

**POWER PURCHASE AGREEMENT**

**Between**

**UN-School House LLC,  
as Seller**

**And**

**Constellation NewEnergy, Inc.,  
as Buyer**

**September 15, 2021**

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**EXHIBITS:**

Exhibit A	Description of Facility and Site
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## **POWER PURCHASE AGREEMENT**

**THIS POWER PURCHASE AGREEMENT** (this “Agreement”) is entered into as of September 15, 2021, (the “Effective Date”) by and between Constellation NewEnergy, Inc., a Delaware corporation (“Buyer”), and UN-School House LLC, a Delaware limited liability company (“Seller”). Each of Buyer and Seller is referred to individually in this Agreement as a “Party” and together they are referred to as the “Parties.”

### **RECITALS**

WHEREAS, Seller is developing a solar photovoltaic-powered electricity generation facility, on approximately 114 acres in Clearfield County, Pennsylvania, with an anticipated nameplate Capacity of 20 MW, known as the “School House Facility” (such facility, including the solar panels, inverters, buildings, collection lines, substation, and other improvements related thereto owned by Seller and more particularly described on Exhibit A, the “Facility”);

WHEREAS, Seller desires to sell and deliver, and Buyer desires to purchase and receive, the Metered Output generated by the Facility and an equivalent amount of RECs (as hereinafter defined), pursuant to the terms and conditions of this Agreement;

WHEREAS, Seller and Buyer entered into that certain Power Purchase Agreement dated June 22, 2021, as amended by that certain Amendment to Power Purchase Agreement dated June 30, 2021 (collectively, the “Original Agreement”); and

WHEREAS, the Parties agree that upon the execution of this Agreement, the Original Agreement shall be terminated and rendered null and void and the Parties shall be released from their obligations thereunder.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

### **ARTICLE 1**

#### **DEFINITIONS AND RULES OF INTERPRETATION**

1.1 Definitions. The following terms shall have the meaning hereinafter specified:

“Additional Equipment” has the meaning set forth in Section 4.2.2.

“Additional Nameplate Capacity” has the meaning set forth in Section 4.2.2.

“Affiliate” means, with respect to a Party, any Person which, directly or indirectly, controls, is controlled by or is under common control with such Party. For purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person whether through ownership of stock, by agreement or otherwise.

“Agreement” has the meaning set forth in the preamble to this Agreement.

“Ancillary Services” shall mean any current or future services capable of being provided by the Facility that are described as “Ancillary Services” in the PJM Rules, which shall include reactive power (and revenues therefrom). Ancillary Services do not include Environmental Attributes, Capacity Benefits, or Tax Credits.

“Approved Equipment Suppliers” shall include (i) the entities listed on Exhibit K, (ii) Tier 1 module manufacturers (as classified by Bloomberg New Energy Finance as of the date of determination) and with respect to racking and other equipment, those manufacturers that are well known and hold good commercial reputations in the solar photovoltaic industry, and (iii) those entities that, with respect to suppliers of solar photovoltaic modules manufacturers and Inverters, are purchased from manufacturers (a) who manufacture their own brand solar photovoltaic module or Inverter, (b) whose solar photovoltaic modules and Inverters have been used in a minimum of six (6) other solar photovoltaic-powered electric generating facilities of at least 75 MW in nameplate capacity in the two (2) years immediately preceding the Effective Date, with each such facility being financed by non-recourse construction and/or tax equity financing by at least six (6) different Facility Lenders over such two (2) year period, and (c) provides Seller with a warranty that is supported by a Person that has a Credit Rating of at least BBB- from S&P or Baa3 from Moody’s.

“Approved Tracking Attestation” means a Tracking Attestation form that has been submitted to and approved by the Center for Resource Solutions.

“Back-Up/Secondary Metering Equipment” has the meaning set forth in Section 5.2.

“Bankrupt” means, with respect to any Person, such Person (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law; (b) has any such petition, action or proceeding filed or commenced against it and such petition, action or proceeding is not stayed or dismissed within sixty (60) Days after filing; (c) makes an assignment or any general arrangement for the benefit of creditors or commences a marshalling of its assets for the benefit of creditors; (d) otherwise becomes bankrupt or insolvent; (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; (f) is generally unable to pay its debts as they fall due or admits in writing its general inability to pay debts as they fall due; (g) has dissolved (other than pursuant to a consolidation, amalgamation or merger); (h) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger); (i) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (j) causes or is subject to any event with respect to it which, under the applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (a) to (i) inclusive; or (k) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Break-Up Costs” means, with respect to the Non-Defaulting Party, reasonably documented brokerage fees, commissions and other similar third party transaction costs and



expenses reasonably incurred by the Non-Defaulting Party either in terminating or restructuring any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

"Business Day" has the meaning specified for such term in the PJM Rules.

"Buy Down Date" has the meaning set forth in Section 4.2.1.

"Buy Down Payment" has the meaning set forth in Section 4.2.1.

"Buy Down Payment Refund" has the meaning set forth in Section 4.2.2.

"Buyer" has the meaning set forth in the preamble to this Agreement.

"Buyer LC Proceeds" has the meaning set forth in Section 10.2.1.

"Buyer Required Amount" has the meaning set forth in Section 10.2.

"Buyer Security" has the meaning set forth in Section 10.2.

"Capacity" means the continuous load carrying capability of the Facility at the Delivery Point, at a given time, expressed in MW-AC.

"Capacity Benefits" means any current or future capacity credits, payments or similar accreditations provided to the Facility by PJM, arising out of or connection with the Capacity of the Facility at the Delivery Point that may be available under applicable Laws from time to time, excluding Environmental Attributes.

"Capacity Costs" means any current or future capacity related fees, penalties, damages, charges, costs and expenses assessed on the Facility by PJM, arising out of or connection with the Capacity of the Facility at the Delivery Point that may be assessed or charged under applicable Laws from time to time, excluding Environmental Attributes.

"Change of Control" means any transfer, assignment or acquisition of the ownership, of more than fifty percent (50%) of the equity of, or other ownership interest in, Seller to a Person that was not an Affiliate of Seller immediately prior to such transfer, assignment, or acquisition, except that in no event will a Change of Control occur in connection with (a) the issuance of equity or other ownership interest in Seller to a Facility Lender (or the subsequent transfer, assignment, or acquisition of such interest) in connection with any tax equity investment or (b) any transfer or assignment to, or acquisition by, a Permitted Transferee of the equity of, or other ownership interest in, Seller.

"Claims" means all third party claims or actions brought or filed by a Person, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are filed prior to or after the termination of this Agreement.

“COD Delay LDs” has the meaning set forth in Section 4.1.3.

“COD Notice” has the meaning set forth in Section 4.5.

“Commercial Operation” means that all of the conditions set forth in Section 4.5.1 through Section 4.5.3 have been met as provided in Section 4.5.

