



POWER PURCHASE AGREEMENT

This Power Purchase Agreement (“Agreement”) is made and entered as of _____ (“Effective Date”) by and between Torus Inc. (“Torus”), a Delaware corporation, located at 855 West 2400 South, South Salt Lake, UT 84119 and the Ticaboo Utility Improvement District (“TUID”), located at Highway 276 MM 28, Ticaboo, UT 84533. Torus and TUID are sometimes referred to in this Agreement collectively as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, Torus intends to construct, own, operate, maintain, and secure an energy storage and generation project (“Project”) consisting of 1,080 kWh of total storage capacity, 1 Nova Spin, 530 kW of solar generation, all ancillary equipment and cabling needed to deliver electrical power (“Energy”) to the TUID grid;

WHEREAS, the total projected annual output of the Project is at least 565MWh (“Output”);

WHEREAS, Torus desires to deliver Energy to the TUID grid at the Main Plant located at 135 Mesa Drive, Lake Powell, Utah 84533 (“Plant”) and coordinate the function of the Project in order to reduce generator use to approximately 16% annually;

WHEREAS, Torus desires to deliver and make available to TUID, and TUID desires to receive from Torus, operations, maintenance, and security services (“Managed Services”) for the Project; and

WHEREAS, Torus and TUID wish to enter into this Power Purchase Agreement to provide for Torus’ sale and TUID’s purchase of the Energy generated by the Project and consumed by the customers connected to the TUID grid (“Ratepayers”).

NOW, THEREFORE in consideration of the foregoing and the mutual promises below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

AGREEMENT

1. DEFINITIONS

Unless otherwise required by the context in which any capitalized term appears, initially capitalized terms used in this Agreement shall have the meaning set forth in the Managed Services Agreement.

2. PURPOSE OF POWER PURCHASE AGREEMENT

This Power Purchase Agreement: (a) governs the Parties’ respective rights and obligations with respect to the purchase and sale of the Energy generated by the Project and consumed by the Ratepayers, and (b) applies only to the Project described herein and consumed by the Ratepayers.

3. TERM

This Agreement shall become effective as of the Effective Date and shall continue for a period of twenty (20) years from the date the Project is commissioned and operational (“Commission Date”). Upon mutual agreement of the Parties, the Term may be extended for additional periods of five (5) years. This Agreement



may be terminated earlier pursuant to Section 8 of the Managed Services Agreement or as set forth herein.

4. PURCHASE AND SALE OF CAPACITY, ENERGY, AND MANAGED SERVICES

4.1. Project Capacity and Output. Beginning on the Commission Date and continuing thereafter through the Term of this Agreement, Torus shall sell, and TUID shall purchase the Energy produced by the Project and consumed by the Ratepayers at the rates set forth in Section 4.4, subject to the limitations set forth in Section 4.2.

4.2. Existing Generation Sources. TUID owns solar panels (“Existing Solar”) that generate approximately 30kW of energy. In exchange for operating, maintaining, and, if necessary, replacing the Existing Solar, Torus shall include the Existing Solar in the Project for purposes of calculating the Energy produced by the Project and consumed by the Ratepayers. TUID owns gas-powered generators (“Generators”) that are connected to the grid. TUID is responsible to operate and maintain the Generators. The energy produced by the Generators that is delivered directly to the grid shall not be included in the Project for purposes of calculating the Energy produced by the Project and consumed by the Ratepayers. The energy produced by the Generators that is delivered to the Project prior to delivery to the grid (“Generated Energy”) shall be included in the Project for purposes of calculating the Energy produced by the Project and consumed by the Ratepayers.

4.3. Managed Services. Torus agrees to provide Managed Services to TUID for the Project pursuant to terms and conditions set forth in a separate agreement to be executed by Torus and TUID (“Managed Services Agreement”), attached hereto as Exhibit A.

4.4. Purchase Price. TUID shall pay for the Project’s Energy and the Managed Services at the rate of \$0.24 per kWh (24¢/kWh) of Energy consumed by the Ratepayers (“Consumption”) during the month (“Monthly Fees”). The fees paid by TUID for Generated Energy shall not exceed \$10,000 annually, regardless of the actual amount of Generated Energy consumed by the Ratepayers. The Monthly Fee shall be subject to a 10% increase on the tenth anniversary of the Commission Date. The rates stated in this Section 4.4 and in Section 4.5 are based on the Preliminary Cost Estimate (as defined below) shown in the Proposal attached hereto as Exhibit B and may be amended in conjunction with approval of the Final Site Plan pursuant to Section 5.3.1, upon mutual written agreement of the Parties.

4.5. Excess Charges. TUID shall pay the rate of \$0.24 per kWh (24¢/kWh) of Consumption in excess of the Output, beginning on the Commission Date. On each anniversary of the Commission Date, the accrued amount of Consumption shall reset to zero and the Monthly Fees shall be subject to the rate set forth in Section 4.4 and, if applicable, this Section 4.5.

4.6. Incentives, Renewable Energy Credits, or Green Tags. TUID shall cooperate with Torus in providing necessary documentation to apply for any incentives available for the Project and with registering the Project with WREGIS or any other designated entity to create, manage and record the Project as a renewable energy credit or green tag. The Operating Fees for do not include title to green tags or renewable energy credits to TUID. Torus shall retain all incentives, renewable energy credits, or environmental attributes associated with the Project.

4.7. Invoicing. On or about the first day of each month during the Term, Torus shall invoice TUID for the Monthly Fees due for the previous month. TUID shall pay the invoice within thirty (30) days of receipt from Torus.



5. PROJECT DEVELOPMENT AND INSTALLATION

5.1. Preliminary Project and Budget. The estimated cost of the Project is \$2,540,000 (the Preliminary Cost Estimate”) as set forth in Exhibit B.

5.2. Design and Engineering. Upon execution of this Agreement, Torus shall commence development of the Project design and engineering. Torus shall present 50% and 90% design plans to TUID for review, comment, and discussion. Torus shall present a final site plan to TUID for approval that includes a final cost estimate of the Project (the “Final Cost Estimate”), an overview of the equipment to be installed, a map showing the location of the Project, and a proposed installation schedule (collectively, the “Final Site Plan”).

5.3. Project Approval. After review of the Final Site Plan, upon written notice (e-mail sufficient) and no more than ten (10) business days after receipt of the Final Site Plan, TUID may, in its sole discretion, (i) approve the Final Site Plan and elect to proceed with installation of the Project or (ii) terminate this Agreement and the Managed Services Agreement as set forth below in Section 5.3.2.

5.3.1. Approval. Upon approval of the Final Site Plan, Torus shall commence installation of the Project pursuant to the proposed schedule included in the Final Site Plan. If the Final Cost Estimate exceeds 120% of the Preliminary Cost Estimate, the Parties may elect to amend the pricing set forth in Sections 4.3 and 4.4 prior to approving the Final Site Plan and commencing installation.

5.3.2. Termination. In the event the Final Cost Estimate is below or equal to 120% of the Preliminary Cost Estimate TUID may terminate this Agreement and shall pay to Torus a termination fee of \$20,000 as compensation for the design and engineering work completed by Torus and TUID shall receive a copy of the Final Site Plan and the supporting documentation (“Project Materials”). TUID may terminate this Agreement at no cost if (i) the Final Cost Estimate exceeds 120% of the Preliminary Cost Estimate or (ii) TUID is required to purchase additional land in order to accommodate the Project. If TUID terminates pursuant to clause (i) or (ii), TUID shall not receive the Project Materials.

5.4. Installation Access and Cooperation. TUID agrees to provide reasonable access to the installation site and make all necessary arrangements for Torus to install the Project. TUID shall reasonably cooperate with Torus to ensure that the installation occurs promptly, at the time of delivery or within a mutually agreed-upon timeframe.

