### **Signature Routing Form**

Pre-Approvals: Out of cycle deal approved by Finance and GM on:

Summary:	
Project Title -	
Supplier:	
VSO #:	
Company Code:	
Project Owner:	
<b>Contract Value:</b>	
<b>Project Description:</b>	

Approver	Approver Name	Approval Sequence	Signature	Date Signed
Finance Approver		1		Dec 13, 2024
Legal Approver		1		Dec 10, 2024
Supplier Signatory		2		
Authorized Signatory	Redacted	3		Dec 16, 2024
Signature Authority Delegation (2 <sup>nd</sup> VP)		4		
Signature Authority Delegation (SAFE)		6		

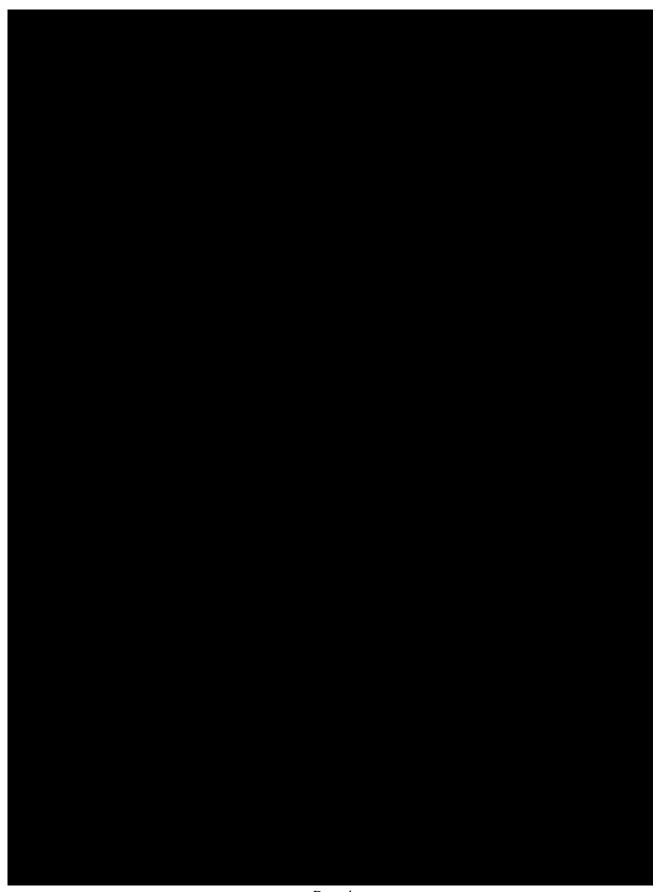
### RENEWABLE ENERGY PURCHASE AGREEMENT

#### Between

Clover Creek Solar Project LLC d/b/a New Frontiers Solar Park, as Seller,

and

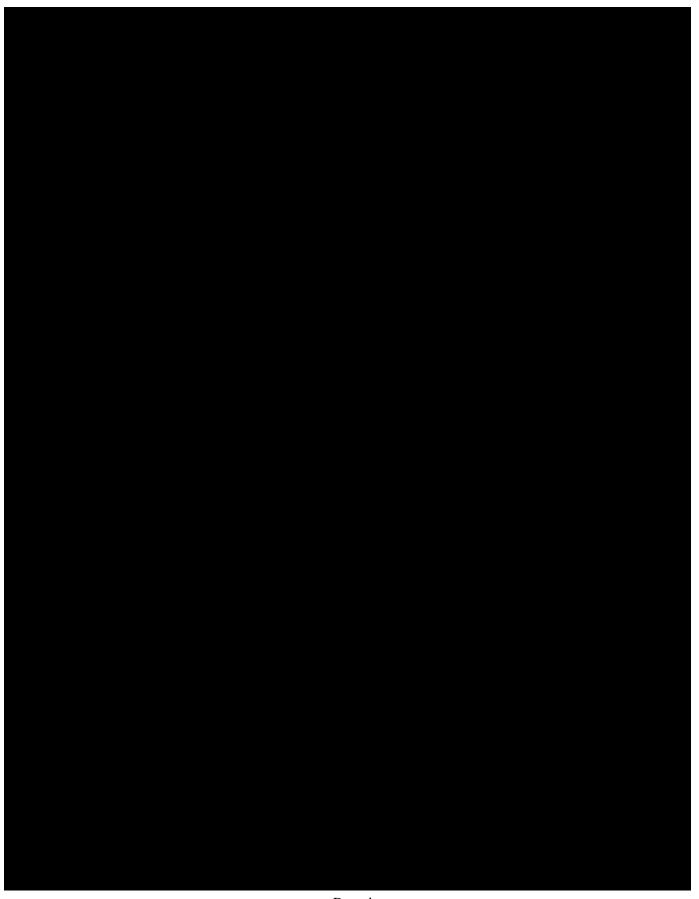
as Buyer





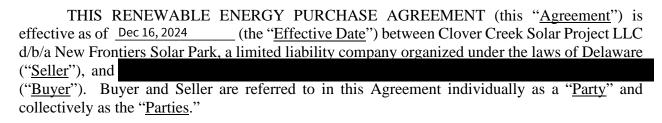
Page ii







#### RENEWABLE ENERGY PURCHASE AGREEMENT



#### **RECITALS**

Seller intends to design, construct, own and operate the Project; and

Seller desires to sell and deliver to Buyer, and Buyer desires to purchase and receive the Products on the terms and conditions set forth in this Agreement.

The Parties agree as follows:

### ARTICLE 1 DEFINED TERMS

1.1 <u>Defined Terms</u>. Capitalized terms used in this Agreement and not otherwise defined will have the meanings specified in <u>Exhibit 1</u>.

### ARTICLE 2 TERM; PROJECT DEVELOPMENT

#### 2.1 Condition Precedent and Term.

- (a) This Agreement is effective as of the Effective Date and, unless terminated earlier as provided in this Agreement, will remain in full force and effect for the duration of the Term.
- (b) Seller's obligations to construct the Project and sell Buyer the Products thereof are subject to the satisfaction or waiver of the condition listed below (the "Condition Precedent"):
  - (i) No later than July 15, 2025, Seller having received a permit from the Kentucky Electric Generation and Transmission Siting Board approving the Project with commercially reasonable terms and conditions, as reasonably determined by Seller.
- (c) Seller will provide written notice to Buyer of the Condition Precedent, including reasonable evidence of its achievement. If the Condition Precedent has not been satisfied or waived by Seller in writing on or before July 25, 2025, then either Party will have the right to terminate this Agreement without liability upon written notice to the other Party. If either Party fails to provide such notice,

such Party will be deemed to have waived its right to terminate this Agreement in accordance with this Section 2.1(c).

|--|

(a)	Exhibit 2 pro	vides a de	etailed descript	ion of the	Project	including
identification	of the Major	Equipment,	components,	and Interco	nnection	Facilities
comprising th	e Project. Selle	er will pron	nptly notify B <u>u</u>	yer in writin	g of any	proposed
modifications	to the Project th	at may resu	It in a change		of the	Expected
Nameplate C	apacity or the	generation	profile of the	Project; pr	rovided,	
			Buyer m	ay reject suc	h propose	d changes
after such date	in its reasonable	e discretion				
		_				

- (b) Seller will provide the items listed, and in accordance with deadlines provided, in <u>Exhibit 3</u>.
- (c) Each Calendar Quarter after the Effective Date until the commencement of construction, and each month after the commencement of construction, Seller will prepare and provide a written report in the form and substance provided in <a href="Exhibit 20">Exhibit 20</a> regarding its progress relative to the development, construction and startup of the Project and the milestone schedule ("Progress Report"). Seller will send the Progress Report via e-mail in a single PDF file to Buver's contact listed in <a href="Exhibit 10">Exhibit 10</a>
  The first Progress Report will be due after the Effective Date. The last monthly Progress Report will be due

(d) after the Effective Date, Seller will provide a plan reasonably acceptable to the Parties for the proper recycling and disposal of all Project components, equipment, and material during and at the end of the useful life of the Project (the "Disposal and Decommissioning Plan"), and Seller will comply with such Disposal and Decommissioning Plan during the Term and at the end of the Project's useful life.

after the end of the month in which the Commercial Operation Date occurs.

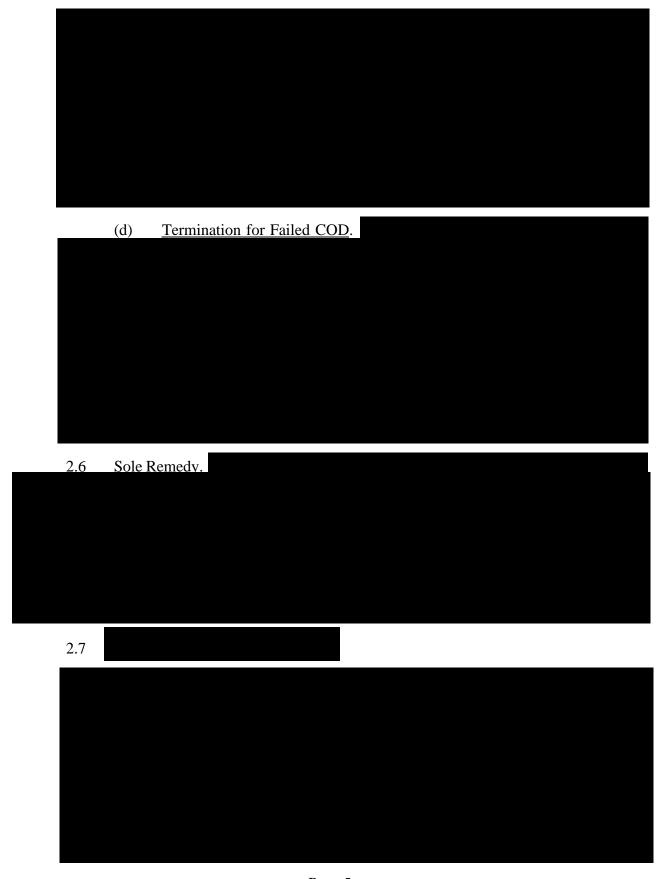
2.3 <u>Project Development, Design, Construction</u>. At no cost to Buyer, Seller will (a) design, engineer, construct, and install the Project in accordance with Prudent Industry Practices and this Agreement, and (b) obtain and maintain all Approvals for such activities. Seller must use Tier 1 Suppliers for the procurement of all Major Equipment comprising the Project.

#### 2.4 Commercial Operation.

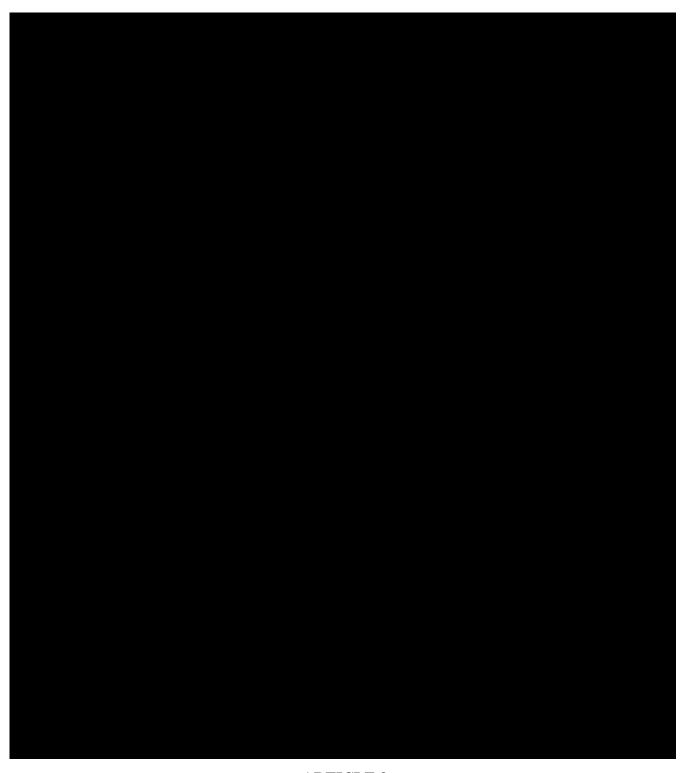
- (a) <u>Expected Commercial Operation Date</u>. Seller will use commercially reasonable efforts to cause the Project to achieve Commercial Operation on or before the Expected Commercial Operation Date.
  - (b) <u>Delay Damages</u>.

(1) If Serier anticipates that the Commercial Operation will not be
achieved on or before the Expected Commercial Operation Date,
(ii) If Commercial Operation has not been achieved on or before the
(ii) If Commercial Operation has not been achieved on or before the
Guaranteed Commercial Operation Date,
(c) Notice of Commercial Operation. Seller may declare Commercial
Operation
will provide notice to Buyer that the Commercial Operation Date has occurred
(the
"COD Notice"). The COD Notice must contain (i) specification of the Commercial
Operation Date, (ii) certification by an officer of Seller that Seller has completed each
subsection of the requirements of Commercial Operation, (iii) reasonable evidence that
Seller has completed each subsection of the requirements of Commercial Operation, and
(iv) specification of the Contract Capacity on the Commercial Operation Date and the
expiration date of the Delivery Term.
(d) Duy Down Dight If the Contract Conscitution of the College COD
(d) <u>Buy-Down Right</u> . If the Contract Capacity specified in Seller's COD
Notice is less than 100% of the Expected Nameplate Capacity, Seller will use commercially reasonable efforts to install the remaining Expected Nameplate Capacity
reasonable efforts to histair the remaining expected Namepiate Capacity
Any damages payable pursuant to
this Section 2.4(d) are payable to Buyer
and services are payment to surjet

	(e)	Without prejudice to Buyer's termination rights pursuant to Section 2.5,
2.5	Buye	r Termination Rights.
	(a)	[Reserved]
	(b)	Termination for Failed Financial Close.
	and properties and properties written certification for the certification of the certificatio	(i) Subject to Section 2.5(b)(ii), Seller will (x) achieve Financial Close following the Effective Date ("Financial Close ination Deadline") and (y) include in each Progress Report an update of timing progress in achieving Financial Close by the Financial Close Termination line.  (ii) Seller will provide en notice to Buyer confirming Financial Close, as demonstrated by a fication by an officer of Seller that Seller has met one of the two conditions set in the definition of Financial Close, and the date on which Financial Close achieved.
		Termination for Failed Key Milestones.  Seller will provide written uyer regarding the status of the following requirement listed in this e) (a "Key Milestone"):
		(i) Seller having obtained all Material Approvals for the Project



Page 5

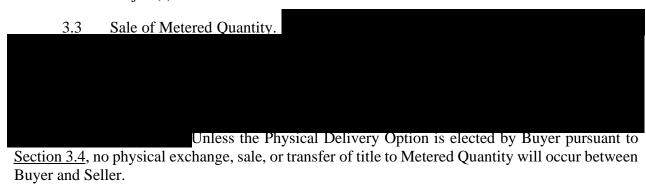


# ARTICLE 3 PRODUCT GENERATION, OPERATION, DELIVERY AND MARKETING OBLIGATIONS

3.1 <u>Benefits of the Project; Project Operation</u>. During the Delivery Term, each Party will sell or purchase, deliver or receive, or settle, as applicable, the Products in accordance with

this Agreement. All Products will be generated and produced on a Unit Contingent basis. At no cost to Buyer, Seller will obtain and maintain all Approvals to operate the Project. Seller will operate and maintain the Project in accordance with Prudent Industry Practices.

3.2 <u>Project Independence</u>. The Project must be electrically independent from Other Projects (including any further or pre-existing phases or extensions in connection with the Project), except to the extent that the Project shares the Shared Facilities (including the Revenue Meter) with the Other Project(s).



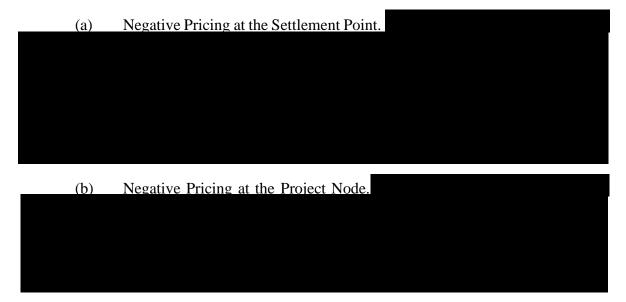
3.4 <u>Physical Delivery Option</u>. At any point during the Delivery Term, Buyer will have the option (the "<u>Physical Delivery Option</u>") in its sole discretion, to direct Seller to transfer title of the Metered Quantity to Buyer or Buyer's Scheduling Entity. If Buyer elects the Physical Delivery Option, Seller will use its best efforts to begin transfer of title of the Metered Quantity to Buyer or Buyer's <u>Scheduling Entity</u> in accordance with the provisions in Exhibit 9 as soon as reasonably practical.

#### 3.5 Approvals, Interconnection Agreements, and Applicable Market Compliance.

- (a) Seller will obtain and maintain throughout the Delivery Term sufficient interconnection rights under the Interconnection Agreement and Approvals required to interconnect the Project to the Transmission Grid and fulfill Seller's obligations under this Agreement. The Interconnection Agreement will make available, or allocate, interconnection rights to the Project that permit no less than (i) the Expected Nameplate Capacity or, (ii) in the event of a capacity buy-down pursuant to Section 2.4(d), the Contract Capacity, in each case to be interconnected throughout the Delivery Term.
- (b) Seller will be responsible for all costs and charges under or in connection with the Interconnection Agreement and the Applicable Market Protocols to establish and maintain interconnection of the Project to the Transmission Grid.
- (c) Seller will comply with the Applicable Market Tariff and Applicable Market Rules, including securing and maintaining in full force and effect all required agreements, certifications and Approvals to generate electricity for sale in the Applicable Market.

- (d) Seller will ensure that the Project and the Metered Quantity satisfy all requirements to qualify under the Applicable EAC Standard.
- 3.6 <u>Scheduling and Bidding</u>. The Parties agree that the operating procedures set forth in <u>Exhibit 7</u> (the "<u>Operating Procedures</u>") will govern the performance of each Party's respective scheduling and bidding obligations under this Agreement. The Parties may revise the Operating Procedures from time to time by mutual written agreement.
  - (a) Seller, or its designee, will act as Scheduling Entity for the Project and will schedule and deliver the Metered Quantity into the Applicable Market. Seller will be responsible for receiving and paying (as applicable) all revenues, costs, penalties and charges associated with scheduling, bidding, balancing and integrating the Metered Quantity into the Applicable Market, including all Applicable Market Penalties.
  - (b) Seller will comply with the Applicable Market Rules and Applicable Market Tariff as necessary for Seller to submit bids for Metered Quantity into the Applicable Market.
    - (c) Seller will notify Buyer in writing of any change to the Scheduling Entity.
- 3.7 <u>Metering and Data Feed</u>. The Parties agree that the Metering and Data Feed Protocol set forth in <u>Exhibit 8</u> will govern the performance of each Party's respective metering and data feed obligations under this Agreement. The Parties may revise the Metering and Data Feed Protocol from time to time by mutual written agreement. As set forth in <u>Exhibit 8</u>, Seller will (a) provide Buyer access to data from the Project's SCADA system, and (b) install and maintain, at no cost to Buyer, the Approved Meters and measuring equipment, including a pyranometer at the Site.

#### 3.8 <u>Negative Pricing.</u>



	(c)	Negative Prici	ng Overlap.		
3.9	IRESE	ERVED1.			

- Excess Project Output. If during a Calendar Quarter, the Metered Quantity exceeds the Projected Output for such Calendar Quarter ("Excess Output Threshold"), (a) Seller will continue to deliver the Products to Buyer, and (b) the Contract Price Payment will be calculated as set forth in Exhibit 4 for the remainder of such Calendar Quarter. The first measurement period of the Delivery Term will include an additional stub period and the last measurement period of the Delivery Term will include an additional stub period Seller will give Buyer advance written notice of the date that Seller reasonably anticipates the Project will reach the Excess Output Threshold.
- Seller will provide Buyer a 3.11 Planned Outages. schedule of Planned Outages for the Project for the remainder of such year and for January 1 until June 30 of the following year, minimizing Project unavailability and maximizing Project performance; Planned Outages during the months of June, July, August and September will be avoided unless otherwise required pursuant to Prudent Industry Practices, the warranty of Major Equipment, or for safety reasons or to the extent the Parties have otherwise agreed in writing.
- 3.12 Availability Guarantee. Seller guarantees that the Project will be available to produce the Products in accordance with the Availability Guarantee in Exhibit 5.
- <u>Performance Guarantee</u>. Seller guarantees that the Project will be able to produce 3.13 the Products in accordance with the Performance Guarantee in Exhibit 6.

#### 3.14 Environmental Attributes.

- Transfer of Environmental Attributes. No later than the EAC Delivery Deadline, Seller will deliver Environmental Attributes in an amount equal to the Metered Quantity for the respective month by transferring EACs in accordance with the EAC Delivery Election.
  - Except with respect to Replacement EACs, all EACs delivered under this Agreement must be from the Project.
  - Buyer will accept the EACs on its own account or may designate an EAC Management Party by providing advance notice to Seller. Buyer may change the EAC Management Party at any time, in its sole discretion, upon advance notice to Seller.

- (iii) At Seller's cost, the Parties will make such filings, execute such periodic documentation and take all actions as are reasonably required to deliver documentation of Buyer's Environmental Attributes directly to Buyer or the EAC Management Party through the Applicable Tracking System.
- (iv) If the Applicable Tracking System is unavailable, then Seller will deliver Environmental Attributes in an amount equal to the Metered Quantity to Buyer in an Environmental Attribute attestation or other legal form acceptable to Buyer.
- (v) To the extent available in the Applicable Market at the time EACs are delivered in accordance with this Agreement, and to assist Buyer

  Seller will deliver to Buyer time-matched or timestamped EACs in an amount equal to the Metered Quantity, along with reasonable documentation of the time of generation of such EACs, provided that Seller will not be required to make such deliveries to the extent that they (a) require material modifications or upgrades to the Project or any Interconnection Facilities, (b) require Seller to materially modify, reduce, or restrict Seller's offers, bids, or schedules of energy generated by the Project, Future Energy Attributes, Capacity Attributes, and Ancillary Services, or (c) materially interfere with the qualification, offering, bidding, planning, scheduling, or other disposition of Environmental Attributes or Future Environmental Attributes that are not Buyer's Environmental Attributes or Future Environmental Attributes.
- (b) <u>Clean Title</u>. Seller represents and warrants that, at the time of delivery of any Environmental Attributes, including any Replacement EACs, (i) Seller has good and marketable title to such Environmental Attributes, (ii) such Environmental Attributes have not been sold to any other Person or used to meet compliance requirements of any other regulatory or voluntary renewable energy program or standard, including any greenhouse gas reduction requirements, and (iii) Seller has transferred to Buyer all right, title to and interest in such Environmental Attributes, free and clear of any liens or other encumbrances.
- (c) Registration and Verification. Seller will, at its own cost, take the actions necessary to qualify the Environmental Attributes under the Applicable EAC Standard and transfer the EACs via the Applicable Tracking System and to transfer the Environmental Attributes associated with the Metered Quantity, including in the event of a change in Applicable Law or program. Each Party will be responsible for all fees, costs, and charges associated with registering and maintaining its own Applicable Tracking System account.
- (d) <u>Future Environmental Attributes</u>. Buyer will have all rights to any Future Environmental Attributes in an amount equal to the Metered Quantity at no increase to the Contract Price;

writing as soon as reasonably practicable of any Future Environmental Attributes that become available in the market, which such notice will include Seller's estimate of the

Future Environmental Attributes Costs.

