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**DEPARTMENT OF THE AIR FORCE**

**GROUND LEASE**

**NUCLEAR MICRO-REACTOR PROJECT**

**ON**

**EIELSON AIR FORCE BASE,**

**IN**

**EIELSON AIR FORCE BASE, ALASKA**

**DATED AS OF \_\_\_\_\_**

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DEPARTMENT OF THE AIR FORCE

GROUND LEASE

ON

EIELSON AIR FORCE BASE, ALASKA

THIS GROUND LEASE (“**Lease**”) is made effective as of \_\_\_\_\_, 20\_\_, (the “**Effective Date**” hereinafter defined in **Section 1.2**), by and between **THE UNITED STATES OF AMERICA**, acting by and through **THE SECRETARY OF THE AIR FORCE** (the “**Secretary**” or the “**Government**”) and \_\_\_\_\_, incorporated in the State of \_\_\_\_\_ (the “**Lessee**”). The Government and Lessee may sometimes be referred to jointly as the “**Parties**,” and each separately may be referred to as a “**Party**.”

RECITALS

R-1 The Secretary, under the authority of 10 U.S.C. § 2667 (the “**Enabling Statute**”), has determined:

(i) that the Leased Premises (hereinafter defined) are under the control of the Secretary;

(ii) that the Leased Premises are not for the time needed for public use;

(iii) that the Leased Premises are not excess property as defined by 40 U.S.C. § 102(e) based on the following:

(a) all of the Leased Premises are essential to future mission flexibility, operational changes, equipment changes, and for potential expansion of the current operations/activities or new, as well as relocating, operational unit bed down;

(b) with encroachment problems impacting Air Force facilities nationwide, the Government’s continued ownership of the Leased Premises provides an essential buffer zone against uncontrolled incompatible uses that may otherwise be approved by local community or private interests if the Leased Premises were declared excess and transferred;

(c) the Leased Premises and the point of interconnection are located within the boundaries of the Eielson AFB (the “**Installation**”).

(d) the Leased Premises will be used solely for the construction and operation of a nuclear micro-reactor facility that will supply electricity directly to the Installation, and therefore, supports the military mission by enhancing energy security and furthering Department of Defense’s (“**DoD**”) renewable energy production and procurement goals;

(iv) that the consideration established in **Section 6** is not less than the fair market value of the Lessee's leasehold interest;

(v) that a lease of the Leased Premises is advantageous to the United States; and

(vi) that a lease of the Leased Premises for the term established in **Section 3** will promote the national defense or be in the public interest.

R-2 The Secretary has further determined that omitting a provision to permit the Secretary to unilaterally revoke this Lease at any time will promote the national defense or be in the public interest.

R-3 Whereas, the Lease of such Leased Premises is made in furtherance of the execution of a **"Resilient Energy Supply Agreement"** (the **"Contract"**), (INSERT RESA CONTRACT NUMBER), whereby the Lessee executes construction, provision, operation, management, maintenance, and eventual removal of a nuclear micro-reactor on the Installation EPF (the **"Energy Production Facility"** or **"EPF"**); interconnects the EPF with, or constructs facilities for interconnecting the EPF with, the Installation's electrical distribution system; sells power and Environmental Attributes of that power to the Government); and removes its improvements and restores the land at the end of the Lease (collectively, the **"Project"**).

R-4 The term of the Contract will be for a period of \_\_ ( ) years; the Government desires to execute this Lease solely to enable the Lessee to construct and operate the EPF for the delivery of electricity to the Installation and thereby satisfy its obligations pursuant to the Contract between the Parties. This Lease supports and is ancillary to the Contract.

## LEASE AGREEMENT

### 1. Grant of Lease.

1.1. Leased Premises. The Government hereby leases to Lessee, and Lessee leases from the Government, the real property described in **Exhibit A** hereto (the **"Leased Land"**), consisting of an approximately \_\_ ( ) acre parcel of land under the administrative control of Eielson AFB and those existing improvements located on the Leased Land, which is limited to utility infrastructure and roadways, described in **Exhibit B** hereto (the **"Existing Improvements"**). **Exhibit A** shall be prepared, to the maximum extent practicable, in accordance with the standards of the American Land Title Association (**"ALTA"**) and the American Congress on Surveying and Mapping (**"ACSM"**). The term **"Leased Premises"** means both the Leased Land and Existing Improvements. The term **"Lessee Improvements"** means any structures, facilities (e.g., EPF, transmission, interconnection), landscaping, infrastructure, or other improvements the Lessee constructs or places on the Leased Premises or in connection with its use of the Leased Premises in accordance with the terms of this Lease, including demolition of, renovation/modification of Existing Improvements, if any.

1.2. Conditions Precedent. This Lease is made as of its Effective Date that is also the effective date for the Contract, which is the date of award; provided that the rights and obligations

of the Parties under this Lease are conditioned upon the prior occurrence, or Lessee's waiver, of the following (the date all such conditions are satisfied or waived, the "**Commencement of Construction Date**"): (a) execution of an agreement whereby the Government agrees to purchase power and Environmental Attributes of that power from the Lessee's Project (i.e., the Contract); (b) execution of an **Engineering, Procurement, and Construction ("EPC") Contract**, or the equivalent, by the Lessee for the facilities required by the Project; (c) obtaining, or causing to be obtained, all non-Government, third-party "**Approvals**" deemed necessary by the Lessee to commence construction, generation and delivery of power (e.g., execution of an interconnection agreement), as well as to assume long-term management and operation of the Project. For the purpose of clarification only, and without limitation to the foregoing, execution of an EPC Contract or the equivalent, or the waiver thereof, by the Lessee may occur after the Effective Date.

1.3. Access to Leased Premises. The Leased Premises is not behind a security fence/gate that would restrict or limit access.

1.3.1. Prior to the Effective Date of this Lease and until the Commencement of Construction Date has been established, the Lessee and its agents, employees, contractors, and invitees shall be permitted to enter upon the Leased Premises via such public right-of-way for the purposes of preliminary planning and due diligence activities not involving substantial ground disturbance pursuant to a license or right-of-entry agreement.

1.3.2. During the Lease Term (hereinafter defined) and after the Commencement of Construction Date has been established, Lessee and its agents, employees, contractors, and invitees shall be permitted to enter upon the Leased Premises via such public right-of-way and shall have the right to enter upon the Leased Premises at any reasonable times for the purposes of planning, designing, constructing, operating, and maintaining the Project.

1.3.3. Access to the Installation through one of the security gates is subject to the controls and restrictions specified in **Section 2.1** below. The Government reserves the right to modify, eliminate, or temporarily close any streets, driveways, and walkways on the base; however, subject to **Section 25**, the Government agrees that it will attempt to do so in a manner that does not unreasonably interfere with Lessee's work on the Project.

1.4. Delivery of Possession. The Government shall deliver possession of the Leased Premises to Lessee on the Effective Date of the Lease.

1.5. Third Party Interests.

1.5.1. A list of known Third Party Property Interests maintained in the records of the Installation is attached as **Exhibit C** hereto. Lessee's leasehold interest shall be subject to all existing ground or master leases, non-terminable easements, licenses, permits (if to federal entities) and other interests of third parties affecting the Leased Premises while those are in effect, whether of public record or not (collectively, "**Third Party Property Interests**"). The Government agrees to use reasonable efforts to assist Lessee in obtaining non-disturbance agreements, crossing consents or other consents from holders of Third Party Property Interests to ensure those interests do not unreasonably interfere with Lessee's use of the Lease Land for the Project.