“Commercial Operation Date” or “COD” for the Facility means the date on which the Facility achieves Commercial Operation.

“Commercial Operation Quarter” means a calendar quarter; provided, however, that (a) to the extent that the Term Effective Date shall occur on any Day other than the first Day of a calendar quarter, the first Commercial Operation Quarter shall be the period commencing on the Term Effective Date and ending on 11:59:59 (EPT), the last Day of the calendar quarter in which the Term Effective Date occurs and (b) to the extent that this Agreement terminates on a Day other than the last Day of a calendar quarter, the last Commercial Operation Quarter shall be the period commencing at the start of hour ending 01:00 (EPT) on the first Day of the calendar quarter during which the termination occurs and ending at the conclusion of hour ending 24:00 (EPT) on the termination date.

“Commercial Operation Year” means a calendar year; provided, however, that (a) to the extent that the Term Effective Date shall occur on any Day other than January 1 of a calendar year, the first Commercial Operation Year shall be the period commencing on the Term Effective Date and ending on 11:59:59 (EPT), December 31 of the calendar year in which the Term Effective Date occurs and (b) to the extent that this Agreement terminates on a Day other than December 31 of a calendar year, the last Commercial Operation Year shall be the period commencing at the start of hour ending 01:00 (EPT) on January 1 of the calendar year during which the termination occurs and ending at the conclusion of hour ending 24:00 (EPT) on the termination date.

“Communication Plan” has the meaning set forth in Section 18.5.1.

“Confidential Information” has the meaning specified for such term in Section 18.1.

“Credit Rating” means, with respect to any Person, the rating then assigned to such Person’s senior, unsecured long-term debt obligations (not supported by third party credit enhancements), or if such Person does not have a rating for its senior, unsecured long-term debt, then the rating assigned to such Person as an issuer rating, by S&P, Moody’s or any other rating agency agreed to by the Parties.

“CRS Listed Facility” means a solar photovoltaic or wind energy generation facility with an Approved Tracking Attestation for generators participating in a Tracking System on file with the Center for Resource Solutions that is effective as of the date the energy associated with RECs was generated.

“Curtailed Energy” has the meaning set forth in Section 7.2.1.

“Customer(s)” means those retail customers to whom Buyer or any Affiliate of Buyer sells energy and/or RECs correlated with or in a quantity that is derived from the Metered Output and RECs purchased by Buyer under this Agreement.

“Customer Press Release” has the meaning set forth in Section 18.5.4.

“Damage Payment” means an amount equal to the initial Seller Required Amount of Development Security less any COD Delay LDs and Remaining MW Delay LDs already paid to Buyer pursuant to Section 4.1.3.

“Day” means the consecutive 24 hour-period beginning at the start of the hour ending 01:00 EPT on any Day and ending at the completion of the hour ending 24:00 EPT on such Day.

“Day-Ahead Delivery Point LMP” means, for any Settlement Interval, the “Day-Ahead Locational Marginal Price” at the Delivery Point for such Settlement Interval, as published by PJM; provided that, if such price no longer exists, then the Day-Ahead Delivery Point LMP shall be such other reference or index price for such Settlement Interval as is reasonably acceptable to the Parties (expressed in \$/MWh).

“Day-Ahead Hub LMP” means, for any Settlement Interval, the “Day-Ahead Locational Marginal Price” at the Settlement Point for such Settlement Interval, as published by PJM; provided, that if such price no longer exists, then the Day-Ahead Hub LMP shall be such other reference or index price for such Settlement Interval as is reasonably acceptable to the Parties (expressed in \$/MWh).

“Day-Ahead Market” has the meaning set forth in the PJM Rules for the “Day-ahead Energy Market”.

“Default” has the meaning set forth in Section 11.1.

“Deficient Volume” has the meaning set forth in Section 7.4.

“Delay LD Rate” has the meaning set forth in Section 4.1.3.

“Delivery Point” means the Facility’s point of interconnection with the Transmission System as set forth in the Interconnection Agreement.

“Delivery Term” has the meaning set forth in Section 2.1.

“Development Security” has the meaning set forth in Section 10.4.

“Disclosing Party” has the meaning set forth in Section 18.1.

“Downgrade Event” means at any point in time with respect to any Person, such Person does not have an Investment Grade Credit Rating, at such point in time.

“Early Termination Date” has the meaning set forth in Section 12.1.

“Eastern Prevailing Time” or “EPT” means either Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect as of the time of determination.

“Economic Curtailment” has the meaning set forth in Section 7.3.

“Effective Date” means the first date written above.

“Emergency” means an “Emergency Condition” as such term is defined in the PJM Rules, and any event or condition of the Facility or the Transmission System, in which continued operation of the Facility or the Transmission System (a) is reasonably likely to endanger life or property and necessitates immediate action to avert injury to persons or serious damage to property, or (b) is reasonably likely to adversely affect, degrade or impair Transmission System reliability or Transmission System reliability of the Transmission System of other electric utilities.

“Energy” means three-phase, 60 Hertz alternating current electric energy, expressed in units of MWh, net of auxiliary load and station electrical uses.

“Energy Payment” has the meaning set forth in Section 7.1(a).

“Energy Payment Rate” means for each Commercial Operation Year, \$35.00/MWh that Buyer will pay to Seller for the purchase of Products.

“Environmental Attribute” means any and all current or future credits, benefits, emissions reductions, offsets or allowances, howsoever entitled, named, registered, created, measured, allocated or validated, including RECs and credits, green tags, emission credits, nitrous oxide and methane reductions and carbon offsets, that are attributable to (a) generation of Energy by a solar photovoltaic or wind energy generation facility; (b) the emissions or other environmental characteristics of such generation by such facility or its displacement of conventional or other types of Energy generation, resulting from the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (UNFCCC) or the Kyoto Protocol to the UNFCCC or crediting “early action” emissions reduction, or Laws or regulations involving or administered by the Clean Air Markets Division of the United States Environmental Protection Agency, or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, and any reporting rights to such Environmental Attributes; (c) avoided water use (but not water rights or other rights or credits obtained pursuant to applicable Laws to site and develop the facility itself); or (d) as otherwise defined under the Voluntary Standard or as agreed by the Parties. Environmental Attributes do not include any Energy; Capacity; reliability or other power attributes from the facility; Tax Credits or other direct third-party subsidies; filed rates; or feed-in tariffs for generation of electricity by such facility.

“EPC Contract” means, individually or collectively as the context requires, engineering, procurement and construction agreements and/or balance of plant agreements for construction of the Facility to be entered into by and between Seller and the EPC Contractor.

“EPC Contractor” means, individually or collectively as the context requires, the contractors hired by Seller to perform services for Seller under the EPC Contract.

