration panel with three members, one picked by the first Party, one by the second Party and one mutually agreed. If a Party fails to choose its arbitrator or the Parties fail to choose their mutual agreement arbitrator within 30 days after the dispute has been submitted to the AAA, the AAA shall choose such arbitrator. The panel will meet and be instructed to reach a binding decision within thirty (30) days. The pendency of this dispute resolution mechanism shall not of itself relieve either Party of its duty to perform under this Agreement. The arbitration shall be conducted in English and shall be held and the award shall be issued in Las Vegas, Nevada. Each Party shall bear its own costs and fees, including attorneys’ fees and expenses. The Parties shall each provide the panel with all non-confidential and non-privileged information and documentation and all other assistance reasonably required to resolve the dispute.

ARTICLE 8 – INSURANCE

8.1 **Insurance Terms.** Capitalized terms used in this Article 8 and not otherwise defined in this Agreement shall have the meanings generally ascribed to them in the commercial insurance industry in the United States.

8.2 **Owner to Procure Insurance.** Owner shall ensure, to the extent commercially available, that Operator is named as an additional insured on each insurance policy relating to the ownership, operation and maintenance of the Facility that Owner is required to take out and maintain pursuant to the Project Agreements, and shall cause such insurance policies to include a waiver of subrogation by the insurers in favor of Operator, its parent, assignees, Affiliates, agents, officers, directors, employees, insurers or policy issuers, and a waiver of any right of the insurers to any set-off or counterclaim, whether by endorsement or otherwise, in respect of any type of liability of any of the Persons insured under such policies. Owner shall provide Operator with a certified copy of each such insurance policy and shall notify Operator in writing of any changes to such policy from time to time or, before doing so, of the cancellation of any such policy or policies.

8.3 **Operator's Insurance.**

8.3.1 Without prejudice to its obligations hereunder or otherwise under Applicable Laws, Operator shall take out and maintain from the Mobilization Date and throughout the term of this Agreement insurance for:

(a) **Workers Compensation.** Operator shall provide and maintain workers compensation insurance as required by Applicable Law and employer's liability insurance with a limit of liability of at least One Million Dollars (\$1,000,000.00) for each accident, One Million Dollars (\$1,000,000.00) for each employee and One Million Dollars (\$1,000,000.00) policy limit, which shall cover all of Operator's employees, whether full-time, part-time, leased, temporary or casual, who are performing Work. The coverage shall extend to the USL&H Act and FELA if those exposures exist.

(b) **Commercial General Liability.** Operator shall procure and maintain a commercial general liability insurance policy written with a combined single limit of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, covering bodily injury (including death), personal injury and products/completed operations property damage. The coverage shall include extensions for independent contractors, mobile equipment, cross liabilities/separation of insureds, and no exclusions for X.C. & U., lifting, rigging or boom overload, or operations within fifty (50) feet of a railroad. Such coverage shall be written on an "occurrence" basis and be at least as broad as the Insurance Services Office Commercial General Liability Coverage "occurrence" form.

(c) **Automobile Liability.** Operator shall provide and maintain business auto liability insurance covering owned, non-owned, leased and hired automobiles used by Operator in the amount of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage for each accident. Such coverage for all vehicles shall be at least as broad as the Insurance Services Office Business Auto Coverage form covering Automobile Liability.

(d) Excess Liability. Operator shall provide and maintain excess liability insurance on an “occurrence” basis covering claims in excess of the employer’s liability, commercial general liability, and business auto liability, on a following form basis, at an aggregate policy limit of Thirty Million Dollars (\$30,000,000.00) for bodily injury and property damage per occurrence.

(e) Pollution Liability. Operator shall provide and maintain pollution liability coverage with a limit of not less than One Million Dollars (\$1,000,000.00) per occurrence. Such insurance shall include coverage for bodily injury and property damage, including clean-up costs and defense costs, resulting from sudden and accidental pollution events, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water.

(f) Equipment, Supplies and Materials. All equipment, supplies and materials (i) belonging to Operator or (ii) used by or on behalf of Operator in the performance of the Work which is not intended to become a permanent part of the Facility shall be brought to and kept at the Site at the sole cost, risk and expense of Operator, and Owner shall not be liable for Losses thereto. Should such property be insured, said insurers shall waive rights of subrogation against Owner. Owner will not be responsible for any insurance premium payments related to the aforementioned equipment, supplies or materials.

8.3.2 Operator shall promptly, after having placed any such policy or policies, provide Owner with a certificate for the insurance and shall notify Owner of any changes or, before doing so, of the cancellation of any such policy or policies.

8.3.3 Operator’s general, automobile and umbrella/excess liability policies relating to the operation and maintenance of the Facility shall provide as follows:

(a) Owner, its employees, and Lenders shall be additional insureds under such policies;

(b) the insurance shall be primary with respect to the interest of Owner, its employees, and its Lenders and any other insurance maintained by them in excess and not contributory with such policies;

(c) such general liability policy shall allow severability of interests;

(d) notwithstanding any provision of the policies, the policies may not be canceled, non-renewed or materially changed by the insurer without giving sixty (60) days, or in the case of cancellation for non-payment of premiums ten (10) days’, prior written notice to Owner and Lenders; and

(e) such policies shall include a waiver of subrogation by the insurers in favor of Owner and any Lender and each of their respective assignees, Affiliates, agents, officers, directors, employees, insurers or policy issuers, and a waiver of any right of the insurers to any set-off or counterclaim, whether by endorsement or otherwise, in respect of any type of liability of any of the Persons insured under such policies.

8.3.4 Operator's insurance policies required by Section 8.3.1(a) (Workers Compensation) shall name Owner as an "alternate employer."

8.3.5 The insurance coverages described in Sections 8.3.1(b) and 8.3.1(d) shall be on occurrence-based forms.

8.3.6 If Operator should fail to obtain and maintain the insurance coverages required pursuant to this Section 8.3 or any other insurance which it may be required to effect under the terms of this Agreement, then and in any such case, Owner may procure and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and deduct the amounts so paid by Owner from any monies due or which may become due to Operator, or recover the same as a debt due from Operator.

8.4 Disclosure of Claims.

8.4.1 Each Party shall promptly furnish the other Party with information relating to the operation and maintenance of the Facility to enable the first Party to comply with its disclosure obligations under the insurance policies which it has procured.

8.4.2 Each Party shall promptly notify the other Party of any Claim with respect to any of the insurance policies referred to in Section 8.2 or Section 8.3, as applicable, accompanied by reasonable details of the incident giving rise to such Claim.

8.4.3 Each Party shall give the other Party all reasonable assistance in the preparation and negotiation of insurance Claims.

8.5 **General Provisions Regarding Insurance.** If Operator receives the proceeds of any insurance with respect to any of Owner's property, it shall hold such proceeds in trust for the benefit of Owner and shall comply with any requirements of Owner regarding the application or distribution of such proceeds.

ARTICLE 9 – INDEMNIFICATION; LIMITATION OF LIABILITY

9.1 **Indemnification.** Each Party hereto shall indemnify and hold harmless the other Party, its parent, and each director, officer, employee, Affiliate, shareholder, contractor, lender and agent thereof, from and against all Losses and Claims to which such indemnified Party, parent, director, officer, employee, Affiliate, shareholder, contractor or agent may become subject, insofar as such Losses and Claims arise out of, in any way relate to, or result from (i) a third-party Claim for personal injury or bodily injury, including death, or damage to property to the extent caused by the negligence or willful misconduct or strict liability of the indemnifying Party; provided, however, that the indemnified Party shall not have the right to be indemnified for its own negligence or willful misconduct or (ii) bodily injury to or death of any employee of the indemnifying Party or its Affiliates at the Facility or in connection with the performance of the Work to the extent caused by the negligence or willful misconduct or strict liability of the indemnifying Party or its Affiliates; provided, however, that the indemnified Party or its Affiliates shall not have the right to be indemnified for their respective negligence or willful misconduct. Owner shall indemnify and hold harmless Operator, its parent, assignees, Affiliates, agents, officers, directors and employees from and against all Losses and Claims arising out of, in any

way relating to, or resulting from the presence of Hazardous Materials, except to the extent (a) such Hazardous Materials are brought to the Site by Operator or any Subcontractor ("Operator Hazardous Materials") and (b) such Claim or Loss is caused by the negligence or willful misconduct of Operator while performing the Work. Operator shall indemnify and hold harmless Owner, its parent, assignees, Affiliates, agents, officers, directors, and employees from and against all Losses and Claims arising out of, in any way relating to, or resulting from the presence of (x) Operator Hazardous Materials, and (y) other Hazardous Materials to the extent such Claim or Loss is caused by the negligence or willful misconduct of Operator while performing the Work. If any action, suit or proceeding arising from any of the foregoing is brought against a Party or any other Person indemnified or intended to be indemnified pursuant to this Section 9.1, the indemnifying Party will, if required by the indemnified Party or any such indemnified Person, resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel reasonably satisfactory to the Person or Persons indemnified or intended to be indemnified. Each indemnified Person shall, unless the indemnified Party or such indemnified Person has made the request described in the preceding sentence and such request has been complied with, have the right to employ its own counsel (including staff counsel) to investigate and control the defense of any matter covered by such indemnity and the reasonable fees and expenses of such counsel shall be at the expense of the indemnifying Party. Notwithstanding anything contained in this Section 9.1 to the contrary, Operator and its insurance policies shall be primary for all liabilities arising out of the operation and maintenance of the Facility (except liabilities arising from Owner's negligence), and each Party shall be an additional insured on the other Party's liability insurance covering the Facility, and no Party shall be required to indemnify the other Party for any loss for which such insurance shall provide a recovery.