1.5.2. Nothing in this Lease shall prevent the Government from creating additional third party easements, licenses, permits or other interests affecting the Leased Premises to meet its own or other public requirements. Any such future third party interests shall not unreasonably interfere with Lessee's use of the Project.

1.5.3. No Lessee Improvements shall permanently block or obstruct free traffic flow along roadways without prior approval from the Government.

## 2. Additional Interests Granted to Lessee.

2.1. Access to the Installation. During the Lease Term, Lessee and its agents, employees, contractors, and invitees shall be permitted to enter the Installation to conduct Project related business. The base main gate and security checkpoint shall be used by the Lessee's personnel. One or more routes and/or restrictions on the use of specified streets during certain hours of the day (e.g., haul routes) may be designated from time to time on a non-exclusive basis by the Government. Lessee acknowledges that the Installation is an active, operating military base and that the Government retains the right to restrict or entirely eliminate access to the Installation by Lessee and its agents, employees, contractors and invitees due to the needs of national defense or because of inclement weather and natural disasters. Lessee further acknowledges that the Government retains the right to promulgate and enforce security regulations that may restrict or impose requirements on access to the Installation by Lessee and its agents, employees, contractors and invitees, including regulations delineating parameters for authorized entry to or exit from the Installation. The Government will not be liable for any damages or losses, direct or consequential, to Lessee or its agents, employees, contractors and invitees resulting from the exercise of its foregoing rights.

2.2. Other Easements, Licenses or Permits. At Lessee's request, the Government will grant, in accordance with statutory requirements (including, if applicable, the requirement that Government receive at least fair market value for the interest granted) easements, licenses or other interests benefitting the Leased Premises for utilities, interconnection, and/or other purposes (not including vehicular and pedestrian access) reasonably necessary for the Project for a term not to exceed the Lease Term; provided, however, any such easements, licenses or other interests shall not interfere with the Government's mission and operations on any portion of the base outside of the Leased Premises.

2.3. Omitted.

3. Lease Term. This Lease shall be for a term beginning on the Effective Date and of a duration of \_\_\_\_ ( ) years ending , \_\_\_\_, \_\_\_\_ (the "**Lease Expiration Date**"), unless sooner terminated in accordance with the terms of this Lease. The "**Lease Term**" means period from the Effective Date through the Lease Expiration Date.

3.1. Notwithstanding the Term set forth in Condition 3 above, the Lessor reserves the right to terminate this Lease in conjunction with the Government's rights to terminate the Contract, with or without cause, in accordance with the Government's rights under the Contract. Any compensation that may be due to the Lessee for such termination shall be determined pursuant to the Contract.

4. Lessee's Representations and Warranties. Lessee represents and warrants to the Government as follows:

4.1. Organizational Matters; Enforceability. Lessee is a corporation, duly organized and validly existing under the laws of the State of \_\_\_\_\_, and is in good standing and qualified to do business in Alaska and in every other state in which its business requires such qualification. Lessee has full authority to own its properties and to carry on its business as now being conducted and as contemplated for the Project consistent with the Contract, and to enter into and perform this Lease.

4.2. No Other Authorization. No authorization, consent, approval, order, registration, declaration, or withholding of objection on the part of, or filing of or with, any governmental authority not already obtained or made (or to the extent not yet obtained or made, Lessee has no reason to believe that such authorizations, consents, approvals, orders, registrations, or declarations will not be obtained or made in a timely fashion) is required for the execution and delivery or approval, as the case may be, of this Lease, or the performance of this Lease by Lessee.

5. Condition of the Leased Premises.

5.1. No Representations or Warranties by the Government.

5.1.1. Lessee agrees that it has entered into this Lease based on its own full investigation of all facts relating to, and conditions underlying, the Leased Premises and its development and use of the Leased Premises, including environmental conditions, and that it has solely relied on its own investigation.

5.1.2. Lessee agrees that the Leased Premises are leased in "as is, where is" condition, without any representation or warranty by the Government concerning their condition and without any obligation of the Government to make alterations, repairs or additions. Except as expressly set forth in the Contract, section C, subsection VI, the Government shall not be liable to Lessee for any damages or losses, whether direct or consequential, incurred by Lessee because of the discovery of any latent or patent defect in the Leased Premises.

5.2. Environmental Baseline Survey. Lessee acknowledges receipt of the environmental baseline survey (Phase I) for the Leased Premises dated, \_\_\_\_\_, the "EBS"). The EBS sets forth those environmental conditions affecting the Leased Premises as of its effective date as determined from the records and analyses reflected therein. The EBS is not a representation or warranty by the Government regarding the environmental or physical conditions of the Leased Premises, and the Government shall have no liability in connection with the accuracy or completeness thereof. The Government will prepare a separate EBS for the Leased Premises after the expiration or earlier termination of this Lease (the "Closeout EBS"). The Government will use the Closeout EBS to determine whether Lessee has fulfilled its obligations to maintain and restore the Leased Premises under this Lease, including all obligations set forth in **Sections 13** and in the Contract, section C, subsection VI. Lessee agrees that it has received and reviewed the items provided by the Government identified in **Exhibit D** (List of Environmental Documents).

6. Rent.

6.1. Amount. Rent for this Lease shall be paid in the form of in-kind consideration to the Government pursuant to the Contract, section B.2.3 (the “**Rent**”). Notwithstanding anything to the contrary herein, the obligation to pay Rent will commence on the Effective Date and ends on the Lease Expiration Date. Rent payments are subject to an escalation (i.e., increase) every five (5) years that will be applied to payments on the appropriate anniversary of the Effective Date. For the rent rates and escalation see **Exhibit E**, Rent Rate Schedule. Payment of in-kind consideration under this **Section 6.1** shall be satisfied by way of a credit (i.e., direct offset) against monthly invoices presented by Lessee to the Government pursuant to the Contract. Partial invoices for periods of less than a month will have the corresponding pro rata Rent credit applied as a direct offset. In the event that the Rent for any monthly billing period is greater than the total amount owed by the Government under the Contract for that monthly period (which shall include the period after possession of the Leased Premises is delivered to the Lessee during the construction period of the Project), the excess portion of the credit, which cannot be used as an offset in that month, shall be carried forward and accumulated as a credit against future amounts owed by the Government pursuant to the Contract.

6.1.1. The Rent credit that accumulates from the Effective Date until the first monthly bill for delivered power shall be paid by twelve (12) equal credits (i.e., direct offsets) that shall be deducted from each of the first twelve (12) monthly invoices presented to the Government pursuant to the Contract.

6.1.2. The final monthly bill for delivered power shall include a Rent credit for the remaining Lease Term, as set forth in **Section 3**. The prospective Rent will be calculated using the applicable rates from **Exhibit E**.

6.2. Conversion to Cash Rent. In the event of the renewal of this Lease after early termination of the Contract, Rent for this Lease shall be paid as rent in the form of cash to the Government in an amount equal to the then current Rent as calculated as in-kind consideration in **Section 6.1** (subject to successful renewal, renegotiation, and amendment of this Lease required by **Section 20**) commencing in the month immediately following the month in which Contract terminates and ending on the last day of the month in which the Lease Expiration Date occurs. Cash Rent under this **Section 6.2** shall be subject to the same escalation as specified in **Section 6.1**. Cash Rent shall be due and payable on the first day of each month without prior notice or demand from the Government. All cash Rent due from the Lessee shall be paid in lawful money of the United States of America without deduction or offset (except as otherwise provided herein) to the Treasurer of the United States of America and forwarded directly to the Installation’s designated point of contact, or such other official as the Government shall designate from time to time in writing, for deposit into the Special Treasury Account established under the provisions of 10 U.S.C. § 2667(e).