“Excess Energy” means with respect to any Commercial Operation Quarter, any Metered Output delivered during such Commercial Operation Quarter that is in excess of one hundred fifteen percent (115%) of the Expected Generation for the Commercial Operation Quarter.

“Excess Energy Credit Payment” means, with respect to any Commercial Operation Quarter (or a ratable portion thereof to the extent the Commercial Operation Quarter is not a full calendar quarter), a Dollar amount equal to (a) the Excess Energy for such Commercial Operation Quarter (if any), multiplied by the difference between (b) the Energy Payment Rate and the Excess Energy Price. If the applicable Energy Payment Rate exceeds the Excess Energy Price, Seller shall be required to make an Excess Energy Credit Payment to Buyer for such Commercial Operation Quarter, and if the applicable Energy Payment Rate is lower than the Excess Energy Price for such Commercial Operation Quarter, Buyer shall be required to make an Excess Energy Credit Payment to Seller for such Commercial Operation Quarter.

“Excess Energy Price” means an amount equal to (i) the summation of the following calculation for each Settlement Interval during such Commercial Operation Quarter: the product of (A) the Day-Ahead Hub LMP for such Settlement Interval; provided, however, that for any Settlement Interval in which the Day-Ahead Hub LMP is less than \$0/MWh, the Day-Ahead Hub LMP shall be deemed to be \$0/MWh for such Settlement Interval and (B) the total MWhs of Metered Output of Energy during such Settlement Interval and then divided by (ii) the total MWhs of Metered Output of Energy in such Commercial Operation Quarter.

“Expected Generation” means with respect to a Month during a Commercial Operation Year, a Commercial Operation Quarter or a Commercial Operation Year (as applicable), the expected generation for such Month during a Commercial Operation Year, Commercial Operation Quarter or Commercial Operation Year, as applicable, determined by reference to Exhibit F.

“Expected Installed Capacity” means 20 MW-AC at the Delivery Point.

“Facility” has the meaning set forth in the recitals of this Agreement and which is generally depicted in Exhibit A.

“Facility Debt” means all obligations of Seller for repayment of borrowed monies pursuant to the Financing Documents, excluding (a) inter-company working capital loans between Seller and one or more of its Affiliates, (b) any payments in respect of this Agreement or any trading agreement permitted under Section 15.2.3, (c) for the avoidance of doubt, any Tax equity investment or other equity investment in Seller by a Facility Lender, (d) any construction loan provided to Seller by a Facility Lender and (e) any trade payables (as determined under generally accepted accounting practices).

“Facility Lender” means any Person (including any trustee or agent acting on behalf of such Person) lending money or extending credit or equity financing (including any financing lease, monetization of Tax benefits, transactions with a Tax investor or credit derivative arrangement) in connection with the construction, ownership, operation or maintenance of the Facility.

“FERC” means the Federal Energy Regulatory Commission or any successor agency.

“Final Installed Capacity” has the meaning set forth in Section 4.2.1, as such term may be adjusted pursuant to Section 4.2.2.

“Financing Documents” means all loan and credit agreements, notes, bonds, indentures, security agreements, mortgages, deeds of trust, interest rate exchanges, swap agreements, and other documents relating to the development, bridge, construction and/or permanent debt financing or refinancing for the Facility, including any credit enhancement, credit support, working capital financing, or refinancing documents, and any and all amendments, modifications, or supplements to the foregoing that may be entered into from time to time at the discretion of Seller in connection with the development, construction, ownership, leasing, operation or maintenance of the Facility.

“Force Majeure” means any event that wholly or partly prevents or delays the performance by the Party affected of any obligation arising hereunder, but only if and to the extent: (a) such event or condition is not reasonably foreseeable and is not within the reasonable control of the Party affected; (b) that despite the exercise of reasonable diligence, cannot be or be caused to be prevented or avoided by such Party; and (c) such event is not the direct or indirect result of the affected Party’s negligence or the failure of such Party to perform any of its obligations under this Agreement. Events and conditions that may constitute Force Majeure include, to the extent satisfying the foregoing requirements, events and conditions that are within or similar to one or more of the following categories: condemnation; expropriation; invasion; plague; drought; landslide; hurricane or tropical storm; tornado; lightning, ice storm, dust storm, tsunami; flood; earthquake; fire; explosion; epidemic; pandemic (including, COVID-19 or the related virus designated SARS-CoV-2 or any mutations thereof); quarantine; war (declared or undeclared), terrorism or other armed conflict; strikes and other labor disputes if such strike or other labor dispute is part of a national action; riot or similar civil disturbance or commotion; other acts of God; acts of the public enemy; blockade; insurrection, riot or revolution; sabotage or vandalism; embargoes; and failures or delays of the Transmission System Owner directly impacting the Facility or the Interconnection Facilities except to the extent such failures or delays were due to circumstances that would constitute a force majeure impacting the Transmission System Owner. The term “Force Majeure” shall not include (A) a Party’s ability to enter into a contract for the hedge of energy and/or sale or purchase of the Products at a more favorable price or under more favorable conditions or other economic reasons, (B) delays or nonperformance by suppliers, vendors, or other third parties with whom a Party has contracted (including interconnection or permitting delays) except to the extent that such delays or nonperformance were due to circumstances that would constitute Force Majeure, (C) serial defects of the Facility’s equipment, (D) any other economic hardship or changes in market conditions affecting the economics of either Party, (E) any delay in providing, or cancellation of, any approvals or permits by the issuing governmental authority, except to the extent such delay or cancellation was due to circumstances that would constitute Force Majeure, (F) weather conditions (including severe and extreme weather, other than the weather events expressly provided above), (G) failure or breakdown of mechanical equipment except to the extent that such delays or nonperformance were due to circumstances that would constitute Force Majeure, or (H) variability in solar irradiance, including periods of low solar irradiance resulting from cloud cover, pollution, dust, smoke, weather conditions, and other causes, in the area in which the Facility is located.

“Forced Outage” means an unexpected failure of one or more components of the Facility or any outage of the Transmission System that prevents Seller from making Energy available at the Delivery Point in excess of 1MW and that is not the result of Force Majeure.

“Gain” has the meaning set forth in Section 12.2.

“GATS” means PJM Generation Attribute Tracking System.

“GATS Administrator” has the meaning set forth in the PJM GATS Operating Rules.

“Generator Operator” and “GOP” have the meaning given to such terms in the Glossary of Terms Used in NERC Reliability Standards.

“GenManager” means Buyer’s proprietary internet-based platform used to record and communicate generation unit status, including information about unit characteristics, outages, testing, scheduling and availability, as such platform is in effect from time to time, or a successor platform.

“GIF” means Generator’s Interconnection Facilities as described in the Interconnection Agreement.

“Governmental Authority” means any nation, state, or sovereign government, any federal, regional, state, municipal, or local governmental body (or other political subdivision thereof), any Person exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any reliability organization or agency with oversight of Seller or Buyer. “Governmental Authority” includes NERC and PJM.