5.5. Site Preparation and Compliance. Torus is responsible for ensuring that the site designated for the installation of the Project meets all applicable safety standards, building codes, and any other regulatory requirements for the safe installation and operation of the Project. TUID agrees to provide reasonable assistance to Torus in order to comply with the requirements of this provision.

5.6. Permits and Approvals. Torus shall be responsible for securing any necessary permits or approvals required by local, state, or federal authorities for the installation, operation, and maintenance of the Project. Torus must ensure that the installation complies with all applicable legal and regulatory requirements before installation begins. TUID shall not be liable for any failure to install the Project if such permits or approvals are not obtained by Torus.



5.7. Title and Risk of Loss. Torus shall retain title to and risk of loss to the Project through the Term of the Agreement. TUID shall retain title to and risk of loss to the existing generation equipment.

6. OPERATION OF THE PROJECT

6.1. Generator Run Time Threshold. During the Term of this Agreement, Torus agrees to maintain the Project to ensure that the Generators produce no more than 25% of Consumption (“Threshold”), measured over a twelve (12) month period. Any additions or modifications to the Project required to meet this obligation shall be provided by Torus at no expense to TUID.

6.2. Remedy for Excess Generator Production. If the Generators exceed the Threshold, Torus shall have ninety (90) days from the date end of the twelve (12) month period that the Threshold is exceeded (the “Remediation Period”) to implement changes necessary to reduce the Threshold to or below the Threshold. If Torus fails to make such changes within the Remediation Period, Torus shall reimburse TUID at the rate set forth in Section 4.4 for the amount of kilowatt-hours corresponding to the delta between the Threshold (25%) and the actual percentage by which the Threshold was exceeded, calculated from the end of the Remediation Period until the changes are implemented. The reimbursement pursuant to this Section shall be calculated as follows:

Reimbursement = (Actual % - 25%) × [Total Relevant kWh] × \$0.24.

6.3. Remedy for Diminished Energy Consumption. If Consumption is less than 75% of the Output, as measured over a twelve (12) month period, TUID shall reimburse Torus at the rate set forth in Section 4.4 of for the delta between Consumption and Output over the twelve (12) month period in which the shortfall occurred. Therefore, the minimum annual payment due to Torus from TUID shall be \$101,700, calculated as follows: 75% × 565,000kWh × \$0.24.

6.4. Modifications to Generators. In the event that TUID elects to replace or materially alter the Existing Solar or Generators, prior to commencing work, the Parties will re-evaluate the Project based on the new equipment and amend this Agreement as necessary.

6.5. Re-evaluation after First Year. No later than thirty (30) days after the first anniversary of the Commission Date, the Parties shall agree to a timeline to complete a re-evaluation of the Project and, if further agreed by the Parties, to amend this agreement as needed.

6.6. Future Utility Development. In the event that an alternate energy provider is able to provide energy generation and storage services to TUID, Torus agrees to negotiate in good faith to match the pricing offered by the new provider.

7. ENTIRE AGREEMENT

This Power Purchase Agreement and the Managed Services Agreement, each with their respective exhibits, appendices, and attachments, shall form a single integrated agreement among the Parties and contains the entire agreement between the Parties concerning the subject matter thereof and supersede and cancel agreements, all previous representations, warranties, commitments, and writings in respect thereto, whether oral or otherwise. In the event of conflict between the Power Purchase Agreement and the Managed Services Agreement, the terms of the Power Purchase Agreement shall control.



[Signature Page Follows]



IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized officers as of the date set forth in the preamble to this Agreement.

TORUS INC.

**TICABOO UTILITY IMPROVEMENT
DISTRICT**

By: _____

Name: Nate Walkingshaw

Title: Chief Executive Officer

By: _____

Name:

Title:



EXHIBIT A

MANAGED SERVICES AGREEMENT

This MANAGED SERVICES AGREEMENT (“Agreement”) is made and entered into as of _____ by and between Torus Inc., located at 855 West 2400 South, South Salt Lake, UT 84119 (“Torus”) and the Ticaboo Utility Improvement District (“Customer”), located at Highway 276 MM 28, Ticaboo, UT 84533. Torus and Customer are sometimes referred to in this Agreement collectively as the “Parties” and individually as a “Party.”

RECITALS

WHEREAS, Customer controls property upon which an energy storage and generation project (“Project”) is located and desires to contract for operation, maintenance, and management of the Project; and

WHEREAS, Torus provides operation, maintenance and energy management services for generation and storage facilities and has agreed to provide those services for the Project on the terms and conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants, undertakings and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. AGREEMENT

1.1. *Agreement.* This Agreement consists of the terms and conditions set forth in the sections captioned by numbered Section designations (“Sections”) and the following appendices, which are incorporated and made part of this Agreement by this reference and are included in any reference to this Agreement.

Appendix A – [RESERVED]

Appendix B – Software End User License Terms

If the terms and conditions of the Sections of this Agreement vary or are inconsistent with any portion of the Appendices or any other Project Agreement, the terms of the Sections of this Agreement shall control and be given priority, and the provisions of the Appendices shall be subject to the terms of the Sections, except as set forth in the Appendices or in the Project Agreements. Neither party will be bound by or be deemed to have made any representations, warranties, commitments or other undertakings with respect to the subject matter of this Agreement that are not contained in this Agreement.

1.2. *Effective Date.* This Agreement shall be effective and shall govern the rights and obligations of the parties as of the date set forth in the Preamble.

1.3. *Relationship of The Parties.* Torus has been retained by Customer as an independent contractor to operate, maintain and manage the Project on behalf of Customer, in accordance with Prudent Utility Practice and the requirements of the Project Agreements. Customer has delegated to Torus overall responsibility for operating, maintaining and managing the Project to ensure that the Project meets all requirements under the Project Agreements.



2. DEFINITIONS

2.1. *Definitions.* Unless otherwise required by the context in which a defined term appears, the following terms shall have the meanings specified in this Section 2. Terms that are defined in other Sections shall have the meanings given to them in those Sections.

“Bankruptcy” means a situation in which (i) a party’s actions under applicable debtor relief laws demonstrate an inability to pay its debts as they mature or a need for protection from its creditors; (ii) a court of competent jurisdiction approves a petition filed against a party, which petition sought relief for the party’s creditors, and the action of the court remains in effect for an aggregated period of 60 days (whether or not consecutive); (iii) a party admits in writing its inability to pay its debts as they mature; (iv) a party gives notice to any person or entity of its current (or pending) insolvency or suspension of operations; or (v) a party makes an assignment for the benefit of creditors or takes other similar action for the protection or benefit of its creditors.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized or required to close in the State of Utah.

“Energy Management System” means the integrated energy storage management, security, and monitoring software provided by Torus.

“Equipment” means the photovoltaic solar modules, the battery energy storage system and related products owned, leased, or installed on property that is owned, leased, or otherwise controlled by Customer pursuant to a separate agreement.

“Force Majeure Event” means an event, condition or circumstance beyond the reasonable control of, and not due to the fault or negligence of, the party affected, and which could not have been avoided by due diligence and use of reasonable efforts, which prevents the performance by such affected party of its obligations hereunder; provided, that a “Force Majeure Event” shall not be deemed to have occurred or to be continuing unless the party claiming Force Majeure complies with the requirements of Section 15.3 (*Force Majeure*). Subject to the foregoing, “Force Majeure Event” shall include, as to either party, explosion and fire (in either case to the extent not attributable to the negligence of the affected party), flood, earthquake, storm or other natural calamity or act of God, strike or other labor dispute, war, insurrection or riot, actions or failures to act by governmental entities or officials, failure to obtain governmental permits or approvals (despite timely application therefor and due diligence) and changes in laws, rules, regulations, orders or ordinances affecting operation of the Project, which events were not pending on the date of this Agreement.