6.3. Supplemental Rent. All sums other than Rent that are payable by the Lessee to the Government, including all items of reimbursement for utilities or emergency services provided by the Government, shall be deemed supplemental rent (the “**Supplemental Rent**”). Any written request by the Government to the Lessee for reimbursement under this Lease shall identify the expenses included in such reimbursement request. For the purposes of defining the Lessee’s obligations under this Lease, all payments required by **Section 6.1**, **Section 6.2**, and all

Supplemental Rent may sometimes be collectively referred to as “Rent.” Notwithstanding the use of the term “Rent” to include Supplemental Rent, no payment to the Government of a reimbursement constituting Supplemental Rent shall be considered to be the receipt by the Government of money compensation for the occupancy of the Leased Premises for purposes of the Enabling Statute or the Bankruptcy Code or for any other purpose.

6.4. Overdue Rent. If any installment of Rent is not paid within ten (10) business days after its due date, then such arrearage shall, consistent with the Debt Collection Act of 1982 (31 U.S.C. § 3717), (a) bear interest from the due date at the rate prescribed by the Secretary of the Treasury for amounts past due to the Federal government until paid in full; (b) include an administrative charge to cover the costs of processing and handling delinquent debts; and (c) include an assessment of an additional penalty charge on any portion of a debt that is more than ninety (90) Days past due.

6.5. FMV Determination. The Rent amount has been determined by the Government to be not less than the fair market value of the leased interest based on a Government approved appraisal.

7. Use of Project.

7.1. Permitted Uses. The sole purposes for which the Leased Premises may be used, in the absence of prior written approval of the Government for any other use, is to support and advance activities associated with the Project as described in **Recital R-3**.

7.2. Specific Prohibited Uses. Specifically, but without limitation, Lessee shall not use or permit the use of the Project for any of the following activities:

7.2.1. Any use that is unlawful or inherently dangerous or that constitutes waste, unreasonable annoyance, or a nuisance;

7.2.2. Activities involving the storage, treatment, transportation, disposal, or manufacture of Toxic or Hazardous Materials, except as specifically authorized in the Contract, section C, subsection VI or as approved by the Government in writing;

7.2.3. Activities that the Government determines adversely affect the security of the Installation or the health, safety, morals, welfare, morale, and discipline of the Armed Forces, such as the sale or use of controlled substances and/or drug abuse paraphernalia, as well as illicit gambling or prostitution;

7.2.4. Partisan political activities; or

7.2.5. Activities by any persons advocating the overthrow of the United States.

7.3. Primacy of Air Force Mission. The Lessee recognizes that Eielson AFB is an operating military base and that the Government’s military mission has priority and primacy over all other activities or operations on Eielson AFB, including those conducted on premises out leased to others. The Lessee understands and accepts that the priority of conducting Government operations at Eielson AFB, including but not limited to normal base-related operations, the

Installation Restoration Program (“**IRP**”), Government overflight, surges, exercises, contingencies, inspections and other Air Force operations (collectively, the “**Government Operations**”) may at times require delay in, modification or other interruption of the Lessee’s activities, including its construction activities. The Government shall, whenever possible, provide advance notice of Government Operations that may impact Lessee’s activities and shall coordinate such operations so that any disruption to Lessee’s activities is minimized.

7.3.1. The Lessee hereby agrees that in case of any conflict between Government Operations and Lessee’s activities, as determined by the Commander in the Commander’s sole and absolute discretion, the Lessee will, if the Commander so directs, delay, modify or otherwise interrupt its activities on the Leased Land to accommodate Government Operations.

7.3.2. The Lessee also understands and accepts that its activities on the Leased Land may, from time to time, be hampered by temporary restrictions on access, such as identity checks and auto searches by the Air Force. The Lessee understands that the Air Force strictly enforces Federal laws and Air Force regulations concerning controlled substances (drugs).

7.3.3. Except as set forth in the Contract, the Lessee agrees that the Government shall not be liable or responsible under this Lease for any lost time or any costs incurred by the Lessee due to any disruption of its activities on the Leased Premises, regardless of frequency or duration of any such interruptions, including disruptions of its commercial activities, or for any delays in entry, temporary loss of access, barring of individual employees from the base under Federal laws authorizing such actions, limitation or withdrawal of an employee’s on-base driving privileges, or any other security action (collectively, the “**Security Actions**”) that may cause employees to be late to or unavailable at their work stations, or delay arrival of parts and supplies. The Lessee hereby expressly waives any claims or suits against the Government under this Lease caused by or arising out of the priority of conducting Government Operations, including any Security Actions.

7.4. Operating Agreement. [Intentionally Omitted]

8. Lessee’s Construction and Modification of Improvements.

8.1. Government’s Limited Interest. The Government’s sole and exclusive interest in and liability under this Lease are limited to that of Lessor of the Leased Land. The Lessee shall retain use and possession of the Lessee Improvements pursuant to the Contract, sections C.5 and H.1. The Lessee Improvements constructed/installed as part of the Project shall be at all times during the Lease Term the property of the Lessee or a tax equity investor, separate and apart from the Leasehold interest and all other real property rights.

8.2. Time to Construct. The Lessee shall complete construction/acceptance testing/interconnection of the EPF and reach the **Commercial Operation Date** within the Effective Date expressed in the Contract, section B .

9. Lessee’s Operation and Maintenance of the Project. [See Contract]

10. Utilities and Other Services.

10.1. Sale of Utility Service by the Government. Government provided utility services may be available to the Lessee at the Leased Premises pursuant to the Contract, section C.37. Any sale of utility services to Lessee by the Government and associated reimbursement calculations will be in accordance with Air Force Instruction 32-1061, "Providing Utilities to U.S. Air Force Installations," as the same may be amended, modified or superseded from time to time.

10.2. Sale of Emergency Services by the Government. The Government will provide first response, fire, and law enforcement services to the Project. Lessee shall pay for any firefighting, fire protection, and police protection services furnished by the Government for the benefit of the Project during the Lease Term. Reimbursement for such services will be calculated as outlined in **Exhibit I** (Emergency Services Plan).

11. Taxes. Lessee shall pay to the proper taxing authority, when due and payable, all taxes, assessments, and similar charges that may be imposed on Lessee or the Project. Each Party shall have the right, but not the obligation, at its own expense to take such actions as may be necessary and appropriate (a) to contest the validity, applicability or amount thereof; (b) minimize such taxes, assessments or charges; or (c) assert any exemption which may be available with respect to taxes, assessments or charges imposed on the Project. If and to the extent the Leased Premises are made taxable by state or local governments under a subsequent Act of Congress, this Lease shall be renegotiated pursuant to 10 U.S.C. § 2667(f).

12. Records and Reports.

12.1. Lessee's Books and Records. At all times during the Lease Term and for three (3) years after the expiration or earlier termination of this Lease, Lessee shall maintain at its principal place of business or such other place as agreed to by the Parties, a complete and accurate set of books and records of all business activities and operations, which shall fully/completely reflect the financial condition, production/delivery data, physical condition (maintenance/repair), and operational status of the Project during at least the previous three (3) years, together with all business licenses and permits required to be kept and maintained pursuant to the provisions of any applicable state or local law, regulation, or rule now or hereafter in effect.