EAC Statements. The Parties will reasonably cooperate regarding any public statements, public announcements or press releases regarding this Agreement in accordance with Section 12.2 to ensure that such statements are in compliance with the Federal Trade Commission Guides for the Use of Environmental Marketing Claims. The Parties will reasonably cooperate regarding any public statements, public announcements or press releases regarding this Agreement in accordance with Section 12.2 to ensure that such statements do not create any material adverse effect on Buyer's environmental claims under this Agreement. If Seller or Seller's Affiliates originate any marketing claim, public statement or representation that Buyer reasonably determines may diminish the value, marketability or use of the EACs, Buyer will have the right to require Seller (or Seller's Affiliates) to cause any public statement to be retracted, removed, ceased, revised, corrected, or updated from or on any public forum promptly upon written notice to Seller to avoid a double counting claim. Seller will work in good faith with Buyer to mitigate any damages to, or rehabilitate, EACs that are impaired by such Seller (or Seller's Affiliates) statements. If the public statement, marketing claim or representation cannot and renders EACs unable to qualify for the Applicable EAC be clarified Standard, or causes an EAC to be retired to a Person other than Buyer, Seller will pay damages to Buyer for such impaired EACs in an amount equal to the market value of such EACs, at its sole expense and indemnify Buyer pursuant to Section 11.1. Seller will comply with the Federal Trade Commission requirements set forth in 16 CFR Part 260 in any communications concerning the Metered Quantity, the Project and the Environmental

Attributes that are or may be generated from the Project. Seller will not claim the Environmental Attributes or other "renewable energy," "green energy," "clean energy" or similar attributes associated with the Metered Quantity as belonging to Seller or any Affiliate of Seller or to any person or entity other than Buyer.

3.15 Future Energy Attributes; Capacity Attributes; Ancillary Services. Seller will retain all Future Energy Attributes, Capacity Attributes, and Ancillary Services; provided that (a) actions to maximize the value of such Future Energy Attributes, Capacity Attributes, and Ancillary Services (and any resulting requirements and other results thereof) do not: (i) require modifications to the Project (or the design thereof) which would affect the Metered Quantity or Products generated from the Project, (ii) require Seller to reduce (or restrict offering, bidding, planning and scheduling) the generation of Metered Quantity from the Project and delivery thereof to the Project Node, and (b) such actions are permitted by (and capable of being implemented pursuant to) Applicable Laws.

#### 3.16 Shared Facilities.

- (a) Buyer acknowledges and agrees that, subject to the terms and conditions set forth in this Agreement, (i) the Shared Facilities are, or will or may be, subject to sharing and common ownership, use and financing arrangements between Seller and the owners of the Other Project(s), and (ii) all such arrangements, including any and all related rights, liabilities, obligations and financings (including any pledge or collateral assignments in connection with such arrangements) will be permitted by, and are not in conflict with, and do not give rise to any default under, this Agreement.
- (b) The Parties acknowledge that ownership and use of the Shared Facilities (including the Interconnection Agreement) may be subject to a co-tenancy or similar sharing agreement (collectively, "Shared Facilities Agreement(s)"), under which Shared Facilities Agreements an Affiliate of Seller or third party may act as a manager on behalf of Seller and the Other Project(s) ("Shared Facilities Manager"). Seller will ensure that, throughout the Delivery Term, Seller will have sufficient interconnection capacity and rights under or through the Interconnection Agreement and the Shared Facilities Agreements, if any, to interconnect the Project with the Transmission Grid and fulfill its obligations under this Agreement. The Shared Facilities Agreements will provide that:
  - (i) the Other Project(s) and the Shared Facilities Manager will indemnify Seller for any reasonably foreseeable liability arising out of a breach of their respective performance obligations resulting from their respective acts or omissions under (1) any of the Other Project(s)' interconnection agreement(s) which results in a material adverse effect on Seller, and (2) any Shared Facilities Agreement in which such party is a counterparty with Seller;
  - (ii) Seller will have the right to correct, remedy, mitigate, or otherwise cure any omission, failure, breach or default by the owners of the Other Project(s) or the Shared Facilities Manager under any Shared Facilities Agreement in which Seller is a counterparty; and

- (iii) if the Project and Other Project(s) do not independently receive separate dispatch instructions from the Transmission Provider or Applicable Market Operator, any instruction from the Transmission Provider or Applicable Market Operator to Curtail will be allocated between the Project and the Other Project(s) on a pro rata basis based upon installed capacity,
- (c) As between Buyer and Seller under this Agreement, Seller will be responsible for all costs and charges directly caused by, associated with, or allocated to Seller, the Other Project(s), and the Shared Facilities Manager under the Shared Facilities Agreement(s), if any, and in connection with the interconnection of the Project to the Transmission Grid and transmission of Metered Quantity from the Project to the Applicable Market.

#### 3.17 <u>Battery Storage</u>.

(a) In recognition of emerging technologies and opportunities that will continue to evolve during the Term, and subject to Section 3.17(b) below, Seller will have the right to incorporate the use of storage technologies into the Project and retain the attributes and benefits associated with such storage technologies, other than the Products. Seller will ensure (i) the installation and operation of storage technologies by Seller or its Affiliates do not (1) diminish Buyer's rights or benefits hereunder, (2) increase Buyer's obligations or liabilities hereunder, or (3) reduce the Project's Metered Quantity; (ii) Seller is otherwise able to continue to comply with all other obligations of Seller under this Agreement; (iii) the attributes and benefits associated with any storage technologies incorporated in the Project will be separately recorded and determined in accordance with a methodology to be mutually agreed by the Parties prior to the installation and operation of any such storage component of the Project; and (iv) the Metered Quantity will be separately metered from any storage.

### (b) <u>Right of First Offer on Battery Storage Products.</u>

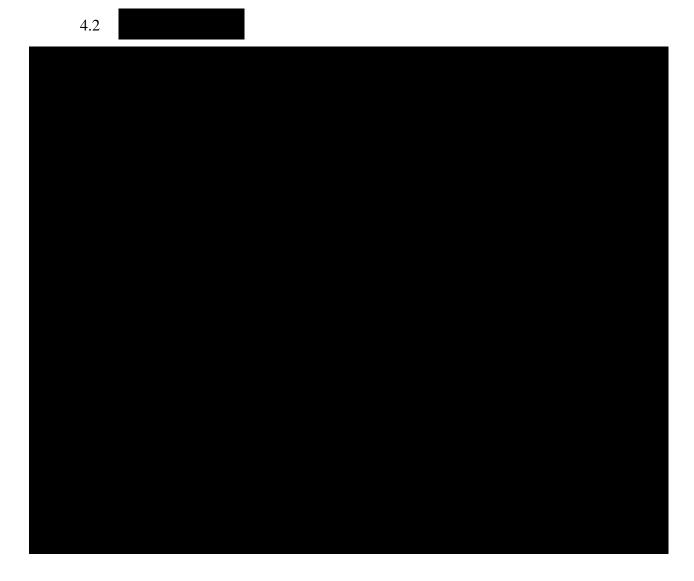
- (i) Buyer will have the right of first offer to purchase the attributes (which may include Capacity Attributes) and benefits associated with any storage technologies incorporated into the Project (the "Storage Attributes"). Seller will notify Buyer in writing prior to the planned storage facilities commissioning date. Seller will offer in good faith to sell the Storage Attributes to Buyer as an amendment to this Agreement and with an adjustment to the Contract Price that is mutually agreed by the Parties.
- (ii) Seller's offer will set forth in reasonable detail the terms and conditions of the offer in writing. Seller will promptly answer Buyer's reasonable questions concerning the offered terms and conditions and will meet with Buyer at Buyer's request to discuss the offer.

- (iii) Buver may accept or reject Seller's offer under this Section 3.17(b),

  If Buyer accepts
  Seller's offer, the Parties will memorialize the purchase of Storage Attributes and associated adjustment to the Contract Price in an amendment following Buyer's acceptance of such offer.
- (iv) If Buyer rejects Seller's offer, subject to <u>Section 3.17(a)</u>, Seller will have the right to enter into any agreement to sell the Storage Attributes to any third party free and clear of any claims by Buyer.

### ARTICLE 4 SETTLEMENT AND INVOICING

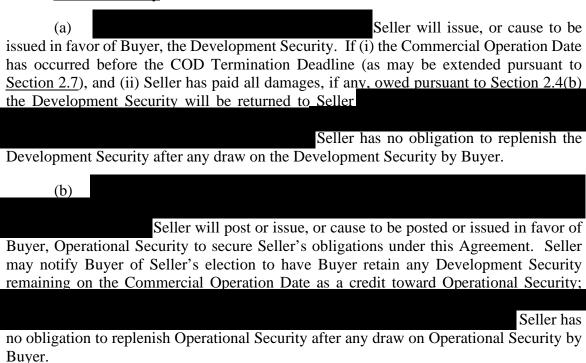
4.1 <u>Settlement Amount</u>. The Parties agree to calculate the Settlement Amount in accordance with <u>Exhibit 4</u>.



4.3 Payment Date. Seller will pay any amounts owed on the Monthly Invoice and Buyer will pay any amounts owed on the Monthly Invoice Payment of the Monthly Invoice by Buyer or Seller, as applicable, will be made by electronic funds transfer in accordance with the wire transfer instructions set forth in Exhibit 10.
4.4 <u>Disputes and Adjustments of Invoices.</u>
(a) Seller may adjust a prior Monthly Invoice reflect revisions to the underlying data by the Applicable Market Operator.
(b) A Party may, in good faith, dispute the correctness of any Settlement Amount, Monthly Invoice or any adjustment to a Monthly Invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error upon written notice to the other Party, stating the basis for the dispute or adjustment. All billing disputes will be handled in accordance with <u>Section 13.2</u> .
(c) Subject to <u>Section 13.3</u> :
(i) Payment of the disputed portion of any Monthly Invoice or adjustment to a Monthly Invoice will not be required until the dispute is resolved and a corrected Monthly Invoice is sent to the appropriate Party based on the resolution of the dispute. Upon resolution of the dispute, a revised Settlement Amount and Monthly Invoice, if applicable, will be issued and paid in accordance with Sections 4.2 and 4.3;
(ii) Overpayments will be returned upon request, or upon resolution of a dispute, if applicable. Any dispute with respect to a Monthly Invoice and the settlement statement supporting the Monthly Invoice is waived unless the other Party is notified in accordance with this <u>Section 4.4</u> after the Monthly Invoice is rendered or any specific adjustment to the Monthly Invoice is made; and
(iii) If a Monthly Invoice is not rendered the right to payment for such performance is waived. Notwithstanding the foregoing, a Party may pay the entire Monthly Invoice even where a portion of such Monthly Invoice is subject to dispute without waiving its right to dispute the Monthly Invoice and request and receive a return or credit for any overpayment.
4.5 Taxes.

# ARTICLE 5 CREDIT AND COLLATERAL REQUIREMENTS

5.1	Seller'	s Sec	urity.



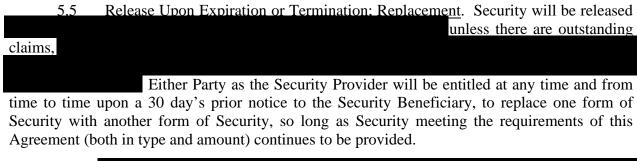
5.2 Buver's Security.

Security.

Buyer will issue, or cause to be issued in favor of Seller, the Buyer

- 5.3 <u>Security Interest</u>. To secure its obligations under this Agreement, each Party posting Security (the "<u>Security Provider</u>") hereby grants to the other Party, as the secured party (the "<u>Security Beneficiary</u>"), a first priority and continuing security interest in, and lien on (and right of setoff against), all Cash obtained by Security Beneficiary resulting from a draw on the Security.
- 5.4 <u>Drawing of Security</u>. Security Beneficiary will be entitled to draw upon Security as may be permitted under this Agreement, including for any damages arising from (a) an Event of Default that has continued or is continuing, or (b) any prior Event of Default to the extent that damages arising therefrom have not yet been paid in full to the Security Beneficiary. In the case of Security in the form of a Letter of Credit, the Security Beneficiary may draw the full amount of

such Letter of Credit before the expiration of such Letter of Credit if, as of the date of such drawing, Security Beneficiary does not receive replacement Security meeting the requirements of this Agreement. If the Security Beneficiary draws on the Letter of Credit as provided in the preceding sentence, the proceeds of any such draw will constitute collateral provided to the beneficiary in the form of Cash and the Cash will be maintained in a custodial account at a national bank reasonably acceptable to the Security Beneficiary. The Security Beneficiary may withdraw funds from such account to pay any amount due and owing the Security Beneficiary under this Agreement that has not been paid within the time provided under this Agreement, including any applicable cure periods. Except as provided in Sections 2.4, 2.5, and 2.6 with respect to Development Security only, the Security contemplated by this Article 5 constitutes security for, but is not a limitation of liability for either Party's obligations and liabilities under this Agreement.





### ARTICLE 6 REPRESENTATIONS, WARRANTIES AND COVENANTS

- 6.1 <u>Mutual Representations and Warranties</u>. On the Effective Date each Party hereby represents and warrants to the other Party as follows:
  - (a) <u>Organization</u>. It is duly formed, validly existing and in good standing under the laws of its jurisdiction of formation. It is duly qualified or licensed to perform its obligations under this Agreement.
  - (b) <u>Authority; Enforceability</u>. It has all requisite power and authority to execute and deliver this Agreement and any related agreements to which it is a party, to perform its obligations under this Agreement and the related agreements and to consummate the transactions contemplated. The execution and delivery of this Agreement and the related agreements to which it is a party, and the performance of its obligations, have been duly and validly authorized by all necessary corporate action. This Agreement and each related

agreement to which it is a party has been duly and validly executed and delivered and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms.

- (c) <u>No Conflicts; Consents and Approvals</u>. The execution and delivery of this Agreement and the related agreements to which it is a party do not and will not, and the performance of its obligations under this Agreement and the related agreements to which it is a party does not and will not:
  - (i) conflict with or result in a violation or breach of any of the terms, conditions or provisions of its organizational documents;
  - (ii) be in violation of or result in a breach of or default (or give rise to any right of termination, cancellation or acceleration) under (with or without the giving of notice, the lapse of time, or both) any material contract or permit to which it is a party, except for any such violations or defaults (or rights of termination, cancellation or acceleration) that would not, in the aggregate, reasonably be expected to result in a material adverse effect on its ability to perform its obligations hereunder; and
  - (iii) assuming any other notifications provided in the ordinary course of business have been made, obtained or given, (1) conflict with, violate or breach any term or provision of any Applicable Law, except as would not reasonably be expected to result in a material adverse effect on such Party's ability to perform its obligations hereunder, or (2) require any consent or approval of any Governmental Authority, or notice to, or declaration, filing or registration with, any Governmental Authority, under any Applicable Law, other than such consents, approvals, notices, declarations, filings or registrations that, if not made or obtained, would not reasonably be expected to result in a material adverse effect on its ability to perform its obligations hereunder.
- 6.2 <u>Seller's Representations and Warranties</u>. On the Effective Date, Seller hereby represents and warrants to Buyer as follows:
  - (a) <u>Compliance with Laws</u>. Seller is not in violation of, or in default under, any Applicable Law, the effect of which, in the aggregate, would reasonably be expected to hinder, prevent or delay Seller from performing its obligations under this Agreement.
  - (b) <u>Legal Proceedings</u>. Except as disclosed on <u>Exhibit 12</u>, Seller has not been served with notice of any Claim, no Claim is pending, and, to its knowledge no Claim is threatened against it or any Affiliate, which seeks an Order restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated by this Agreement. Neither Seller nor any of its Affiliates is involved with any Person in litigation or legal action with respect to the Project.

#### (c) Environmental Baseline and Other Matters.

- (i) Except as disclosed on Exhibit 13, neither Seller nor any of its Affiliates is subject to any corrective actions or remedial obligations under any applicable Environmental Law or to any settlement, court order, administrative or judicial order, or judgment arising under any applicable Environmental Law with respect to the Project, and neither Seller nor any of its Affiliates has received any approval or entered into any document, written arrangement or agreement related to material impacts of the Project requiring remediation or mitigation of such material impacts to (1) endangered species, (2) migratory birds (including bald and golden eagles), (3) wildlife and species of conservation concern (state and federal), or (4) environmentally, culturally or historically sensitive properties or resources.
- (ii) Neither Seller nor any of its Affiliates is in violation of any principles or obligation
- (d) <u>Sanctions</u>. None of Seller or its Affiliates or any of the Project Lenders are Restricted Parties.
- (e) <u>Interconnection Agreement</u>. The Interconnection Agreement has been executed by the parties thereto.
- 6.3 <u>Representations and Warranties of Buyer</u>. On the Effective Date, Buyer hereby represents and warrants to Seller as follows:
  - (a) <u>Legal Proceedings</u>. Buyer has not been served with notice of any Claim, no Claim is pending, and, to Buyer's knowledge no Claim is threatened against Buyer, which seeks an Order restraining, enjoining or otherwise prohibiting or making illegal any of the transactions contemplated by this Agreement.
  - (b) <u>Compliance with Laws</u>. Buyer is not in violation of, or in default under, any Applicable Law, the effect of which, in the aggregate, would reasonably be expected to hinder, prevent or delay Buyer from performing its obligations under this Agreement.
    - (c) <u>Sanctions</u>. None of Buyer or its Affiliates are Restricted Parties.
- 6.4 <u>Seller Disclosure Obligations with Respect to Environmental and Safety Matters;</u>
  Reputational Issues. Seller will notify Buyer of gaining knowledge of the following (each a "Reputational Event"):
  - (a) Any violation of any Environmental Laws arising out of the construction or operation of the Project, Environmental and Safety Noncompliance at the Project which is required to be reported to a Governmental Authority, claims or actions relating to any of the same by any Governmental Authority having jurisdiction over the Site, or the existence of any past or present enforcement, legal, or regulatory action or proceeding relating to

such alleged Environmental and Safety Noncompliance or alleged presence of Hazardous Materials, and use commercially reasonable efforts to take action to dispute or correct such Environmental and Safety Noncompliance in accordance with applicable Environmental Laws or directive of Governmental Authority;

- (b) After Seller or any of its Affiliates becomes subject to any corrective actions or remedial obligations under any applicable Environmental Law or to any settlement, court order, administrative or judicial order, or judgment arising under any applicable Environmental Law with respect to the Project.
- (c) After Seller or any of its Affiliates receives any approval or enters into any document, written arrangement or agreement related to material impacts of the Project (other than agreements with consultants hired to complete environmental assessments related to the Project) requiring remediation or mitigation of such material impacts to (i) endangered species, (ii) migratory birds (including eagles), (iii) wildlife and species of conservation concern (state and federal), (iv) environmentally, culturally or historically sensitive property or resources, (v) a military facility, or (vi) national security;
  - (d) Any actual or known material opposition to the Project;
  - (e) Any violation of any principles or obligations

or

(f) Any press reports or third-party complaints that could reasonably be expected to bring negative attention to the Project or have a material adverse effect on the Project's reputation.

Seller will respond to Reputational Events in accordance with Prudent Industry Practices to mitigate any material harm to the reputation of the Project and promptly notify Buyer of any action taken in this. Public announcements regarding Reputational Events are subject to <u>Section 12.2</u>.

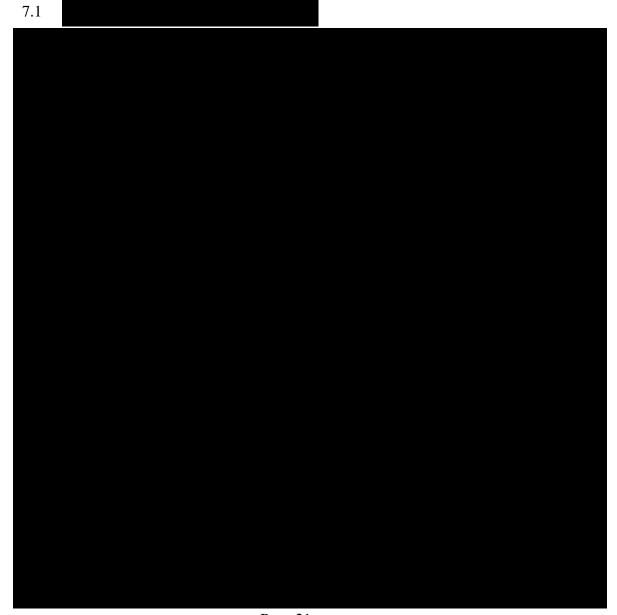
#### 6.5 Covenants.

- (a) General Covenants. Each Party covenants that throughout the Term:
- (i) it will continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (ii) it will maintain (or obtain from time to time as required, including through renewal, as applicable) all governmental Approvals necessary for it to legally perform its obligations under this Agreement; and
- (iii) it will comply with this Agreement and perform its obligations under this Agreement in a manner that does not materially violate any of the terms and

conditions in its governing documents, any material contracts to which it is a party or any Applicable Law.

- (b) <u>Seller Covenants</u>. Seller covenants that:
- (i) throughout the Term, none of Seller or its Affiliates or any of the Project Lenders are Restricted Parties; and
- (ii) throughout the Delivery Term, the Project will be operated by a Qualified Operator.

### ARTICLE 7 FORCE MAJEURE



Page 21

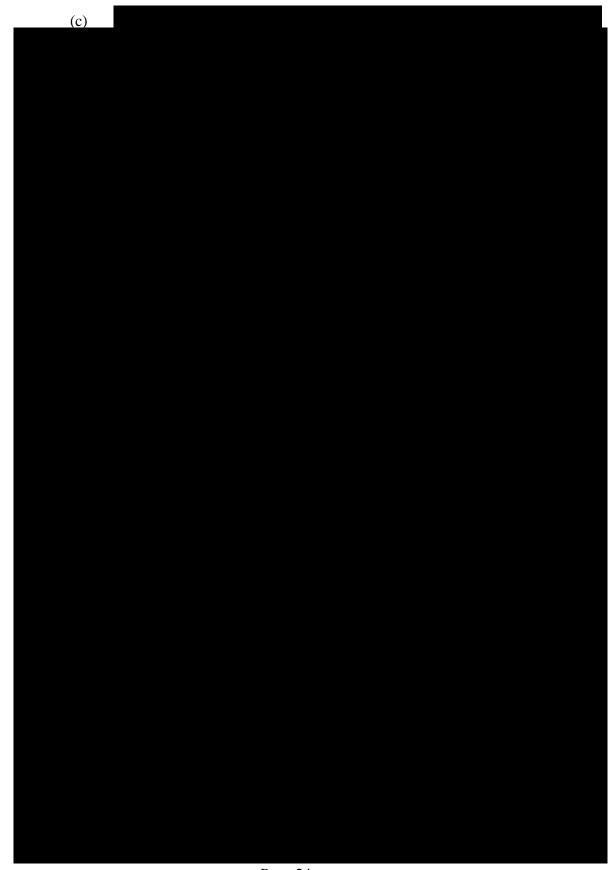
7.2 <u>Excuse of Performance; Required Notice</u>.