“Lender(s)” means

- (a) any person that has made loans to Customer, its successors or permitted assigns for the financing or refinancing of the Project (or any part thereof) or which loans are secured by the Project (or any part thereof),
- (b) the holder(s) of indebtedness evidencing any such loans or any person or entity lawfully acting on behalf of such holders, or
- (c) any person or entity that purchases the Project in connection with a sale-leaseback or other lease arrangement in which Customer is the lessee of the Project pursuant to a net lease.

“Project” means the generating and storage Project and related assets, together with other facilities and related assets, to be constructed on certain real property as set forth in the applicable Power Purchase Agreement.

“Project Agreements” means the agreements relating to the Project, including and as applicable, any Power Purchase Agreement, Interconnection Agreement, Loan Agreements, Sync Generator Agreement, Equipment Purchase Agreement, this Agreement and any other agreements applicable to the Project, permits, and licenses required for the operation, maintenance and management of the Project.



“Prudent Utility Practice” means (i) any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry in the country and geographic region where the Project is located during the relevant time period, or (ii) practices, methods and acts that, in the exercise of reasonable judgment on the facts known (or that reasonably should have been known) at the time a decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition.

“Reference Rate” means the rate published in the Money Rates table of The Wall Street Journal, from time to time, as the “prime rate”, plus 1%.

“Services” has the meaning set forth in Section 3.1.

3. SERVICES

3.1. *Scope of Services.* Subject to the terms and conditions of this Agreement, a Power Purchase Agreement, and any Project Agreements, as applicable, Torus shall perform the following services: (i) operate and maintain the Project on behalf of Customer, including upgrading and modernizing the system to incorporate then-current technological advances in Project equipment (“repowering”) on or about the tenth anniversary of the Commission Date (as defined in the Power Purchase Agreement); (ii) provide energy management services on behalf of Customer; and (iii) provide access to Torus’ energy management system software (“EMS”), subject to the terms of the End User License Agreement attached hereto as Appendix B (collectively, the “Services”).

3.2. *Standards for Performance of the Services.* Torus shall perform the Services required under this Agreement in a prudent, reasonable, and efficient manner and in accordance with (i) all applicable Laws, (ii) Prudent Utility Practices, (iii) the Project Agreements, and (iv) all insurance policies specified in Section 9 of this Agreement. Torus shall use all reasonable efforts to optimize the useful life of the Project and to minimize Project outages or other unavailability.

3.3. *Torus’ Personnel Standards.* Torus shall provide as reasonably necessary all labor and professional, supervisory and managerial personnel as are required to perform the Services. Such personnel shall be qualified to perform the duties to which they are assigned and shall meet any requirements for Project personnel under the Project Agreements. All individuals employed by Torus to perform the Services shall be employees or contractors of Torus, and their working hours, rates of compensation and all other matters relating to their employment shall be determined solely by Torus. With respect to labor matters, hiring personnel, and employment policies, Torus shall comply with all applicable Laws. Torus also shall act in a reasonable manner that is consistent with the intent and purpose of this Agreement and with Torus’ acknowledgment (hereby given) that Torus has no authority to enter into any contracts with respect to labor matters that purport to bind or otherwise obligate Customer.

3.4. *Compliance.* Torus shall comply with all Laws applicable to the operation, maintenance and management of the Project and the performance of the Services. Torus shall apply for and obtain, and Customer shall assist Torus in applying for and obtaining, all necessary permits, licenses and approvals (and renewals of the same) required to allow Torus to do business or perform the Services in the jurisdictions where the Services are to be performed. Torus shall provide reasonably necessary assistance to Customer, to secure permits, licenses, and approvals (and renewals of the same) that Customer is required to obtain from or file with any governmental agency regarding the Project. Torus also shall file such reports, notices, and other communications as may be required by any governmental agency regarding the Project.

3.5. *Operating Records and Reports.* Torus shall maintain Project operating logs, records, and reports (“Reporting”) that document the operation and maintenance of the Project. Customer shall have access to Reporting via the EMS. Torus shall maintain current revisions of drawings, specifications, lists, clarifications and other materials related to operation and maintenance of the Project provided to Torus by Customer and vendors. Torus shall provide Customer reasonably necessary assistance in connection with Customer’s compliance with reporting requirements under the Project Agreements, applicable Laws or any other agreement to which Customer is a party relating to the Project.



3.6. *No Liens or Encumbrances.* The owner of the Project shall maintain the Project free and clear of all liens and encumbrances resulting from any action of the owner or work done at the request of the owner, except for such liens or encumbrances that result directly from nonpayment by Customer of amounts due and owing to Torus under this Agreement.

3.7. *No Action.* Except where such action is expressly permitted by this Agreement, Torus shall not take any action that would cause a default under any Project Agreement.

3.8. *Emergency Action.* If an emergency endangering the safety or protection of persons, the Project, or property located near the Project occurs, Torus shall promptly notify Customer and take all necessary action to attempt to prevent or mitigate any such threatened damage, injury or loss. Torus shall make reasonable efforts to minimize any cost associated with remedial action in case of such an emergency.

3.9. *Action in Extraordinary Circumstances.* In the event that (i) the Project or major Project equipment suffers an unplanned outage (or Torus reasonably believes that such an occurrence is imminent), and (ii) Torus has made reasonable, but unsuccessful, efforts to notify and communicate with Customer regarding such occurrence or imminent occurrence in accordance with the terms of this Agreement, then Torus shall:

- (a) take all necessary action to prevent or to mitigate such unplanned outage,
- (b) make reasonable efforts to minimize any cost associated with such remedial action and,
- (c) continue to attempt to notify and communicate with Customer regarding the occurrence and the remedial action.

4. CUSTOMER RESPONSIBILITIES

4.1. *Access to the Site.* Customer shall provide Torus with all necessary access and cooperation to facilitate performance of the Services, including:

- (a) upon reasonable request by the Torus, access to the Site for routine and unplanned maintenance activities, inspections, and to address any technical issues or defects;
- (b) in the event of an emergency on the Site, in accordance with Section 3.8 (*Emergency*) and 3.9 (*Extraordinary Circumstances*), a means of entry and permission for Torus to enter the Site without consent of the Customer.

5. COMPENSATION AND PAYMENT

5.1. *Payments.* As compensation to Torus for performance of the Services hereunder or as compensation pursuant to another Project Agreement, Customer shall pay Torus the Monthly Fees as set forth in the Power Purchase Agreement.

5.2. [RESERVED]

5.3. [RESERVED]

5.4. [RESERVED]

5.5. *Billing and Payment.*

- (a) *Monthly Fees.* Customer shall pay the Monthly Fees within thirty (30) days of receipt of an invoice from Torus.



(b) [RESERVED]

(c) [RESERVED]

(d) [RESERVED]

5.6. *Interest.* Any amount owed to either party under this Agreement by the other party which remains unpaid more than thirty (30) days after the date such amount is due and payable shall begin to accrue interest at the Reference Rate commencing on the thirty-first day after such due date.

6. PROCEDURES AND REPORTING

6.1. *Operating Data and Records.* Torus shall monitor and record all operating data and information that (i) Customer must report to any person or entity under any Project Agreement, and (ii) Customer must report to any government agency or other person or entity under applicable Laws. Torus shall report required operating data and information to Customer in the EMS.

6.2. *Litigation, Permit Lapses.* Upon obtaining knowledge thereof, Torus shall promptly notify Customer in writing of: (i) any event of default under any of the Project Agreements; (ii) any litigation, claims, disputes or actions, threatened or filed, concerning the Project or the Services; (iii) any refusal or threatened refusal to grant, renew or extend (or any action pending or threatened that might affect the granting, renewal or extension of) any license, permit, warranty, approval, authorization or consent relating to the Project or the Services; and (iv) any dispute with any governmental authority relating to the Project or the Services.

6.3. *Other Information.* Torus shall promptly submit to Customer any material information concerning new or significant aspects of the Project's activities that directly impact Customer's use or benefit derived from the Project.