9.2 **Limitation of Liability.** The liability of Operator to Owner on all Claims of any kind (excluding death or bodily injury), whether based on contract, warranty, tort (including, as the case may be, Operator's own negligence), strict liability or otherwise, for all Losses arising out of, connected with, or resulting from this Agreement or from the performance or breach thereof, or from any services covered by or furnished during the Transition Period and the Term, shall in no case exceed in any Year an amount equal to the sum of any Management Fees payable or paid in such Year; provided, however, that such limitation shall not apply to the extent that such liability is for indemnification of third-party Claims pursuant to Section 9.1 or fraud or gross negligence or willful misconduct. The limits on the amount of insurance required to be maintained hereunder and Operator's costs for such insurance shall not operate to limit Operator's liability under this Agreement.

9.3 **Waiver of Consequential Damages.** Except for a Party's obligation to indemnify the other Party pursuant to Section 9.1 for third-party Claims, in no event, whether based on contract, warranty, tort (including, as the case may be, a Party's own negligence), strict liability or otherwise, shall Operator or its Subcontractors or Affiliates be liable to Owner, or Owner or its Subcontractors or Affiliates be liable to Operator, for special, incidental, punitive, exemplary, indirect or consequential damages, including loss of profits or revenue, loss of use of the Equipment or any associated equipment, cost of capital, cost of purchased power, cost of substitute Equipment, facilities or services, downtime costs, or Claims of customers of Owner or Operator for such damages, and each Party shall indemnify the other Party and its Subcontractors and Affiliates against any such Claims from the indemnifying Party's Subcontractors, Affiliates or customers.

9.4 **Comparative Negligence.** Notwithstanding anything to the contrary in this Article 9, in the event damage or injury for which a Party is entitled to indemnification hereunder is caused by the joint or concurrent negligence of the indemnified Party, the loss shall be borne by each Party in proportion to its negligence.

ARTICLE 10 – FORCE MAJEURE

10.1 **Excuse.** Subject to Section 10.2, neither Party shall be considered in default under this Agreement for any delay or failure in the performance of its obligations under this Agreement if such delay or failure is due to an event of Force Majeure. The time for performance of a Party's obligations hereunder may, subject to Section 10.2, be extended to the extent performance is prevented by an event of Force Majeure, but the suspension of a Party's performance due to a Force Majeure shall be of no greater scope and of no longer duration than is required by the Force Majeure.

10.2 **Certain Delays Not Excused.** In addition to the conditions set forth in Section 10.1 above, a Party may rely on a claim of Force Majeure to excuse its performance only to the extent that such Party:

10.2.1 Provides prompt notice of such Force Majeure event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement;

10.2.2 Exercises all reasonable efforts to continue to perform its obligations under this Agreement;

10.2.3 Expeditiously takes actions to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem; provided, however, that settlement of strikes or other labor disputes will be completely within the sole discretion of the Party affected by such strikes or labor disputes;

10.2.4 Exercises all reasonable efforts to mitigate or limit Losses to the other Party;
and

10.2.5 Provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

10.3 **Notice of Force Majeure.** The Party affected by an event of Force Majeure shall provide the other Party with written Notice thereof setting forth the full details within two (2) Business Days after the occurrence of such event, and shall take all reasonable measures to mitigate or minimize the effects of such event of Force Majeure.

ARTICLE 11 – ASSIGNMENT

11.1 **Assignment.** Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party; provided, however, Owner may, without the consent of Operator, (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts,

revenues or proceeds hereof in connection with any financing or other financial arrangements by or for the benefit of Owner (without relieving itself from liability hereunder), (ii) transfer or assign this Agreement to an Affiliate of Owner, (iii) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of Owner, or (iv) transfer or assign this Agreement to any Person acquiring the Facility; provided, however, that in each such case, any such assignee (other than an assignee in a transaction referred to in clause (i) above) shall agree in writing to be bound by the terms and conditions hereof and such assignee's creditworthiness shall not be materially worse than that of Owner as of the Effective Date.

ARTICLE 12 – CONFIDENTIALITY; INTELLECTUAL PROPERTY; FACILITY DATA

12.1 Confidentiality and Non-Disclosure. The terms and conditions of this Agreement and any information made available by one Party to the other in relation thereto are confidential, and neither Party shall publish or disclose the same or particulars thereof (save and insofar as may be necessary for the purposes of this Agreement, financing purposes or as required by Applicable Law), including to any of its Affiliates, without the prior written consent of the other Party; provided, however, that nothing in this Section 12.1 shall prevent the disclosure of any information:

12.1.1 that has come within the public domain otherwise than by breach of this provision;

12.1.2 to Government Authorities in connection with regulatory requirements within their jurisdiction;

12.1.3 in connection with the rules or regulations of any stock exchange on which the shares of the disclosing Party or any of its Affiliates are listed; or

12.1.4 as required by any legal process binding on the disclosing Party; provided that in the event that Operator is requested in any legal proceeding, or by any regulatory, governmental, administrative or supervisory authority (including any stock exchange) or self-regulatory organization, in each case relating to Contractor or any other Affiliate of Operator, to disclose any information, Operator will give Owner prompt notice of such request so that Owner may seek an appropriate protective order, at Owner's sole expense.

Notwithstanding anything to the contrary in this Section 12.1, Owner may utilize photographs and video of the Facility (or any portion thereof) in connection with public statements, for promotional purposes or otherwise.

12.2 Tax Matters. Notwithstanding any other provisions contained herein, each Party (and each of its respective employees, representatives or other agents) may disclose to any and all Persons, without limitations of any kind, the tax treatment and any facts that may be relevant to the tax structure of the transactions contemplated by this Agreement; provided, however, that no Party (and no employee, representative, or other agent thereof) shall disclose any other information that is not relevant to understanding the tax treatment and tax structure of the transaction (including the identity of any Party and any information that could lead another to determine the identity of

any party), or any other information to the extent that such disclosure would result in a violation of any federal or state securities law.

12.3 Intellectual Property.

12.3.1 All Intellectual Property owned by a Party prior to the Effective Date shall remain the property of such Party.

12.3.2 All Intellectual Property developed by Operator, alone or jointly with Owner, for use exclusively on or at the Facility shall be the property of Owner, and Operator shall and hereby does assign its entire right, title and interest in and to such Intellectual Property (including all copyrights therein) to Owner.

12.3.3 Owner hereby grants to Operator a non-exclusive license under all Intellectual Property of Owner solely for purposes of and only to the extent required for Operator's performance of the Work. All such Intellectual Property furnished to Operator by or on behalf of Owner shall remain the sole and exclusive property of Owner. Operator agrees that such Intellectual Property will be subject to the confidentiality restrictions set forth in Section 12.1.

12.3.4 Operator hereby grants a fully paid-up, non-exclusive, perpetual, irrevocable, worldwide license for Owner to use all Intellectual Property therein and any Intellectual Property of Operator incorporated into or used by Operator at the Facility (the "Operator IP"); provided that Owner shall not, without the prior written consent of Operator, use such Operator IP in relation to any project other than the Facility. All Operator IP furnished to Owner by or on behalf of Operator shall remain the sole and exclusive property of Operator. Owner agrees that such Intellectual Property will be subject to the confidentiality restrictions set forth in Section 12.1.

12.3.5 Operator agrees that it shall execute any reasonable agreement or other document prepared by Owner to address the assignment, ownership, perfection, use and treatment of Owner's Intellectual Property described in this Section 12.3.