- (c) If the Claiming Party is Seller, Seller will also furnish to Buyer as soon as practicable after the Force Majeure Event, but no later than 30 days after, (i) a written remediation plan (the "Force Majeure Remediation Plan"), certified by an Independent Engineer selected and paid for by Seller, and (ii) if applicable, the construction contract for the restoration or repair of the Project.
- (d) Following the initial notice required under <u>Section 7.2(b)</u>, the Claiming Party will provide Buyer detailed status reports of the Force Majeure Event no less than once every two weeks, which will include:
  - (i) the status of the Force Majeure Event, including any updates to the circumstances surrounding the Force Majeure Event;
  - (ii) if the Claiming Party is Seller, the status of the implementation of the Force Majeure Remediation Plan, including any subsequent modifications to such plan;

- (iii) the projected days of remaining delay or non-performance, and specific reasons causing such delays or non-performance; and
  - (iv) any other details reasonably requested by the Non-Claiming Party.
- (e) When the Claiming Party is able to resume performance of its obligations under this Agreement, such Party will give the Non-Claiming Party written notice, and the Parties will resume performance under this Agreement. In no event will the Term be extended due to the occurrence of any Force Majeure Event.

7.3 <u>Termination for Extended Force Majeure</u> . Without limiting the provisions of
Section 2.7, if a Force Majeure Event continues for a period of
then either Party will have the right to terminate this
Agreement by providing the other Party with not less than 10 Business Days' prior written notice;
Upon the effective date of such termination, neither
Party will have any further rights or obligations under this Agreement, except for those rights and
obligations arising before the effective date of such termination and as provided in <u>Article 8</u> . Further, neither Party will be liable to the other Party for damages or otherwise owe to the other
Party a termination payment of any kind.
Tarty a termination payment of any kind.
7.4 No Relief from Liability for Prior Breach.
ARTICLE 8
ARTICLE 8
FVENTS OF DEFAULT: REMEDIES
EVENTS OF DEFAULT; REMEDIES
EVENTS OF DEFAULT; REMEDIES  8.1
· · · · · · · · · · · · · · · · · · ·
· · · · · · · · · · · · · · · · · · ·
· · · · · · · · · · · · · · · · · · ·
· · · · · · · · · · · · · · · · · · ·
· · · · · · · · · · · · · · · · · · ·
· · · · · · · · · · · · · · · · · · ·
· · · · · · · · · · · · · · · · · · ·
· · · · · · · · · · · · · · · · · · ·
· · · · · · · · · · · · · · · · · · ·
· · · · · · · · · · · · · · · · · · ·
· · · · · · · · · · · · · · · · · · ·
· · · · · · · · · · · · · · · · · · ·



Page 24



8.3 <u>Termination for an Event of Default</u>. If an Event of Default has occurred and is not cured within the applicable cure period, if any, set forth in <u>Section 8.1</u>, the Non-Defaulting Party will have the right, at any time when such Event of Default is continuing, and in addition to the remedies set forth in <u>Section 8.2</u>, to:



- 8.4 <u>Draw or Demand on Security</u>. Without limiting either Party's liability hereunder, any amounts owed by either Party to the other under this Agreement (other than disputed amounts) and not satisfied within the remedy period specified in <u>Section 8.1(a)</u> may be satisfied, subject to <u>Section 5.4</u>, by drawing or demanding payment under the relevant Security until the amount of such Security has been exhausted.
- 8.5 <u>Termination Payment</u>. On or as soon as reasonably practicable following the occurrence of the Early Termination Date, the Non-Defaulting Party will calculate the Termination Payment.

8.6	Notice of Termination Payment. As soon as possible after the designation of the
Early Termina	ation Date, the Non-Defaulting Party will notify the Defaulting Party of the amount
of the Termin	ation Payment, if any, payable by the Defaulting Party to the Non-Defaulting Party
or by the Non-	-Defaulting Party to the Defaulting Party, as applicable;
	The notice will include a
written statem	nent setting forth in reasonable detail the calculation of such amount, together with
reasonable su	pporting documentation. If the statement shows a Termination Payment due by the
Defaulting Pa	arty, the Defaulting Party will pay the Termination Payment to the Non-Defaulting
Party	
8.7	Other Remedies.

- 8.8 <u>Duty/Right to Mitigate</u>. Each Party agrees that it has a duty to mitigate damages, and that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement; *provided*, that in no event will such mitigation obligations include any requirement that either Party pay any amounts to the other Party.
- 8.9 <u>Remedies Cumulative</u>. Subject to the express limitations set forth in <u>Section 2.6</u>, <u>Section 8.7</u>, and <u>Section 13.5</u>, each right or remedy of the Parties provided for in this Agreement will be cumulative of and will be in addition to every other right or remedy provided for in this Agreement. A Party's exercise of any one or more of the rights or remedies provided for in this Agreement will not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for in this Agreement.
- 8.10 <u>Effect of Termination of Agreement</u>. The provisions of this Agreement will remain in effect only to the extent necessary (a) to provide for final billings and adjustments related to the period before termination with respect to Metered Quantity and Products delivered to Buyer before the date on which termination of this Agreement is effective, and (b) to make payment of any money due and owing any Party pursuant to this Agreement before termination. However, termination will not affect or excuse the performance of any Party under any provision of this Agreement that survives termination.

## ARTICLE 9 DODD-FRANK ACT SWAP REPORTING REQUIREMENTS

- 9.1 <u>Delegation of Reporting Party</u>. The Parties hereby agree that this Agreement will be reported under the Commodity Exchange Act, and that, for purposes of CFTC Regulations 43.3, 45.8, and 46.5 (17 C.F.R. §§ 43.3, 45.8, 46.5), Seller will: (a) be the "reporting party" or the "reporting counterparty," as the case may be, with respect to this Agreement (the "Reporting Party"); (b) bear all costs associated with reporting in compliance with the Commodity Exchange Act; and (c) promptly reimburse Buyer for any costs Buyer incurs as a result of Seller's failure to comply with this <u>Article 9</u> and the reporting requirements under the Commodity Exchange Act. As of the Effective Date, the Parties agree further that the Parties' obligations set forth in <u>Exhibit 4</u> represent a single Swap with multiple settlement periods, as defined in the CFTC Regulations, and must be reported by the Reporting Party as such pursuant to Part 45 of the CFTC Regulations.
- 9.2 Permitted Disclosure. Notwithstanding any restrictions on disclosure to the contrary in this Agreement or in any non-disclosure, confidentiality or similar agreement between the Parties, each Party consents to the disclosure of information in connection with this Article 9 only to the extent required by CFTC Regulations and only to the persons or entities contemplated by those CFTC Regulations. Additionally, to the extent either Party needs additional information or details from the other Party in order to comply with any such Applicable Laws (including information concerning such other Party's organization, corporate status, or status under the CFTC Regulations), such other Party will promptly provide such additional information or details to the requesting Party upon request for such information. To the extent that applicable non-disclosure, confidentiality, bank secrecy or other law imposes non-disclosure requirements on transaction and similar information required to be disclosed pursuant to Applicable Laws but permits a Party to waive such requirements by consent, the consent and acknowledgements provided herein will be deemed a consent by each Party for purposes of such other Applicable Laws.
- 9.3 <u>Identifying Information</u>. Each Party represents and warrants to the other Party that the information provided in <u>Exhibit 17</u> with respect to such Party is true, accurate and complete in every material respect as of the Effective Date. Each Party will, promptly following any material change in any of its information included in <u>Exhibit 17</u> or upon identifying that any such information is no longer true, accurate and complete in every material respect, provide notice to the other Party together with the changes or updates to such information as are needed to cause such information to be true, accurate and complete in every material respect. To facilitate the Reporting Party's compliance with the foregoing reporting obligations, the non-Reporting Party will promptly, provide notice to the Reporting Party of the occurrence of any "corporate event" with respect to the non-Reporting Party that would constitute a "life cycle event" (in each case as such term is used in Part 45 of the CFTC Regulations), together with sufficient detail regarding such life cycle event to enable the Reporting Party to comply with any applicable reporting requirement related to such life cycle event.
- 9.4 <u>Recordkeeping</u>. Each Party will comply with the recordkeeping requirements of the CFTC Regulations and will bear its own costs associated with its compliance with such CFTC Regulations.

9.5 <u>Defaults</u>. Each Party agrees that an Event of Default or other similar event will not occur under this Agreement or any other contract between the Parties solely on the basis of (a) a representation provided solely in any by it in connection with the reporting of a Swap hereunder or in this <u>Article 9</u> being incorrect or misleading in any material respect or (b) a breach of any covenant or agreement set forth solely in this <u>Article 9</u>; *provided*, *however*, that nothing in this <u>Article 9</u> will prejudice any other right or remedy of a Party at law or under this Agreement or any other contract in respect of any misrepresentation or breach described in <u>clause (a)</u> or <u>(b)</u> above. This <u>Article 9</u> will not alter a Party's termination rights or remedies, if any, applicable to a breach of any representation, warranty, covenant or agreement that is not provided or set forth solely in any information provided for purposes of reporting or in this <u>Article 9</u>, including any such breach relating to any event or condition that could also cause or constitute a misrepresentation or breach described in <u>clause (a)</u> or <u>(b)</u> above.

### ARTICLE 10 MARKET CHANGES; REGULATORY EVENTS; CHANGE IN LAW

#### 10.1 <u>Market Changes</u>.

(a) If a Change in Market Design or a Market Disruption Event occurs or is reasonably likely to occur, then either Party, on written notice by the affected Party, may request the other Party to enter into negotiations to make changes to this Agreement as necessary or appropriate to allow the Products to be accounted for by this Agreement, while attempting to preserve to the maximum extent possible the benefits, burdens and obligations set forth in this Agreement as of the Effective Date. Upon receipt of such notice requesting negotiations, the Parties will promptly meet and negotiate in good faith such changes, *provided*, neither Party

will be obligated to agree to any such changes.

(ii) Seller will continue to deliver the Products to Buyer pursuant to Article 4; and (iv) Seller will continue delivery of the Metered Quantity into the Applicable Market.

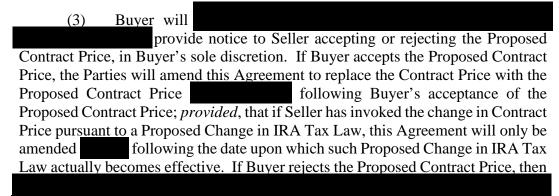
#### 10.2 Change in Law.

(a) Except as set forth in <u>Section 10.2(b)</u>, the Parties agree that the obligations of the Parties under this Agreement will not be affected by any change in Applicable Laws that (i) alters either Party's costs in connection with this Agreement or the value of the Products delivered or transferred under this Agreement, or (ii) affects in any other material

way the purpose or economics of this Agreement. Seller will be solely responsible for any change in Applicable Law or increased costs associated with the development, construction, financing or operation of the Project, including (1) interconnection of the Project, (2) eligibility, loss or reduction in state or federal Tax benefits, (3) changes in the Tax code that impact the economics of the Project or its financing, and (4) any other changes in equipment pricing, including as a result of tariffs imposed by the U.S. government as a result of a federal agency proceeding, including pursuant to Section 301 of the Trade Act of 1974, Section 201 of the Trade Act of 1974, and the antidumping and/or countervailing duty laws.

- (b) As of the Effective Date, Seller has assumed for purposes of this Agreement that (i) upon the Project being placed in service for federal income tax purposes, the Project will qualify for: (A) the increased credit amount for qualified facilities pursuant to Section 45(b)(6) of the Internal Revenue Code with respect to the federal renewable energy production tax credit; or the increase in credit rate for energy projects pursuant to Section 48(a)(9) of the Internal Revenue Code with respect to the energy investment tax credit; (B) the domestic content adder pursuant to Sections 45(b)(9) and 48(a)(12) of the Internal Revenue Code; and (C) the energy community adder pursuant to Sections 45(b)(11) and 48(a)(14) of the Internal Revenue Code ("Seller's Tax Assumptions"), and (ii) one or more of Seller's suppliers with respect to the Project will qualify for, or indirectly benefit from, the manufacturing tax credit pursuant to Section 45X of the Internal Revenue Code ("Seller's Expenditure Assumptions").
  - (1) If between the Effective Date and the Commercial Operation Date there is (x) a Change in IRA Tax Law, or (y) a Proposed Change in IRA Tax Law, then Seller may request an adjustment to the Contract Price via a Repricing Notice.
  - (2) The Repricing Notice must include a certification from an independent third-party expert

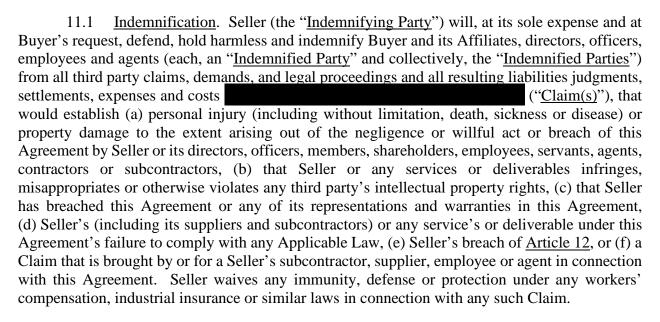
    having reviewed the supporting documentation, that the estimated or actual change to Seller's Tax Assumptions or Seller's Expenditure Assumptions is reasonable, accurate, and directly related to the Change in IRA Tax Law or Proposed Change in IRA Tax Law, as applicable.



the Parties will negotiate in good faith an increased Contract Price. If, in their sole discretion, the Parties fail to agree to a final Contract

Price during such period, either Pa	rty will have the right,		
to	o terminate this Agreen	nent without	liability to
the other Party due to such terminat	tion.		

# ARTICLE 11 INDEMNIFICATION; REQUIRED INSURANCE



- 11.2 <u>Notice of Claims; Procedure.</u> Buyer will give Seller reasonable notice of each Claim for which it requests indemnification under <u>Section 11.1</u>. Buyer will also give Seller its reasonable cooperation in the defense of each Claim, at Seller's expense. Seller will use counsel reasonably satisfactory to Buyer to defend each Claim. Each Indemnified Party may participate in the defense of a Claim at its own expense. If at any time Buyer reasonably determines that any Claim might adversely affect any Indemnified Party, then without limiting Seller's indemnification obligations, Buyer may take control of the defense of such Claim, and in such event Buyer and its counsel will proceed diligently and in good faith with that defense. Seller may settle any Claim with Buyer's prior written consent, which may not be unreasonably withheld. Seller will not settle any Claim without the Indemnified Parties' prior written consent, which may not be unreasonably withheld. Seller will ensure that any settlement it makes of any Claim is made confidentially, except where prohibited by Applicable Law.
- 11.3 <u>Insurance Proceeds</u>. If the Indemnifying Party is obligated to indemnify the Indemnified Party under this <u>Article 11</u>, the amount owing to the Indemnified Party is
- 11.4 <u>Insurance Requirements</u>. During the Term Seller will acquire and maintain, and prior to the Commercial Operation Date will require that its engineering, procurement and construction contractor acquire and maintain, each at its sole cost

and expense, such types and amounts of insurance coverage as are consistent with Prudent Industry Practices but in no event, in the aggregate between Seller and its engineering, procurement and construction contractor, less than the types and amounts described in <a href="Exhibit 11">Exhibit 11</a> (except that only Seller will be required to acquire and maintain property insurance for the Project) and this <a href="Article 11">Article 11</a>. The insurance policies for the coverage set forth in <a href="Exhibit 11">Exhibit 11</a> must (a) be issued by companies with a rating of A-/VII or better in the current Best's Insurance Reports published by A.M. Best Company, Inc., (b) not be able to be cancelled or have coverage reduced without at least 30 days' notice from Seller to Buyer, (c) for Commercial General Liability only, name Buyer and its Affiliates, and their respective officers, directors, employees, successors, assigns, licensees, distributors, contractors and agents, as additional insureds, (d) provide coverage on an occurrence basis, (e) waive any insurer right of subrogation against Buyer and its Affiliates and their respective officers, directors, employees, agents, and contractors, and (f) provide primary coverage, without any right of contribution from any other insurance that Buyer may have. Seller will send Buyer certificates of insurance for the coverages set forth in Exhibit 11

pursuant to Exhibit 10. Nothing in this Section 11.4 modifies

any of Seller's obligations under this Agreement.

#### ARTICLE 12 CONFIDENTIALITY

#### 12.1 Confidential Information.

- (a) <u>General</u>. Subject to the other terms of this Agreement, (i) neither Party will disclose the other Party's Confidential Information to third parties, and (ii) each Party will use the other Party's Confidential Information only for purposes of the Parties' business relationship.
- (b) <u>Security Precautions</u>. Each Party agrees (i) to take reasonable steps to protect the other's Confidential Information (such steps must be at least as protective as those a Party takes to protect its own Confidential Information), (ii) to notify the other promptly upon discovery of any unauthorized use or disclosure of Confidential Information; and (iii) to cooperate with the other to help regain control of the Confidential Information and prevent further unauthorized use or disclosure of it.

#### (c) <u>Sharing Confidential Information with Confidentiality Representatives.</u>

(i) Each Party may disclose the other's Confidential Information to our Confidentiality Representatives (who may then disclose that Confidential Information to other Confidentiality Representatives) only if such Persons have a need to know about it for purposes of the business relationship between the Parties and under nondisclosure obligations at least as protective as this <u>Article 12</u>. Before doing so, each Party must (1) ensure that Confidentiality Representatives are required to protect the Confidential Information on terms consistent with this Agreement, and (2) accept responsibility for each Confidentiality Representative's use of Confidential Information.

- (ii) Neither Party is required to restrict work assignments of Confidentiality Representatives who have had access to Confidential Information, but this will not affect a Party's responsibility to comply with the obligations set out in this Agreement. Each Party acknowledges and agrees that neither Party can control the incoming information the other Party will disclose in the course of working together, or what a Party's Confidentiality Representatives will remember, even without notes or other aids. Each Party agrees that use of Confidential Information in Confidentiality Representatives' unaided memories in the development or deployment of our respective products or services does not create liability under this Agreement or trade secret law, and each Party agrees to limit what is disclosed to the other accordingly.
- (d) <u>Disclosure Required by Law.</u> Each Party may disclose the other's Confidential Information if required to comply with a court order or other government demand that has the force of law. Before doing so, such Party must seek the highest level of protection available and, when possible, give the other enough prior notice to provide a reasonable chance to seek a protective order.

- (f) <u>Amendment of Nondisclosure Agreement</u>. Upon the Effective Date, the confidentiality of the transaction contemplated in this Agreement is no longer governed by the Nondisclosure Agreement, and the confidentiality terms of this Agreement supersede and replace the Nondisclosure Agreement with respect to the transaction specifically provided herein.
- (g) <u>Survival of Obligations</u>. The confidentiality obligations of the Parties under this Agreement will survive the expiration of the Term or the termination of this Agreement.

#### 12.2 Public Announcements.

(a) Seller may not, without the prior written consent of Buyer (i) use any names, trademarks or logos of Buyer or its Affiliates, or (ii) originate any publicity, issue or make any public announcement, press release or statement, written or oral, regarding this Agreement.

For previously approved and ongoing public disclosures related to this Agreement, each Party has the right to request revisions or elimination of such disclosures upon written request if the disclosure is subsequently found to be inaccurate, misleading, or damaging to either Party's reputation.

(b) No Party will be prohibited from issuing or making any such public announcement, press release or statement, so long as such Party gives written notice to, but without obtaining approval from the other Party, if it is necessary to do so to comply with Applicable Laws, legal proceedings or rules and regulations of any stock exchange having jurisdiction over such Party or if it is necessary to do so in connection with such Party or its Affiliates' financial statements.

#### ARTICLE 13 MISCELLANEOUS

#### 13.1 Notices.

- (a) <u>Effectiveness</u>. Any notice or other communication in respect of this Agreement must be (i) delivered in person or (ii) sent via certified or registered mail or email, in each case as set forth below; *provided* that if such notice or communication is sent by certified or registered mail, then a copy must also be sent via e-mail to the address details provided in <u>Exhibit 10</u>. Any notice or communication sent in accordance with the preceding sentence will be deemed effective as follows: (1) if in writing and delivered in person or by courier, on the date it is delivered, (2) if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date that mail is delivered or its delivery is attempted, or (3) if sent by e-mail, on the date that it is received, unless, in each case, the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication will be deemed given and effective on the first following day that is a Business Day.
- (b) <u>Change of Notice Information</u>. Either Party may by notice in writing to the other change (i) the address details at which notices or other communications are to be given to it, (ii) the names or titles of designated notice recipients, and (iii) other matters pertinent to the receiving Party's receipt and processing of notices.
- Dispute Resolution. Seller and Buyer will each appoint a representative, as 13.2 designated on Exhibit 10 to coordinate implementation of this Agreement (each a "Representative" and collectively the "Representatives"). If any dispute arises, the Representatives will meet to resolve such dispute after the written request of either Representative. If the Representatives are unable to resolve such dispute certain of Buyer's and Seller's senior officers or executives will meet, after either Representative provides written notice that the Representatives have been unable to resolve such dispute. If such senior officers or executives are unable to resolve such dispute either Party will have the right to refer the dispute to a court of competent jurisdiction as provided in Section 13.4, which will be the Parties' sole legally binding forum available for resolving a dispute.
- 13.3 <u>Audit Rights</u>. Seller agrees that Buyer or Buyer's authorized representative, and any governmental agency that regulates Buyer may, at all reasonable times during the Term and upon reasonable notice, inspect and audit the books and records of Seller

for the sole purpose of evaluating Seller's compliance with this Agreement and any Applicable	e
Law applicable to Buyer. Seller will retain all applicable books and records	
as required by Applicable Law	·
Any such audit will be conducted by Buyer's corporate internal audit personnel or by a certified	d
public accountant firm selected by Buyer. Buyer will provide reasonable notice to Seller before	e
the audit or inspection.	
Nothing in this Section 13.3 limits Buyer's right to audit Seller under any other Section of this	S

information and documentation required in relation to an inspection by a Governmental Authority.