7. LIMITATIONS ON AUTHORITY

7.1. *General Limitations.* Notwithstanding any provision in this Agreement to the contrary, unless previously approved by Customer in writing, Torus and any employee, representative, contractor or other agent of Torus are prohibited from taking the specified actions with respect to the matters indicated below.

(a) Disposition of Assets. Sell, lease, pledge, mortgage, convey, or make any license, exchange or other transfer or disposition of any property or assets of Customer;

(b) Contract. Make, enter into, execute, amend, modify or supplement any contract or agreement (i) on behalf of, in the name of, or purporting to bind Customer or (ii) that prohibits or otherwise restricts Torus' right to assign such contract or agreement to Customer at any time;

(c) [RESERVED];

(d) Other Actions. Take or agree to take any other action that materially varies from the requirements of any Project Agreement;

(e) Lawsuits and Settlements. Settle, compromise, assign, pledge, transfer, release or consent to the compromise, assignment, pledge, transfer or release of, any claim, suit, debt, demand or judgment against or due by, Customer or Torus, or submit any such claim, dispute or controversy to arbitration or judicial process, or stipulate in respect thereof to a judgment, or consent to do the same;

(f) Liens. Create, incur or assume any lien upon the Project, except as otherwise set forth herein;



(g) Transactions on Behalf of Others. Engage in any other transaction on behalf of Customer or any other person or entity not expressly authorized by this Agreement or that violates applicable Laws, this Agreement or any Project Agreement; or

(h) Agreements. Enter into any agreement to do any of the foregoing.

7.2. *Execution Of Documents*. Any agreement, contract, notice or other document that is expressly permitted hereunder (or under written approval of Customer) to be executed by Torus shall be executed by the authorized representative of Torus or, subject to prior written notice to Customer, by such other representative of Torus who is authorized and empowered by Torus to execute such documents.

8. TERM AND TERMINATION

8.1. *Term*. The term of this Agreement (“Agreement Term”) shall begin upon execution of this Agreement (“Effective Date”) and shall continue for twenty (20) years or concurrently with the Project Agreements, whichever is longer. The Term may, upon agreement of Customer and Torus, may be extended for additional periods of five (5) years each. This Agreement is subject to earlier termination pursuant to Sections 8.2, 8.3, 8.4 or 8.5.

8.2. *Immediate Termination By Customer*. Subject to the terms of any Project Agreements, Customer may terminate this Agreement immediately (i) upon the Bankruptcy of Torus, (ii) upon the occurrence of a Force Majeure Event that is not remedied within 120 days of its initial occurrence, or (iii) as set forth in another Project Agreement. If the Agreement is terminated by Customer pursuant to Section 8.2(i) or 8.2(ii), Torus shall be compensated for all unpaid Monthly Fees that are incurred as of the date of termination.

8.3. *Termination Upon Notice By Customer*. Subject to the terms of any Project Agreements, Customer may terminate this Agreement upon 10 days prior written notice to Torus in the event (i) that Torus violates, or consents to a violation of, any Laws applicable to the Services or the Project, where the violation has or may have a material adverse effect on the maintenance or operation of the Project or Customer's interest, and Torus does not cure such violation within 30 days (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided Torus diligently commences and pursues such cure and indemnifies Customer for all related costs, of whatever kind), or (ii) of a material breach by Torus in the performance of the Services, if Torus does not cure such breach within 30 days from the date of Torus' receipt of notice from Customer demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided Torus diligently commences and pursues such cure and indemnifies Customer for all related costs, of whatever kind). If the Agreement is terminated by Customer pursuant to this Section 8.3, Torus shall be compensated for all unpaid Monthly Fees that are incurred as of the date of termination.

8.4. *Other Termination Upon Notice By Customer*. Subject to the terms of any Project Agreements, Customer may terminate this Agreement with 2 months prior written notice to Torus, upon the occurrence of (i) a sale or transfer by Customer of its rights in the Project or a sale or transfer of all or substantially all of the assets of or interests in Customer, or (ii) a determination by Customer that, for any reason, it no longer intends to continue operation of the Project. If the Agreement is terminated by Customer pursuant to this Section 8.4, Torus shall be compensated for (i) the fair market value of the Equipment as of the date of termination, (ii) a termination fee equal to \$175,000, and (iii) all incurred unpaid Monthly Fees, as of the date of termination.

8.5. *Termination By Torus*. Subject to the terms of any Project Agreements, Torus may terminate this Agreement: (i) for cause upon 15 days prior written notice to Customer in the event of (a) Customer's Bankruptcy; or (b) Customer's failure to perform in a timely manner any of its material obligations under this Agreement and such failure is not cured within 30 days of Customer's receipt of a notice from Torus demanding cure (or, if not curable within 30 days, within such period of time as is reasonably necessary, but in no event more than 90 days, provided that Customer diligently commences and continues to pursue such cure); or (ii) without cause upon 30



days prior written notice to Customer. If the Agreement is terminated by Torus pursuant to this Section 8.5, Customer shall pay all unpaid Monthly Fees that are incurred as of the date of termination.

8.6. *Project Condition At End Of Term.* Upon expiration or termination of this Agreement, Torus shall remove its personnel from the Project. Torus shall, at its sole discretion, elect to (i) leave the Project in as good condition as it was on the Effective Date, normal wear and tear and casualty excepted or (ii) remove the installed components of the Project and restore the site to a state similar to its preconstruction condition, at Torus' expense. In the event that Torus elects to leave the Project pursuant to clause (i), all equipment, special tools, improvements, inventory of supplies, spare parts, safety equipment, operating logs, records and documents maintained by Torus pursuant to Section 3.5 and any other items furnished under this Agreement will be left at the Project and will become or remain the property of Customer without additional charge. Customer shall also have the right, in its sole discretion, to assume and become liable for any contracts or obligations that Torus may have undertaken with third parties in connection with the Services. Torus shall cooperate in taking all reasonable steps requested by Customer required to effect the assumption of the contracts, provided that Customer agrees to indemnify and hold harmless Torus for all liabilities arising out of events and obligations arising from the assumption of contract rights and obligations after the date of any such assumption. Torus shall use commercially reasonable efforts to cooperate with Customer or a succeeding operator to assure that the operation, maintenance and management of the Project are not disrupted.

8.7. *Modification of the Services.* Torus reserves the right to modify or discontinue all or any portion of the Services at any time (including by limiting or discontinuing certain features of the Services), temporarily or permanently, without prior notice. In the event there is a material reduction in the Services, Torus will provide notice to Customer within five (5) business days of the reduction of Services.

8.8. *Right of First Refusal.* If Torus intends to sell, transfer, or otherwise dispose of their rights and obligations under this Agreement to any third party, other than in connection with (i) a sale of all or substantially all of Torus' business or assets, (ii) a merger, consolidation, or similar corporate transaction involving Torus, or (iii) an internal transfer to an affiliate of Torus, Torus shall first offer to sell to Customer on the same terms and conditions as those offered to the proposed third-party purchaser. Torus shall provide Customer with written notice (the "Notice") setting forth the material terms and conditions of the proposed sale, including the identity of the proposed purchaser, the purchase price, and other material terms. Customer shall have ten (10) days after receipt of the Notice to notify Torus in writing of its election to purchase on those terms. If Customer does not timely exercise its right, Torus may proceed with the sale to the third party on terms no more favorable to the third party than those offered to Customer. If Torus proposes to sell on more favorable terms, Torus shall first provide Customer with a new Notice and the right to exercise its right of first refusal in accordance with this provision.

9. INSURANCE

9.1. *Obligation to Obtain.* Customer and Torus shall obtain and maintain the insurance set forth in Sections 9.2 and 9.3. Such insurance may be maintained under individual or blanket insurance policies.