12.1.1. All financial statements shall be prepared based on generally accepted accounting principles ("GAAP") or on the basis used for the Lessee's federal income tax return. If the financial statements are prepared on the tax basis, then the footnotes must include all disclosures required by GAAP. All financial statements must be audited or certified as being prepared in accordance with GAAP by the Lessee's Chief Accounting Officer, who must be a Certified Public Accountant. The auditor must be a certified public accounting firm that participates in the peer review program of the American Institute of Certified Public Accountants. Compiled or reviewed financial statements shall not meet the requirements of this **Section 12.1**.

12.2. Government Right to Audit. Consistent with the Contract, section I, the Government, the Comptroller General of the United States, the Auditor General of the U.S. Air Force, or any of its duly authorized representatives, with reasonable advanced notice, shall have access to and the right to examine any directly pertinent books and records maintained by Lessee in connection with performance under this Lease for up to three (3) years after final payment or

early termination settlement if any. The Government shall have the right to photocopies of same, at the sole expense of Lessee.

12.3. Default and Deficiency Notices.

12.3.1. Lessee shall provide the Government with copies of default or deficiency notices delivered to Lessee by any government agency, insurance company or other party within fourteen (14) Days following Lessee's receipt of same.

13. Lessee's Obligations upon Lease Expiration/Termination.

13.1. Removal and Restoration Obligation and Deadline. Except to the extent not required because of a Government Retention Notice (hereinafter defined) delivered pursuant to **Section 13.3** or renewal of the Lease pursuant to **Section 20**, no later than ninety (90) Days after (a) the Lease Expiration Date, (b) the effective date of a **Termination Notice** pursuant to the Contract, section I, (c) a Termination Notice for Extensive Damage or Destruction of Improvements pursuant to **Section 19**, or (d) a date mutually agreed to by Lessee and the Government (the "**Restoration Deadline**"), Lessee shall, at no cost to the Government, remove all of the Existing Improvements, if any, and all Lessee Improvements and other property from the Leased Premises and restore the Leased Premises to the reasonable satisfaction of the Government; provided that in no event shall the Lessee be required to restore the Leased Land to a better condition than on the Effective Date (the "**Removal and Restoration Obligation**").

13.2. Improvement Removal Report. Except to the extent not required because of a Government Retention Notice delivered pursuant to **Section 13.3** or a renewal of the Lease pursuant to **Section 20**, no later than three (3) years prior to the Lease Expiration Date or within forty-five (45) Days after Lessee's receipt of a Termination Notice or a Termination Notice for Extensive Damage or Destruction of Improvements, Lessee shall provide to the Government: (a) a report (an "**Improvement Removal Report**") prepared by a construction and demolition expert approved by the Government, which report details and estimates the cost of removing all improvements on the Leased Premises (the "**Estimated Restoration Costs**"), salvage value if any may be considered; and, (b) a written plan which sets forth how Lessee proposes to discharge its Removal and Restoration Obligations pursuant to this **Section 13**.

13.3. Purchase Option. The Government has retained a purchase option for all or any portion of the Lessee Improvements including the EPF. So long as the Government is not in default at the time of the Lease expiration, it may exercise this option for the Option Price as calculated in the Contract, section H. If such purchase option is exercised, the Government will deliver a "**Government Retention Notice**" as specified in this **Section 13**. The Lessee, its successor or assignee, shall immediately take all actions necessary to enable it to convey clear title to the Lessee Improvements that the Government intends to purchase.

13.4. Re-delivery of Possession. After completion of the Removal and Restoration Obligation, Lessee shall immediately quit, and peacefully surrender possession of, the Leased Land to the Government.

13.5. Restoration Default.

13.5.1. In addition to other available remedies, if Lessee does not satisfy its Removal and Restoration Obligation on or before the Restoration Deadline (a “**Restoration Default**”), the Government at its option shall be entitled to (a) take possession of the Lessee Improvements without compensation therefor (and the Lessee, its successor or assignee, shall immediately take all actions necessary to enable it to convey clear title to the Lessee Improvements), or (b) cause such improvements to be removed or destroyed, with the right to retain all salvage value, and the Leased Premises to be restored at the expense of Lessee.

13.5.2. If the Government elects to restore the Leased Premises pursuant to this **Section 13.5**, the Government shall have the right, upon sixty (60) Days prior written notice to Lessee to direct, without the consent of Lessee or any other Person, the disposition of any form of security provided in accordance with **Section 13.7** below, for the purpose of paying the reasonable costs of such demolition, removal and restoration and the Lessee shall not exercise any authority or powers with respect to, or permit the withdrawal of such funds or such other form of security, except to the extent necessary to accomplish any written disposition instructions issued by the Government.

13.5.3. If the funds available to the Government in the form of security provided under **Section 13.7** below, together with any salvage value, are insufficient to cover removal and restoration costs, Lessee shall be immediately liable to the Government for any deficiency without any further demand for payment. Lessee shall reimburse the Government for any expenses the Government incurs in removing improvements and restoring the Leased Premises within thirty (30) Days after the Government provides written notice to Lessee of the reimbursement amount, together with reasonable documentation of such amount.

13.5.4. In no event shall any claim for damages against the Government, its officers, employees, agents, or contractors be created by or made on account of the Government exercising any of its rights pursuant to this **Section 13.5**.

13.6. Certain Lease Provisions Remain in Effect. Unless otherwise agreed to in writing by the Government, during the period after the Lease Expiration Date, the effective date of a Termination Notice, or the effective date of a Termination Notice for Extensive Damage or Destruction of Improvements, as applicable, until the date on which Lessee satisfies its Removal and Restoration Obligation under this **Section 13**, or such later date as may be agreed to in writing, all obligations of Lessee set forth in the Contract as surviving expiration or termination and **Sections 13** and **17** shall remain in effect.

13.7. Demolition Reserve Account.

13.7.1. At the time Lessee delivers an Improvement Removal Report to the Government pursuant to **Section 13.2**, Lessee shall establish an escrow account with a commercial escrow holder approved by the Government to fund its Removal and Restoration Obligations (“**Demolition Reserve Account**”). Funds deposited to the Demolition Reserve Account will be utilized solely to provide for payment for Lessee’s Removal and Restoration Obligation.

13.7.2. If the Improvement Removal Report was submitted due to early termination and in response to a Termination Notice pursuant to the Contract, section I, Lessee shall

immediately fund the Demolition Reserve Account in the full amount of the Estimated Restoration Costs.

13.7.3. If the Improvement Removal Report was submitted three (3) years prior to the Lease Expiration Date, then commencing upon Lessee's delivery of the Improvement Removal Report every year thereafter until Lessee satisfies its Removal and Restoration Obligations, Lessee shall make substantially equal cash deposits to the Demolition Reserve Account so that, as of the Lease Expiration Date, the total amount on deposit in the Demolition Reserve Account, together with any investment earnings on such funds, is not less than the Estimated Restoration Costs.

13.7.4. Any funds remaining in the Demolition Reserve Account following Lessee's satisfaction of its Removal and Restoration Obligations shall be distributed to Lessee.

13.7.5. The Demolition Reserve Account shall be subject to procedures and controls to be set forth in a "**Demolition Reserve Escrow Agreement**" among Lessee, the Government and the escrow holder. Such agreement shall provide that all disbursements from the Demolition Reserve Account shall be made upon Lessee's written direction to the escrow holder with the consent of the Government, provided that upon the occurrence of a default under the Removal and Restoration Obligation, all disbursements from the Demolition Reserve Account shall be made solely upon the Government's written direction to the escrow agent without the consent of Lessee or any other Person.