### 13.4 Governing Law; Jurisdiction; Waiver of Jury Trial.

Agreement. Seller will respond

(a) THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER WILL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY CONSENTS AND SUBMITS TO THE EXCLUSIVE JURISDICTION AND VENUE IN A COURT IN THE STATE OF NEW YORK WITH RESPECT TO ANY DISPUTE ARISING OUT OF OR RELATED TO THIS AGREEMENT, EXCLUSIVELY WITH THE FEDERAL OR STATE COURTS LOCATED WITHIN NEW YORK COUNTY, NEW YORK IN THE BOROUGH OF MANHATTAN, AND ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING WILL BE HEARD AND DETERMINED BY SUCH COURT. EACH PARTY CONSENTS TO SERVICE OF PROCESS BY CERTIFIED MAIL AT ITS ADDRESS EFFECTIVE PURSUANT TO ARTICLE 13.

with

(b) EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT.

#### 13.5 LIMITATION OF LIABILITY.

(a) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY PUNITIVE, EXEMPLARY, MULTIPLIED, INDIRECT OR CONSEQUENTIAL DAMAGES, LOST PROFITS OR REVENUES OR ANY CLAIM FOR ATTORNEY FEES, COSTS AND PREJUDGMENT INTEREST; *PROVIDED* THAT THE FOREGOING LIMITATIONS DO NOT APPLY TO (I) ANY BREACH OF Article 12 (CONFIDENTIALITY), (II) INDEMNIFICATION OBLIGATIONS PURSUANT TO ARTICLE 11 (INDEMNIFICATION), (III) LIQUIDATED DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT (INCLUDING ANY DELAY DAMAGES, FORWARD SETTLEMENT AMOUNT, AND PERFORMANCE

GUARANTEE DAMAGES), (IV) PRIVACY, DATA PROTECTION, AND PUBLICITY OBLIGATIONS UNDER THIS AGREEMENT (V) INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS IN CONNECTION WITH THIS AGREEMENT, (VI) FRAUD OR FRAUDULENT MISREPRESENTATION, (VII) PERSONAL INJURY OR DEATH TO ANY PERSON, OR (VIII) FINES OR PENALTIES IMPOSED BY APPLICABLE LAW.

(b) TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID UNDER THIS AGREEMENT ARE LIQUIDATED (INCLUDING ANY DELAY DAMAGES, FORWARD SETTLEMENT AMOUNT, AND PERFORMANCE GUARANTEE DAMAGES), THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. THE PARTIES AGREE TO WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

#### 13.6 <u>Transfers and Assignment</u>.

(a) <u>General</u>. Except as provided in this <u>Section 13.6</u>, neither Party will sell, assign or transfer, in whole or in part, this Agreement without the prior written consent of the non-assigning Party, which consent will not be unreasonably withheld, delayed or conditioned;

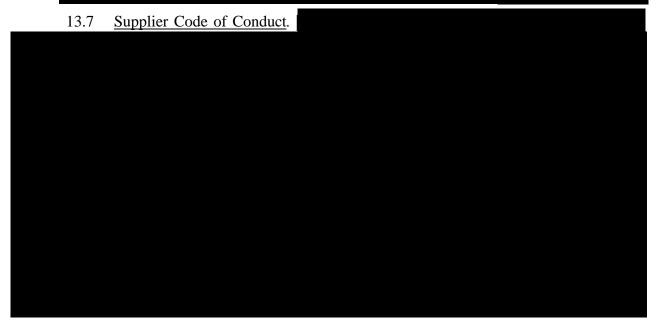
Any such assignment without the prior written consent of the non-assigning Party is void.

A Party may make the following assignments without the prior written consent of the other Party, but will provide written notice of such permissible assignments as soon as practical (i) to an Affiliate, or (ii) to any Person succeeding to all or substantially all of its assets; *provided*, that, in each case, such assignee (1) has agreed in writing to be bound by the terms and conditions of this Agreement, (2) has complied with the obligations of the assigning Party to provide Security, (3) in the case of Seller, such assignee is a Qualified Operator or retains, prior to the date of such transfer, a Qualified Operator to operate the Project, (4) is not a Buyer Competitor, an Affiliate of a Buyer Competitor, or a Restricted Party, and (5) has been registered as a supplier in Buyer's system.

- (b) <u>Change in Control</u>. Any Change in Control of Seller (i) will be subject to the prior written consent of Buyer, such consent not to be unreasonably withheld, and (ii) must not result in the Ultimate Parent becoming a Buyer Competitor or Restricted Party.
- (c) <u>Assignment to Financing Providers</u>. Seller may, without relieving itself from liability hereunder, transfer, pledge, encumber or assign this Agreement or the account, revenues or proceeds thereof, or any part of its ownership interest in the Project,

as collateral to a Project Lender in connection with debt (or, if applicable, tax equity) financing or refinancing of the Project. With respect to consents to collateral assignment or estoppel certificates in connection with the financing or refinancing of the Project, Seller will use its best efforts to utilize the form of consent and agreement in Exhibit 18 and form of estoppel in Exhibit 10, as applicable, with little to no deviation

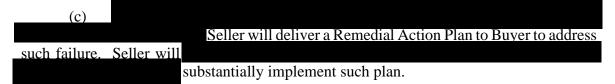
of estoppel in Exhibit 19, as applicable, with little to no deviation.



#### 13.8 No Modern Slavery.

- (a) In connection with the construction, operation and procurement of Major Equipment for the Project, Seller will, and will ensure that its contractors, subcontractors, or suppliers (including Tier 1 Suppliers) will:
  - (i) adopt and use a management system consistent with Prudent Industry Practices to implement the policies and procedures set forth in the Industry Traceability Protocol (including the annexes thereto);
  - (ii) comply in all material respects with all Applicable Laws related to Modern Slavery; and
  - (iii) provide final versions of third party reports commissioned by Seller and related to the traceability of the PV Modules, within 10 days of Seller's receipt of the same; *provided*, that, such reports will be issued by an independent and professional third party who is qualified and experienced in issuing third party reports related to the traceability of the PV Modules;
- (b) Seller's failure to comply with <u>Section 13.8(a)</u> will not be considered a breach or default by Seller of this <u>Section 13.8</u> unless such failure (i) involves the procurement of Major Equipment or the use of on-site work or services resulting from Page 36

Modern Slavery in violation of Applicable Law, and (ii) is committed (1) directly by Seller or any of its Affiliates in connection with the Project, or (2) by Seller's contractors, subcontractors, vendors or agents, and Seller failed to use Prudent Industry Practices to prevent such failure.



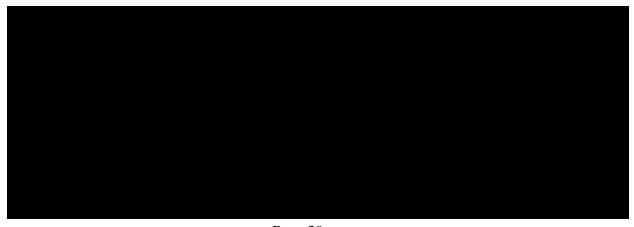
- 13.9 <u>Waiver</u>. No delay or omission by the Parties in exercising any right or remedy provided for in this Agreement will constitute a waiver of such right or remedy nor will it be construed as a bar to or waiver of any such right or remedy on any future occasion. Notwithstanding the foregoing, each Party, in its sole discretion, will have the right, but will have no obligation, to waive, defer or reduce any of the requirements to which the other Party is subject under this Agreement at any time; *provided*, however, that neither Party will be deemed to have waived, deferred or reduced any such requirements unless such waiver, deferral or reduction is in writing and signed by the Party taking such action. A Party's exercise of any rights under this Agreement will apply only to such requirements and on such occasions as such Party may specify and will in no event relieve the other Party of any requirements or other obligations not so specified.
- Agreement, the transactions contemplated in this Agreement, and any instruments that may be provided by either Party under this Agreement will each, and together, constitute one and the same "swap agreement," "forward contract," "forward agreement" and "master netting agreement" within the meaning of the Bankruptcy Code, and that Buyer and Seller are "swap participants" and "forward contract merchants" within the meaning of the Bankruptcy Code. Each Party agrees that it will not make any assertion or claim, or otherwise take any position to the effect that this Agreement, the transactions contemplated under this Agreement, and any instrument(s) that may be provided by either Party under this Agreement do not each, and together, constitute one and the same "swap agreement," "forward contract," "forward agreement" and "master netting agreement" within the meaning of the Bankruptcy Code, or that Buyer and Seller are not "swap participants" and "forward contract merchants" within the meaning of the Bankruptcy Code.
- 13.11 <u>Amendments</u>. This Agreement may be modified or amended only by an instrument in writing signed by the Parties.
- 13.12 <u>Entire Agreement</u>. This Agreement, together with the Security, constitutes the complete and final agreement of the Parties pertaining to the respective subject matter and supersedes the Parties' prior and contemporaneous discussions, agreements and commitments.
- 13.13 <u>Status of the Parties</u>. The Parties are independent contractors, and nothing in this Agreement creates an employer-employee relationship, a partnership, joint venture or other relationship between the Parties. Neither Party has authority to assume or create obligations of any kind on the other's behalf.

- 13.14 <u>Survival</u>. All provisions of this Agreement that either expressly by their terms survive, or by their nature are to survive or come into or continue in force and effect after the expiration or termination of this Agreement, will remain in effect and be enforceable following such expiration or termination.
- 13.15 <u>Further Assurances</u>. Each Party agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party that are not inconsistent with the provisions of this Agreement and that do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

#### 13.16 Rules of Interpretation. As used in this Agreement:

- (a) References to "days" means calendar days, unless the term "Business Days" is used. If the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time will be extended until that time on the next Business Day.
- (b) Relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including."
- (c) Where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings.
- (d) The words "including," "includes," and "include" are deemed to be followed by the words "without limitation".
- (e) References to "or" will be deemed to be disjunctive but not necessarily exclusive (*i.e.*, unless the context dictates otherwise, "or" will be interpreted to mean "and/or" rather than "either/or").
- (f) All references to a given agreement, instrument or other document (including for avoidance of doubt any Applicable Market Rules) will be a reference to that agreement, instrument or other document (or Applicable Market Rules) as modified, amended, supplemented and restated through the date as of which such reference is made.
- (g) Any reference to laws or legislation and to terms defined in, and other provisions of, laws or legislation will be references to the same (or a successor to the same) as has been, or may be, amended, extended, replaced, re-enacted, supplemented or otherwise modified and in effect from time to time during the Term.
- (h) Any reference to times will be to the prevailing time where the Project is located.
  - (i) Any reference to "\$" will be to U.S. dollars.

- 13.17 <u>Headings</u>. The headings to Articles, Sections and Exhibits of this Agreement are for ease of reference only and in no way define, describe, extend or limit the scope of intent of this Agreement or the intent of any provision contained in this Agreement.
- 13.18 No Rights in Third Parties. Except with respect to the lender accommodations set forth in Section 13.6(c), this Agreement and all rights in this Agreement are intended for the sole benefit of the Parties and will not imply or create any rights on the part of, or obligations to, any other Person.
- 13.19 <u>Expenses</u>. Each Party will be responsible for its own costs and expenses (including the fees and expenses of its legal counsel) incurred in the preparation, review, execution and delivery of this Agreement, any Security, and all related documents.
- 13.20 <u>Severability</u>. The invalidity of one or more phrases, sentences, clauses, Sections or Articles contained in this Agreement will not affect the validity of the remaining portions of this Agreement so long as the material purposes of this Agreement can be determined and effectuated.
- 13.21 <u>Joint Effort</u>. Preparation of this Agreement has been a joint effort of the Parties and the resulting document will not be construed more severely against one of the Parties than against the other. Any rule of construction that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement, or any amendments or Exhibits to this Agreement.
- 13.22 <u>Remedies Cumulative</u>. Except as provided in this Agreement, the rights, powers, remedies and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies and privileges provided by Applicable Law.
- 13.23 <u>Counterparts</u>. This Agreement may be signed in multiple counterparts. Delivery of an executed counterpart of this Agreement by electronic transmission in a Portable Document Format ("PDF") or via DocuSign®, Adobe Sign, or equivalent is equally effective as delivery of a manually executed counterpart hereof.
- 13.24 <u>Environmental Justice</u>. Reflecting Buyer and Seller's shared commitment to environmental justice, Seller makes the below commitments to Buyer, consideration for which is contained in the Contract Price.





(c) Seller will make good faith efforts to spend, prior to the Commercial Operation Date, businesses on materials or services in connection with the Project.

(d) In addition to meeting (a), (b), and (c) of this <u>Section 13.24</u>, Seller will request that all primary direct subcontractors submit demographic data indicating the composition of their workforce, including diversity by position type.

[SIGNATURE PAGE FOLLOWS]

## Clover Creek Solar Project LLC d/b/a New Frontiers Solar Park

By: Thomas F. LoTurco
Thomas F. LoTurco (Dec 16, 2024 16:13 EST)

Name: Thomas F. LoTurco

Title: EVP East/Canada/Gov't Affairs Dec 16, 2024

Name: Sandhya Ganapathy

Title: Chief Executive Officer Dec 14, 2024

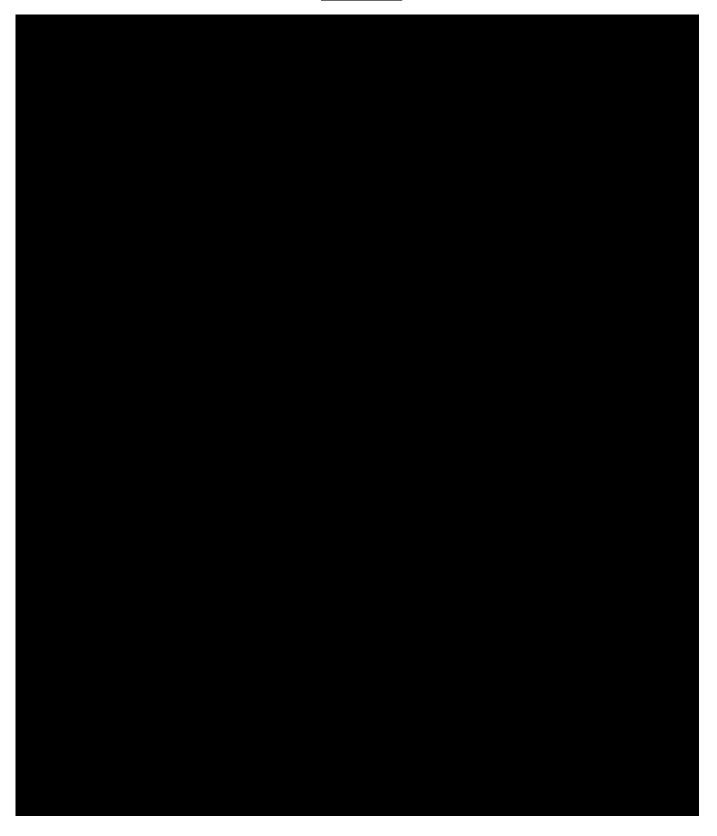
Title: CVP Dec 16, 2024

By: \_\_\_\_

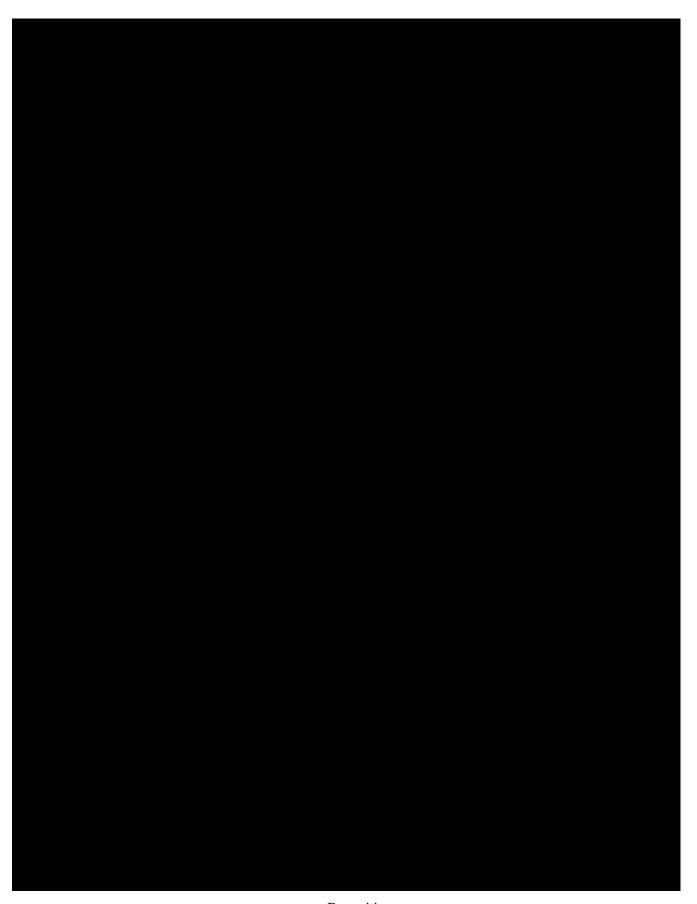
Name:

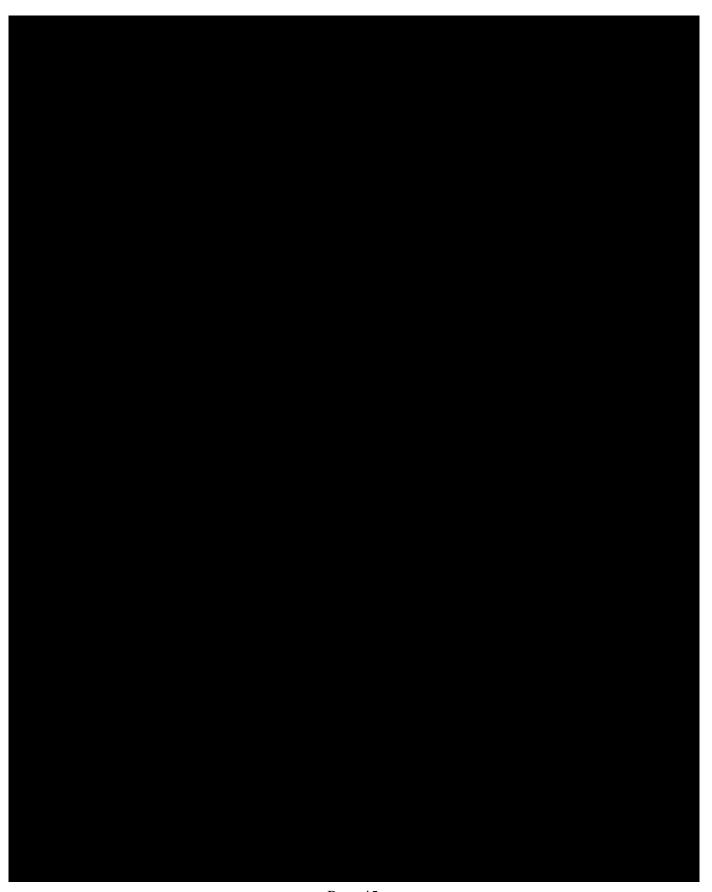
Title: Executive Vice President Dec 16, 2024