9.2. *Torus Coverage.* Torus shall maintain during the term of this Agreement the insurance described below with financially sound and reputable insurers with an AM Best Rating of A-VII or better and with limits and coverage provisions not less than the limits and coverage provisions set forth below:

(a) Commercial general liability insurance on an "occurrence" basis on a form for the commercial general liability insurance with at least the following coverage/enhancements: (i) limits of not less than the following (which may be met in part by umbrella liability insurance which must be follow form over the commercial general liability insurance); (ii) one million dollars (\$1,000,000) Each Occurrence Limit; (iii) two million dollars (\$2,000,000) General Aggregate Limit (Other than Products - Completed Operations); and (iv) two million dollars (\$2,000,000) Products - Completed Operations for at least 36 months.

(b) Automobile Liability Insurance: If and to the extent Torus or any entities on behalf of Torus will come to the Delivery Point or the Site, such entities shall obtain and maintain business automobile liability coverage with



coverage for “Hired Autos Only” and “Non-Owned Autos Only” and with minimum limits of not less than one million dollars (\$1,000,000) each accident limit. The policy limits may be satisfied by a combination of primary and umbrella or excess liability policies; however, any umbrella or excess liability policies must be follow form over the business automobile liability insurance.

(c) Workers' Compensation Insurance: If and to the extent Torus or any entities on behalf of Torus will come to the Delivery Point or the Site, such entities shall obtain and maintain workers' compensation as required by Applicable Law and Employer's Liability insurance with minimum limits as follows: (i) one million dollars (\$1,000,000) bodily injury by accident for each person; (ii) one million dollars (\$1,000,000) bodily injury by disease for each person; and (iii) one million dollars (\$1,000,000) bodily injury by disease-policy limit. Any umbrella liability policies must follow form over the employer's liability coverage.

(d) Umbrella Liability that shall be excess of commercial general liability, business automobile liability, and employers' liability. Such insurance shall be written on an “occurrence” basis on a form acceptable to Customer. Such insurance shall include a drop-down feature in the event any underlying limits are exhausted. Such insurance shall cover all operations of Torus and shall minimally provide the same coverages, additional insureds, and terms and conditions included in the primary policies. The umbrella policy to the commercial general liability insurance must be follow form over the commercial general liability insurance. Any umbrella policy should be endorsed to indicate that it is primary and non-contributory to any policies provided by Customer and any of the other additional insureds. The umbrella policy shall have limits of not less than the following: five million dollars (\$5,000,000) per occurrence and (ii) five million dollars (\$5,000,000) in aggregate.

The amounts of insurance required in the foregoing subsections 9.2(a), 9.2(b), 9.2(c), and 9.2(d), may be satisfied by Torus purchasing coverage in the amounts specified or by any combination thereof, so long as the total amount of insurance meets the requirements specified. Upon mutual agreement of the Customer, Torus may provide equivalent self-insurance in lieu of the requirements set forth in this Section.

All policies of liability insurance to be maintained by Torus shall provide for waivers of subrogation in favor of Customer, the Lenders and such other persons as may be required by the Project Agreements. These policies shall include the following:

- (i) a severability of interests or cross liability clause;
- (ii) insurance shall be primary and not excess to or contributing with any insurance or self-insurance maintained by Customer or the Lenders; and
- (iii) Customer, Lenders and such other persons or entities as may be required by the Project Agreements named as additional insureds.

All policies of insurance required to be maintained pursuant to Section 9.2 shall include a provision that bars any cancellation or reduction in coverage in a manner that affects the interests of Customer, without 60 days prior written notice to Customer, except for termination for non-payment of premium which shall require 10 days prior written notice to Customer. Customer has the option in placing the coverages listed above and naming the Torus as an additional insured.

9.3. *Customer Coverage.* Customer shall maintain from and after the date of this Agreement the insurance described below with limits and coverage provisions not less than the limits and coverage provisions set forth below. Such insurance may be provided through any combination of commercial insurance, self-insurance, risk pools, or other programs of financial responsibility customarily used by government entities. Any commercial insurers or reinsurers providing coverage shall be financially sound and reputable and, to the extent applicable, have an A.M. Best Rating of A-VII or better (or an equivalent rating from another nationally recognized rating agency).



(a) Commercial general liability insurance on an “occurrence” basis on a form for the commercial general liability insurance with at least the following coverage/enhancements: (i) limits of not less than the following (which may be met in part by umbrella liability insurance which must be follow form over the commercial general liability insurance); (ii) one million dollars (\$1,000,000) Each Occurrence Limit; (iii) two million dollars (\$2,000,000) General Aggregate Limit (Other than Products - Completed Operations); and (iv) two million dollars (\$2,000,000) Products - Completed Operations for at least 36 months. Customer may provide adequate self-insurance in lieu of the requirements set forth in this Section.

9.4. [RESERVED]

9.5. *Certificates.* On or before the date on which insurance must be provided, each party shall furnish certificates of insurance to the other party evidencing the insurance required pursuant to this Agreement. Each party shall cooperate with the other to ensure collection from insurers for any loss under any such policy.

9.6. *Payment Of Deductible Amounts.* Notwithstanding which party hereto shall have purchased, or been responsible for the purchase of, any insurance in respect of the Project or otherwise referred to in this Agreement, Torus shall promptly pay to Customer any deductible amount related to any claim against or other cost to Customer covered under any such insurance policy which arose due to the gross negligence of Torus.

10. INDEMNIFICATION AND LIABILITIES

10.1. *Indemnification.*

(a) Indemnification by Torus. General Indemnity. Torus shall defend, indemnify and hold harmless Customer, Customer, and each of their respective officers, directors, shareholders, managers, members, partners, employees, representatives, agents, creditors, successors and assigns (each, an “Customer Indemnified Party”) from and against any and all third party suits, actions, losses, damages, injuries, liabilities, claims, demands, penalties, assessments, interests and causes of action and expenses (including but not limited to reasonable attorneys’ fees, and expenses), for (a) bodily injury or death to any person, including but not limited to employees of Torus or its subcontractors and (b) damage to any property, to the extent caused by the Torus or its subcontractors or their agents or employees, which arises out of or is connected with this Agreement, the transactions contemplated by this Agreement or the negligence or willful misconduct of Torus or its subcontractors, provided that Torus’ indemnity pursuant to this Section 10.1(a) shall be reduced to the extent of any damages caused by the gross negligence, willful misconduct or fraud of the Customer Indemnified Party; provided, however, that Torus’ indemnification obligations hereunder shall be limited to insurance coverage.

(b) Infringement Indemnity. Torus shall defend, indemnify and hold harmless the Customer Indemnified Parties from and against all third party suits, actions, losses, damages, claims and liabilities of any type or description, including but not limited to reasonable attorneys’ fees and expenses, based upon any claim of infringement of any patent or other license or intellectual property right (whether by way of copyright, trademark, trade secret, or otherwise) resulting from Torus’ Services or any material breach of representations and warranties contained in Section 15.9(d). Each Party agrees to notify the other as soon as reasonably possible of any material matters with respect to which the foregoing indemnity is likely to apply and of which the notifying Party has actual knowledge. Upon notification by Customer or upon learning of the matter on its own accord, Torus shall, without limitation, defend (subject to reasonable consultation with Customer) such action or claim at Torus’ expense and pay the cost and damages and attorneys’ fees awarded against Customer in such action or claim; *provided, however*, that Torus shall have the right to control the defense and settlement of all such actions or claims, which such settlement shall be subject to the consent of Customer. Indemnification pursuant to this section shall not be predicated on Customer having made payment on any such claim. In the event the apparatus or equipment, or any part thereof furnished hereunder as part of the Services, in such a suit or proceedings under this section is held to constitute infringement, and its use is enjoined, Torus shall, at its option, and with Customer’s approval, and at Torus’ expense, either: (a) procure for Customer the right to continue using said software, parts and components thereof; (b) replace it with non-infringing apparatus or equipment; or (c) modify it so it becomes non-infringing while retaining equivalent functionality.