“Governmental Charges” means all Taxes, assessments or other governmental fees, costs, levies, expenses, duties, imposts and tariffs imposed by any Governmental Authority (including costs, charges and fees imposed by PJM or any other Transmission System operator in connection with the delivery of the Products or the participation of the Facility in PJM markets) that would affect the sale and purchase of any part of the Products contemplated by this Agreement, but excluding in all cases Income Taxes.

“Guaranteed Commercial Operation Date” means June 1, 2022, as such date may be extended in accordance with Section 4.1.2.

“Guarantor” means a Person that possesses an Investment Grade Credit Rating.

“Guaranty” shall mean one or more guarantees, in form and substance reasonably acceptable to the beneficiary of the Guaranty, provided by a Guarantor.

“Income Taxes” means all foreign and domestic Taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, whether currently in effect or adopted during the Term, imposed on or measured by the net income or profits of Buyer, Seller, or any other Person, and any and all items of withholding, deficiency, penalty, addition to Tax, interest or assessment related thereto.

“Incremental Costs” has the meaning set forth in Section 9.8.

“Indemnified Party” has the meaning set forth in Section 13.1.

“Indemnifying Party” has the meaning set forth in Section 13.1.

“Installed Capacity” means, as of any date of calculation, the aggregate nameplate capacity of inverters (AC) that are installed and have been commissioned and for which the Facility’s systems have been substantially completed at the Facility and are capable of delivering Energy to the Delivery Point in accordance with Prudent Utility Practice.

“Interconnection Agreement” means that certain Standard Generation Interconnection Agreement to be entered into by and between the Transmission System Owner and Seller.

“Interconnection Facilities” means, collectively, the GIF and the TIF.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under “Money Rates” on such Day (or if not published on such Day on the most recent preceding Day on which published), plus two percent (2%) and (b) the maximum rate permitted by Law.

“Internal Revenue Code” means the Internal Revenue Code of 1986, as amended.

“Inverter” means an inverter installed at the Facility.

“Investment Grade” means a Credit Rating of BBB- and Baa3 or higher by S&P or Moody’s, respectively, provided, however, that if the Credit Ratings by S&P and Moody’s are not equivalent, then the lower of the Credit Ratings shall control for purposes of determining whether the Person’s Credit Rating is Investment Grade.

“Law” means any federal, state and local law, statute, act, rule, code, ordinance, decree, treaty, regulation, order, or judgment, legally binding announcement, directive or published practice or interpretation thereof, enacted, issued or promulgated by any Governmental Authority.

“Letter of Credit” means an irrevocable, transferable standby letter of credit, substantially in the form attached hereto as Exhibit C or in such other form as the beneficiary thereof may accept, issued by a Qualified Issuer. The costs and expenses of the Letter of Credit issued on behalf of (a) Seller with respect to Seller Security shall be borne by Seller and (b) Buyer with respect to Buyer Security, if applicable, shall be borne by Buyer.

“Letter of Credit Default” means, with respect to a Letter of Credit, the occurrence of any of the following events: (a) the Qualified Issuer that has issued such Letter of Credit (i) becomes subject to any event analogous to the ones identified in the definition of Bankrupt, (ii) fails to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after notice thereof and the lapse of any applicable grace period or (iii) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of such Letter of Credit; (b) such Letter of Credit ceases to be in full force and effect; or (c) the issuer of such Letter of Credit ceases to meet the qualifications of a Qualified Issuer.



“LMP” means the Locational Marginal Price as defined and published by PJM.

“Loss” has the meaning set forth in Section 12.2.

“Loss Event” means (i) any property casualty, loss, or other similar event affecting the Facility or (ii) any compulsory transfer or taking by condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking, of any part of the Facility, by any Governmental Authority or otherwise pursuant to applicable Law.

“Loss Event Buy-Down Amount” has the meaning set forth in Section 4.6.1.

“Major Equipment” all solar photovoltaic modules, trackers, Inverters and transformers required for the Facility to achieve Commercial Operation by the Guaranteed Commercial Operation Date from the Approved Equipment Suppliers.

“Major Milestone” means the milestones set forth in Exhibit H.

“Market Participant” has the meaning set forth in the OATT.

“Metered Output” means one hundred percent (100%) of the instantaneous Energy output, intermittent and variable within the hour, generated by the Facility and delivered at the Delivery Point, as measured by the Metering Equipment.

“Metering Equipment” has the meaning set forth in Section 5.1.

“Minimum Performance Volume” means the amount of Energy equal to eighty percent (80%) of the Expected Generation for each Rolling Period (starting with January 1<sup>st</sup> of the calendar year following the calendar year in which the Commercial Operation Date occurred).

“Month” means a calendar month commencing at 00:00 EPT on the first Day of such month and ending at 24:00 on the last Day of such month.

“Moody’s” means Moody’s Investors Service, Inc. or its successor.

“MW-AC” means megawatt-alternating current.

“MWh” means megawatt hour(s).

“NARR” means the North American Renewables Registry.

“NERC” means the North American Electric Reliability Corporation or any successor organization.

“Network Upgrades” means any network upgrades as described in the Interconnection Agreement.

“Notice to Proceed” means the full notice to proceed provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions to performance of such contract, by which Seller authorizes such EPC

Contractor to begin mobilization and construction of the Facility without any delay or waiting periods.

“OATT” means the FERC-filed Open Access Transmission Tariff of PJM.

“Operating Procedures” means those procedures developed pursuant to Section 9.4.

“Operating Security” has the meaning set forth in Section 10.4.

“Original Agreement” has the meaning set forth in the recitals of this Agreement.

“Party(ies)” has the meaning set forth in the preamble to this Agreement.

“Performance Assurance” has the meaning set forth in Section 10.4.

“Performance Assurance Provider” shall mean either Seller or Buyer, whichever is the provider of a Performance Assurance in question.

“Permitted Transferee” means a Person that (a) is a Facility Lender or subsequent transferee of such Facility Lender that is itself a Person that satisfies the requirements of parts (b)(i) and (b)(ii) of this definition, or has engaged another Person to operate the Facility and that Person satisfies the requirements of parts (b)(i) and (b)(ii) of this definition, or (b) (i) individually or together with its Affiliates owns or operates, or has engaged a Person to manage or operate the Facility that owns or operates, electric generating assets with an aggregate nameplate capacity of at least 350 MW and (ii) has a consolidated net worth of at least One Hundred Million Dollars (\$100,000,000).

“Permits” has the meaning set forth in Section 4.3.

“Person” means a natural person, corporation, electric cooperative, partnership, trust, association, joint venture, real estate investment trust or business trust (including any beneficiary thereof), unincorporated association, municipal corporation, municipally-owned utility, municipality or other Governmental Authority, and any other form of business or legal entity.