12.4 Facility Data.

12.4.1 Owner is and at all times shall remain the sole owner of Facility Data.

12.4.2 It is understood and agreed that, even though Operator will have access to Facility Data following the Mobilization Date at the times and to the extent required for the performance of the Work, Owner authorizes such access on a without prejudice basis and for the sole and limited purpose of performing the Work. All Facility Data is confidential information and Operator is not authorized to use Facility Data for any purpose other than performing the Work or as provided in Section 12.4.3.

12.4.3 Specifically, and without limitation, Operator will not, and will ensure that its Affiliates will not, produce, rely on, invoke, or otherwise allude to Facility Data in any dispute resolution process involving Operator or any of its Affiliates and Owner, including the ICC Arbitration, without: (i) the prior written consent of Owner; (ii) an order from a court of competent jurisdiction; or (iii) if production of or reliance on Facility Data is sought in the ICC Arbitration,

an order from the arbitral tribunal in the ICC Arbitration; except if Operator lawfully accessed such Facility Data in a manner unrelated to its performance under this Agreement. If Owner uses any Facility Data as evidence to support a specific claim against the Operator or any of its Affiliates in the ICC Arbitration or in any other dispute resolution process, then Operator and its Affiliates may rely on, invoke, or discuss in the ICC Arbitration, or in the relevant dispute resolution process, exculpatory Facility Data.

For the avoidance of doubt, nothing in this Section 12.4.3 shall prevent Operator or its Affiliates from submitting in the ICC Arbitration data concerning the Facility that Operator or its Affiliates obtained prior to the execution of this Agreement or Facility Data that Operator or its Affiliates obtained in discovery prior to the execution of this Agreement or that is produced by Owner in any future proceedings in the ICC Arbitration.

12.4.4 Operator shall not provide Facility Data to any third party, including any third-party subcontractor or Affiliate, without the prior written consent of Owner (which consent may be conditioned by Owner, in its sole discretion, upon such third party entering into a satisfactory confidentiality agreement).

12.4.5 Operator agrees to protect, and cause any Affiliate or subcontractor to agree to protect, the integrity of all Facility Data. In particular, and without limitation, Operator agrees to preserve, and will ensure that each third-party subcontractor and Affiliate agrees to preserve, “as-is” and without modification any Facility Data pre-existing the start date of the Work under this Agreement, provided, however, that any modification to Facility Data shall require Owner’s prior written consent, which shall not be unreasonably withheld. If new Facility Data is generated after the start date of the Work under this Agreement, Operator will preserve, and will ensure that each third-party subcontractor and Affiliate agrees to preserve, such new Facility Data without alteration. Operator’s access to Facility Data shall in no way limit, impair or otherwise prejudice Owner or any third party designated by Owner from immediate access to all Facility Data of whatever kind and nature throughout the performance of this Agreement and, if requested by Owner, Operator shall provide, and shall ensure that each third-party subcontractor and Affiliate provides, such access.

12.4.6 Operator agrees that, notwithstanding anything to the contrary in this Agreement, Owner shall remain the exclusive owner of the Facility Data at all times. Owner agrees to provide to Operator access to Facility Data that is necessary for Operator to fulfill its obligations under this Agreement. If Operator requires access to additional or different Facility Data to fulfill its obligations under this Agreement, it will submit a written reasoned request to Owner identifying the Facility Data it requires access to. Owner will not arbitrarily withhold or deny its prompt consent to any such request. Operator shall maintain any Facility Data it accesses pursuant to this Section 12.4 in accordance with this Agreement and any Bankruptcy Court order or ruling that addresses the terms and conditions of its use of any such Facility Data.

12.4.7 Operator acknowledges that: (a) Operator’s compliance with this clause is necessary to preserve and protect proprietary rights, confidential information and the goodwill of Owner as a going concern; (b) any failure by Operator to comply with the provisions of this Section 12.4 shall result in irreparable and continuing injury for which there will be no adequate remedy at law, and monetary damages alone would not provide adequate relief for any such breach; and

(c) in the event that Operator should fail to comply with this clause, Owner shall be entitled, in addition to such other relief as may be proper, to all types of equitable relief (including, but not limited to, the issuance of an injunction and/or temporary restraining order) as may be necessary to cause Operator to comply with this clause, to restore to Owner its property, and to make Owner whole.

12.4.8 Article 12 shall survive the termination of this Agreement.

ARTICLE 13 – MISCELLANEOUS

13.1 **Amendment.** No modification, amendment or other change to this Agreement shall be effective unless consented to in writing by each of the Parties hereto; provided that Exhibit A to this Agreement shall be deemed to be automatically updated as of the date of effectiveness of any Project Agreement entered into by Owner following the Effective Date to reflect such Project Agreement.

13.2 **Severability.** Any provision in this Agreement that is, in whole or in part, found to be invalid or unenforceable in any jurisdiction shall, for the purposes of that jurisdiction, be severed accordingly without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

13.3 **Entire Agreement.** This Agreement and all amendments hereto contain the complete agreement between Owner and Operator with respect to the matters contained herein and supersede all other agreements, whether written or oral, with respect to the matters contained herein.

13.4 **Waiver.** Failure or forbearance by a Party to exercise any of its rights or remedies under this Agreement shall not constitute a waiver of such rights or remedies. No Party shall be deemed to have waived or forborne any right or remedy resulting from such failure to perform unless it has made such waiver specifically in writing.

13.5 **Counterparts.** This Agreement may be executed in one or more counterparts (including counterparts transmitted via facsimile, electronic mail or in .pdf or similar format) each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

13.6 **Choice of Law.** This Agreement shall be governed by, and construed, interpreted and applied in accordance with, the laws of the State of Nevada without giving effect to the conflict of laws principles thereof.

13.7 **Title Passage.** Title to all Equipment and Consumables purchased or obtained by Operator on an Operating Cost basis shall pass to and vest in Owner immediately upon the passage of title thereto from the vendor or supplier thereof; provided, however, that the passage of title shall not release Operator from its responsibility to fully carry out its obligations under this Agreement.

13.8 **Time Is of the Essence.** Time is of the essence to this Agreement and in the performance of all of the covenants, obligations and conditions hereof.

13.9 **Interest on Amounts Due.** Any amounts properly due and payable to a Party pursuant to this Agreement and remaining unpaid after the due date shall bear interest thereafter, such interest to accrue from day to day at the prime rate of interest as reported from time to time in The Wall Street Journal plus two percent (2%), from and including the date such amount is due until but excluding the day upon which the amount due actually is received.

13.10 **Notice.** A notice, consent, approval or other communication (each a “Notice”) shall be delivered in writing via mail, electronic mail, courier or facsimile, and if meant for:

Owner, deliver to:

Tonopah Solar Energy, LLC
11 Gabbs Pole Line Road
Tonopah, NV 89049
Tel: +1 303.689.8839
Email: chris.lewand@fticonsulting.com
Attn: Chris LeWand, President

With copies to:

Tonopah Solar Energy, LLC
11 Gabbs Pole Line Road
Tonopah, NV 89049
Email: steve.means@fticonsulting.com
Attn: Steve Means

Operator, deliver to:

Cobra Industrial Services, Inc.
11 Gabbs Pole Line Road
Tonopah, NV 89049
Email: ramon.fernandez@grupocobra.com
Attn: Ramón Fernández Valle

With copies to:

Cobra Industrial Services, Inc.
Cardenal Marcelo Spínola, 10
Madrid, 28016
Spain
Email: ahuguetp@grupocobra.com
Attn: Araceli Huguet

Any Notice shall be deemed properly given if either mailed, registered or certified mail, return receipt requested, sent by courier, electronic mail or faxed (if proved by a fax transmission slip) to the address appointed for this purpose as outlined in this Section 13.10. Notices mailed pursuant to the provisions hereof shall be deemed delivered five (5) Business Days after mailing. Notices

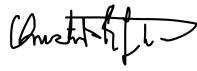
sent by courier or faxed and verified by transmission slip, shall be deemed delivered the day delivered by courier or faxed if delivered or received by fax during or before 5:00 pm local time and the following day if delivered or received after 5:00 pm local time. Notices sent by electronic mail shall be deemed delivered when received. The designation of the Party to be so notified and the address or fax number of such Party may be changed at any time by any Party by Notice.