## EXHIBIT 1

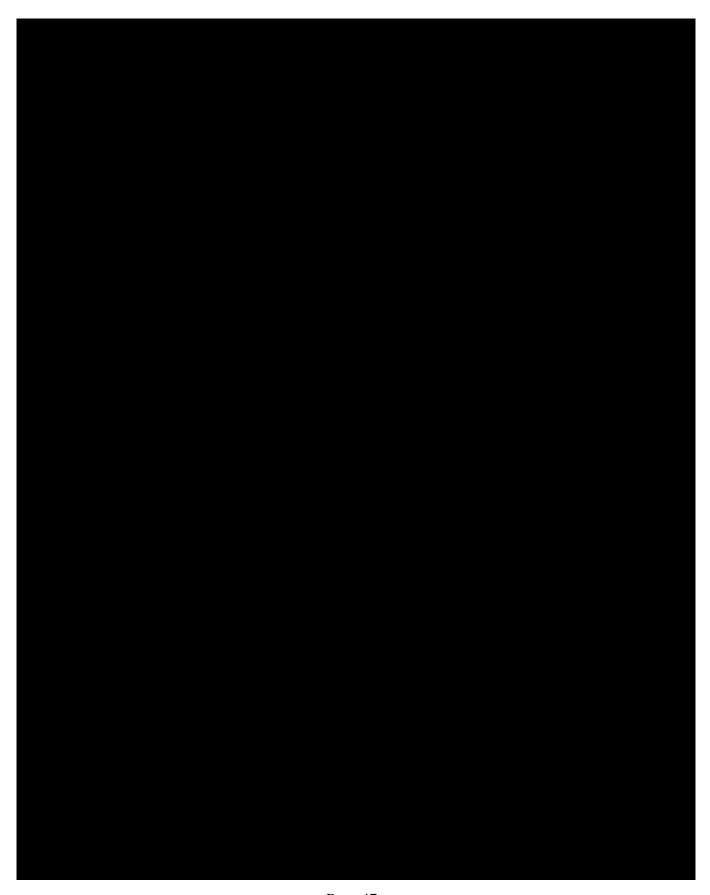


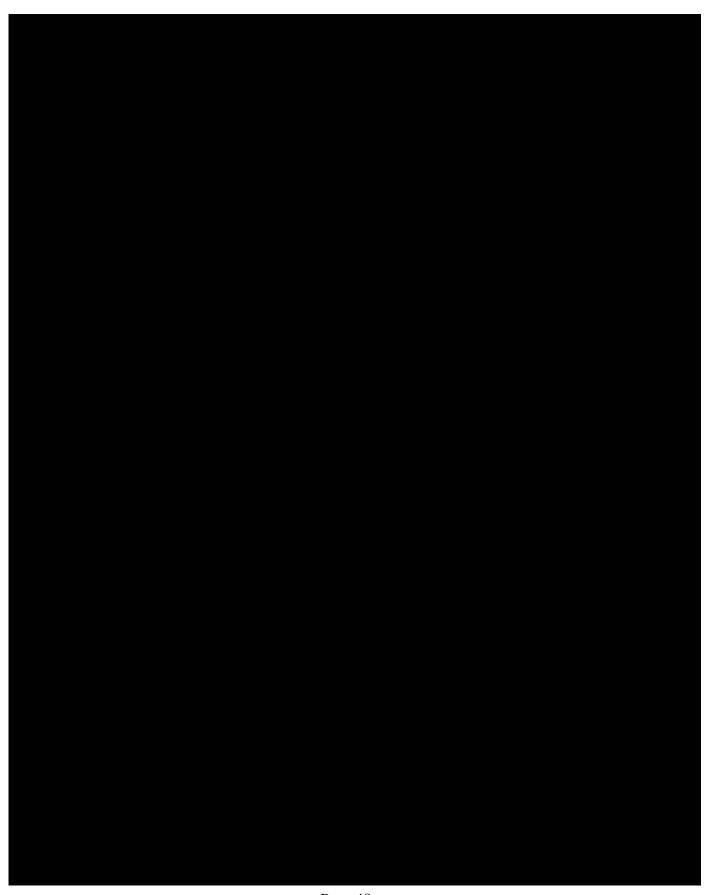


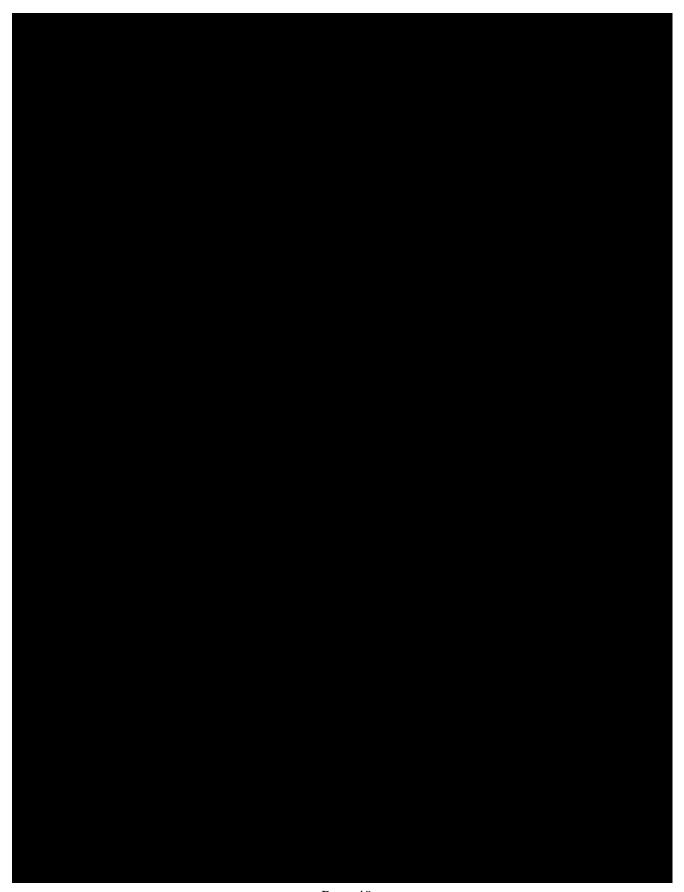


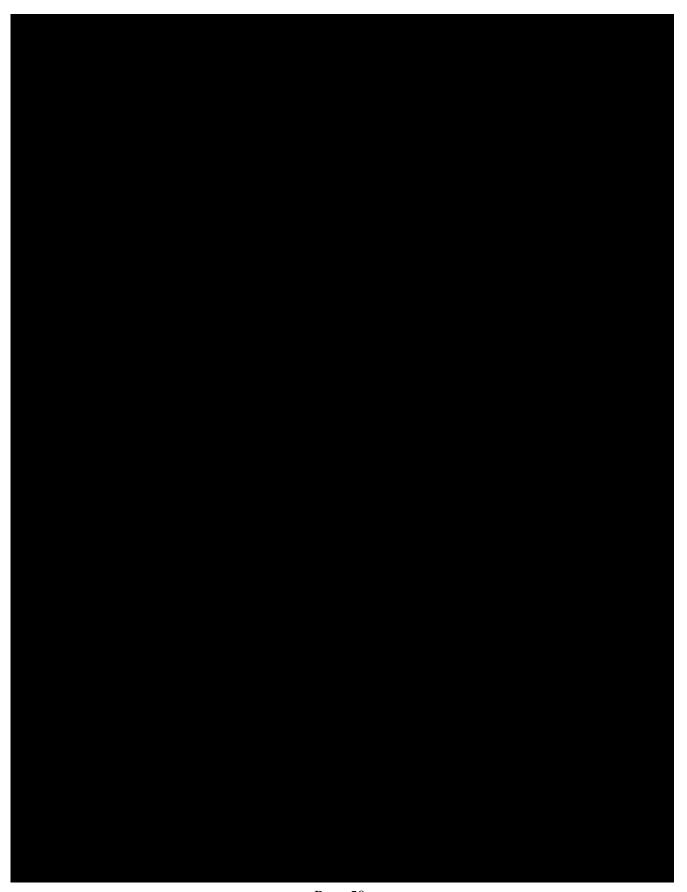


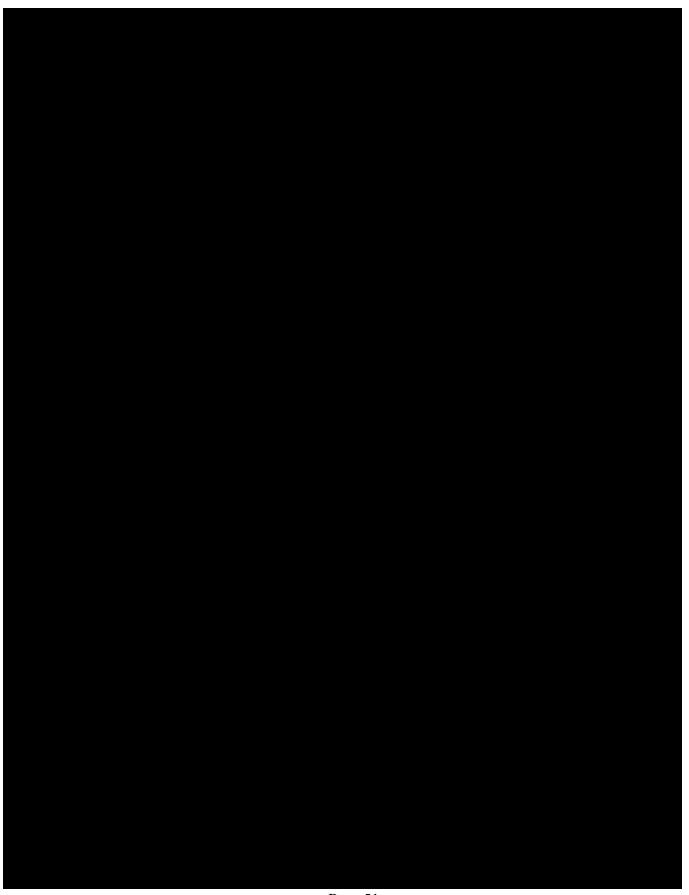


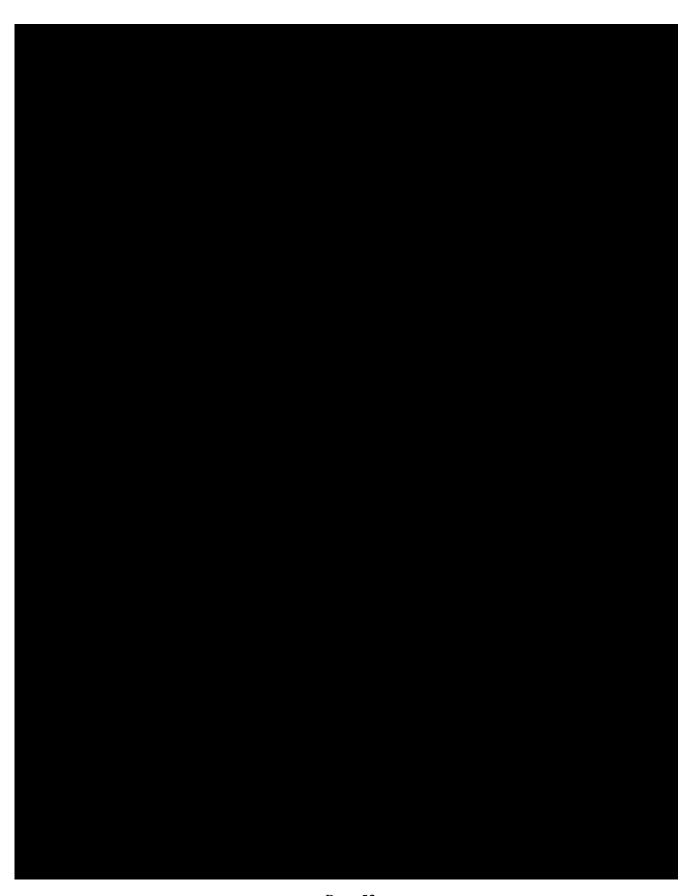


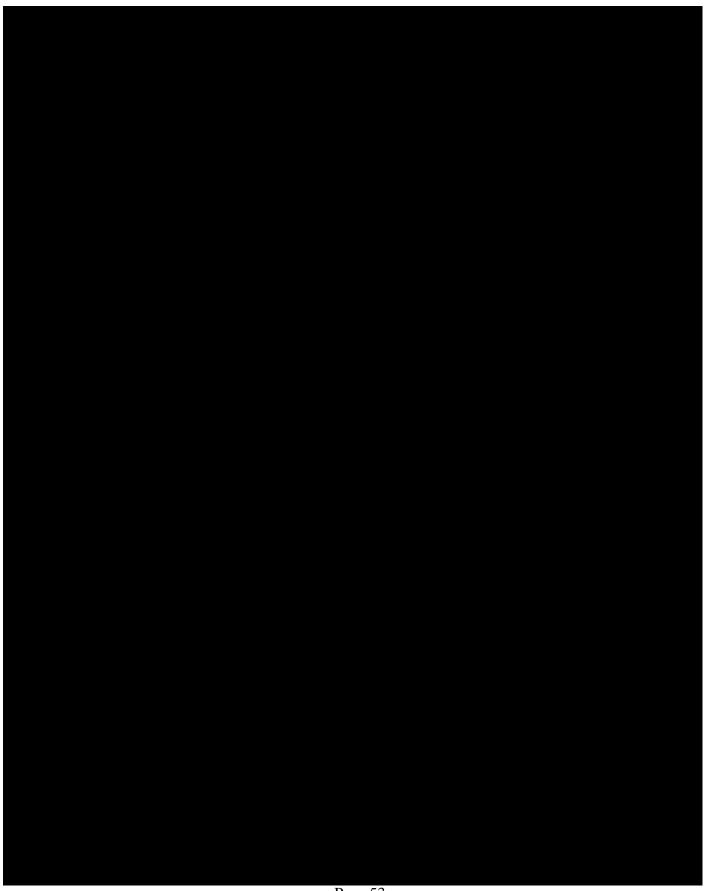


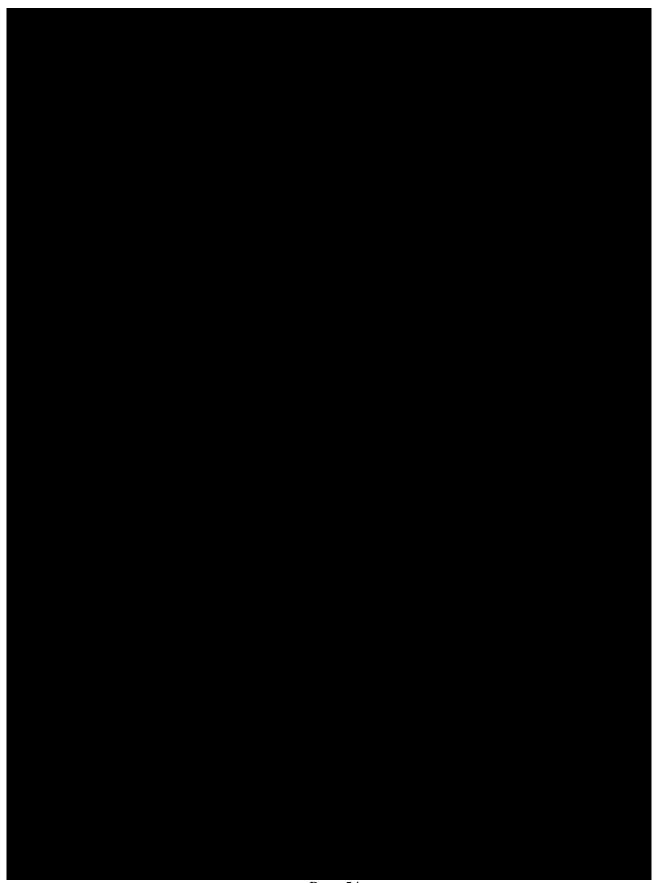


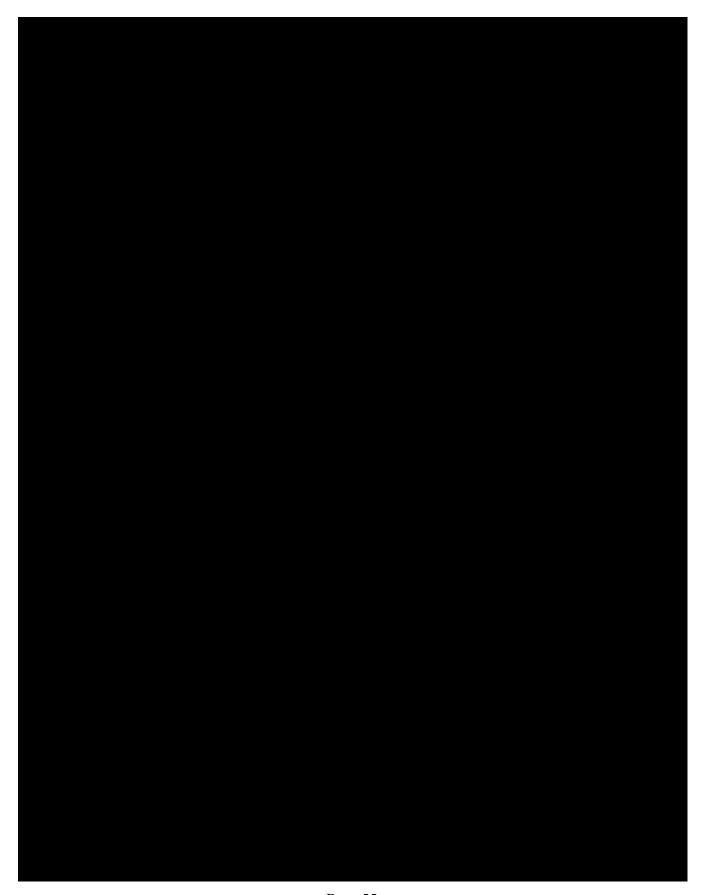


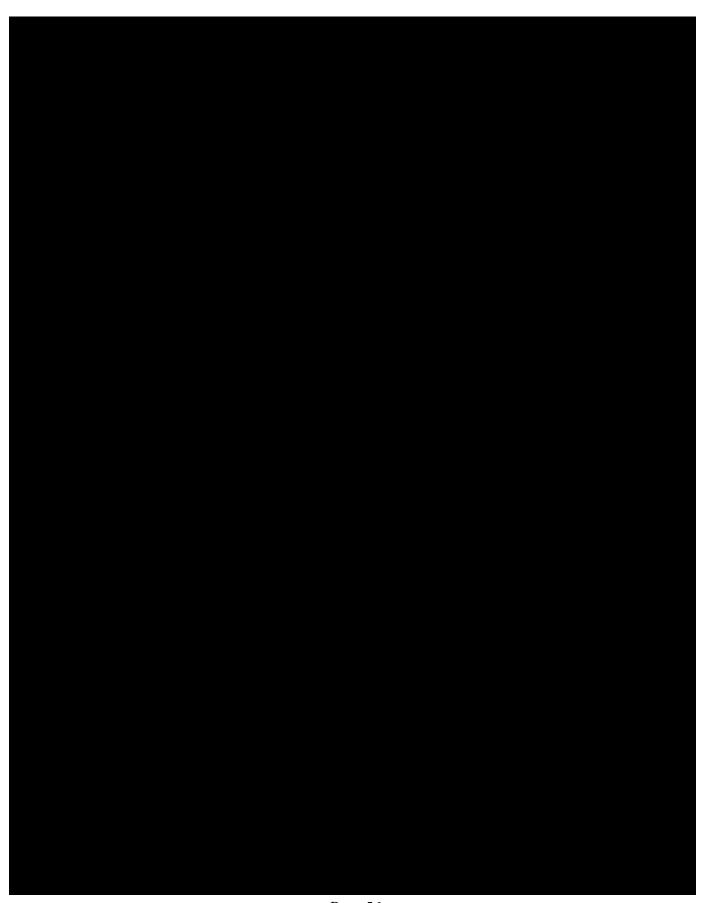




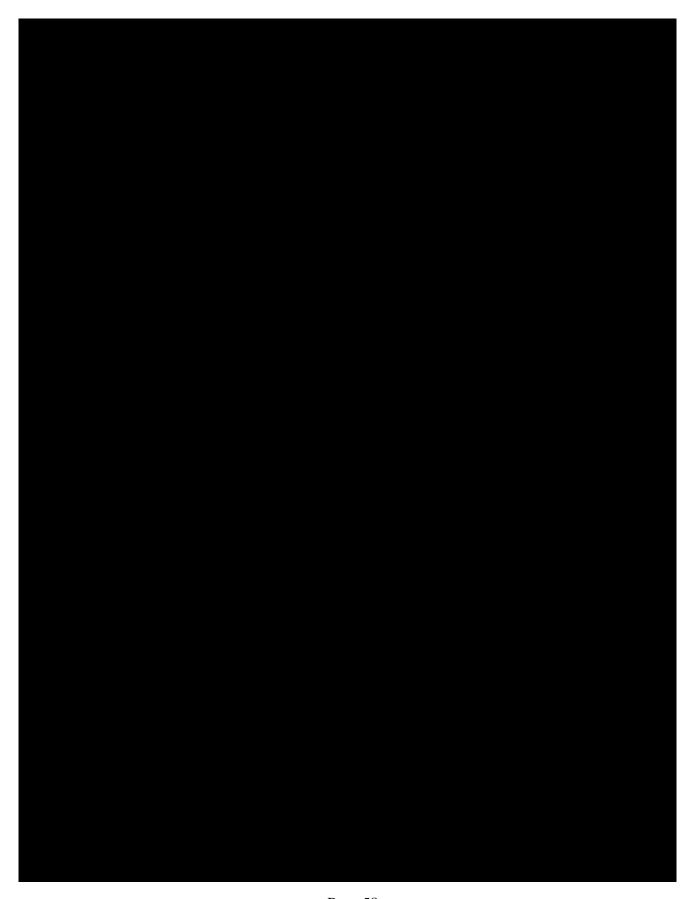


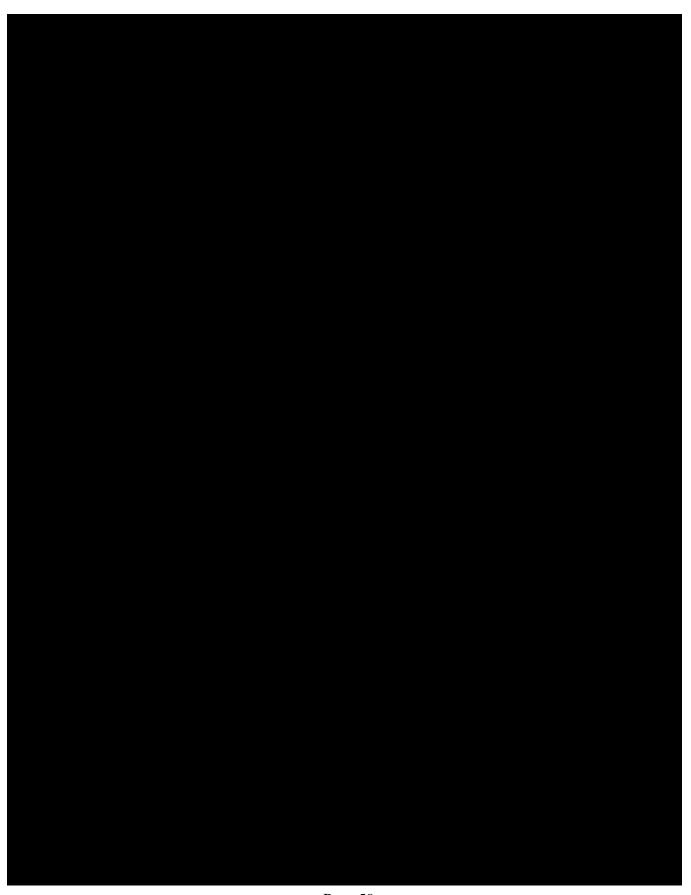


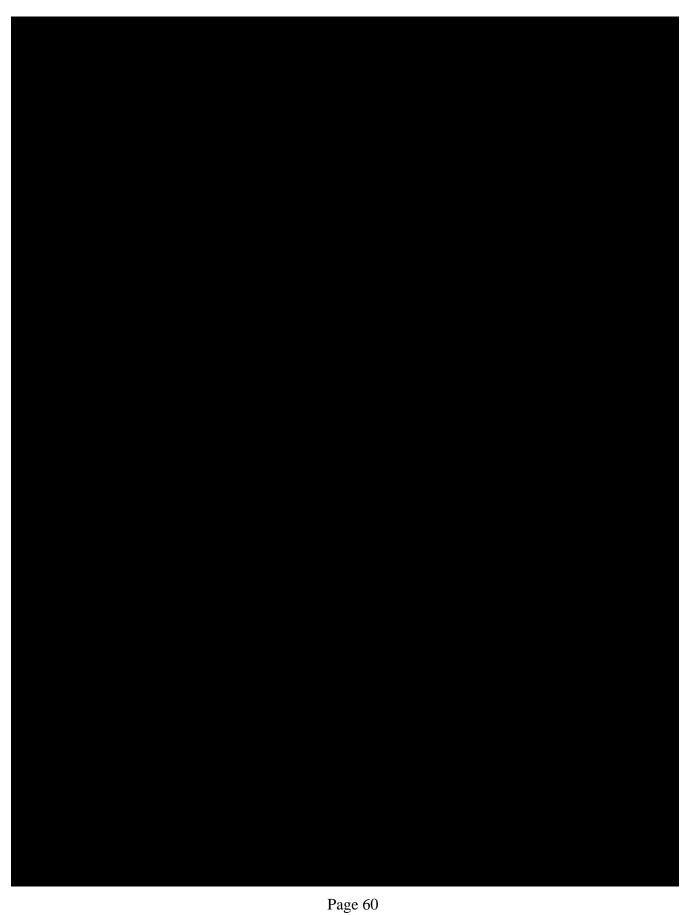


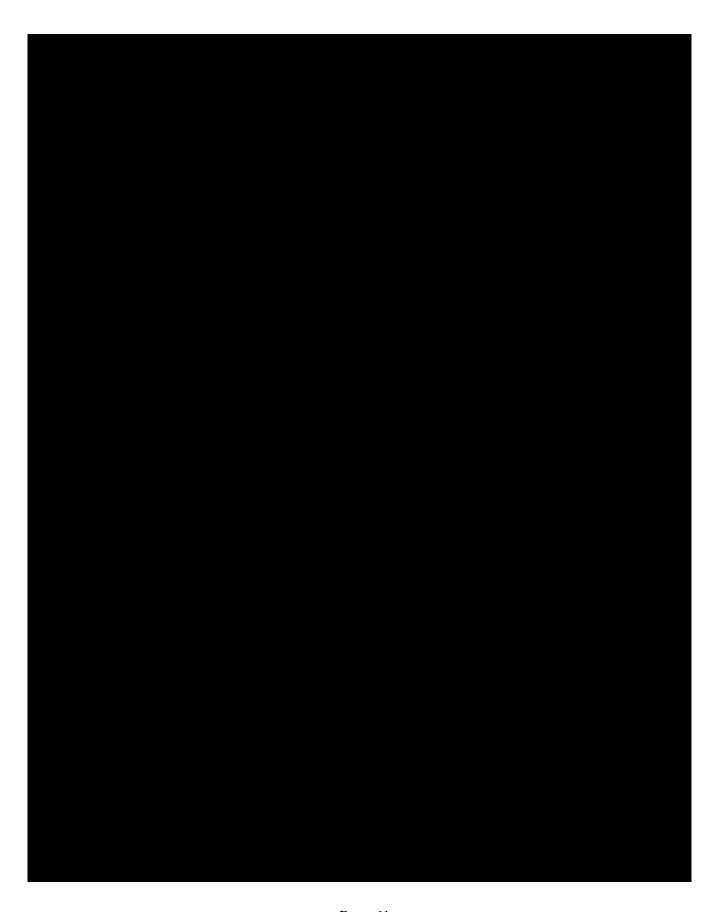






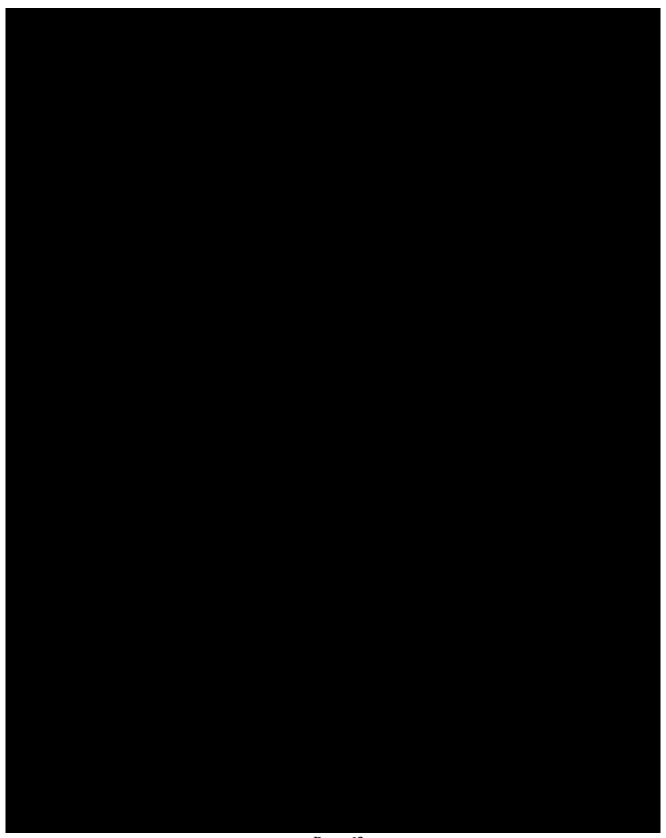






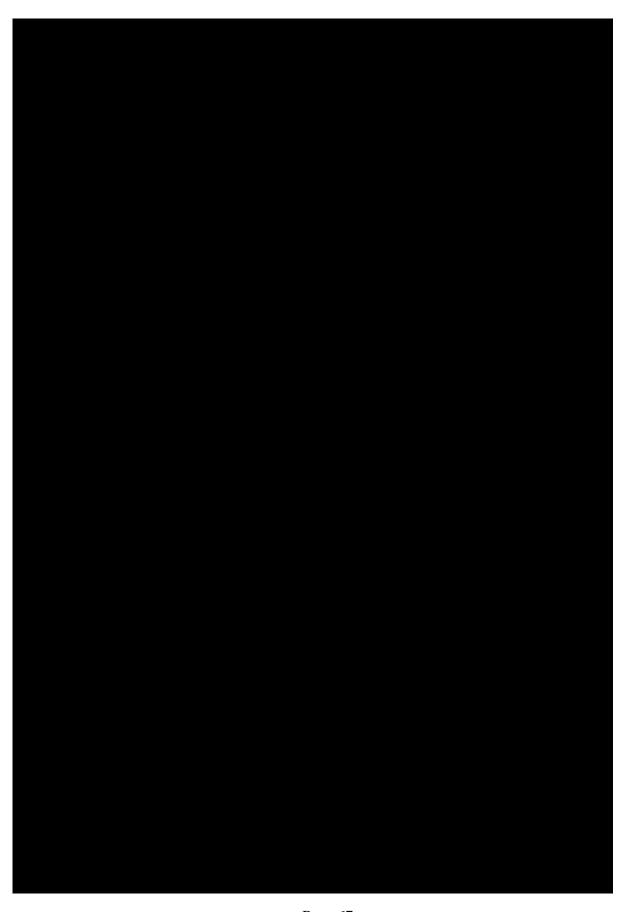


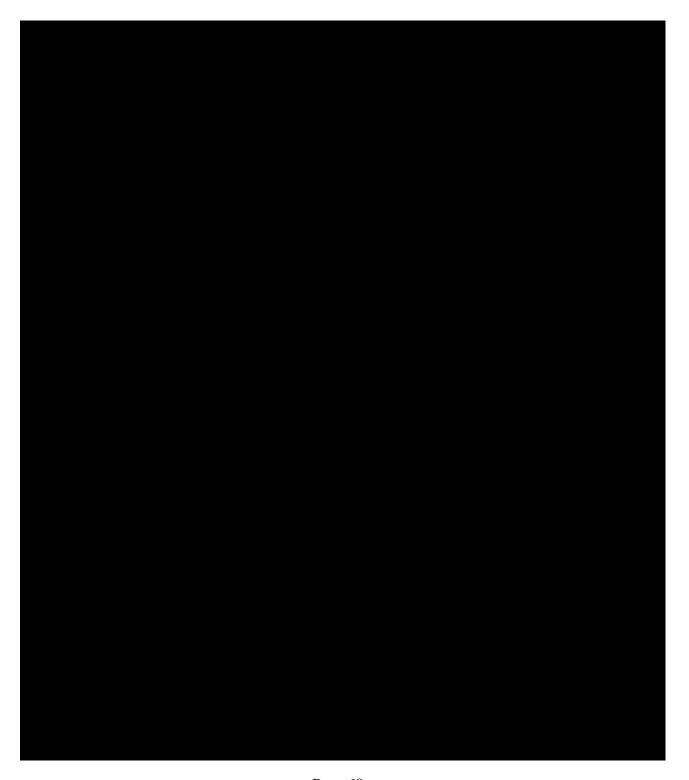
## **EXHIBIT 2**

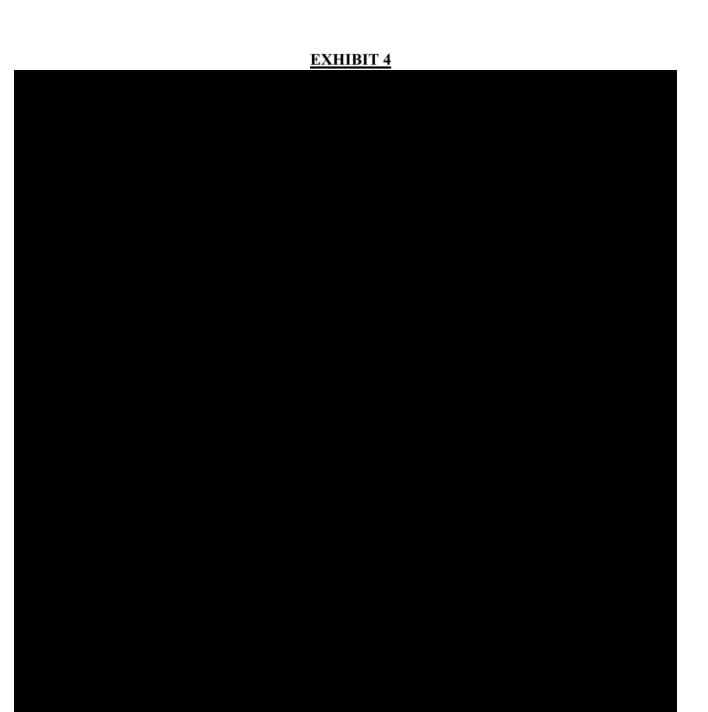




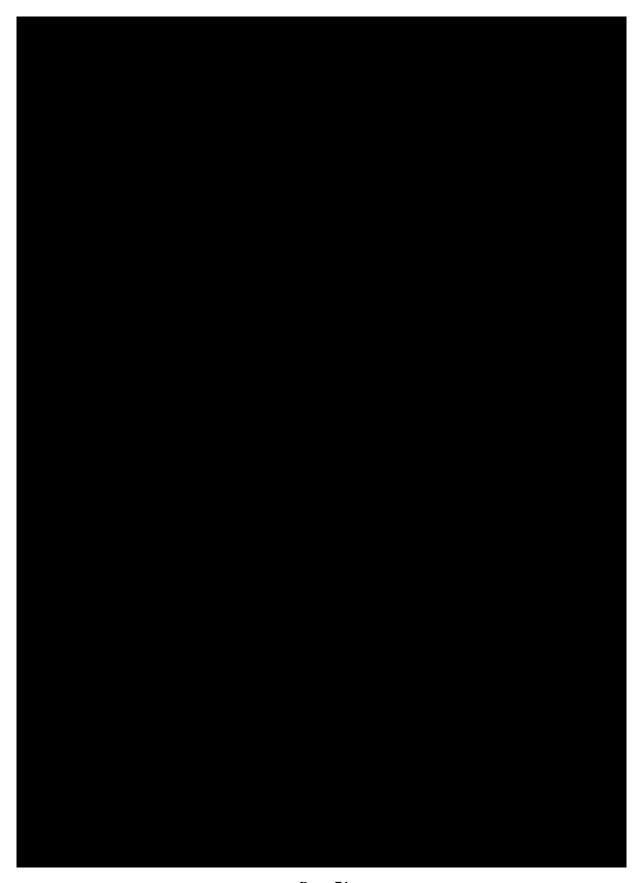






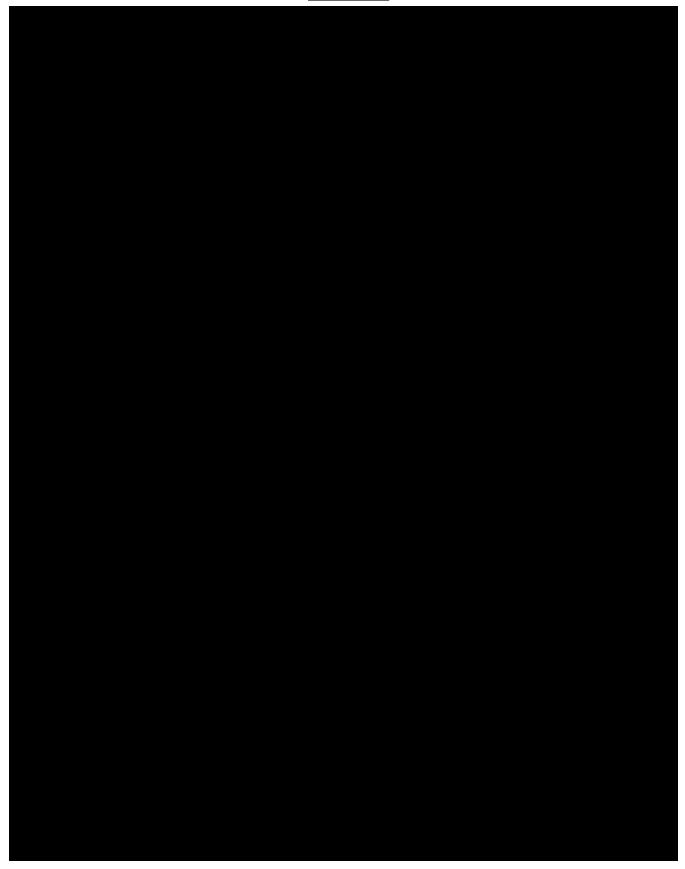


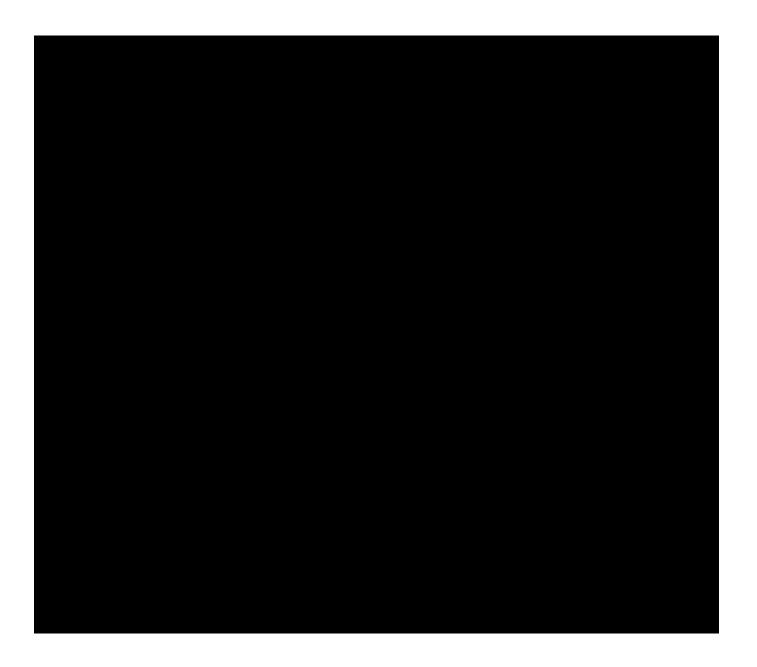


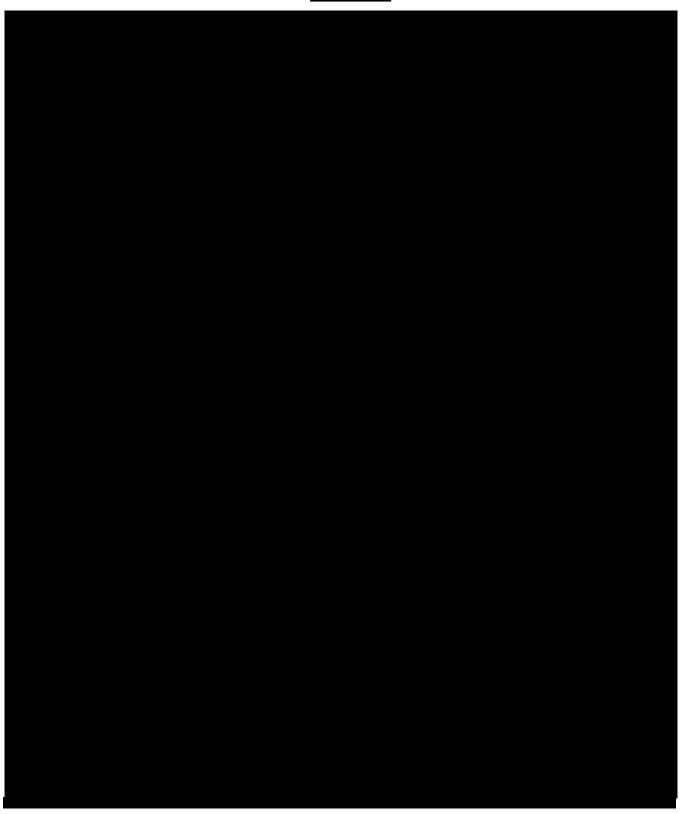


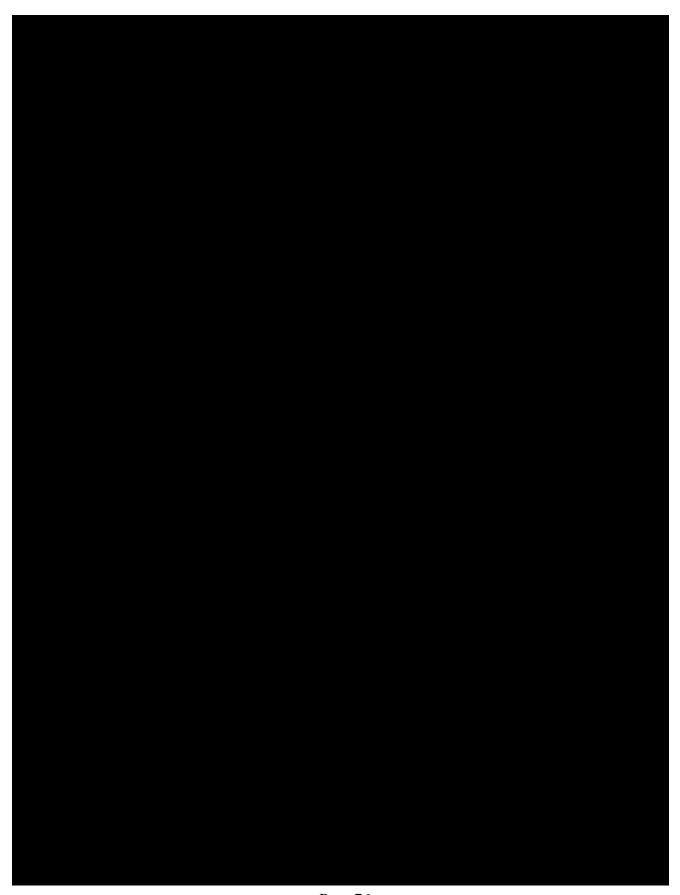