(c) Indemnification by Customer. Customer shall defend, indemnify and hold harmless Torus and its Affiliates and each of their respective officers, directors, shareholders, Affiliates, managers, members, partners, employees, representatives, agents, creditors, successors and assigns (each, an “Torus Indemnified Party”) from and against any and all third-party suits, actions, losses, damages, injuries, liabilities, claims, demands, penalties, assessments, interests and causes of action and expenses (including but not limited to reasonable attorneys’ fees, and expenses), for (a) material breach of this Agreement or applicable law or (b) damage to any property, to the extent caused by the Customer or its agents or employees, which arises out of or is connected with this Agreement, the transactions contemplated by this Agreement or the negligence or willful misconduct of Customer or its agents or employees, provided that Customer’s indemnity pursuant to this Section 10.1(c) shall be reduced to the extent of any damages are caused by the gross negligence or contractual breach of the Torus Indemnified Party.

10.2. *Environmental Liability*.

(a) Torus Liability. Torus shall not be responsible for claims directly or indirectly related to hazardous materials present at the Project before the date of this Agreement, except to the extent Torus acted with respect to such materials in a grossly negligent manner. Customer shall defend, indemnify and hold Torus harmless against such claims, except to the extent such claims arise from Torus’ grossly negligent or intentional acts.

(b) Customer Liability. Customer shall not be responsible for claims directly related to hazardous materials at the Project arising out of the grossly negligent or intentional acts of Torus. This provision of the Agreement shall not be construed to require Torus to take corrective action with respect to any hazardous materials at the Project before the date of this Agreement.

(c) Governmental Actions. If action is required at the Project to comply with any applicable environmental laws during the term of this Agreement, Customer shall be responsible for the costs of compliance.

11. LIMITATIONS OF LIABILITY

11.1. *Limitations Of Liability*.

(a) Consequential Damages. Notwithstanding any provision in this Agreement to the contrary, Torus and Customer each agree not to assert against the other any claim, demand or suit for consequential, incidental, indirect or special damages arising from any aspect of the performance or nonperformance of the other party or any third-party engaged by such other party under this Agreement, and each party hereto waives any such claim, demand or suit against the other in connection with this Agreement.

(b) Damages Limited to Annualized Monthly Fees. The aggregate liability of Torus (except for those claims that are subject to the provisions of Section 10.1(a) (*Indemnification by Torus*) or covered by the insurance set forth in Section 9, and then only to the extent such claims are actually covered thereby, after giving effect to any deductibles, exclusions, limits, or self-insured retentions thereunder) with respect to claims of Customer arising out of the performance or nonperformance of obligations under this Agreement. Torus’ liability shall in no event exceed, during any year of the Term, the total Monthly Fees payable to Torus during such year plus the amount necessary to satisfy Torus’ indemnification responsibilities under Section 10.

(c) Personal Liability Limited. Torus and Customer each understand and agree that there shall be absolutely no personal liability on the part of any of the members, partners, officers, employees, directors, agents, authorized representatives or Affiliates of Customer or Torus for the payment of any amounts due hereunder, or performance of any obligations hereunder. Torus shall look solely to the assets of Customer for the satisfaction of each and every remedy of Torus in the event of any breach by Customer. Customer shall look solely to the assets of Torus for the satisfaction of each and every remedy of Customer in the event of any breach by Torus.

(d) Survival. The parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this



Agreement, and shall apply at all times (unless otherwise expressly indicated), regardless of fault, negligence, strict liability, or breach of warranty of the party indemnified, released or whose liabilities are limited, and shall extend to the members, partners, principals, officers, employees, controlling persons, executives, directors, agents, authorized representatives, and affiliates of such party.

(e) Exclusivity. The provisions of this Agreement constitute Torus' and Customer's exclusive liability, respectively, to each other, and Torus' and Customer's exclusive remedy, respectively, with respect to the Services to be performed hereunder and Customer hereby releases Torus performing Services hereunder, and Torus hereby releases Customer performing its obligations hereunder, from any further liability.

12. CONFIDENTIALITY

12.1. *Torus*. Torus agrees to hold in confidence for a period of three (3) years after the termination date of this Agreement, any information supplied to Torus by Customer or others acting on its behalf. Torus further agrees, to the extent requested by the supplier of such information, to require its subcontractors, vendors, suppliers and employees to enter into appropriate nondisclosure agreements relative to such information, prior to the receipt thereof.

12.2. *Customer*. Customer agrees to hold in confidence for a period of three (3) years from the termination date of this Agreement, any information supplied to Customer by Torus or others acting on its behalf, provided that Customer may disclose such information as is required by Lenders (including their agents and advisors), provided Lenders enter into appropriate nondisclosure agreements. Customer further agrees, to the extent requested by the supplier of such information, to require its members and contractors to enter into such appropriate nondisclosure agreements relative to such information, prior to their receipt thereof.

12.3. *Exceptions*. The provisions of this shall not apply to information that was in the public domain, was already in the receiving party's possession, or was received lawfully and free of any obligation to treat it as confidential.

12.4. *Required Disclosure*. If a receiving party or any of its respective representatives is required by applicable law to disclose any of the information that is otherwise required to remain confidential pursuant to this Section 12, the receiving party will notify the other party promptly in writing, unless prohibited by applicable law, so that the other party may seek a protective order or other appropriate remedy (which the receiving party will not oppose), or, in the other party's sole discretion, waive compliance with the terms of this Agreement.

13. TITLE, DOCUMENTS AND DATA

13.1. *Materials And Equipment*. Title to all materials, equipment, tools, supplies, consumables, spare parts and other items purchased or obtained by Torus hereunder shall pass immediately to and vest in the Party that owns or leases the Equipment upon the passage of title from the vendor or supplier thereof, provided, however, that such transfer of title shall in no way affect Torus' obligations as set forth in this Agreement.

13.2. *Documents*. In the event that Customer owns or leases the Equipment, copies of all materials and documents prepared or developed by Torus, its employees, representatives or contractors in connection with the Project or performance of the Services, including all manuals, data, drawings, plans, specifications, reports and accounts and excluding all financial documentation created by Torus, shall be provided to Customer upon execution of this Agreement or as prepared or created.

13.3. *Review By Customer*. All materials and documents referred to in Section 13.2 hereof shall be available for review by Customer or Lenders (including their agents or advisors) at all reasonable times during development and promptly upon completion.

13.4. *Proprietary Information*. Where materials or documents prepared or developed by Torus or its agents, employees, representatives or contractors contain proprietary information, systems, techniques, or know-how



belonging to Torus, acquired from third parties by Torus, or by others acting on its behalf, such persons or entities shall retain all rights to use or dispose of such information, provided, however, that Customer shall have the right to the same to the extent necessary for operation or maintenance of the Project.

13.5. *License to Usage Data.* Customer grants Torus a non-exclusive, transferrable, royalty-free license to access, review, and analyze Customer's data collected through the usage of the EMS provided by Torus (the "Usage Data") and otherwise support Customer's efficient and optimal use of the EMS and Equipment. Torus may also use the Usage Data for its internal business purposes, including, but not limited to, for improving the performance of the EMS and Equipment. Only anonymized and aggregated data will be disclosed externally, unless otherwise agreed in writing by the Parties.

14. RESOLUTION OF DISPUTES

14.1. *Resolution Through Discussions.* If any dispute or difference of any kind (a "Dispute") arises between Customer and Torus in connection with, or arising out of, this Agreement, the Customer and Torus within 30 days shall attempt to settle such Dispute in the first instance through discussions. The designated representatives of Customer and Torus shall promptly confer and exert their best efforts in good faith to reach a reasonable and equitable resolution of such Dispute. If the representatives are unable to resolve the Dispute within 5 Business Days, the Dispute shall be referred within 2 Business Days of the lapse of the 5 Business Day period to the responsible senior management of each party for resolution. Neither party shall seek any other means of resolving any Dispute arising in connection with this Agreement until the responsible senior management of Customer and Torus have had at least 5 Business Days to resolve the Dispute following referral of the Dispute to them. If the parties are unable to resolve the Dispute using the procedure described in this section, either party may deliver notice to the other party of its intent to submit the Dispute to arbitration ("Arbitration Notice"). The Arbitration Notice shall include the specific issues concerning the Dispute which must be resolved by the arbitration.