13.11 **Cooperation in Financing.** Operator shall execute and deliver any customary and reasonable agreement and consent to assignment, together with opinions of counsel, as may be requested by Owner in connection with the financing of the Facility. Operator shall promptly respond to reasonable requests by Owner and Lender (or Lender's independent engineer) for (a) information regarding Operator and its performance of its duties hereunder and the operation, maintenance and administration of the Facility, (b) Operator's most recent audited and unaudited quarterly financial statements along with a certification by a financial officer that the statements fairly represent the financial condition of Operator, and (c) Operator's organizational documents, including good standing certificates, proof of authorization and officer's certification. Operator shall (i) within sixty (60) days of the end of each fiscal quarter, deliver to Owner unaudited financial statements, certified by a financial officer that such statements (a) were prepared in accordance with GAAP and (b) fairly present the financial condition of Operator; (ii) within one hundred and twenty (120) days of the end of each fiscal year, deliver to Owner audited financial statements (with notes), certified by a financial officer that such statements (a) were prepared in accordance with GAAP and (b) fairly present the financial condition of Operator; and (iii) agree to cooperate with Lender and Lender's independent engineer and to provide Lender and such independent engineer with reasonable access to the Facility and Operator's books and records.

[Signature Page Follows]

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

TONOPAH SOLAR ENERGY, LLC, a Delaware
Limited Liability Company

By: 
Name: Chris LeWand
Title: President

COBRA INDUSTRIAL SERVICES, INC.,
a Delaware corporation

By: _____
Name: Carlos Ramiro Visser
Title: President

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

TONOPAH SOLAR ENERGY, LLC, a Delaware
Limited Liability Company

By: _____
Name: Chris LeWand
Title: President

COBRA INDUSTRIAL SERVICES, INC.,
a Delaware corporation


By:  _____
Name: Carlos Ramiro Visser
Title: President

EXHIBIT A

Project Agreements

Large Generator Interconnection Agreement, effective as of November 8, 2010, between the Owner and Sierra Pacific Power Company d/b/a NV Energy

Contract for the Engineering, Procurement and Construction of the 110 MW Nominal Capacity Thermosolar Electrical Generation Facility in Tonopah, NV, USA, by and between Tonopah Solar Energy, LLC and Cobra Thermosolar Plants, Inc., dated September 20, 2011, as amended

Technology License Agreement, between SolarReserve Technology, LLC and Tonopah Solar Energy, LLC, dated as of September 9, 2019

EXHIBIT B

Total Payment to Operator, Components and Structure

The Owner shall pay to the Operator an amount composed of the following components as defined below and in the appropriate Section and/or Exhibit:

1. Operating Costs consistent with the Approved Operating Budget.
2. Capital Improvement Costs consistent with the Approved Capital Budget.
3. Payments to Operator

The Operator shall receive a fixed, monthly Management Fee that covers the expenses for corporate support (not part of capital or special projects) including: labor, Operator's insurance required by Section 8.3 of the Agreement, overhead, office expenses and travel costs.

EXHIBIT C**Major Expense Line Items**

“Major Expense Line Item” means the following Accounting Code/Descriptions set forth in the Approved Operating Budget:

11	Employee Training, Travel	Operating Cost
21	Office Supplies & Expenses	Plant Office Expense/Operating Cost
31	Capital Expenses	Capital Expenditure/Operating Cost
32	Spare Parts	Operating Cost/App'd Op Budget
33	Capital Improvements	Capital Expenditure
34	Consumables	Operating Cost
35	Chemicals	Part of Consumables in Definitions
36	Plant Rolling Stock Expenses	Rolling Stock Expense/Operating Cost
41	Outside Services	Legal, Acct'g Consultants Cost
42	Maintenance	Operating Cost
43	Rolling Stock & Equipment Rental/Lease	Operating Cost
44	Buildings & Grounds	Maintenance / Operating Cost
45	Utilities	Operating Cost
46	Insurance	Management Fee
51	Staffing incl P/R, P/R Taxes, Benefits, etc	Operating Cost
61	Project Management and Fees	Management Fee
	Hazardous Materials Disposal	Operating Cost
	Legal, Accounting & Consulting Costs	Operating Cost
	Permit Compliance Costs	Operating Cost
	Lease Payments	Operating Cost

Management Fee (\$2.0)		
	Corporate Support	Management Fee
	Operator Insurances	Management Fee
	Office Expenses	Management Fee
	Travel	Management Fee

EXHIBIT D

Request for Expenditure Form

Plant _____ **Submitted by** _____

Date _____

Project Title _____

Requested Amount \$ _____

Year(s) of Expenditure	20 _____	20 _____	20 _____	20 _____
-------------------------------	-----------------	-----------------	-----------------	-----------------

Amount of Expenditure	\$ _____	\$ _____	\$ _____	\$ _____
------------------------------	-----------------	-----------------	-----------------	-----------------

Description of Expenditure:

Explain need and cost/benefit:

Attach additional sheets to document cost/benefit analysis.

Approved:

General Manager _____ Date _____

Attach addition sheets to document comments/analysis.

Purpose:

Scope:

Preliminary cost justification:

EXHIBIT E

Form of Operator Letter of Credit

JUNE __, 2020

WE HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER _____ AS FOLLOWS:

ISSUING BANK:

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER _____

DATE OF ISSUE: JUNE __, 2020

DATE AND PLACE OF EXPIRY: JUNE 30, 2021, NEW YORK

APPLICANT: COBRA INDUSTRIAL SERVICES, INC.

AMOUNT: UP TO AN AGGREGATE OF U.S. \$3,000,000.00

CREDIT AVAILABLE WITH:

BENEFICIARY: TONOPAH SOLAR ENERGY, LLC

LADIES AND GENTLEMEN:

AT THE REQUEST AND FOR THE ACCOUNT OF OUR CUSTOMER, COBRA INDUSTRIAL SERVICES, INC., A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE (THE "OPERATOR"), WE HEREBY ISSUE IN YOUR FAVOR, IN YOUR CAPACITY AS OWNER UNDER THE OPERATION AND MAINTENANCE AGREEMENT DATED AS OF JUNE __, 2020 (THE "O&M AGREEMENT") BETWEEN YOU AND THE OPERATOR, OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ (THIS "STANDBY LETTER OF CREDIT") FOR AN AMOUNT NOT EXCEEDING A TOTAL OF U.S. \$3,000,000.00 (THE "STATED AMOUNT").

WE ARE INFORMED BY OUR CUSTOMER THAT THIS STANDBY LETTER OF CREDIT IS ISSUED TO YOU IN CONNECTION WITH THE PAYMENT AND PERFORMANCE OBLIGATIONS OF THE OPERATOR UNDER THE O&M AGREEMENT.

THIS STANDBY LETTER OF CREDIT SHALL TERMINATE UPON THE CLOSE OF BUSINESS IN NEW YORK ON THE EARLIEST OF (X) JUNE 30, 2021; PROVIDED, HOWEVER, THAT SUCH EXPIRATION DATE SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR SUCCESSIVE ONE (1) YEAR PERIODS FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE HEREOF (BUT NOT

LATER THAN JUNE 30, 2023, UNLESS WE PROVIDE YOU WITH WRITTEN NOTICE OF OUR ELECTION NOT TO RENEW THIS STANDBY LETTER OF CREDIT AT LEAST FORTY-FIVE (45) DAYS PRIOR TO ANY SUCH DATE; (Y) THE SURRENDER TO US BY YOU OF THIS STANDBY LETTER OF CREDIT FOR CANCELLATION; AND (Z) THE DATE ON WHICH DRAWINGS HEREUNDER TOTAL, IN AN AGGREGATE AMOUNT, THE STATED AMOUNT OF THIS STANDBY LETTER OF CREDIT (SUCH EARLIEST DATE, THE "LOC EXPIRATION DATE").

SUBJECT TO THE PROVISIONS HEREIN, THE STATED AMOUNT UNDER THIS STANDBY LETTER OF CREDIT IS AVAILABLE AGAINST OUR RECEIPT OF A SIGHT DRAFT IN THE AMOUNT OF THE REQUESTED DRAWING AND A CERTIFICATE IN THE FORM OF ANNEX 1 (A "DRAW CERTIFICATE") WITH THE BLANKS APPROPRIATELY COMPLETED AND THE APPLICABLE ALTERNATIVE IN SECTION 1 DESCRIBING THE REASON FOR THE DRAWING APPROPRIATELY SELECTED. ALL DOCUMENTS PRESENTED MUST BE IN ENGLISH AND REFER TO THE NUMBER AND DATE OF THIS STANDBY LETTER OF CREDIT.

SUBJECT TO THE PROVISIONS HEREIN, WE HEREBY AUTHORIZE YOU TO MAKE DRAWINGS HEREUNDER FROM TIME TO TIME, IN AN AGGREGATE AMOUNT NOT IN EXCESS OF THE STATED AMOUNT FROM THE DATE HEREOF THROUGH THE CLOSE OF BUSINESS IN NEW YORK ON THE LOC EXPIRATION DATE.