13.7.6. The Demolition Reserve Escrow Agreement shall provide that Lessee grants to the Government a continuing first lien security interest in and to all of Lessee's right, title, and interest in the Demolition Reserve Account, as well as all funds held, or designated for deposit in the Demolition Reserve Account, whether then owned, existing, or thereafter acquired, and regardless of where located. Lessee shall not grant or allow any other security interests in, liens to, or encumbrances on the Demolition Reserve Account or the funds in it. However, Lessee may grant to any Person a continuing security interest in Lessee's right to receive a disbursement of any funds remaining in the Demolition Reserve Account pursuant to **Section 13.7.4**, second in priority to the continuing first lien security interest granted to the Government.

13.7.7. Lessee shall deliver to the Government for filing one or more financing statements, as necessary, in connection with the Demolition Reserve Account in the form reasonably required by the Government to properly perfect its security interest in the Demolition Reserve Account, and shall keep the lien secured by such statements perfected at all times during the existence of the Demolition Reserve Account in accordance with, and to the extent permitted by, the laws of California. Lessee shall deliver to the Government, within ten (10) days after filing, the original and any amendments to, and continuations of, any financing statement.

13.7.8. Except as otherwise expressly provided in the Demolition Reserve Escrow Agreement, Lessee shall be solely liable to the escrow agent for the fees and expenses related to the Demolition Reserve Account.

14. Environmental Matters. [See Contract]

15. Compliance with Laws Generally. [See Contract]

16. Government's Right of Entry. Subject to the terms and upon the conditions set forth in this Section, any agency of the Government, its officers, agents, employees, contractors, or representatives may enter upon the Leased Premises, at all times for any purposes not inconsistent with Lessee's quiet use and enjoyment of them under this Lease, including, but not limited to, the purpose of inspection and ensuring that the terms and conditions of the Contract and this Lease are being met. The Government shall have the right to enter the Leased Premises at any time during business hours (9:00 am to 5:00 pm, Monday through Friday) upon at least twenty-four (24) hours advance written notice to Lessee, and shall be accompanied by a representative of Lessee which shall be made available by Lessee on the date and time Government has requested in its written notice required hereunder. An email from the Contracting Officer's Representative to the Contractor's designated point of contact that is acknowledged by such designee shall constitute written notice for the purposes of this Section. Notwithstanding the foregoing, however, in the event of an emergency, an issue of the Installation's security or national security (as determined by the Government in its sole and absolute discretion), the Government may enter the Leased Premises at any time, with or without a representative of Lessee, without written notice. The Government acknowledges that equipment and facilities in, on, under and above the Leased Premises will generate and transmit electricity at high voltage and that the possibility always exists for property damage and/or injury to persons and/or death from such electricity. The Government further acknowledges that the conductors are energized, uninsulated, and dangerous. Further, the Government acknowledges and agrees that any entry upon the Leased Premises by the Government, its officers, agents, employees, or contractors or representatives shall be at their sole risk, whether or not they are accompanied by a representative of Lessee, and in no event shall Lessee be liable to Government or any such person for any personal injury, loss of life or property damage resulting from or occasioned by their entry onto the Leased Premises, whether or not accompanied by a representative of Lessee, except and to the extent arising from or caused by the negligent or willful acts or omissions of Lessee, or its officers, agents, employees, contractors or representatives.

17. Damage to or Destruction of Government Property. If Lessee damages or destroys any real or personal property of the Government, except as otherwise permitted in this Lease, Lessee shall promptly repair or replace such real or personal property to the reasonable satisfaction of the Government. At the Government's election, in lieu of such repair or replacement, Lessee shall pay to the Government an amount sufficient to compensate for the Government's loss because of damage or destruction of Government property, including natural resources.

18. Lessee's Insurance. [See Contract]

19. Damage to or Destruction of the Energy Production Facility.

19.1. Notification. If any part of the Project is damaged (except *de minimis* damage) or destroyed (the "**Damaged or Destroyed Property**"), Lessee shall promptly give notice thereof to the Government pursuant to the Contract, section C.55.

19.2. Restoration Obligation. Except as provided in **Section 19.3**, Lessee shall, as soon as reasonably practicable after the casualty, restore the Damaged or Destroyed Property as nearly as possible to the condition that existed immediately prior to such loss or damage.

19.3. Extensive Damage or Destruction. If the Government in consultation with Lessee, determines that the magnitude of Damaged or Destroyed Property is so extensive that the Project cannot be used by Lessee for its operations and the repairs, rebuilding, or replacement of the Damaged or Destroyed Property cannot reasonably be expected to be substantially completed within nine (9) months after the occurrence of the casualty (an “**Extensive Damage or Destruction of Improvements**”), either Party may terminate this Lease. If the Government determines that Extensive Damage or Destruction of Improvements has not occurred, then neither Party shall have the right to terminate this Lease. If the Government determines that such an event has occurred, but the Lessee disagrees with that determination, then the matter shall be resolved pursuant to the dispute provisions in the Contract. If the Parties mutually agree to repair, rebuild, and replace less than all Damaged or Destroyed Property, then neither Party shall have the right to terminate this Lease with respect to the Leased Premises on which the Damaged or Destroyed Property that will be repaired, rebuilt, and replaced is situated. Nothing herein shall be construed as limiting the Government’s right to terminate the Contract for convenience or for cause, and the automatic termination of this Lease in conjunction with such termination for convenience or for cause, pursuant to the terms of the Contract.

19.4 Application of Insurance Proceeds. Unless this Lease is terminated pursuant to the Contract, section I, any insurance proceeds actually collected by the Project Company (hereinafter defined) as a result of any casualty loss to the Project shall be applied in the following order of priority: (a) to restoring the damaged area and removing any related debris to the reasonable satisfaction of the Government; (b) to repairing, rebuilding, and/or replacing the Lessee Improvements and the damaged area to the reasonable satisfaction of the Government; and, (c) the excess, if any, shall be paid to Lessee.

20. Termination Remedies and Elections. Subject to the terms and conditions set forth in the Contract, either the Government or the Lessee, respectively, will have a right of election with respect to termination of this Lease after an early termination of the Contract.

20.1. If the Contract is terminated by the Government for cause, this Lease shall be terminated. Subject to successful renegotiation of terms and conditions with a successor to the Lessee, it may be renewed. However, the Lease will require successful amendment to reform it into a standalone ground lease in order to remain in effect.

20.2. If the Contract is terminated by the Government for its convenience, pursuant to its terms, and the Lessee elects to remain on the Leased Land and sell power generated by the EPF to a third party(ies), then the Parties may renew the Lease, in which case the Government shall not have the obligation to pay the full “cancellation charges” set forth in 52.212-4(I) CONTRACT TERMS AND CONDITIONS. However, if the Lease is so renewed, the Parties shall agree to how much the Government will be obligated to pay in regard to the termination. Additionally, the Lease must be successfully amended by mutual agreement of the Parties to reform it into a standalone ground lease in order to be renewed.

20.3. The Party electing to terminate the Lease under this **Section 20** shall notify the other Party of its election within thirty (30) Days of the time the electing Party receives notice of the final decision of the Contracting Officer terminating the Contract.