“Personal Property” means all non-real property necessary for the Facility to generate and delivery the Products to the Delivery Point in accordance with Prudent Utility Practice, including all Major Equipment.

“PJM” means PJM Interconnection LLC. or its successor in function.

“PJM GATS Operating Rules” means the procedure as published on the following website: <https://www.pjm-eis.com/documents.aspx> and listed as “Operating Rules”.

“PJM Penalties” means any scheduling penalties, imbalance penalties or other penalties, fees or charges as are now or at any time in the future assessed or imposed by PJM for failure to satisfy the PJM Rules, but does not include PJM Settlement Amounts.

“PJM Rules” means the policies, rules, guidelines, procedures, standards and criteria applicable to a Market Participant in PJM, including the OATT, the Operating Agreement, the PJM manuals and the PJM GATS Operating Rules.

“PJM Settlement Amounts” means any compensation received by or charges assessed by PJM as a result of the differences in scheduled versus actual amounts of Metered Output.

“Planned Outage” means the removal of 10% or more of the nameplate Capacity of the Facility from service at any one time that is planned in advance in accordance with Section 9.3.2; for the avoidance of doubt any operations and maintenance performed by Seller during a Forced Outage shall not be considered a Planned Outage.

“Potential Downstream Transaction” has the meaning set forth in Section 18.5.3.

“Potential Purchaser” has the meaning set forth in Section 18.5.3.

“Product(s)” means all Metered Output and an amount of RECs equivalent to the Metered Output.

“Production Damages Payment” means, with respect to any Rolling Period (starting with January 1<sup>st</sup> of the calendar year following the calendar year in which the Commercial Operation Date occurs), a Dollar amount equal to the product of (a) the Deficient Volume, and (b) the Production Damages Rate, plus, the Spot RECs Price times the Deficient Volume.

“Production Damages Rate” means \$12.00 per MWh.

“Prudent Utility Practice” means the practices, methods, standards and acts engaged in or adopted by a significant portion of the solar electric power generation industry or the electric power industry, as applicable, in the United States of America and PJM that, during the relevant period of time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would reasonably have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by the Facility’s equipment suppliers and manufacturers, operational limits, and all applicable Laws. Prudent Utility Practice is not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others but rather to be a spectrum of acceptable practices, methods, standards or acts.

“Qualified Issuer” means a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof or validly existing in the country of its organization that is registered to do business in the United States and has a branch office located in the United States, with (a) a Credit Rating of at least (i) “A-” by S&P or (ii) “A3” by Moody’s at any point in time and (b) a net worth of at least Ten Billion Dollars (\$10,000,000,000) at the time of issuance of a Letter of Credit.

“Qualified Surety” means a Person (i) duly authorized and licensed by the proper authorities to transact the business of indemnity and suretyship in the Commonwealth of

Pennsylvania and (ii) with financial strength rating of at least “A” from A.M. Best and that satisfies the requirements of A.M. Best financial size category of “XI” or larger.

“Real-Time” has the meaning set forth in the PJM Rules.

“Receiving Party” has the meaning set forth in Section 18.1.

“REC(s)” or “Renewable Energy Credit(s)” means credits generated from a CRS Listed Facility that (i) originate from a state that is not subject to any greenhouse gas cap-and-trade program, including the Regional Greenhouse Gas Initiative (“RGGI”) and (ii) are eligible to be certified (whether or not actually certified) as National Green-e® Energy renewable energy certificates meeting the requirements set forth in the Voluntary Standard, including “Certificates” as defined in the PJM GATS Operating Rules.

“REC Amendment” has the meaning set forth in Section 6.4.5.

“REC Trading Account” means with respect to GATS, a PJM GATS account or, with respect to any other Tracking System, an account with such Tracking System used to track the production, sale, transfer and purchase of RECs by the holder of such account.

“Reliability Standard” has the meaning given to such term in the Glossary of Terms Used in NERC Reliability Standards.

“Remaining MW Delay LDs” has the meaning set forth in Section 4.1.4.

“Remaining MWs” has the meaning set forth in Section 4.1.4.

“Remedial Action Plan” has the meaning set forth in Section 4.4.2.

“Required Nameplate Capacity” means 18 MW-AC.

“Rolling Period” means a rolling 24-month period during the Delivery Term commencing on January 1<sup>st</sup> of each calendar year and ending on December 31<sup>st</sup> of the succeeding calendar year. For example, if the Commercial Operation Date occurred on June 30, 2021, the first Rolling Period would commence on January 1, 2022 and end on December 31, 2023 and the next Rolling Period would commence on January 1, 2023 and end on December 31, 2024.

“S&P” means the S&P Global Ratings (a division of S&P Global, Inc.) or its successor.

“SCADA” has the meaning set forth in Section 8.4.3.

“Scarcity Event” has the meaning set forth in Section 9.8.

“Scheduling Procedures” has the meaning set forth in Section 6.1.1.

“Seller” has the meaning set forth in the preamble to this Agreement.

“Seller LC Proceeds” has the meaning set forth in Section 10.1.3.

“Seller Required Amount” has the meaning set forth in Section 10.1.

“Seller Security” means the Development Security or the Operating Security, as the context requires.

“Settlement Interval” means a “Day-Ahead Settlement Interval” as such term is defined in the PJM Rules.

“Settlement Point” means the Western Hub, Day Ahead, pnode ID 51288.

“Site” means the real property where the Facility will be physically located, and which is generally depicted in Exhibit A, as such exhibit may be updated from time to time in accordance with and subject to Section 3.3.

“Spot RECs Price” means, with respect to any RECs that Seller fails to transfer to Buyer, the amount (expressed in \$/MWh or \$/MW, as applicable) equal to the average of at least two (2) price quotes obtained by Seller from nationally recognized brokers during the ten (10) Days after such date the RECs were required to be transferred hereunder, for the sale and delivery of RECs in lots of approximately the same quantity and of the same vintage as the aggregate number of RECs not transferred by the due date.

“Surety Bond” means a surety bond in form and substance reasonably acceptable to Buyer. The costs and expenses of the Surety Bond issued on behalf of Seller with respect to Seller Security shall be borne by Seller.

“Surety Bond Default” means, with respect to a Surety Bond, the occurrence of any of the following events: (a) the Qualified Surety that has issued such Surety Bond (i) becomes subject to any event analogous to the ones identified in the definition of Bankrupt, (ii) fails to comply with or perform its obligations under such Surety Bond if such failure shall be continuing after notice thereof and the lapse of any applicable grace period or (iii) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of such Surety Bond; (b) such Surety Bond ceases to be in full force and effect; or (c) the issuer of such Surety Bond ceases to meet the qualifications of a Qualified Surety.

“Reduced Generation Event” has the meaning set forth in Section 9.8.