PARTIAL DRAWINGS ARE PERMITTED UNDER THIS STANDBY LETTER OF CREDIT AND EACH PARTIAL DRAWING SHALL REDUCE THE STATED AMOUNT THEREAFTER AVAILABLE HEREUNDER FOR DRAWINGS UNDER THIS STANDBY LETTER OF CREDIT. UPON PAYMENT OF DRAWINGS IN AN AGGREGATE AMOUNT EQUAL TO THE STATED AMOUNT OF THIS STANDBY LETTER OF CREDIT, WE SHALL BE FULLY DISCHARGED OF OUR OBLIGATION UNDER THIS STANDBY LETTER OF CREDIT AND WE SHALL NOT THEREAFTER BE OBLIGED TO MAKE ANY FURTHER PAYMENTS UNDER THIS STANDBY LETTER OF CREDIT.

WE HEREBY IRREVOCABLY AUTHORIZE YOU TO PRESENT ANY SIGHT DRAFT AND DRAW CERTIFICATE TO US ON ANY BUSINESS DAY, IN ACCORDANCE WITH THE TERMS OF THIS STANDBY LETTER OF CREDIT. IF WE RECEIVE YOUR SIGHT DRAFT AND CONFORMING DRAW CERTIFICATE AT OR BEFORE 11:00 AM (NEW YORK TIME), WE WILL REIMBURSE YOU AND EFFECT PAYMENT IN ACCORDANCE WITH YOUR INSTRUCTIONS WITHIN FIVE BUSINESS DAYS. IF WE RECEIVE YOUR SIGHT DRAFT AND CONFORMING DRAW CERTIFICATE ON A BUSINESS DAY AFTER 11:00 AM (NEW YORK TIME), WE WILL REIMBURSE YOU AND EFFECT PAYMENT IN ACCORDANCE WITH YOUR INSTRUCTIONS ON THE SIXTH BUSINESS DAY AFTER OUR RECEIPT OF SUCH DRAW CERTIFICATE. IF A DEMAND FOR PAYMENT MADE BY YOU HEREUNDER DOES NOT, IN ANY INSTANCE, COMPLY WITH THE TERMS OF THIS STANDBY LETTER OF CREDIT, WE SHALL GIVE YOU PROMPT NOTICE THAT THE DEMAND FOR PAYMENT WAS NOT EFFECTED IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS STANDBY LETTER OF CREDIT, STATING THE REASONS THEREFORE. UPON BEING NOTIFIED THAT THE DEMAND FOR PAYMENTS WAS NOT EFFECTED IN CONFORMITY WITH THIS

STANDBY LETTER OF CREDIT, YOU MAY ATTEMPT TO CORRECT ANY SUCH NONCONFORMING DEMAND. OUR ONLY OBLIGATION WITH REGARD TO A DRAWING MADE UNDER THIS STANDBY LETTER OF CREDIT SHALL BE TO EXAMINE SUCH SIGHT DRAFT AND DRAW CERTIFICATE AND TO PAY IN ACCORDANCE THEREWITH IF THE SAME CONFORMS TO THE TERMS AND CONDITIONS OF THIS STANDBY LETTER OF CREDIT, AS IT MAY BE AMENDED WITH YOUR WRITTEN CONSENT, AND WE SHALL NOT BE OBLIGATED TO MAKE ANY INQUIRY IN CONNECTION WITH DEMANDS MADE UNDER THIS STANDBY LETTER OF CREDIT.

AS USED HEREIN A "BUSINESS DAY" SHALL MEAN ANY DAY OF THE YEAR OTHER THAN A SATURDAY, SUNDAY OR DAY ON WHICH COMMERCIAL BANKS ARE AUTHORIZED TO BE CLOSED IN NEW YORK.

THIS STANDBY LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING AND THIS UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, LIMITED OR AMPLIFIED BY REFERENCE TO ANY DOCUMENT, INSTRUMENT OR AGREEMENT REFERRED TO HEREIN, EXCEPT FOR THE ANNEX ATTACHED HERETO, WHICH IS HEREBY INCORPORATED BY REFERENCE, AND ANY SUCH REFERENCE SHALL NOT BE DEEMED TO INCORPORATE HEREIN BY REFERENCE ANY DOCUMENT, INSTRUMENT, OR AGREEMENT EXCEPT FOR SUCH ANNEX.

THIS STANDBY LETTER OF CREDIT IS NOT TRANSFERABLE.

DRAW CERTIFICATES MAY ALSO BE PRESENTED VIA FACSIMILE TO THE ISSUING BANK, FAX NUMBER _____ OR SUCH OTHER NUMBER WE MAY ADVISE YOU IN WRITING.

ALL BANKING CHARGES, INCLUDING COMMISSIONS, ADVISING AND NEGOTIATING BANK CHARGES ARE FOR THE ACCOUNT OF THE APPLICANT.

WE HEREBY CONFIRM TO YOU THAT DRAWINGS MADE HEREUNDER THAT ARE IN COMPLIANCE WITH THE TERMS OF THIS STANDBY LETTER OF CREDIT SHALL BE HONORED IN ACCORDANCE WITH THE TERMS HEREOF. THIS STANDBY LETTER OF CREDIT AND THE ATTACHED ANNEX ARE SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 ISSUED BY THE INSTITUTE OF INTERNATIONAL BANKING LAW & PRACTICE ("ISP98") AND, AS TO MATTERS NOT ADDRESSED BY ISP98, SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK IN THE UNITED STATES OF AMERICA WITHOUT REFERENCE TO RULES OR PRINCIPLES THAT WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

VERY TRULY YOURS,

BANK

BY:_____

ANNEX 1

TO LETTER OF CREDIT

DRAW CERTIFICATE

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NO. _____ DATED
JUNE __, 2020

TO: [BANK]

THIS DRAW CERTIFICATE IS DELIVERED BY TONOPAH SOLAR ENERGY, LLC (THE “BENEFICIARY”). DEMAND IS HEREBY MADE FOR PAYMENT IN THE AMOUNT OF USD (XXXXX) (THE “DRAWING AMOUNT”) UNDER IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER _____ DATED JUNE __, 2020 (THE “STANDBY LETTER OF CREDIT”), ISSUED FOR THE ACCOUNT OF COBRA INDUSTRIAL SERVICES, INC. (THE “APPLICANT”) IN ACCORDANCE WITH THE OPERATION & MAINTENANCE AGREEMENT DATED AS OF JUNE, __, 2020 (THE “O&M AGREEMENT”) BETWEEN THE APPLICANT AND THE BENEFICIARY. IN CONNECTION WITH SUCH DEMAND WE HEREBY CERTIFY TO _____ (THE “ISSUING BANK”) AS FOLLOWS:

1. (THIS DRAW CERTIFICATE MUST CONTAIN ONE, BUT ONLY ONE, OF THE TWO ALTERNATIVE PARAGRAPHS SET FORTH BELOW)

ALTERNATIVE 1: THE BENEFICIARY IS MAKING A DRAWING UNDER THE STANDBY LETTER OF CREDIT AS A RESULT OF AN EVENT OF DEFAULT BY APPLICANT DESCRIBED IN CLAUSE _____ OF SECTION 7.1.2 OF THE O&M AGREEMENT AND THE BENEFICIARY IS IN COMPLIANCE WITH SECTION 7.3 OF THE O&M AGREEMENT.

ALTERNATIVE 2: THE BENEFICIARY IS MAKING A DRAWING UNDER THE STANDBY LETTER OF CREDIT AS THE BANK HAS PROVIDED NOTICE THAT IT WILL NOT RENEW THE STANDBY LETTER OF CREDIT AND THE APPLICANT’S OBLIGATIONS UNDER THE O&M AGREEMENT REMAIN OUTSTANDING AND THE APPLICANT HAS NOT PROVIDED ALTERNATIVE SECURITY TO THE BENEFICIARY BY THE AGREED EXTENSION OR REPLACEMENT DATE.

2. BY REASON OF THE FOREGOING, THE BENEFICIARY IS ENTITLED TO MAKE THIS DRAWING UNDER THE O&M AGREEMENT.

3. THE DRAWING AMOUNT DOES NOT EXCEED THE CURRENT STATED AMOUNT OF THE STANDBY LETTER OF CREDIT.

4. THE BENEFICIARY HEREBY IRREVOCABLY AUTHORIZES AND DIRECTS THE ISSUING BANK TO PAY THE DRAWING AMOUNT IN U.S. DOLLARS AND IN IMMEDIATELY AVAILABLE FUNDS TO XXXXX, ATTENTION: XXXXXXXXXX, FOR DEPOSIT IN ACCOUNT NUMBER XXXXXX.