21. Notices. [See Contract]

22. Assignment/Transfer. Except as provided in this **Section 22**, Lessee shall neither assign nor transfer this Lease, without the prior written consent of the Government. The Government may withhold written consent for any proposed assignee or transferee if the Government determines in its sole discretion that such assignee/transferee could pose a threat to or breach of security at the Installation by its interest in this Project. However, such consent will not be unreasonably withheld or delayed. For purposes of this **Section 22**, a sublease shall not be considered an assignment or transfer and shall not be permitted.

22.1. In the event that the Contract is novated under FAR Subpart 42.12, the Lease may be assigned to the novated party (the "Project Company") coincident with the novation with the prior written consent of the Government.

22.2. The EPF may be transferred to a tax equity investor by the Project Company following the novation of the Contract to such tax equity investor under FAR Subpart 42.12 without the prior written consent of the Government. Likewise, the Lease must be beneficially assigned to the same legal entity as the EPF transferee by the Project Company, following a completed novation of the Contract to such legal entity under FAR Subpart 42.12, without the prior written consent of the Government.

22.3. Effect of Assignment. Any assignment by the Lessee shall be consistent with all of the terms and conditions of this Lease and the Contract, and the rights of the assignee shall terminate no later than immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of the Government to the Lessee or any assignee. Under any assignment made, with or without consent of the Government, the assignee shall be deemed to have assumed all of the obligations of the Lessee under this Lease.

22.4. Interest Acquired in Violation of Lease. The Government shall not be obligated to recognize any right of any Person to an interest in the Project, or to own or operate any facilities or improvements or conduct any other activity or activities on the Project authorized under this Lease if such interest was acquired in violation of this **Section 22**.

23. Liens and Mortgages. [Intentionally Omitted]

24. Disputes. [See Contract]

25. Installation and Mission Security and Safety. Nothing in this Lease shall be construed to limit any authority of the Installation commanding officer over the Leased Premises relating to the security or mission of the Installation, the health, welfare, safety or security of persons on the Installation or the maintenance of good order and discipline on the Installation, as established in law, regulation, or military custom. The foregoing rights, prerogatives and authorities include, but are not limited to, the following:

25.1. The authority to promulgate and enforce security regulations and restrict public access to the Installation, to include regulations delineating parameters for authorized entry to or exit from the Installation;

25.2. The authority to conduct background checks utilizing the National Crime Information Center III data base of the Federal Bureau of Investigation pursuant to guidance promulgated by the Director, Federal Bureau of Investigation;

25.3. The authority to order the temporary or permanent removal and debarment of anyone from the Installation if the commanding officer believes, in his or her sole discretion, that the continued presence of that person on the Installation represents a threat to the security or mission of the Installation, poses a threat to the health, welfare, safety, or security of persons occupying the Installation or compromises good order or discipline on the Installation;

25.4. The authority to conduct inspections or searches of individuals and the Project;

25.5. The authority to issue search authorizations of individuals, the Leased Premises or the Lessee Improvements based on probable cause.

25.6. The authority to conduct disaster preparedness exercises and emergency recovery operations on the Installation;

25.7. The authority to exercise emergency health powers on the Installation in the event of a public health emergency due to biological warfare, terrorism, or other communicable disease epidemic; and

25.8. The authority to provide force protection and law enforcement services at levels deemed appropriate by the Government for the Project.

26. Government Representatives. The Government, acting through the Secretary of the Air Force, may delegate certain of its responsibilities under this Lease to its duly appointed representatives pursuant to the Contract, section G.

27. Amendments. This Lease may be modified and amended only by mutual agreement in writing, signed by the Parties hereto, or their duly authorized representatives.

28. Transfer of Leased Premises by Government. The Government may sell or otherwise convey the Leased Premises as permitted by any provision of law. Subject to **Section 20**, this amended Lease may continue in full force and effect and Lessee shall attorn to the transferee of the Government's interest. The Parties acknowledge that certain provisions of this Lease establish rights and obligations that are uniquely associated with Governmental ownership of the Leased Premises and the Installation. Lessee shall cooperate with Government and any transferee of the Government's interest to modify such provisions as reasonably necessary to accommodate non-Governmental fee ownership of the Leased Premises.

29. Mandatory Clauses Required by Federal Law.

29.1 Anti-Kickback Procedures.

Lessee shall have in place and follow reasonable procedures designed to prevent and detect, in its own business operations, any of the following activities in connection with this Lease or any agreement relating to this Lease: (i) persons providing or attempting to provide or offering to

provide any kickback; or (ii) persons soliciting, accepting, or attempting to accept any kickback. Lessee further warrants that, when it has reasonable grounds to believe that any of the activities described in this Section may have occurred, it shall promptly report in writing such activities to the Government and either the Air Force Inspector General's office or the Department of Justice. Lessee shall cooperate fully with any federal agency investigating such activities.

#### 29.2 Gratuities.

The Government may, by a Default Termination Notice, terminate this Lease if it is found, after notice and hearing by the Secretary of the Air Force, or his/her duly authorized representative, that gratuities in the form of entertainment, gifts, or otherwise, were offered or given by the Lessee, or any agent or representative of the Lessee, to any officer or employee of the Government with a view toward procuring an agreement or procuring favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such agreement; provided that the existence of the facts upon which the Secretary of the Air Force or his/her duly authorized representative makes such finding shall be an issue and may be reviewed in any competent court. In the event this Lease is so terminated, the Government shall be entitled to pursue the same remedies against Lessee as it could pursue in the event of an Event of Default, and as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages (in an amount as determined by the Secretary of the Air Force or his/her duly authorized representative) which shall be not less than three (3), nor more than ten (10), times the costs incurred by the Lessee in providing any such gratuities to any such officer or employee.

#### 29.3 Covenant Against Contingent Fees.

Lessee warrants that no person or agency has been retained to solicit or secure this Lease for a commission, percentage, brokerage, or contingent fee, except bona fide employees or bona fide established commercial agencies maintained by Lessee for the purpose of securing business.

#### 29.4 Officials Not To Benefit.

No member of or delegate to the Congress of the United States of America or Resident Commissioner of the United States of America shall be admitted to any share or part of this Lease or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this Lease if made with a corporation for its general benefit.

#### 29.5 No Joint Venture.

Nothing contained in this Lease creates a partnership or joint venture between the Parties, it being agreed that the only relationship between the Government and Lessee under this Lease is that of landlord and tenant. Nothing in this Lease shall render either Party liable to any third party for the debts or obligations of the other Party.

#### 29.6 Facilities Nondiscrimination.

a. As used in this Section, the term “Facility” means lodgings, stores, shops, restaurants, cafeterias, restrooms, and any other facility of a public nature on the Leased Premises.

b. Lessee agrees that it will not discriminate against any person because of race, color, religion, sex, gender, sexual orientation, or national origin in furnishing, or by refusing to furnish, to such person or persons the use of any Facility, including any and all services, privileges, accommodations, and activities provided on the Project. This does not require Lessee to furnish to the general public the use of any Facility customarily furnished by the Lessee solely to sublessees or to Government military and civilian personnel, and the guests and invitees of any of them.