“Tax” means any federal, state, local, or foreign tax, charge, duty, fee, levy or other assessment, including income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs, duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, property, Personal Property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, imposed by any Taxing or Governmental Authority, and including any interest, penalty, or addition thereto.

“Tax Credits” means all federal, state, or local Tax benefits, credits, deductions, exemptions or exclusions, including production Tax credits, the investment Tax credits available under Section 48 of the Internal Revenue Code, any credits and sales or property Tax exemptions or exclusions available under federal, state or local Law, and any other credits or Tax benefits or

cash grants in lieu of such credits or benefits, available under any similar federal, state or local program.

“Term” has the meaning set forth in Section 2.1.

“Term Effective Date” has the meaning set forth in Section 2.1.

“Termination Payment” has the meaning set forth in Section 12.2.

“Test Energy” means the Metered Output prior to the Term Effective Date.

“TIF” shall mean Transmission System Owner’s Interconnection Facilities as described in the Interconnection Agreement.

“Tracking Attestation” means the Green-e® Energy Tracking Attestation Form for generators participating in a Tracking System, as may be modified by the Center for Resource Solutions from time to time.

“Tracking System” means GATS, NARR or such other industry-recognized tracking system for RECs as determined by the mutual agreement of Buyer and Seller.

“Transmission System” means the electric transmission system to which the Facility is interconnected.

“Transmission System Owner” means the entity that owns the Transmission System that will provide interconnection service to the Facility.

“Undelivered Quantities” has the meaning set forth in Section 12.2.

“United States Bankruptcy Code” means Title 11, United States Code or any successor statute.

“Voluntary Standard” means the Green-e® Renewable Energy Standard for Canada and the United States, Version 3.5 (updated December 15, 2020), or its successor version as applicable to RECs delivered hereunder, and as administered and monitored by the Center for Resource Solutions, including any applicable State-specific requirements as set forth in Appendix A thereof, as amended from time to time.

1.2 Rules of Construction. The capitalized terms listed in this Article shall have the meanings set forth herein whenever the terms appear in this Agreement, whether in the singular or the plural or in the present or past tense. Other terms used in this Agreement but not listed in this Article shall have meanings defined therein or in the PJM Rules or if not so defined, shall have meanings as commonly used in the English language and, where applicable, in Prudent Utility Practice. Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings. In addition, the following rules of interpretation shall apply:

1.2.1 The masculine shall include the feminine and neuter.

1.2.2 References to “Articles,” “Sections,” or “Exhibits” shall be to articles, sections, or exhibits of this Agreement.

1.2.3 The Exhibits attached hereto are incorporated in and are intended to be part of this Agreement; provided, however, that in the event of a conflict between the terms of any Exhibit and the terms of this Agreement, the terms of this Agreement shall take precedence.

1.2.4 This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

1.2.5 All accounting terms not specifically defined herein are to be construed in accordance with generally accepted accounting principles in the United States, consistently applied.

1.2.6 Unless expressly provided otherwise in this Agreement, where the Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld, conditioned or delayed, except in each case that the foregoing shall not apply to any action of a Party under ARTICLE 10, ARTICLE 11 or Section 13.1.

1.2.7 Use of the words “include” or “including” or similar words shall be interpreted as “including but not limited to” or “including, without limitation.”

1.2.8 Use of the words “tax” or “taxes” shall be interpreted to include taxes, fees, and surcharges imposed or levied by a Governmental Authority.

## **ARTICLE 2**

### **TERM**

2.1 Term. The term of this Agreement shall be effective as of the Effective Date and shall be binding on the Parties subject to the terms hereof and shall expire at the completion of the hour ending 24:00 (EPT) of the one hundred thirty-nine (139) month anniversary of the Term Effective Date, unless earlier terminated in accordance with the terms of this Agreement (the “Term”). The delivery term (the “Delivery Term”) of this Agreement shall commence at the start of the hour ending 01:00 (EPT) on the later of the Commercial Operation Date and the Guaranteed Commercial Operation Date (such date being the “Term Effective Date”) and shall expire at the end of the Term.

## **ARTICLE 3**

### **FACILITY DESCRIPTION**

3.1 Facility. Seller shall design and construct, or cause to be designed and constructed, the Facility with a nameplate Capacity at least equal to the Required Nameplate Capacity, but not greater than the Expected Installed Capacity. Seller shall cause the Facility to be designed and constructed in accordance with applicable Law and Prudent Utility Practices. A description of the

Facility is set forth in Exhibit A. Seller shall not schedule any Energy generated by the Final Installed Capacity to any Person other than Buyer.

3.2 Location. The Facility shall be located on the Site. Exhibit A is a description of the real property interests comprising the Site and where the Facility will be located on the Site.

3.3 Replacement Facility. Seller shall have the right to designate a replacement facility (or facilities) for the Facility prior to the Commercial Operation Date with the prior written consent of Buyer (such consent not to be unreasonably withheld, conditioned or delayed), provided that such consent may not be withheld if (i) such replacement facility is listed on Schedule 3.3 and the facility characteristics set forth therein have not materially changed since the date hereof, has an expected commercial operations date that is the same or earlier than the Guaranteed Commercial Operation Date and has a fixed contract price equal to or less than the Energy Payment Rate, (ii) there is no material public opposition to the development, operation or maintenance of such replacement facility and (iii) no event has occurred since the date hereof which could reasonably be expected to have a material adverse effect on the development, operation or maintenance of such replacement facility; provided, further, that Buyer shall not be required to take more than 20 MW of nameplate capacity.

## ARTICLE 4

### COMMERCIAL OPERATION

#### 4.1 Commercial Operation Date.

4.1.1 Seller shall cause the Facility to achieve Commercial Operation by the Guaranteed Commercial Operation Date.

4.1.2 The Guaranteed Commercial Operation Date shall be extended (i) if there is an event of Force Majeure, or (ii) due to Buyer's failure to perform its obligations under this Agreement. In either such event, the Guaranteed Commercial Operation Date shall be extended on a Day-for-Day basis without imposition of any COD Delay LDs for the duration of the event described in this Section 4.1.2.

4.1.3 If Seller fails to achieve Commercial Operation by the Guaranteed Commercial Operation Date, as such date may be extended in accordance with Section 4.1.2, Seller shall pay Buyer liquidated damages (the "COD Delay LDs") in an amount equal to \$100.00/MW/Day multiplied by Buyer's Expected Installed Capacity for each Day of delay that occurs (the "Delay LD Rate") until the earlier of (i) the Commercial Operation Date, and (ii) the date this Agreement is terminated in accordance with this Section 4.1.3. In the event that the Facility fails to achieve Commercial Operation within one hundred eighty (180) Days of the Guaranteed Commercial Operation Date, as such date may be extended in accordance with Section 4.1.2, Buyer may, at its sole option, terminate this Agreement upon written notice to Seller pursuant to Section 11.1.1, in which case Seller's liability will be as set forth in Section 4.1.6, ARTICLE 10 and ARTICLE 12, as applicable.