Page 71

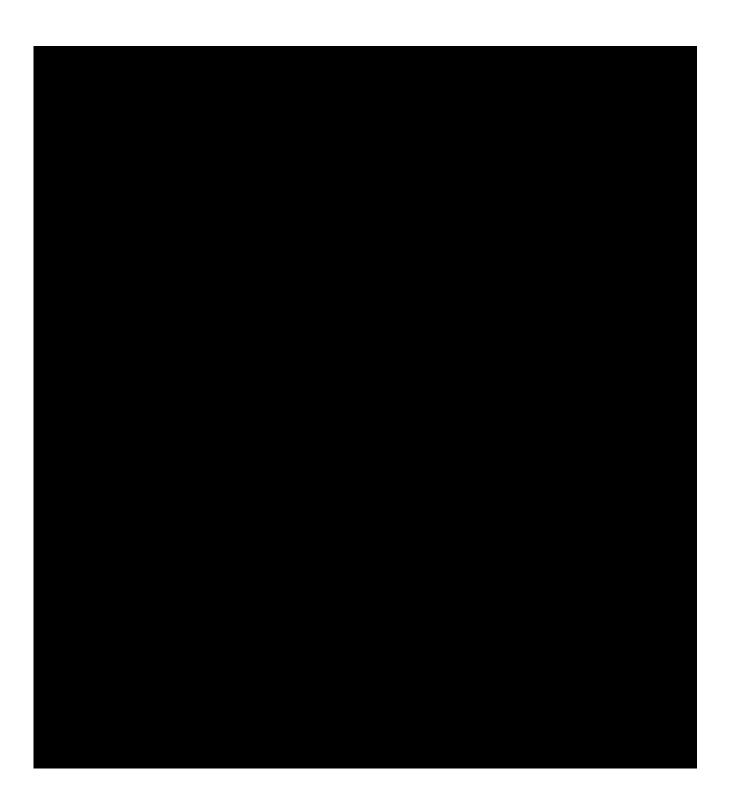


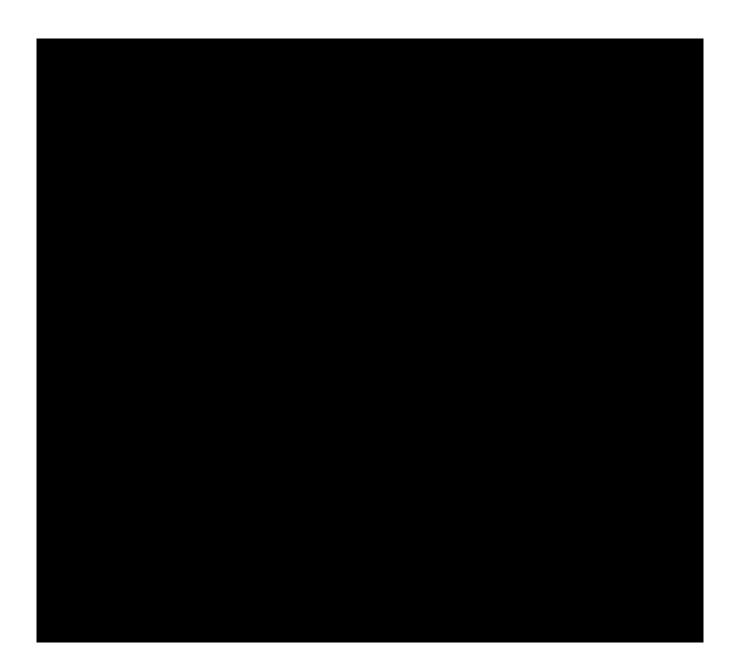


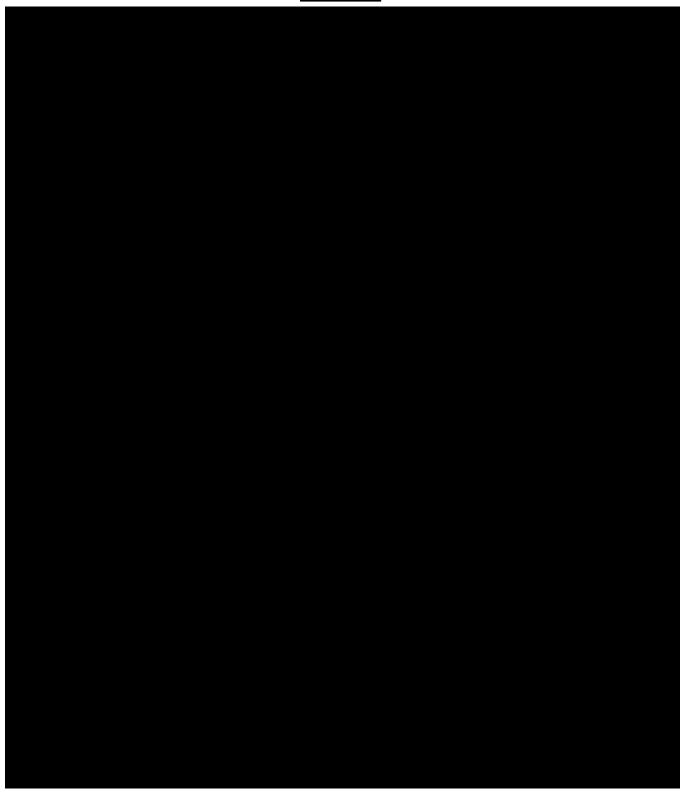


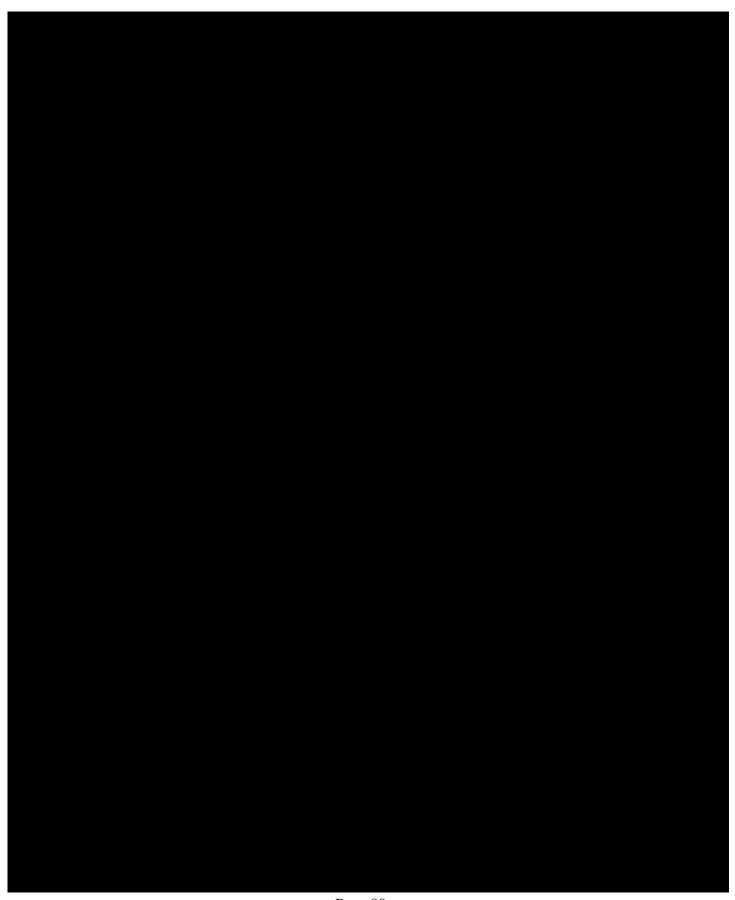


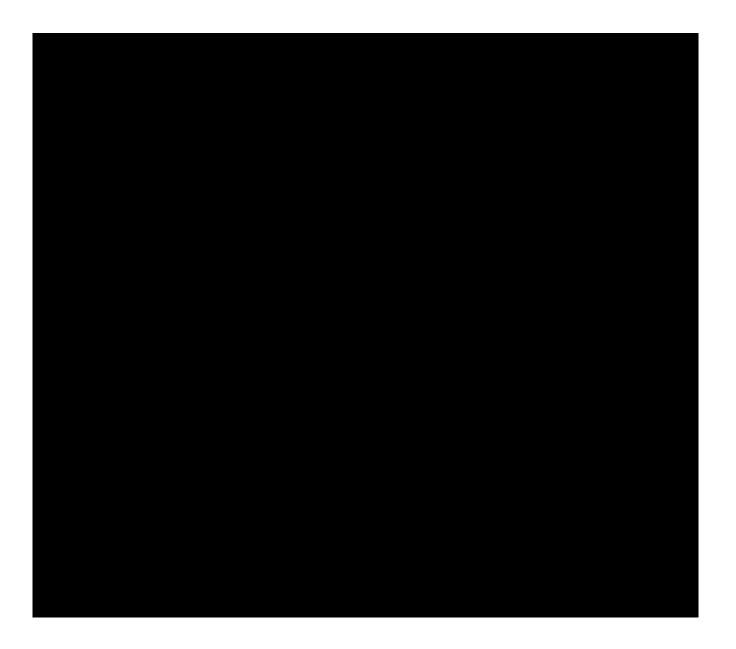




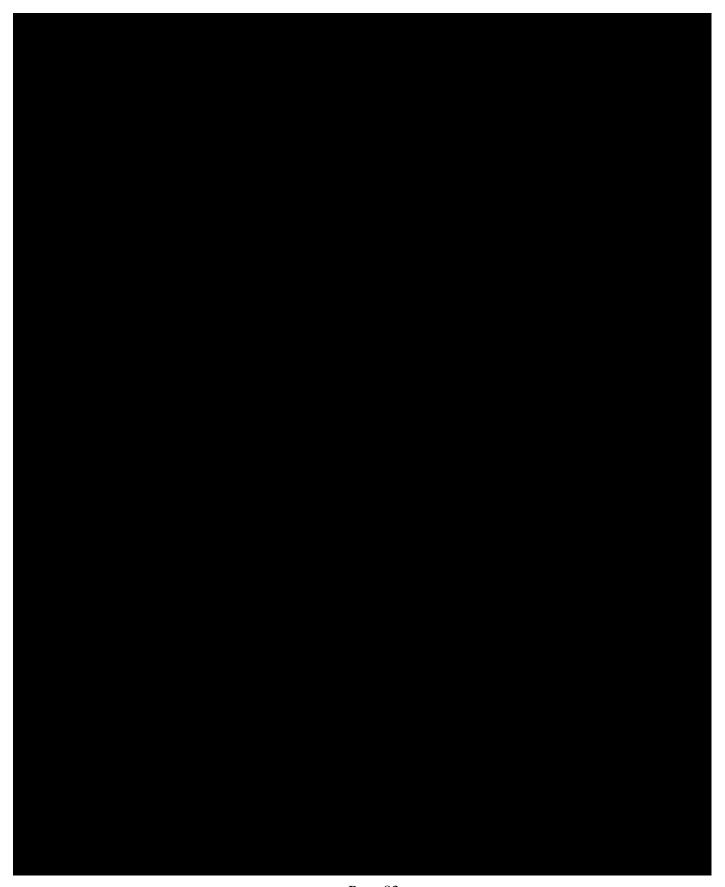


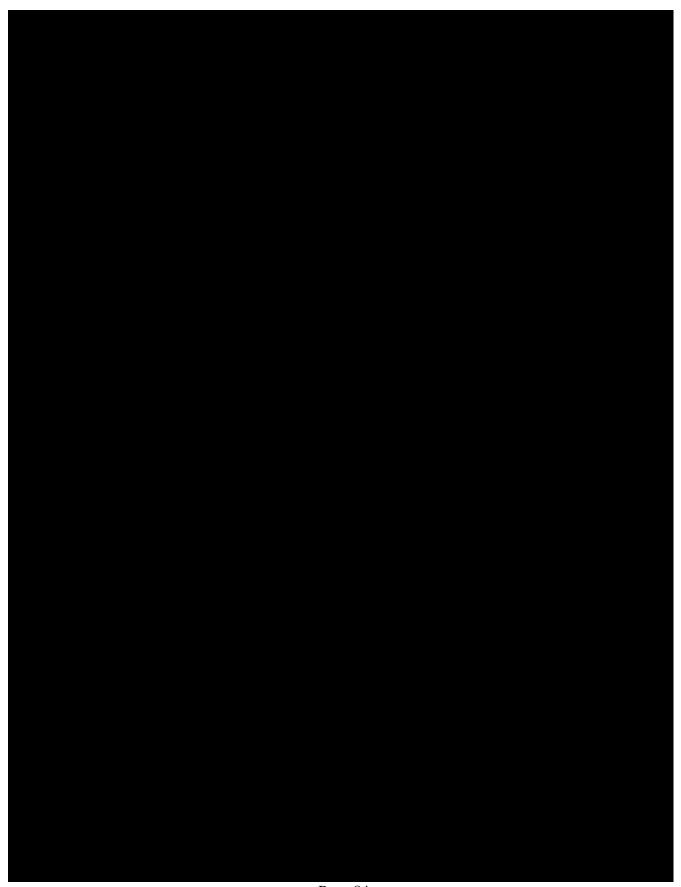




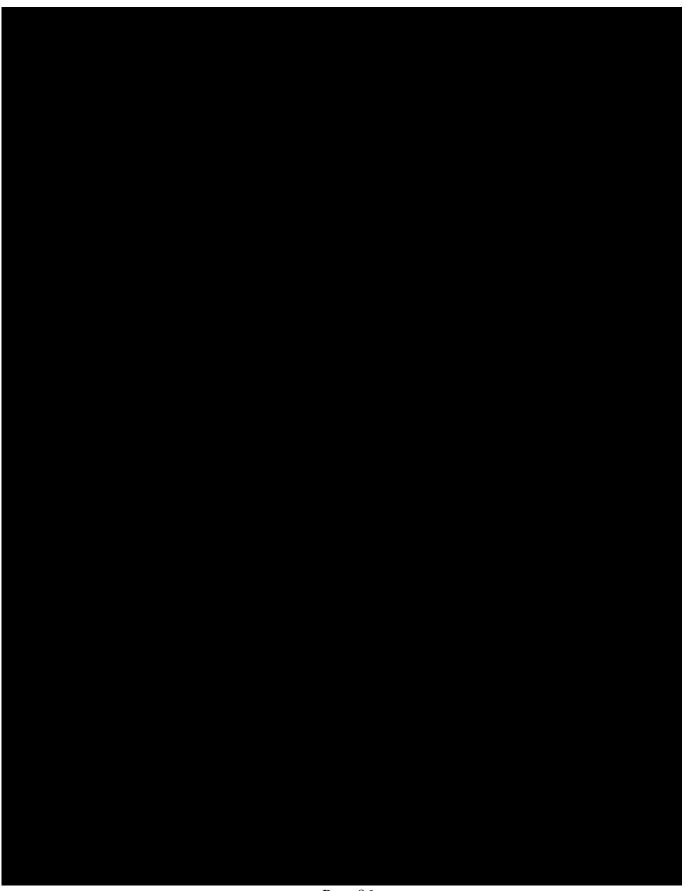




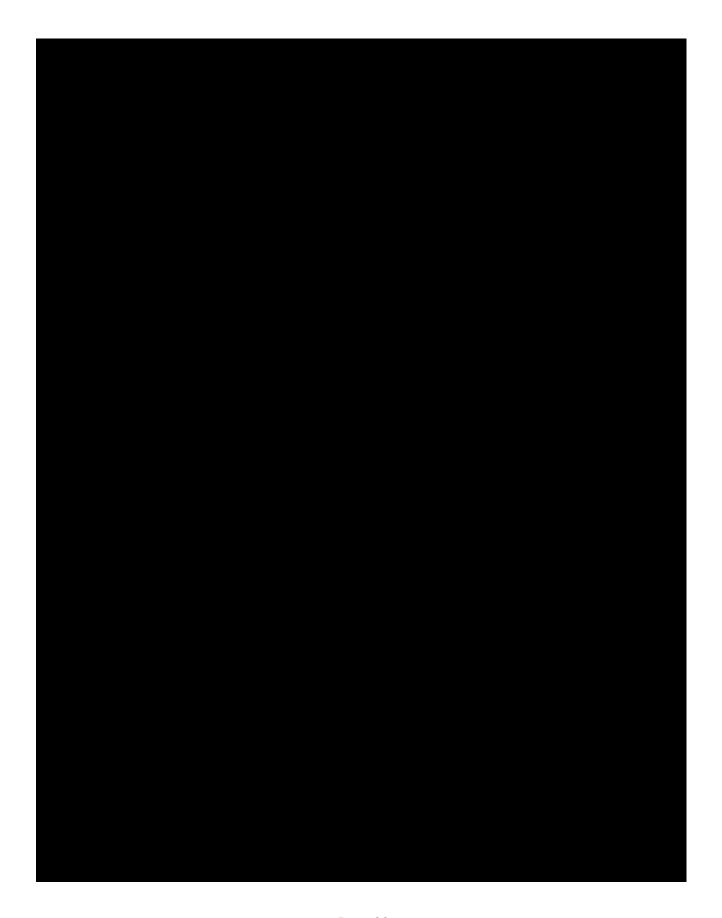










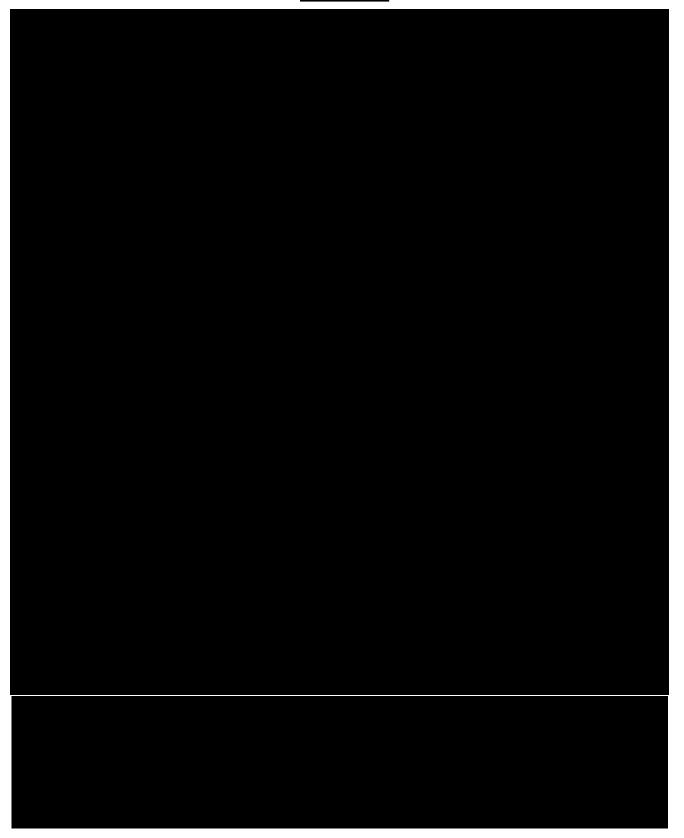


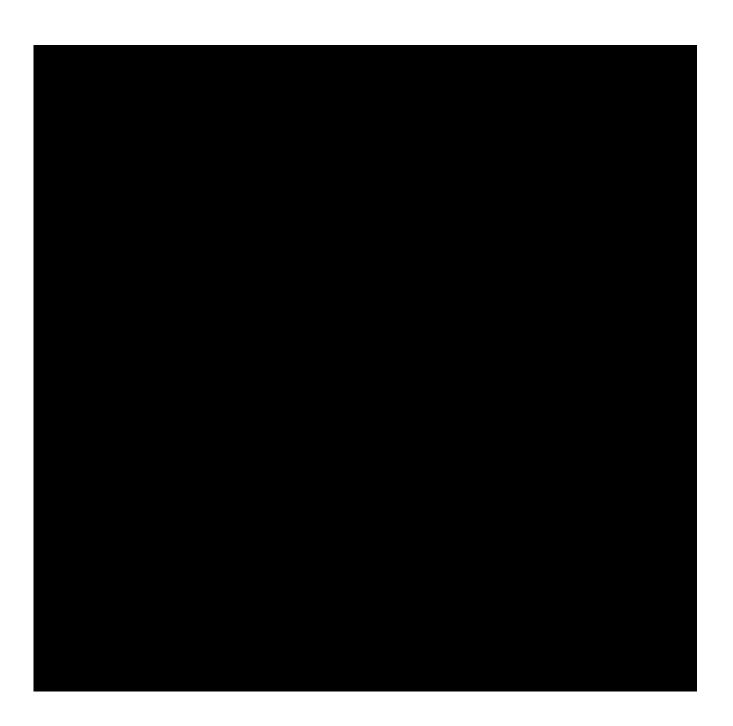


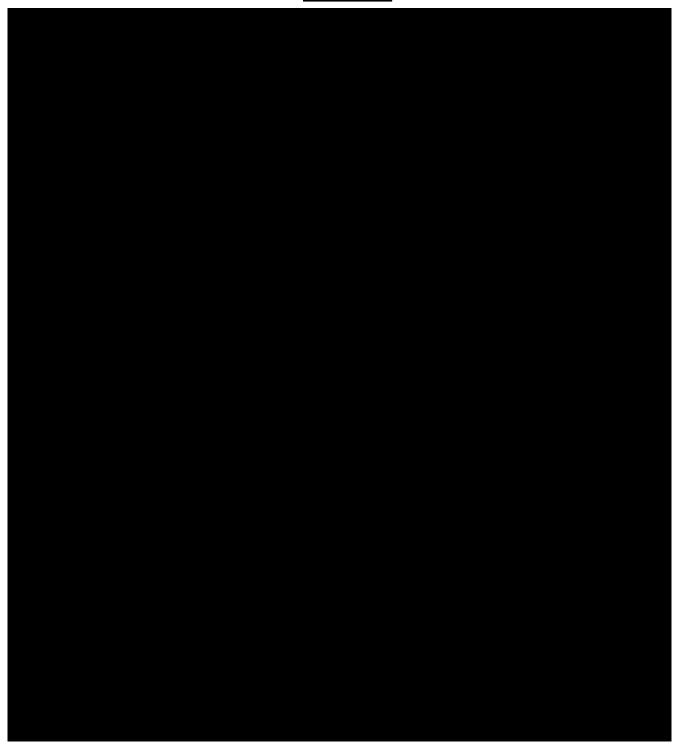




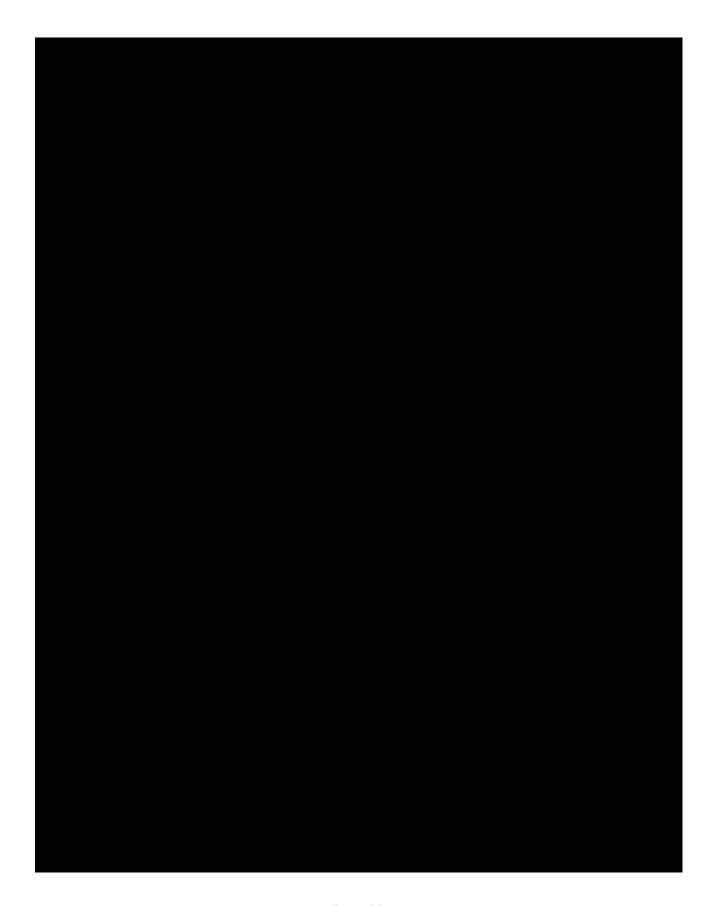


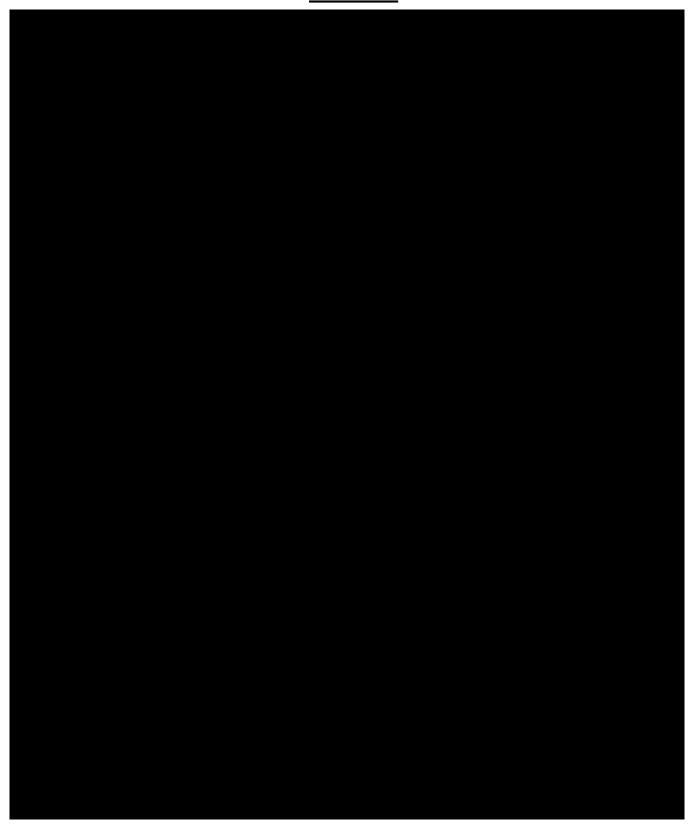


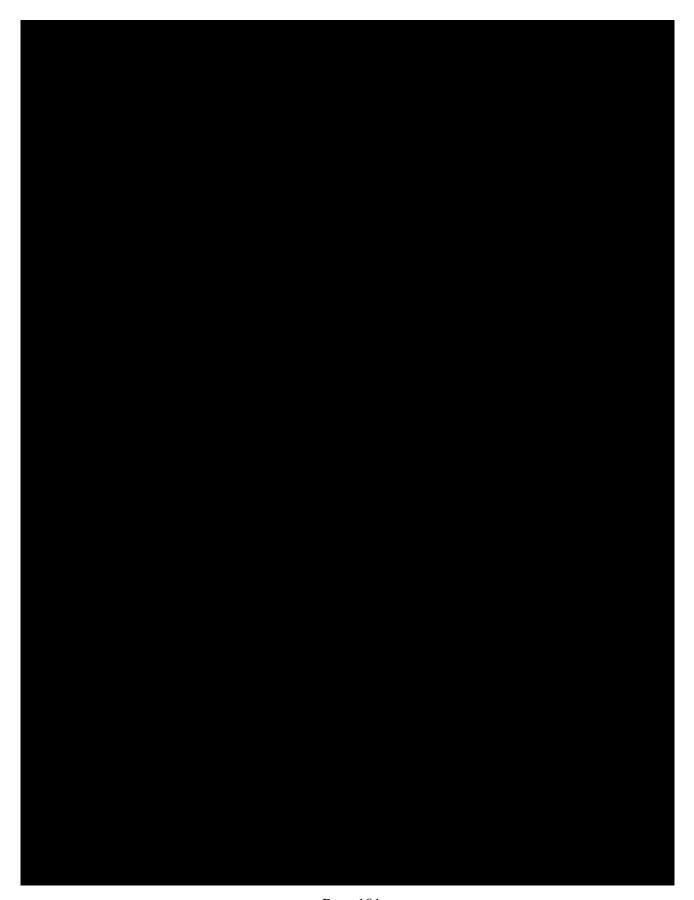




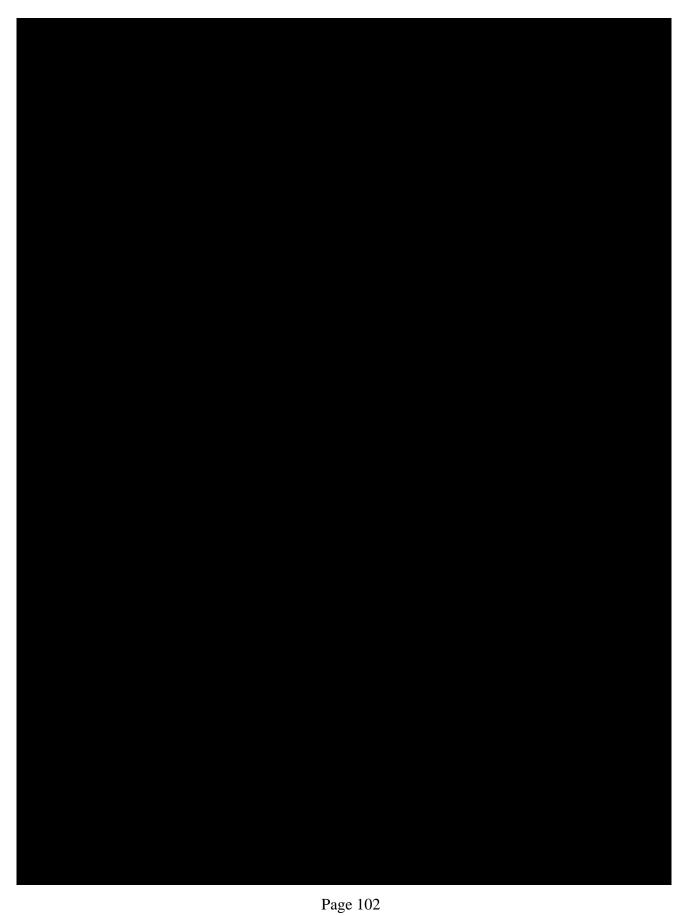
2.	"An 'Event of Default' (as defined in the Renewable Energy Purchase Agreement dated
2	between Beneficiary and the Account Party, as modified, amended or restated from time to time (the "Agreement")) has occurred with respect to the Account Party under the Agreement. Therefore, Beneficiary demands payment under the Letter of Credit No. in the amount of []";
3.	"An 'Early Termination Date' (as defined in the Renewable Energy Purchase Agreement dated between Beneficiary and the Account Party, as modified, amended or restated from time to time (the "Agreement")) has occurred as a result of an Event of Default defined in the Agreement and the Account Party has failed to make all payments due and owing to Beneficiary in accordance with the terms of the Agreement. Therefore, Beneficiary demands payment under the Letter of Credit No in the amount of []"; or
4.	"This Letter of Credit expires in twenty (20) Business Days (as defined in the Renewable Energy Purchase Agreement dated between Beneficiary and the Account Party, as modified, amended or restated from time to time (the "Agreement")) or less and Account Party has failed to renew or replace this Letter of Credit in accordance with the Agreement. Therefore, Beneficiary demands payment under the Letter of Credit No in the amount of []."