#### 29.7 Equal Opportunity.

a. The following provisions are applicable unless this Lease is exempt under the rules, regulations and relevant orders of the Department of Labor (41 C.F.R. ch 60).

b. Lessee shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, sexual orientation, or national origin. Lessee shall, in all solicitations or advertisements for employees placed by or on behalf of Lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, gender, sexual orientation, or national origin.

c. Lessee shall take proactive steps to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, gender, sexual orientation, or national origin. Such action shall include employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

d. Lessee shall post, in conspicuous places available to employees and applicants for employment, the notices to be provided by the Government for this Lease that explain this clause.

e. Lessee shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Government advising the labor union or workers’ representative of the Lessee’s commitments under this equal opportunity clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

f. Lessee shall comply with all provisions of Executive Order No. 11246, as amended, and of the rules, regulations, and relevant orders of the Department of Labor. Lessee shall furnish all information required by Executive Order No. 11246 and by the rules, regulations, and orders of the Department of Labor, or pursuant thereto, and shall permit access to its books, records, and accounts by the leasing agency and the Department of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

g. In the event of Lessee’s noncompliance with the equal opportunity clause of this Lease or with any of the rules, regulations, or orders described in this Section, the Government may take appropriate action to enforce compliance, and subject to other provisions of this Lease, may

terminate this Lease for default as provided in the Lease, and Lessee may be declared ineligible for further Government leases and other contracts in accordance with procedures authorized in Executive Order No. 11246, as amended, or by rule, regulation, or order of the Department of Labor, or as otherwise provided by law.

h. Notwithstanding any other provision in this Lease, disputes relative to this equal opportunity clause will be governed by the procedures in 41 C.F.R. § 60 1.1.

29.8 Drug-Free Workplace.

(a) *Definitions.* As used in this clause-

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C.812) and as further defined in regulation at 21 CFR 1308.11 - 1308.15.

“Conviction” means a finding of guilt (including a plea of *nolo contendere*) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the site(s) for the performance of work done by the Lessee in connection with a specific lease where employees of the Lessee are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Lessee directly engaged in the performance of work under a Government lease. “Directly engaged” is defined to include all direct cost employees and any other Lessee employee who has other than a minimal impact or involvement in lease performance.

“Individual” means an offeror/Lessee that has no more than one employee including the offeror/Lessee.

(b) The Lessee, if other than an individual, shall-within 30 days after award (unless a longer period is agreed to in writing for leases of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration-

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Lessee’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about-

(i) The dangers of drug abuse in the workplace;  
(ii) The Lessee's policy of maintaining a drug-free workplace;  
(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and  
(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by paragraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by paragraph (b)(1) of this clause that, as a condition of continued employment on this lease, the employee will-

(i) Abide by the terms of the statement; and  
(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Government in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or  
(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (b)(1) through (b)(6) of this clause.

(c) The Lessee, if an individual, agrees by award of the lease or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while under this lease.

(d) In addition to other remedies available to the Government, the Lessee's failure to comply with the requirements of paragraph (b) or (c) of this clause may render the Lessee subject to suspension of payments, termination of the lease or default, and suspension or debarment, as applicable.

#### 29.9 Contract Work Hours and Safety Standards Act—Overtime Compensation.

(a) Overtime requirements. No Lessee or subcontractor contracting for any part of the lease work which may require or involve the employment of laborers or mechanics shall require or permit any such laborers or mechanics in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than 1-1/2 times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(b) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the provisions set forth in paragraph (a) of this clause, the Lessee and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Lessee and subcontractor shall be liable to the United States (in the case of work done under lease for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions set forth in paragraph (a) of this clause in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by provisions set forth in paragraph (a) of this clause.

(c) Withholding for unpaid wages and liquidated damages. The Government Representative shall upon his or her own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Lessee or subcontractor under any such lease or any other Federal Contract with the same Prime Lessee, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same Prime Lessee, such sums as may be determined to be necessary to satisfy any liabilities of such Lessee or subcontractor for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause.

(d) Payrolls and basic records.

(1) The Lessee or subcontractor shall maintain payrolls and basic payroll records during the course of lease work and shall preserve them for a period of 3 years from the completion of the lease for all laborers and mechanics working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Nothing in this paragraph shall require the duplication of records required to be maintained for construction work by Department of Labor regulations at 29 CFR 5.5(a)(3) implementing the Davis-Bacon Act.

(2) The records to be maintained under paragraph (d)(1) of this clause shall be made available by the Lessee or subcontractor for inspection, copying, or transcription by authorized representatives of the Government Representative or the Department of Labor. The Lessee or subcontractor shall permit such representatives to interview employees during working hours on the job.

(e) Subcontracts. The Lessee or subcontractor shall insert in any subcontract exceeding \$100,000 the provisions set forth in paragraphs (a) through (e) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The Prime Lessee shall be responsible for compliance by any sub-Lessee or lower tier subcontractor with the provisions set forth in paragraphs (a) through (e) of this clause.

29.10 Davis-Bacon Act.

The Government's involvement in the oversight of the Davis-Bacon Act requirements is limited to monitoring the Project Owner's responsibilities only during the construction period(s). This oversight involves validating the Project Owner ensures that any class of laborers or mechanics employed, or working on the site, are in compliance with the Davis-Bacon wage classifications and standards.

29.11 Withholding of Funds.

The Government Representative shall, upon his or her own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Lessee under this lease or any other Federal contract with the same Lessee, or any other Federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Lessee, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Lessee or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Government Representative may, after written notice to the Lessee, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

29.12 Payrolls and Basic Records.

(a) Payrolls and basic records relating thereto shall be maintained by the Lessee during the course of the work and preserved for a period of 3 years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made, and actual wages paid. Whenever the Secretary of Labor has found, under paragraph (d) of the clause entitled Davis-Bacon Act, that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Lessee shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. The Lessee agrees that it and subcontractors employing apprentices or trainees under approved programs shall maintain

written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(b) (1) The Lessee shall submit weekly for each week in which any lease work is performed a copy of all payrolls to the Government Representative. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under paragraph (a) of this clause. This information may be submitted in any form desired. Optional Form WH-347 (Federal Stock Number 029-005-00014-1) is available for this purpose and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. The Prime Lessee is responsible for the submission of copies of payrolls by all subcontractors.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Lessee or sub-Lessee or his or her agent who pays or supervises the payment of the persons employed under the lease and shall certify—

(i) That the payroll or the payroll period contains the information required to be maintained under paragraph (a) of this clause and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the lease during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR Part 3; and

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph (b)(2) of this clause.

(4) The falsification of any of the certifications in this clause may subject the Lessee or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 3729 of Title 31 of the United States Code.

(5) The Lessee or subcontractor shall make the records required under paragraph (a) of this clause available for inspection, copying, or transcription by the Government Representative or the Department of Labor. The Lessee or subcontractor shall permit the Government Representative or the Department of Labor to interview employees during working hours on the job. If the Lessee or subcontractor fails to submit required records or to make them available, the Government Representative may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment. Furthermore, failure to submit the required records upon request or to make such records available, may be grounds for debarment action pursuant to 29 CFR 5.12.

29.13 Apprentices and Trainees.

(a) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Lessee as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in this paragraph, shall be paid not less than the applicable wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Lessee is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate specified in the Lessee's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Lessee will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(b) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed in the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate in the wage determination which provides for less than full fringe benefits for

apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate in the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate in the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Lessee will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(c) Equal employment opportunity. The utilization of apprentices, trainees, and journeymen under this clause shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

29.14 Compliance with Copeland Act Requirements.

The Lessee shall comply with the requirements of 29 CFR Part 3, which are hereby incorporated by reference in this Lease..

29.15 Subcontracts (Labor Standards).

(a) The Lessee or subcontractor shall insert in any subcontracts the clauses entitled *Davis-Bacon Act, Contract Work Hours and Safety Standards Act--Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Withholding of Funds, Subcontracts (Labor Standards), Contract Termination--Debarment, Disputes Concerning Labor Standards, Compliance with Davis-Bacon and Related Act Regulations, and Certification of Eligibility*, and such other clauses as the Government Representative may, by appropriate instructions, require, and also a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The Prime Lessee shall be responsible for compliance by any sub-Lessee or lower tier subcontractor with all lease clauses cited in this paragraph.