4.1.4 Notwithstanding the achievement of Commercial Operation, if the Installed Capacity of the Facility is less than the Expected Installed Capacity, Seller may continue the



installation and commissioning of additional capacity necessary to cause the Installed Capacity of the Facility to equal the Expected Installed Capacity. If the Facility achieves Commercial Operation, but the Installed Capacity of the Facility on the Term Effective Date is less than the Expected Installed Capacity, then Seller shall, commencing on the Term Effective Date, pay Buyer liquidated damages (the “Remaining MW Delay LDs”) in an amount for each Day of delay that occurs equal to (i) the Expected Installed Capacity minus the Installed Capacity of the Facility available to Buyer (the “Remaining MWs”) *multiplied by* (ii) the Delay LD Rate, until the earlier of (x) the Buy Down Date, and (y) the date that the Installed Capacity of the Facility is equal to the Expected Installed Capacity.

4.1.5 Within ten (10) Days after the later of (i) the start of each Month and (ii) receipt of Buyer’s invoice, Seller shall pay to Buyer the amount of any COD Delay LDs and Remaining MW Delay LDs owed for the previous Month. Each such invoice for COD Delay LDs and Remaining MW Delay LDs shall include reasonable supporting documentation regarding the calculation of the COD Delay LDs and Remaining MW Delay LDs, as applicable.

4.1.6 If a Force Majeure event extends the Guaranteed Commercial Operation Date for more than one hundred eighty (180) consecutive Days, then the non-impacted Party will have the right to terminate this Agreement without liability to the other Party by written notice delivered to the other Party no later than thirty (30) Days after the end of the one hundred eighty (180) Day period and before the Force Majeure event has been cured; if the non-impacted Party does not terminate this Agreement within thirty (30) Days of the conclusion of the one hundred eighty (180) Day period, then such Party’s termination right shall be of no further force and effect; provided, however, that such Party’s election not to terminate the Agreement within thirty (30) Days of the conclusion of the one hundred eighty (180) Day period shall not affect any other termination rights such Party may have pursuant to the terms of this Agreement, including the other termination rights set forth in this Section 4.1.6. If a Force Majeure event extends the Guaranteed Commercial Operation Date for more than three hundred sixty five (365) consecutive Days, then either Party will have the right to terminate this Agreement without liability to the other Party by written notice delivered to the other Party at any time after the end of the three hundred sixty five (365) Day period and before the Force Majeure event has been cured. Any such termination under this Section 4.1.6 shall be effective five (5) Business Days after notice of such termination is provided. For clarification, if this Agreement is terminated pursuant to this Section 4.1.6, no Damage Payment or Termination Payment under ARTICLE 12 shall be due, neither Party shall owe the other Party any sums or damages, associated with the early termination of this Agreement.

## 4.2 Seller Buy Down.

4.2.1 If Commercial Operation is achieved based on a total nameplate Capacity of the Facility which is less than the Expected Installed Capacity, then at any time prior to the date that is one hundred eighty (180) Days after the Term Effective Date (the “Buy Down Date”), Seller may notify Buyer in writing, and in any event, shall notify Buyer in writing within five (5) Business Days of the Buy Down Date, that the Expected Installed Capacity will be reduced to the Installed Capacity on such Day (the “Final Installed Capacity”). In such event, within ten (10) Business Days of the Buy Down Date, Seller shall pay to Buyer liquidated damages (the “Buy Down Payment”) in an amount equal to (a) (i) Buyer’s Expected Installed Capacity, *minus* the Final

Installed Capacity in MW-AC, *multiplied* by (ii) One Hundred Twenty-Five Thousand U.S. Dollars (\$125,000). Upon Seller's payment of the Buy Down Payment, the Expected Generation, Buyer's Security and Seller's Security shall be reduced pro rata based upon the Final Installed Capacity.

4.2.2 If, at any time within eighteen (18) months after the date that Seller pays the Buy Down Payment to Buyer, Seller intends to continue, commence or recommence the construction, installation, commissioning or operation of additional solar photovoltaic modules, trackers and Inverters at the Facility in excess of the Final Installed Capacity but not to exceed the Expected Installed Capacity (the "Additional Equipment"), then Seller shall promptly provide written notice of such intent to Buyer. For a period of thirty (30) Days following Buyer's receipt of such notice, Buyer shall be entitled to exercise an option to pay to Seller an amount (the "Buy Down Payment Refund") equal to (a) the product of (i) One Hundred Thousand Dollars (\$100,000) and (ii) the aggregate Capacity in MW-AC added to the Facility beyond the Final Installed Capacity as a result of such Additional Equipment not to exceed the Expected Installed Capacity (the "Additional Nameplate Capacity") *multiplied* by (b) a fraction, the numerator of which is (i) one hundred eighty (180) *minus* (ii) the number of Months (calculated to the second decimal place) that have elapsed from the date that Buyer received the Buy Down Payment until the date that payment of the Buy Down Payment Refund is made to Seller, and the denominator of which is one hundred eighty (180). Upon Buyer's payment of the Buy Down Payment Refund, the Expected Generation, Buyer's Security and Seller's Security shall be increased pro rata based upon the Additional Nameplate Capacity. If Buyer exercises such option, the Additional Nameplate Capacity shall be included in the Final Installed Capacity and the definition of "Facility" for all purposes of this Agreement, and Seller shall sell, and Buyer shall purchase, all Products generated or associated with such Additional Nameplate Capacity in accordance with the terms of this Agreement.

4.3 Permits. Seller shall obtain, and shall pay for, all applicable environmental and other permits, licenses, approvals, certificates, entitlements and other authorizations necessary or required for the construction, ownership, operation and maintenance of the Facility, the sale and delivery of Products and occupancy of the Site (together with all amendments, modifications, supplements, general conditions and addenda thereto, the "Permits"). During the Delivery Term, Seller shall (a) maintain all Permits in full force and effect and in good standing, except Permits the failure to maintain of which would have a material adverse effect on Seller's performance of its obligations hereunder and (b) promptly (but in any event, within three (3) Days) notify Buyer of any findings from Site inspections by any Governmental Authority relating to any Permit that would have a material adverse effect on Buyer.

#### 4.4 Buyer's Rights During Construction.

4.4.1 Buyer, at its own expense, shall have the right to monitor the construction, start-up and testing of the Facility and Seller shall comply with all reasonable requests of Buyer with respect to Buyer's monitoring of these events; provided, however, that any Site visits requested by Buyer during the construction, start-up and testing of the Facility shall be scheduled in advance with Seller during normal business hours and upon reasonable prior notice to Seller. Seller shall cooperate with physical inspections of the Facility as may be reasonably requested by Buyer during construction. Site visits requested by Buyer after completion of construction, start-

up, and testing are subject to the terms of Section 9.5. All persons visiting the Facility on behalf of Buyer during the construction, start-up, or testing of the Facility shall comply with all of Seller's and EPC Contractor's applicable safety and health rules and requirements and such visits shall not interfere with the normal construction, start-up and testing activities at the Site. Notwithstanding anything to the contrary, Buyer's technical review and inspection of the Facility shall not be construed as endorsing the design or construction thereof nor as any warranty of safety, durability, or reliability of the Facility or its suitability for its intended purpose.