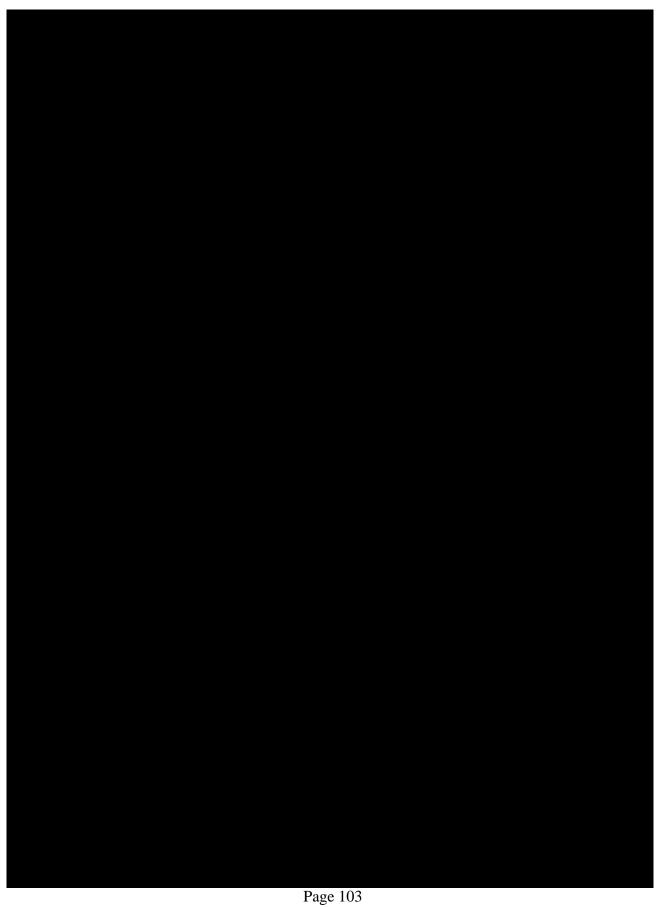




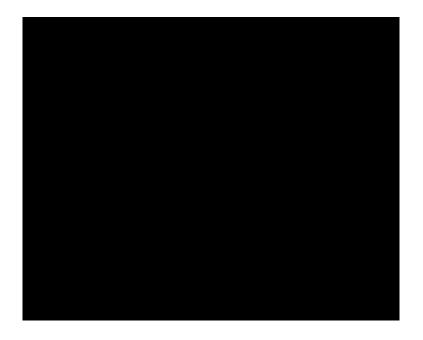


Page 101



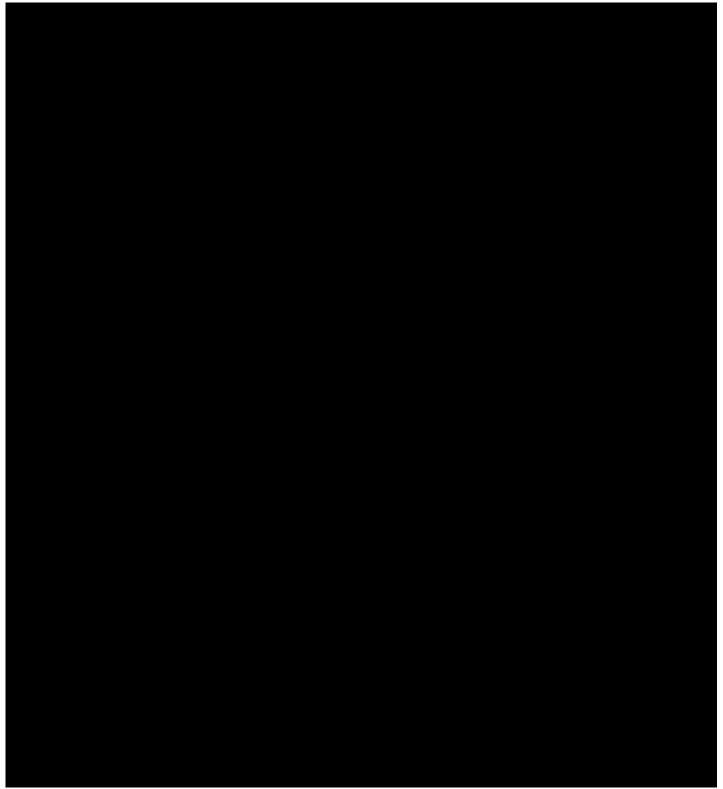


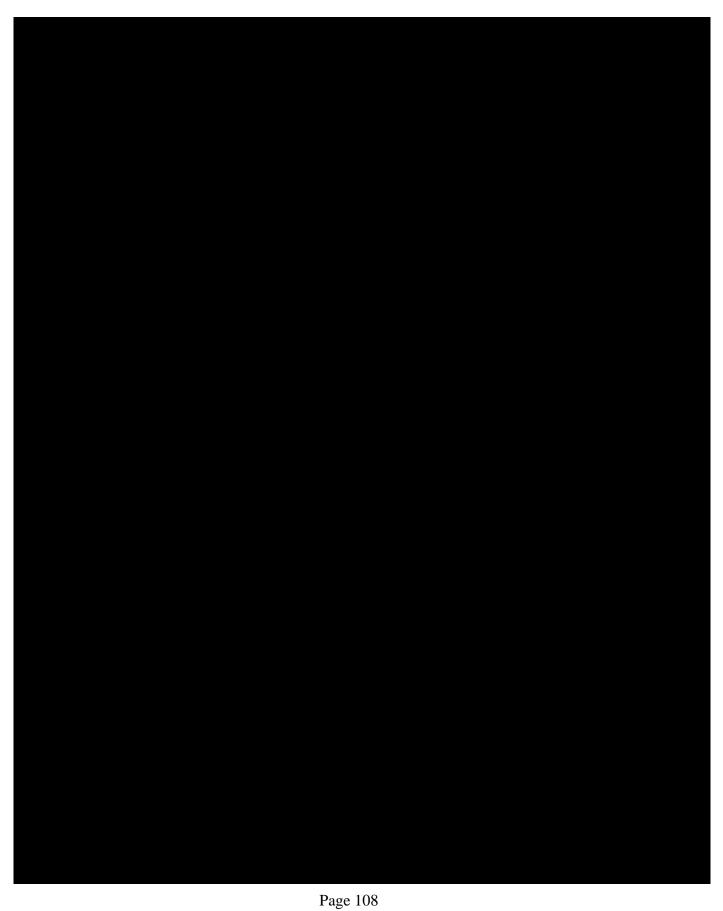


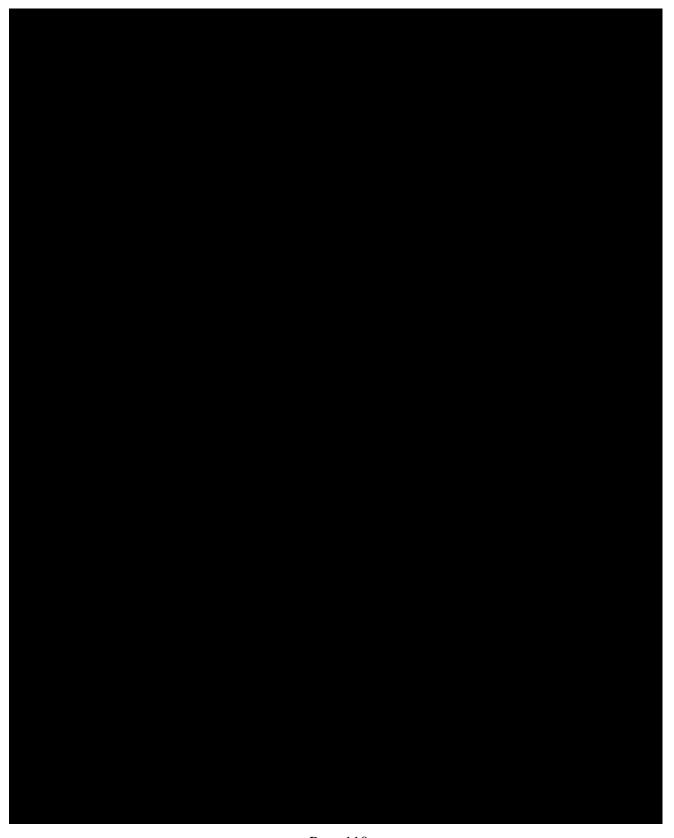


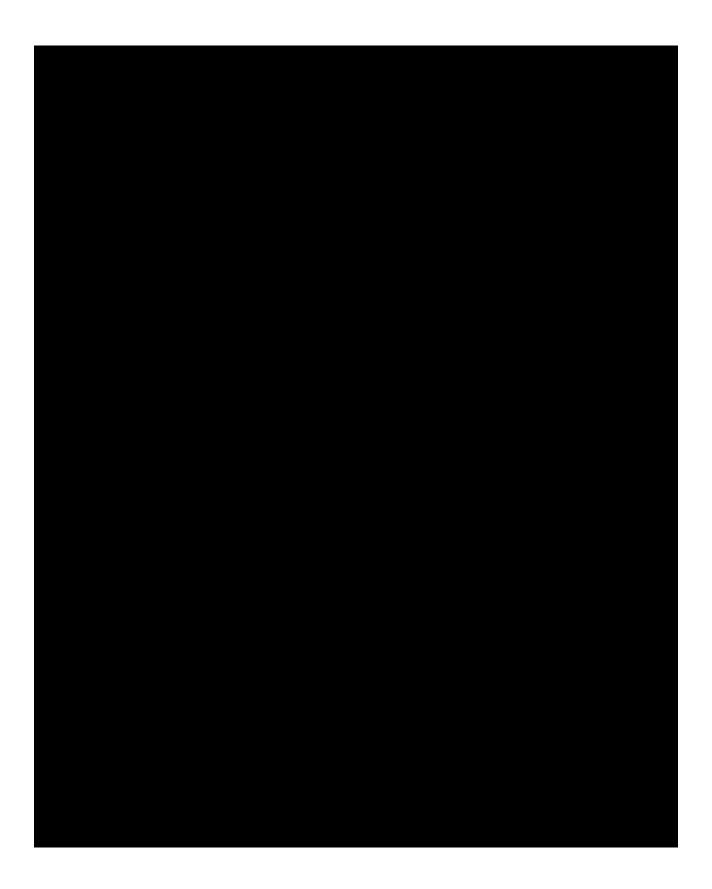


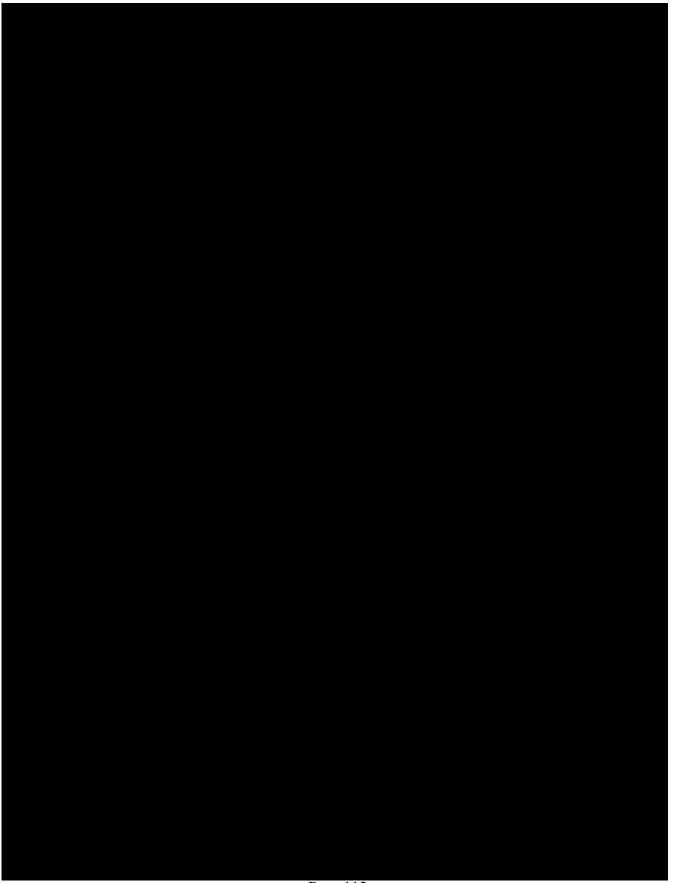
















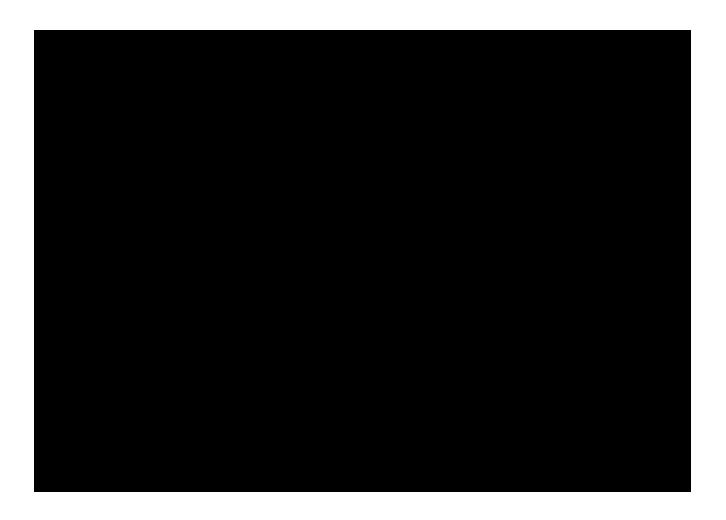










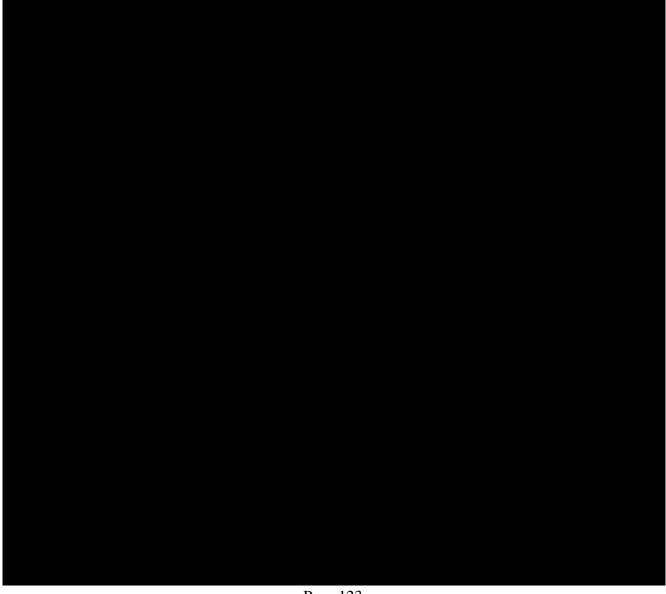




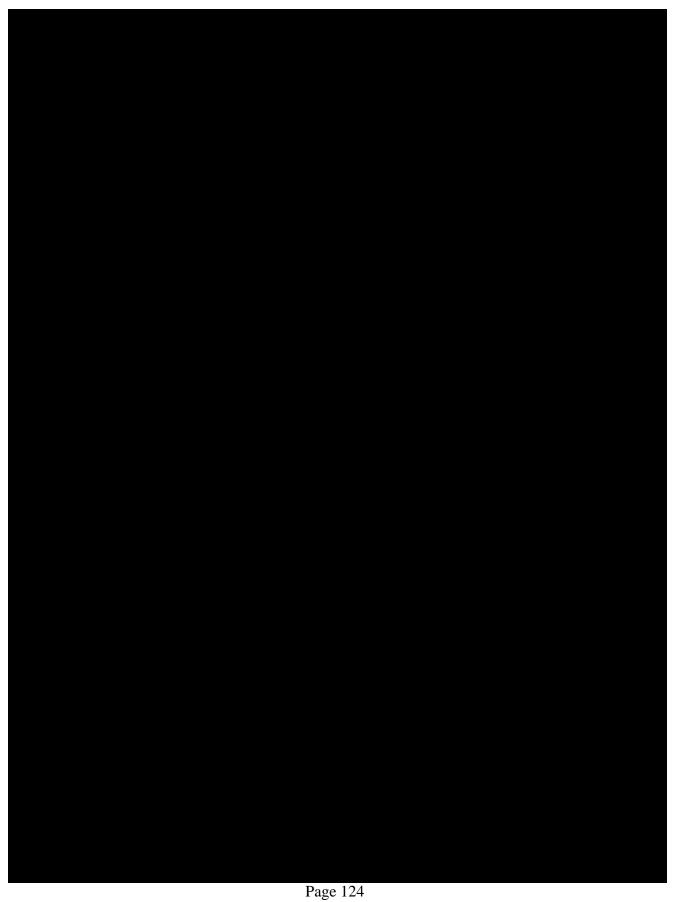


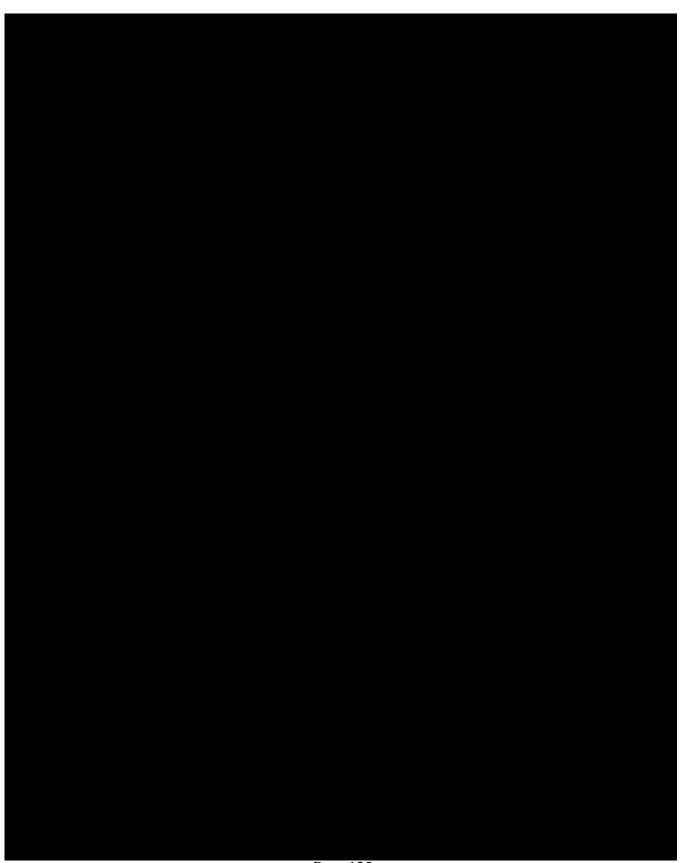






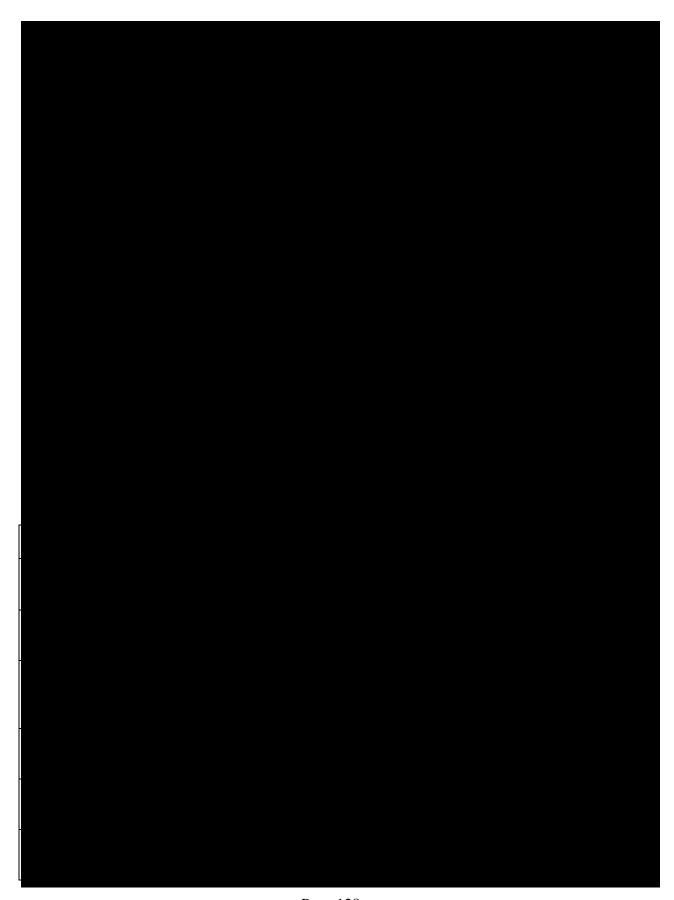
Page 123











Page 128