(b) (1) Within 14 days after award of the lease, the Lessee shall deliver to the Government Representative a completed Statement and Acknowledgment Form (SF1413) for each subcontract, including the subcontractor's signed and dated acknowledgment that the clauses set forth in paragraph (a) of this clause have been included in the subcontract.

(2) Within 14 days after the award of any subsequently awarded subcontract the Lessee shall deliver to the Government Representative an updated completed SF 1413 for each additional subcontract.

29.16 Lease Termination—Debarment.

A breach of the lease clauses entitled *Davis-Bacon Act, Contract Work Hours and Safety Standards Act-- Overtime Compensation, Apprentices and Trainees, Payrolls and Basic Records, Compliance with Copeland Act Requirements, Subcontracts (Labor Standards), Compliance with Davis-Bacon Related Act Regulations, or Certification of Eligibility* may be grounds for

termination of the lease, and for debarment as a Lessee and subcontractor as provided in 29 CFR 5.12.

29.17 Compliance With Davis-Bacon And Related Act Regulations.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are hereby incorporated by reference in this lease.

29.18 Disputes Concerning Labor Standards.

The United States Department of Labor has set forth in 29 CFR Parts 5, 6, and 7 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this agreement. Disputes within the meaning of this clause include disputes between the Lessee (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

29.19 Certification Of Eligibility.

(a) By entering into this agreement, the Lessee certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(b) No part of this lease shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(c) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

29.20 Buy American Act - Construction Materials.

(a) The Buy American Act (41 U.S.C. §§ 10a – 10d) provides that the Government give preference to domestic construction material, as defined below. Components, as used in this clause, means those articles, materials, and supplies incorporated directly into construction materials.

*Construction material*, as used in this clause, means an article, material, or supply brought to the construction site for incorporation into the Government building or work. Construction material also includes an item brought to the site pre-assembled from articles, materials or supplies.

Free Trade Agreement country means Canada, Chile, Mexico, or Singapore. Designated country means any of the following: Aruba, Austria, Bangladesh, Belgium, Benin, Bhutan, Botswana, Burkina Faso, Burundi, Canada, Cape Verde, Central African Republic, Chad, Comoros, and Denmark. Djibouti, Equatorial Guinea, Finland, France, Gambia, Germany, Greece, Guinea, Guinea-Bissau, Haiti, Hong Kong, Iceland, Ireland, Israel, Italy, Japan, Kiribati, Korea-Republic of, Lesotho, Liechtenstein, Luxembourg, Malawi, Maldives, Mali, Mozambique, Nepal,

Netherlands, Niger, Norway, Portugal, Rwanda, Sao Tome and Principe, Sierra Leone, Singapore, Somalia, Spain, Sweden, Switzerland, Tanzania U.R., Togo, Tuvalu, Uganda, United Kingdom, Vanuatu, Western Samoa, Yemen.

*Domestic construction material*, as used in this clause, means (1) an unmanufactured construction material mined or produced in the United States, or (2) a construction material manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States, exceeds 50 percent of the cost of all its components.

(b) Construction materials. Construction materials that are from a designated country, a Free Trade Agreement country, or domestic construction material are allowable. Construction material originating from countries other than these and are of the same class, kind, and quality, may be approved for use by the Management Review Committee, when requested, if the available construction materials are determined to be not timely available in sufficient quality or quantity, or to be unreasonable in cost.

(c) Notwithstanding any other language in this clause or elsewhere in this agreement, the Lessee shall not acquire or use any materials, supplies, or services originating from, located in, or transported from or through, any country or source prohibited from lawful importation into the United States by applicable statute, Executive Order, or regulation.

(d) The Lessee agrees that only allowable construction material will be used by the Lessee, subcontractors, material men, and suppliers in the performance of this lease, except for foreign construction materials, if any, listed in this lease.

#### 29.21 EO 13658 - Establishing a Minimum Wage For Contractors.

The Lessee expressly stipulates that the Lease is subject to Executive Order 13658 and the regulations issued by the Secretary of Labor in 29 CFR Part 10 pursuant to the Executive Order. Thereby, the Lessee must comply with "Appendix A of 29 CFR Part 10-Contract Clause" which is hereby incorporated by reference.

30. Index of Definitions and Acronyms. (In addition to those defined terms and acronyms in the Contract, section B.)

Defined Term	Section, Recital or Paragraph where Defined
ALTA	1.1
ACSM	1.1
Approvals	1.2
Closeout EBS	5.2
Commencement of Construction Date	1.2

Damaged or Destroyed Property	19.1
Day(s)	Means calendar days unless otherwise specified.
Demolition Reserve Account	13.7.1
Demolition Reserve Escrow Agreement	13.7.5
EBS	5.2
Effective Date	Introductory paragraph and 1.2
Enabling Statute	R-1
Energy Production Facility (EPF)	R-3 and the Solicitation
EPC	1.2
EPC Contract	1.2 Means the contract, or equivalent, between the Lessee and the EPC entity that will perform all engineering, procurement, and construction work for the Project.
Estimated Restoration Costs	13.2
Existing Improvements	1.1
Extensive Damage or Destruction of Improvements	19.3
GAAP	12.1.1
Government	Introductory paragraph
Government Operations	7.3
Government Retention Notice	13.3
Improvement Removal Report	13.2
Insolation	2.3
Installation	R-1 (iii)(c)

IRP	7.3
Lease	Introductory paragraph
Lease Expiration Date	3
Lease Term	3
Leased Land	1.1
Leased Premises	1.1
Lessee	Introductory paragraph
Lessee Improvements	1.1
Party or Parties	Introductory paragraph
Renewable Energy Supply Agreement or Contract	R-3
Termination Notice	13.1
Third Party Property Interests	1.5.1
Project	R-3
Project Company	22.1
Removal and Restoration Obligation	13.1
Rent	6.1
Restoration Deadline	13.1
Restoration Default	13.5.1
Secretary	Introductory paragraph
Security Actions	7.3.3
Supplemental Rent	6.3
Third Party Property Interests	1.5.1

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*[SIGNATURES ON FOLLOWING PAGES]*

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26 Sep 2022**

**IN WITNESS WHEREOF**, the Parties hereto by their duly authorized representatives have caused this Lease to be executed in their names as of the day and year indicated below.

**“GOVERNMENT”**

**THE UNITED STATES OF AMERICA,**  
acting by and through the Secretary of the Air  
Force

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

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

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**“LESSEE”**

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

Name: \_\_\_\_\_

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

\_\_\_\_ day of \_\_\_\_\_, 20\_\_

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**EXHIBIT A - LEASED LAND**

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**EXHIBIT B - EXISTING IMPROVEMENTS**

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**EXHIBIT C - THIRD PARTY PROPERTY INTERESTS**

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**EXHIBIT D - LIST OF ENVIRONMENTAL DOCUMENTS**

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**EXHIBIT E - RENT RATE SCEHDULE**

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**EXHIBIT F – [OMITTED]**

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**EXHIBIT G – [OMITTED]**

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**EXHIBIT H – [OMITTED]**

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**EXHIBIT I – EMERGENCY SERVICES PLAN**

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**EXHIBIT J - FORM OF THE MEMORANDUM OF LEASE**

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