DATE: XXXXXXXXXX

(INSERT NAME(S) AND TITTLE(S) OF AUTHORIZED BENEFICIARY OFFICER(S))

EXHIBIT F**Form of Mobilization Report**

Project Status Weekly/Monthly Report Pre-Commencement Activities	Job Number:
	Date:
	Revision:
	Page:

Document Preparation Information

Project Name:	Prepared By:	Signature:	Date Prepared:
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Customer Information

Customer:	Contact:	Phone:
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Highlights

Comments:

Cost

Comments:

Schedule

Comments:

Quality

Comments:

Safety

Comments:

Issues

Comments:

Staffing Status

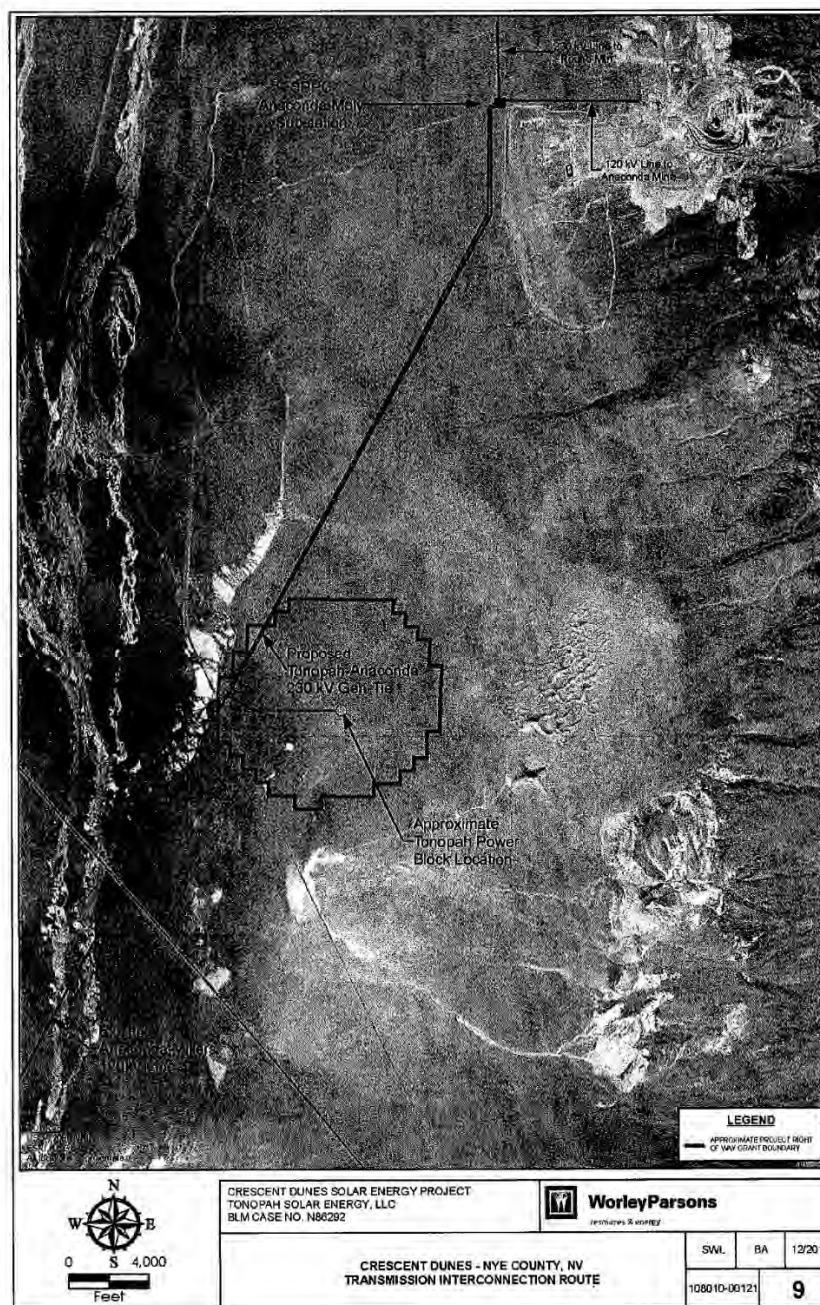
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Attachments

1.
2.
3.
4.

EXHIBIT G**Site**

Crescent Dunes is a 110 MW (net) hybrid-cooled Rankine cycle generating unit on a BLM site approximately 10 miles northwest of the town of Tonopah, NV, which includes a transmission corridor to an NV Energy substation.



A general quantity of equipment associated with the site is found in the list below and is depicted in the attached drawings.

ITEM	DESCRIPTION	QTY.	REMARKS
1	COLLECTOR SYSTEM		
	Helio-stat 115.7 m2 each	10,347	
	Helio-stat foundation	10,347	
	Collector System power supply and applicable grounding system	6	Distribution MV/LV transformers redundant. P, UPS systems.
	AC distribution board	87	Installed through solar field
	Control System hardware and communication network	10	Servers redundant. Fiber and RS485
	Beam Characterization System	4	Targets and cameras
	Weather Stations	4	
2	RECEIVER ASSEMBLY	1	
	Solar Receiver	1	
	Emergency Cooling System	1	
	Central Tower	1	
3	MOLTEN SALT SYSTEM (MSS)		
	Salt Tank Recirculation Heater(s), electric	2	X 600 KW
	Cold Thermal Storage Tank	1	X capacity carbon steel
	Cold Tank Inlet Sparger Ring	1	
	Cold Salt Receiver Pumps	4	4 x 33%
	Attemperation ("tri-function") Pumps	2	2 x 100%
	Hot Thermal Storage Tank	1	X capacity A347SS
	Hot Tank Inlet Sparger Ring	1	
	Hot Salt Pumps	3	3 x 50%
	Salt Drain Transfer Tank	1	X capacity carbon steel
	Salt Drain Tank Pumps	2	2 x 100%
	Potassium Nitrate Salt	14000 (13,561.548)	US tons (Final quantity of salts currently in the tank)
	Sodium Nitrate Salts	21000 (20,342.32)	US tons (Final quantity of salts currently in the tank)
5	STEAM GENERATOR SYSTEM (SGS)		
	Evaporator Recirculation Pump	4	2 trains (2x100%)
	Feedwater Preheater (Economizer)	2	2 trains (2x50%)
	Economizer Preheating Pump	4	2 trains (2x100%)
	Evaporator	2	2 trains (2x50%)
	Steam Drum	2	2 trains (2x50%)
	Superheater	2	2 trains; (2x50%)
	Reheater	2	2 trains; (2x50%)
	Start-Up Heater	2	2 trains (x 2.2 MW)
6	AIR SYSTEM		
	Instrument Air Vessel	1	
	Service Air Vessel	1	
	Instrument Air Compressor	2	2 x 100%
	High Pressure Compressor	2	2 x 50%
	High Pressure Booster Compressor	2	2 x 50%
	HP Air Electric Heater	2	2 x 50% (x 95 KW)
	High Pressure Air Receiver	2	
	High Pressure Air Accumulator	1	1 x 100%
7	RECEIVER AIR SYSTEM		
	Air Compressor	2	2 x 100%