14.2. *Arbitration.* Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial or other Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

14.3. *Continued Performance.* During the pendency of any arbitration, Torus and Customer shall continue to perform their obligations under this Agreement.

15. MISCELLANEOUS PROVISIONS

15.1. *Assignment.*

(a) Torus shall have the right to assign this Agreement or Power Purchase Agreement in whole or in part to (a) one or more of its wholly owned Subsidiaries, or (b) an entity that acquires all or substantially all of Torus' business or assets, whether by merger, reorganization, acquisition, or sale without prior written consent of Customer, but upon notice to Customer within five (5) Business Days of such assignment.

(b) Customer shall have the right to assign this Agreement or Power Purchase Agreement in whole or in part to (a) one or more of its wholly owned Subsidiaries, or (b) an entity that acquires all or substantially all of Customer's business or assets, whether by merger, reorganization, acquisition, or sale without prior written consent of Torus, but upon notice to Torus within five (5) Business Days of such assignment, to its financing parties.

(c) A Party may not assign this Agreement or Power Purchase Agreement other than as provided in this Section without the prior written consent of the other Party. Any attempted assignment of this Agreement or Power Purchase Agreement in contravention of the terms of this Agreement shall be void and unenforceable.



15.2. *Access to Project.*

(a) Customer. Customer, Lenders and their respective agents and representatives shall have access at all times to the Project and any documents, materials and records and accounts relating to Project operations for purposes of inspection and review. Upon the request of Customer, Lender or their respective agents and representatives, Torus shall make available to such persons or entities and provide them with access to any operating data and all operating logs.

(b) Cooperation. During any such inspection or review of the Project, each of Customer, Lender and their respective agents and representatives shall use its reasonable commercial efforts to cause authorized visitors to comply with Torus' safety and security procedures and to conduct such inspection and review in a manner which causes minimal interference with Torus' activities. Torus agrees to cooperate fully with Customer, Lender and their respective agents and representatives in providing requested information and documentation for the support of any financial or legal transactions associated with the Project.

15.3. *Force Majeure*. If either Customer or Torus is rendered wholly or partially unable to perform its obligations under this Agreement (other than payment obligations) due to a Force Majeure Event, the party affected by such Force Majeure Event shall be excused from whatever performance is impaired by such Force Majeure Event, provided that the affected party promptly, upon learning of such Force Majeure Event and ascertaining that it will affect its performance hereunder, (i) promptly gives notice to the other party stating the nature of the Force Majeure Event, its anticipated duration, and any action being taken to avoid or minimize its effect and (ii) uses its reasonable commercial efforts to remedy its inability to perform.. The suspension of performance shall be of no greater scope and no longer duration than that which is necessary. No obligations of either party which arose before the occurrence causing the suspension of performance and which could and should have been fully performed before such occurrence shall be excused as a result of such occurrence. The burden of proof shall be on the party asserting excuse from performance due to a Force Majeure Event.

15.4. *Amendments*. No amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by duly authorized representatives of both parties.

15.5. *Survival*. Notwithstanding any provisions herein to the contrary, the obligations set forth in Sections 7, 10, 12 and 14 and the limitations of liabilities set forth in Section 11, shall survive in full force despite the expiration or termination of this Agreement.

15.6. *No Waiver*. It is understood and agreed that any delay, waiver or omission by Customer or Torus with respect to enforcement of required performance by the other under this Agreement shall not be construed to be a waiver by Customer or Torus of any subsequent breach or default of the same or other required performance on the part of Customer or Torus.

15.7. *Notices*. All notices and other communications (collectively "Notices") required or permitted under this Agreement shall be (i) in writing and shall be given to each party at its address or email set forth in this Section 15.7 or at such other address or email as hereafter specified as provided in this Section 15.7 or (ii) sent via the EMS. All Notices shall be (i) delivered personally or (ii) electronic mail, registered or certified mail (return receipt requested and postage prepaid), or (iii) sent by a nationally recognized overnight courier service. Notices shall be deemed to given (A) when transmitted if sent electronic mail or (B) upon receipt by the intended recipient if given by any other means. Notices shall be sent to the following addresses:

To Torus:

Torus Inc.
855 West 2400 South
South Salt Lake, UT 84119
ATTN: Legal Department
E-Mail: legal@torus.co



To Customer:

Ticaboo Utility Improvement District Manager
HC 60 Box 2140
Ticaboo, UT 84533
ATTN: John Motley

15.8. *Fines And Penalties.* If during the term of this Agreement any governmental or regulatory authority or agency assesses any fines or penalties against Torus or Customer arising from Torus' failure to operate and maintain the Project in accordance with applicable Laws without Customer's prior written consent, such fines and penalties shall, subject to the limitations set forth in Section 11, be the sole responsibility of Torus.

15.9. *Representations And Warranties.* Each party represents and warrants to the other party that:

- (a) such party has the full power and authority to execute, deliver and perform this Agreement and to carry out the transactions contemplated hereby;
- (b) to the best of such party's knowledge, the execution, delivery and performance by such party of this Agreement, does not and will not materially conflict with any legal, contractual, or organizational requirement of such party; and
- (c) there are no pending or threatened legal, administrative, or other proceedings that if adversely determined, could reasonably be expected to have a material adverse effect on such party's ability to perform its obligations under this Agreement.

15.10. *Intellectual Property.*

- (a) Torus represents and warrants to Customer that (i) it owns or is licensed or is otherwise lawfully permitted to use any and all of the inventions, processes, know-how, trade secrets, technical expertise, copyrights, trademarks, patents and other intellectual property relating to the performance of the Services, and (ii) the performance of the Services, as reasonably contemplated under this Agreement, will not infringe on the inventions, processes, know-how, trade secrets, technical expertise copyrights, trademarks, patents and other intellectual property of any third party.
- (b) Customer and Torus acknowledge and agree that, pursuant to the terms of this Agreement, Customer is being provided and shall have access to certain intellectual property rights, which are (i) now or hereafter owned or controlled by Torus, or (ii) used or licensed by Torus pursuant to Torus' agreements with its subcontractors, including but not limited to software, patents, copyrights, intellectual property and other proprietary information relating to the performance of the Services, as well as certain processes and documentation related thereto ("Intellectual Property Rights"). Torus grants Customer and its representatives an irrevocable, permanent, transferable, exclusive, royalty-free license to the Intellectual Property Rights in connection with each Project, including but not limited to in operating and maintaining each Project.

15.11. *Counterparts.* The parties may execute this Agreement in counterparts, which shall, in the aggregate, when signed by both parties constitute one instrument. Thereafter, each counterpart shall be deemed an original instrument as against any party who has signed it.

15.12. *Governing Law and Jurisdiction.* The Parties hereto hereby submit to the exclusive jurisdiction of the United States District Court for the District of Utah and of any Utah state court sitting in Salt Lake City for the purposes of all legal proceedings arising out of or relating to this agreement or the transactions contemplated hereby. Each party irrevocably waives, to the fullest extent permitted by applicable law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum



15.13. *Partial Invalidity.* If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the rest of this Agreement shall remain in full force and effect and in no way be affected, impaired or invalidated.

15.14. *Captions.* Titles or captions of Sections contained in this Agreement are inserted as a matter of convenience and for reference, and do not affect the scope or meaning of this Agreement or the intent of any provision hereof.

15.15. *Vendor's Warranties.* In the event that Customer owns or leases the Equipment and for Customer's benefit, Torus shall obtain from sellers of equipment, material, or services (other than the Services), warranties against defects in materials and workmanship to the extent such warranties are reasonably obtainable, and, to the extent of any such warranties actually obtained, Customer releases Torus from any further liability arising in respect of such equipment, material or services (other than the Services) to the extent such liability is covered by any such warranty. Torus itself shall not be liable for any such warranties, or for any defects or damage caused by such equipment, material or services (other than the Services). Upon Customer's request, Torus agrees to take such steps as are necessary, short of litigation, to enforce said warranties. Each such warranty shall be enforceable by Customer for Customer's benefit or assignable by Torus to Customer without any further action or consent by or on the part of any third party. Unless otherwise requested, Torus shall administer such warranties and immediately notify Customer of any defects discovered or suspected that may be covered by such warranties. When requested, Torus shall assign any such warranty to Customer and assist Customer with the administration and enforcement of such warranty, or, if such warranty is not assignable to Customer, assist Customer with the administration and enforcement of such warranty. Any warranty under this Section shall be in addition to any warranty offered under the applicable Project Agreements.



APPENDIX A

[RESERVED]



APPENDIX B

SOFTWARE END USER LICENSE TERMS

These Software End User License Terms (“License”) govern your use of the Company’s energy management system software (including all related documentation, the “EMS”). The EMS is licensed, not sold, to you.

BY DOWNLOADING AND USING THE EMS EITHER VIA THE CLOUD OR ON YOUR MOBILE DEVICE, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT YOU ARE OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT USE THE EMS AND DELETE IT FROM YOUR MOBILE DEVICE.

License Grant. Subject to the terms of this Agreement, Company grants you a limited, non-exclusive, and nontransferable license to access or download and install (as applicable), and use the EMS to monitor and manage the applicable Torus products (“Equipment”) via a unique login to the cloud-based platform (“Platform”) or on a mobile device owned or otherwise controlled by you (“Mobile Device”) strictly in accordance with the EMS’ documentation;

License Restrictions. Except as may be expressly permitted by applicable law or expressly authorized by the EMS, you shall not:

- . copy the EMS, except as expressly permitted by this license;
- . modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the EMS;
- . reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the EMS or any part thereof;
- . remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the EMS, including any copy thereof;
- . rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the EMS, or any features or functionality of the EMS, to any third party for any reason, including by making the EMS available on a network where it is capable of being accessed by more than one device at any time;
- . use any robot, spider, or other automatic device, process, or means to access the EMS for any purpose, including monitoring or copying any of the material on the EMS;
- . use any manual process to monitor or copy any of the material on the EMS, or for any other purpose not expressly authorized in this Agreement, without Company's prior written consent;
- . frame, mirror, or otherwise incorporate the EMS or any portion of the EMS as part of any other mobile EMS, website, or service;
- . use the EMS in any manner that could disable, overburden, damage, or impair the EMS or interfere with any other party's use of the EMS;
- . remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting the EMS; or
- . use the EMS in, or in association with, the design, construction, maintenance, or operation of any hazardous environments or systems, including any aircraft navigation or communication systems, air traffic control systems, or any other transport management systems; safety-critical applications, including medical or



life-support systems, vehicle operation applications or any police, fire, or other safety response systems; and military or aerospace applications, weapons systems, or environments.

2. Reservation of Rights. You acknowledge and agree that the EMS is provided under license, and not sold, to you. You do not acquire any ownership interest in the EMS under this Agreement, or any other rights thereto other than to use the EMS in accordance with the license granted, and subject to all terms, conditions, and restrictions, under this Agreement. Company and its licensors and service providers reserve and shall retain their entire right, title, and interest in and to the EMS, including all copyrights, trademarks, and other intellectual property rights therein or relating thereto, except as expressly granted to you in this Agreement.

3. Collection and Use of Your Information. You acknowledge that when you download, install, or use the EMS, Company may use automatic means (including, for example, cookies and web beacons) to collect information about your Mobile Device and about your use of the EMS. You also may be required to provide certain information about yourself as a condition to downloading, installing, or using the EMS or certain of its features or functionality, and the EMS may provide you with opportunities to share information about yourself with others. All information we collect through or in connection with this EMS is subject to our Privacy Policy at <https://www.torus.co/privacy-notice>. By downloading, installing, using, and providing information to or through this EMS, you consent to all actions taken by us with respect to your information in compliance with the Privacy Policy.

4. Geographic Restrictions. The Content and Services are based in the state of Utah in the United States and provided for access and use only by persons located in the United States. You acknowledge that you may not be able to access all or some of the Content and Services outside of the United States and that access thereto may not be legal by certain persons or in certain countries. If you access the Content and Services from outside the United States, you are responsible for compliance with local laws.

5. Updates. Company may from time to time in its sole discretion develop and provide EMS updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, "Updates"). Updates may also modify or delete in their entirety certain features and functionality. You agree that Company has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Mobile Device settings, when your Mobile Device is connected to the internet either (a) the EMS will automatically download and install all available Updates; or (b) you may receive notice of or be prompted to download and install available Updates. You shall promptly download and install all Updates and acknowledge and agree that the EMS or portions thereof may not properly operate should you fail to do so. You further agree that all Updates will be deemed part of the EMS and be subject to all terms and conditions of this Agreement.

6. Third-Party Materials. The EMS may display, include, or make available third-party content (including data, information, applications, and other products, services, and/or materials) or provide links to third-party websites or services, including through third-party advertising ("Third-Party Materials"). You acknowledge and agree that Company is not responsible for Third-Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality, or any other aspect thereof. Company does not assume and will not have any liability or responsibility to you or any other person or entity for any Third-Party Materials. Third-Party Materials and links thereto are provided solely as a convenience to you, and you access and use them entirely at your own risk and subject to such third parties' terms and conditions.

7. Term and Termination. The term of Agreement commences when you download the EMS or log on to the Platform and will continue in effect until terminated by you or Company as set forth in the Managed Services Agreement. Company may terminate this Agreement at any time without notice if it ceases to support the EMS, which Company may do in its sole discretion or in the event that ownership or interest in the Assets associated with your license to the EMS are transferred to another party. In addition, this Agreement will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.



8. Effect of Termination. Upon termination all rights granted to you under this Agreement will also terminate and you must cease all use of the EMS and delete all copies of the EMS from your Mobile Device and account. Termination will not limit any of Company's rights or remedies at law or in equity.

9. Disclaimer of Warranties. THE EMS IS PROVIDED TO END USER "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, COMPANY, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE EMS, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, COMPANY PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE EMS WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

10. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY ARISING FROM OR RELATED TO YOUR USE OF OR INABILITY TO USE THE EMS OR THE CONTENT AND SERVICES FOR: PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES. DIRECT DAMAGES IN AMOUNTS THAT IN THE AGGREGATE EXCEED THE AMOUNT ACTUALLY PAID BY YOU FOR THE EMS. THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Indemnification. You agree to indemnify, defend, and hold harmless Company and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, arising from or relating to your use or misuse of the EMS or your breach of this Agreement, including but not limited to any actions you take to control, manage, or otherwise direct the Assets using the EMS and the content you submit or make available through this EMS.

12. Export Regulation. The EMS may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the EMS to, or make the EMS accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the EMS available outside the US.

13. US Government Rights. The EMS is a commercial product, consisting of commercial computer software and commercial computer software documentation, as such terms are defined in 48 C.F.R. § 2.101. Accordingly, if you are an agency of the US Government or any contractor therefor, you receive only those rights with respect to the EMS as are granted to all other end users under license, in accordance with (a) 48 C.F.R. § 227.7201



through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government licensees and their contractors.

14. Severability. If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect.

15. Governing Law. This Agreement is governed by and construed in accordance with the internal laws of the State of Utah without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or related to this Agreement or the EMS shall be instituted exclusively in the federal courts of the United States or the courts of the State of Utah in each case located in Salt Lake City and Salt Lake County. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

16. Waiver. No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between this Agreement and any applicable purchase or other terms, the terms of this Agreement shall govern.



EXHIBIT B