	Air Accumulator	1	
8	HYBRID/AUXILIARY COOLING SYSTEM		
	Air Cooler Condenser	1	10 cells
	Cooling Tower	1	2 cells
	Aux Cooling Tower	1	1 cell
	Aux Cooling Volume Tank	1	
	Circulating Water Pumps	2	2 x 50%
	Aux Cooling Water Pumps	2	2 x 100%
	Make Up cooling tower pumps	2	2 x 100%
	Make Up Aux Cooling Tower	2	2 x 100%
	Steam Surface Condenser	1	
	Hot Well	1	
	Hot Well Pumps	2	2 x 100%
	Condenser Tube Cleaning System	1	1 x 100%
	ACC/MSSC Vacuum Skid	2	2 x 100%
9	WATER STEAM CYCLE		
	Condensate Pumps	2	2 x 100%
	LP Preheater n°1	1	
	LP Preheater n°2	1	
	LP Preheater n°3	1	
	Feed Water Tank and Deaerator	1	
	Feed Water Pumps	2	2 x 100%
	HP Preheater n°1	1	
	HP Preheater n°2		
	HP Preheater n°3 (startup heater)	1	
	Electric Auxiliary Boiler	1	1 x 100% rated 1,090 KW
	Auxiliary Steam Superheaters	2	2 x 100% rated 300 KW
	Condensate Storage Tank and Deaerator	1	
	LP Preheater Intermediate Tank	1	
	Intermediate Condensate Drain Pumps	2	1 x 100%
	Blow Down Continuous Tank	1	
	Blow Down Intermittent Tank	1	
	Turbine drains flash tank	1	
	Turbine drains flash tank pump	2	2 x 100%
10	CLOSED COOLING SYSTEM		
	Closed Cooling Water Pumps	2	2 x 100%
	Bladder expansion tank	1	
	Corrosion Inhibitor dosing system	1	1 x 100%
	Plate Heat Exchangers	2	2 x 100%
11	TURBINE		
	Condensing/extracting reheat turbine of 3600 rpm (HP and IP/LP stages)	1	
	Main stop, reheat and control valves	8	
	Lube oil system (main and emergency)	1	
	Control Oil system	1	Electro-Hydraulic Control
	Gland steam system	1	
	Turbine drain/turbine water induction protection system	1	(if needed according to turbine supplier's design)
	All-weather noise enclosure	1	Outdoor installation criteria
12	CHEMICAL DOSING SYSTEM		
	Oxygen scavenger dosing system	1	1 x 100%
	Ammonia Dosing system	1	1 x 100%
	Phosphate dosing system	1	1 x 100%

	Sodium Hypochlorite Dosing System	1	1 x 100%
	Sulphuric Acid Dosing System	1	1 x 100%
	Biodispersant Dosing System	1	1 x 100%
	Antiscalant Dosing System	1	1 x 100%
13	WATER/STEAM SAMPLING SYSTEM		
	Analyzer signal	39	4..20 mA
	Analyzer Types: pH Dissolved Oxygen -Cationic Conductivity Specific Conductivity Silica Sodium Scavenger Oxygen		
14	WATER TREATMENT PLANT		
	Raw water tank	1	
	Raw water pumps	2	2 x 100%
	Groundwater Wells with Pumps, Power and Collection Piping	3	(3 x 100%) Wells to be done will have maximum depth of 328 feet.
	Sodium Hypochlorite dosing system	1	1 x 100% (tank, 3 pumps)
	Sodium Bisulphite dosing system	2	1 x 100% (tank, 3 pumps)
	Sodium Hydroxide dosing system	2	1 x 100% (tank, 3 pumps)
	Antiscalant dosing system	2	1 x 100% (tank, 3 pumps)
	Clarifier tank	1	
	Clarifier Feeding pumps	2	2 x 100%
	Sand filtration	8	
	RO pass 1 water pumps	2	2 x 100%
	RO pretreatment water pumps	2	2 train (1 x 100%)
	RO pass 1 high pressure pumps	2	2 train (1 x 100%)
	Permeate Flush Pumps	3	
	RO pass 2 water pumps	2	2 x 100%
	RO pass 2 high pressure pumps	2	2 train (1 x 100%)
	EDI feed pumps	2	2 x 100%
	CIP water pumps	2	2 x 100%
	Service and firefighting water tank	1	1,464,537 gallons
	Service water pumps	2	2 x 100%
	Cartridge filtration	9	
	Reverse osmosis trains	2	2 x 100%
	Membranes Cleaning station	1	1 x 100%
	Electrostatic De-Ionizer	2	2 x 100%
	EDI Regeneration System	1	
15	DEMINERALIZED WATER DISTRIBUTION SYSTEM		
	Demineralized Water Storage Tank	1	4480.5 m3, 109,963 gallons
	Demineralized Water Transfer Pumps	2	3 x 100%
	HelioStat Wash Truck Fill Pump Valve	1	
16	OIL-WATER SEPARATORS		
	Hydrocarbon separator	1	1 x 100%
	Effluent water pumps	2	2 x 100%
17	POTABLE WATER SKIDS		
	Potable water tank/pump/dosing skid	2	1056 gallons
	Filters	4	4 x 100%
18	HVAC/HEATING SYSTEM		
	Power Block Building	2	
	Admin Building	3	
	Maintenance Building	3	
	Electrical / Control Cabinet Building	21	
	Control Cabinet Remote Panels	43	
19	MISCELLANEOUS		

	Receiver Tower Crane	1	25 tons
	Tower Hoist	1	
	Workshop Bridge Crane	1	5 tons
	Turbine Bridge Crane	1	40 and 10 tons
	SGS Jib Crane		5 tons
	Heater Bay Jib Crane		5 tons
20	FIRE FIGHTING SYSTEM		
	Electric drive fire pumps	1	x gal/min
	Diesel engine drive fire pumps	1	x gal/min
	Jockey pump	1	x gal/min
	Hydrant and hose connections	18	
	Deluge water system at GSU and UAT	3	Per NFPA
	Deluge water/foam system at ST lube oil and hydraulic systems	1	Per NFPA
	Sprinklers on STG bearings	2	Per NFPA
	Foam systems at diesel fuel tanks	2	Per NFPA
	Dry agent (FM-200) system in Electric room	4	Per NFPA
	Main and Local Fire Control Panels	5	Per NFPA
21	GENERATOR UNIT	1	
	60 Hz two-pole Generator with air-to-water cooling with space heater		
	Generator cooling system	1	Air-to-Water cooled
	Shaft seal oil system		
	Lube oil skid vapor extraction, purification unit, coolers, heaters		
	Hydraulic control unit		
	Turning gear		
	Shaft-driven lube oil pump		
	NC backup and D/C emergency pumps		
	Excitation and AVR System		Power System Stabilizer
	Generator control panel and synchronizing panel		
	Generator protection panel		
	Generator neutral grounding cubicle		
	PT and SA cubicle		
22	ELECTRICAL SYSTEM		
	HV breaker, disconnect switches, PT's, CT's, protection and control	1	Low SF6 design
	4,16kV power line from power block to site perimeter		
	4,16/0,48kV transformer for site perimeter power supply	1	
	Isolated Phase Bus Duct at Generator Output Voltage	3	
	Generator main circuit breaker	1	
	Generator Step-Up Transformer (GSU)	1	On-Load Tap Changers per NVE
	Unit auxiliary transformer	2	
	Medium voltage switchgear	3	Subject to applicable arc flash protection standards
	MV/LV transformers	18	
	Low voltage switchgear	18	
	Motor Control Center (MCC)	8	Subject to applicable arc flash protection standards
	AC distribution board	44	(Load Power Center, Emergency Lighting, UPS distribution panels)

	Motor and cabinet space heaters	As appropriate for climate	conditions, 30-year design
			life requirement, etc.
	DC distribution board	4	
	Plant-wide lighting and convenience power		Lighting plan subject to 'dark skies' review. Plant lighting will be limited to the power island, administrative area and main access road, gate, excluding the solar field and perimeter.
	Grounding & Lightning systems		
	MV Emergency diesel generator	1	1 X 3000 KW
	LV Emergency Diesel generator	1	1 x 1500 KW
	Fuel Oil Storage Tanks	2	3,000 gallons
	Battery System	3	
	Battery charger system	3	
	UPS	3	
23	TRANSMISSION LINE		
	Single conductor 230 kV line, H-Frame wood poles, raptor protection design;	5.4975 circuit miles above ground and 0.9484 circuit miles below ground	Step-Up Transformer high- side disconnect switch to NVE dead-end structure
	Dual path optical fiber composite overhead ground wire and terminations	16 ckt miles OPGW	Redundant comm. path to NVE
24	INSTRUMENTATION & CONTROL		
	Control System for Power Block and Solar Field	21	
	Instrumentation	2,728	
25	PERMANENT STRUCTURES LOCATED WITHIN THE POWER BLOCK		
	Steam Turbine All-Weather Noise Enclosure	1	
	Steam Generation Structure	1	
	Water Treatment/Laboratory Building	1	
	Workshop – Warehouse Building	1	
	Water Cycle Structure (heater bay)	1	
	Electrical /Control	4	
	Control Room Building	1	
	Chemical Dosing / Sampling	4	
	Firefighting Building	1	
	Pretreatment Pump Building	1	
	Instrument Air Building	1	
	HP Air Building	1	
	Receiver Tower	1	
	Substation Relay Building	1	
26	PERMANENT STRUCTURES LOCATED AT THE SITE PERIMETER		
	Warehouse / Administration Building	1	
	Parking area	1	
	Evaporation Ponds	3	
27	TEMPORARY FACILITIES		
	HelioStat Assembly Building	m1 Pre-engineered steel	building or fabric structure

	Construction Trailers		
	Salt storage area		Fabric structure
	Salt grinding and melting system		Compliant with EIS and air permit for combustion emissions, fugitive dust, etc.
28	PLANT SUMPS/PONDS		
	Transformer Pits	3	
	Blowdown Sump	1	
	Clean Water Sump	1	
	Evaporation Ponds	3	
	Pond Leak Detection Wells	3	
	Pond Leak Detection Pumps	3	
	Blowdown Sump Pumps	2	
	Clean Water Sump Pumps	4	

EXHIBIT H

Maintenance Program

MAINTENANCE PHILOSOPHY

Maintenance and Repairs

Operator shall be responsible for carrying out, or causing to be carried out, all maintenance and repairs for the Facility and for scheduling such maintenance and repairs in a prompt manner. Repair shall include replacement, restoration and renewal where necessary. Operator shall include in its Operating Budget costs associated with planned minor maintenance and repair of the Facility. The Owner may desire to make annual accruals for a major maintenance reserve sufficient for planned and unplanned major maintenance of large Facility equipment which will be budgeted for in the appropriate years.

Operator shall maintain the Facility during the Term in accordance with: (i) the O&M Manuals furnished for the facility by Owner and supplemented by Operator, as dictated by Operator's experience and prudent industry practices; (ii) manufacturer update material (i.e. service bulletins), and (iii) the provisions of this Agreement. Operator shall use reasonable best efforts to schedule all outages and maintenance shutdowns in accordance with the Project Agreements and to minimize the loss of availability. Scheduling shall be in accordance with the Large Generator Interconnection Agreement, effective as of November 8, 2010, between the Owner and Sierra Pacific Power Company d/b/a NV Energy and the other Project Agreements. Operator shall notify Owner and interconnecting utilities of unscheduled outages, emergencies or unplanned maintenance resulting in shutdowns promptly after the occurrence thereof, specifying the nature of the outage, the anticipated length and the equipment affected, and shall periodically advise Owner and interconnecting utilities of the status of restoring the Facility to normal operations as reasonably requested by Owner and interconnecting utilities. Operator shall notify Owner and interconnecting utilities of scheduled shutdowns pursuant to the Project Agreements consistent with the requirements of such agreements. Operator shall maintain the Facility in a good, safe, clean and orderly condition and maintain the exterior of all Facility structures in a safe and clean condition.

Preventive and Predictive Maintenance Program

Operator shall prepare, implement and maintain a preventive and predictive maintenance program ("PPM Program") for the Facility. The PPM Program shall include, but not be limited to, the regular and routine inspection, testing, calibration and servicing of the equipment and components comprising and utilized in connection with the operation of the Facility, and shall be implemented in accordance with the specifications of the various vendors, subcontractors and manufacturers. The PPM Program shall include intrusive and non-intrusive work and diagnostic, predictive techniques. The PPM Program shall establish a reporting system, which shall include (i), the scheduling and tracking of work to be performed; (ii) documenting any problems encountered; (iii)

documenting the work performed in a manner satisfactory to Owner; (iv) keeping a data base of all work performed; and (v) trending maintenance issues to enable maintenance prediction on assets. On an annual basis, Operator shall provide a schedule of preventive maintenance planned for the upcoming year.

Owner and Operator will meet to discuss the major maintenance philosophies relating to the solar reflectors, tower, molten salt heat exchanger, steam turbine- generator, and balance of plant ("BOP"). Operations and maintenance plans and practices will be discussed; Owner's goals and strategies for the future will be solicited.

After this initial meeting, the following evaluation will be conducted to establish a major maintenance plan ("Major Maintenance Plan"):

- Routine maintenance planning and practices
- Major maintenance planning and practices
- Forced outage response plan
- Consumable and capital spare parts in on-site inventory
- Special tools available on site
- Operating plan and practices
- Customer goals and future requirements

Operator will implement recommendations for operating major plant equipment to achieve higher levels of efficiency and reliability. The Major Maintenance Plan, including list of operating recommendations, will be delivered to the Owner for review, comment, and approval. After implementation, the Major Maintenance Plan will be subject to annual review and update.

PERFORMING PLANNED AND UNPLANNED OUTAGES

Pre-Outage Support

A. Work Scope Definition

Prior to each planned outage, Operator and Owner will meet to define and document the outage work scope, with consideration given to optimum outage schedule to support plant operations. Organizational points of contact for the outage will also be identified. Based on the established outage scope, Operator will develop and deliver shift work schedules, manpower loading charts, and estimated outage labor/subcontractor cost to the Owner for review and approval.

B. Identification of Required Special Tools and Spare Parts

Based on the outage work scope established in (A) above, Operator will develop and deliver lists of special tools and spare parts required to execute the work. The list of special tools and spare parts will be cross-referenced to inventory; any items not maintained in site inventory will be identified for purchase/rental and staging prior to start of work.

Outage Performance

As directed by Owner, Operator will supervise and perform planned and unplanned outages on facility major equipment. Categories of Operator outage support are described below.

A. Craft Personnel

Craft personnel will be secured locally via subcontract. Operator working foremen will be mobilized to provide supervision necessary for quality work output, working under overall direction of the TAs.

B. Technical Advisors

OEM-qualified technical advisors ("TA's") will direct the detailed work activities and sequence. These TA's may be provided by Operator or others, but will have been previously employed and certified by the OEM.

C. Outage Tools and Equipment

The local craft labor subcontractor will provide normal hand tools and equipment required for planned outages/inspections. Special tools, special test equipment, and supporting facilities (office trailers, portable compressors, portable cranes, sanitation facilities, etc.) will be procured and coordinated by Operator.

Post-Outage Support

A. Outage Report

The TA's will prepare an outage report ("Outage Report") after all maintenance activities are completed. The Outage Report will include technical data, notes, and photos collected during the outage. All spare parts used during the outage (including capital parts) will be identified by part number, serial number, and installed position. Typical Outage Report structure is shown below.

- Executive Summary
- Unit Operating Data
- Disassembly and Reassembly Data
- Test/ Calibration Data
- Visual Inspection of Components
- Concerns and Indications
- Recommendations
- Daily Log
- Miscellaneous Photos / Sketches

B. Post-Outage Meeting

A post-outage meeting will be held to present the Outage Report and to discuss any problems or special situations that arose during the outage. Operator will propose solutions to any problems and will provide recommendations for future outages.

EXHIBIT I

Form of Monthly Report

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A. Executive Summary

1. **Generation for the month was:**
2. **Budget**
3. **Operator Summary**
4. **Equipment Incidents**
5. **Contract Services Summary**

B. Operations

1. **EHS**
 - A. **Environmental**
 - B. **Training**
 - C. **Safety**
 - D. **Plant Frequency Rates**
2. **Operations & Maintenance Summary**
 - A.) Performance Statistics

Starts Month	
Total Equivalent Starts	
Total Fired Starts	
Trips Month	
Trips YTD	
Dispatch Calls	
Dispatch's Completed	
Run Hours Month	
Run Hours YTD	
Capacity Factor (%) Month	
Capacity Factor (%) YTD	
Availability (%) Month	

Availability (%) YTD	
Forced Outage Hours Month	
Forced Outage Hours YTD	
Power Generation Month(MWH)	

Dispatch Requests	
Successful Dispatches	

NOTE:

Air Permit and Emissions Information:

Unit Fired Hours 12 Month Rolling Average:

3. Site Activities

a. Operations & Maintenance Man Hours Worked:

- Regular Hours:
- Overtime Hours:

b. Completed work orders:

- Capital Improvements:
- PMs:
- CMs:
- TILs :
- Support:

c. 30 Day Outlook:

4. Personnel:

5. Security:

6. Community Relations:

C. Financial Summary

1. Variance Report by Major Budget Line Item: **The budgeted amount for the month was [__], Actual \$ [__], Variance \$ [__].** There were [__] budget variance's submitted totaling \$ [__]

Budget details are as follows:

a. O&M Labor

i Budgeted \$ [] Actual \$ [] Variance []

b. Contract Services

i Budgeted \$ [] Actual \$ [] Variance []

c. Major Equipment Outage

i Budgeted \$ [] Actual \$ [] Variance []

d. Chemicals

i Budgeted \$ [] Actual \$ [] Variance []

e. Plant Equipment & Consumables

i Budgeted \$ [] Actual \$ [] Variance []

f. General Office Admin Cost

i Budgeted \$ [] Actual \$ [] Variance []

g. Maintenance & Repair

i Budgeted \$ [] Actual \$ [] Variance []

2. **Capital Improvements:** There was [] capital improvement purchase made during the month totaling \$ [].

EXHIBIT J

Facility