4.4.2 Attached hereto as Exhibit G is a form of development schedule for the Facility, which Exhibit shall be updated from time to time (and in any event at least quarterly) by Seller. Within fifteen (15) Business Days after the end of each (a) calendar quarter from the first calendar quarter after the Effective Date and until the date that Seller has issued the Notice to Proceed under the EPC Contract and (b) Month from the second full Month after the date that Seller has issued the Notice to Proceed under the EPC Contract and until the Commercial Operation Date, Seller shall provide Buyer with a status report (which may be delivered in connection with a construction status meeting which Buyer will have the right to attend) detailing Seller's progress in developing and constructing the Facility, including status as to the each of the Major Milestones. The status reports shall be in the form of Exhibit L. Further, Buyer may make reasonable written requests to Seller for information related to construction of the Facility to the extent such request is not duplicative of information already provided by or on behalf of Seller under another part of this Section 4.4 or any other provision of the Agreement. Seller shall use reasonable commercial efforts to provide such information within ten (10) Business Days following such written request of Buyer, or if such information cannot be provided within such time period, at a time when Seller can reasonably provide such information. If Seller misses any Major Milestone by more than fifteen (15) Days, except as the result of Force Majeure or Buyer's failure to perform its obligations under this Agreement, Seller shall submit to Buyer, within ten (10) Business Days thereafter, a Remedial Action Plan ("Remedial Action Plan"), which may be contained in a status report and will describe in detail any delays (actual or anticipated) beyond the scheduled Major Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action and timeline of the same to achieve the missed Milestones and all subsequent Major Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Major Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Seller shall provide Buyer with periodic updates (no less than Monthly) with respect to any Remedial Action Plan and promptly respond to Buyer's request for updates and additional information with respect to any Major Milestone and related Remedial Action Plan.

4.5 Conditions to Commercial Operation. Not fewer than twenty (20) Days prior to the anticipated Commercial Operation Date, Seller shall notify Buyer in writing when it expects to achieve Commercial Operation ("COD Notice"). On or prior to delivery of the COD Notice in accordance with the preceding sentence, Seller shall provide evidence to Buyer of the satisfaction or occurrence of all of the conditions set forth in this Section 4.5. Buyer shall review such evidence to determine whether the applicable condition to Commercial Operation shall have been achieved,

and shall notify Seller of any deficiencies related thereto. The following are the conditions to Commercial Operation:

4.5.1 Seller has made arrangements for the supply of required electric service to the Facility that are needed for Seller to perform its obligations under this Agreement;

4.5.2 Seller has submitted to Buyer a certificate of an officer of Seller familiar with the Facility certifying (a) a list of the Facility's Major Equipment and that such Major Equipment has been delivered to the Site, (b) setting forth the number of Inverters that have been installed at the Facility, (c) that not less than the Required Nameplate Capacity and not more than the Expected Installed Capacity has been installed, commissioned and completed in all material respects (other than the completion of punch-list items with respect to such Installed Capacity of the Facility that do not materially and adversely affect the operation of the Facility), (d) that, in accordance with the Interconnection Agreement, all required Interconnection Facilities have been constructed, all required interconnection tests have been completed and the Facility is physically interconnected to the Transmission System in conformance with the Interconnection Agreement and able to deliver Energy to the Delivery Point consistent with the terms of this Agreement based on the Installed Capacity of the Facility as of the date of such certificate, (e) that, as of the date of such certificate, all Permits required to be obtained by Seller from any Governmental Authority to construct and/or operate the Facility in compliance with applicable Law and this Agreement have been obtained and are in full force and effect and in good standing (except for those Permits reasonably expected to be provided after Commercial Operation), and (f) that Seller is in compliance with the terms and conditions of this Agreement in all material respects; and

4.5.3 Certificates of insurance evidencing the coverages required by ARTICLE 16 have been obtained and submitted to Buyer.

#### 4.6 Production Guarantee Buy-Down Following Loss Event.

4.6.1 If any portion of the Final Installed Capacity is subject to a Loss Event and Seller elects not to, or is unable to, restore any portion of the Final Installed Capacity affected by the Loss Event, then subject to the remaining provisions of this Section 4.6, Seller shall buy-down the Expected Generation in proportion to the amount of the Final Installed Capacity affected by the Loss Event and that will not be restored, at a price determined based on then prevailing market prices for Energy and RECs, as determined by Buyer in a commercially reasonable manner (the "Loss Event Buy-Down Amount"). If such Loss Event affects all or substantially all of the Final Installed Capacity, the buy-down will apply to the entire Expected Generation, in which case this Agreement will terminate upon the occurrence of such buy-down.

4.6.2 Seller will have ninety (90) Days following the occurrence of a Loss Event in which to elect to either restore the portion of the Final Installed Capacity affected by the Loss Event or determine that it is unable or unwilling to do so. If during such ninety (90) Day period, Seller elects to restore the portion of the Final Installed Capacity affected by the Loss Event, then Seller will be afforded a period of one hundred eighty (180) Days following the occurrence of the Loss Event in which to complete such restoration before the applicable buy-down is required, except that if prior to the end of such one hundred eighty (180) Day period, Seller delivers to Buyer a certificate of an independent engineer reasonably acceptable to Buyer certifying that any

remaining restoration of the Facility can be completed within an additional one hundred eighty (180) Days, then Seller will be allowed an additional one hundred eighty (180) Day period following the expiration of the initial one hundred eighty (180) Day period in which to complete such restoration before the payment of the Loss Event Buy-Down Amount will be required.

4.6.3 If a Loss Event occurs as a result of an event of Force Majeure, then the Loss Event Buy-Down Amount will not exceed the amount equal to (A) the aggregate condemnation award or insurance proceeds received by Seller with respect to the applicable Loss Event, *minus* (B) the amount equal to (x) the portion of such award or proceeds, as applicable, applied to the repair and restoration of the Facility, *plus* (y) the portion of such award or proceeds, as applicable, that is required to be paid to Facility Lenders in satisfaction of outstanding indebtedness that is secured by the assets of Seller, *plus* (z) the portion of such award or proceeds, as applicable, that in accordance with the applicable limited liability company agreement or other relevant investment document, is required to be distributed to tax equity investors on account of the inclusion of such proceeds in Seller's available cash flow, determined based on the allocation percentages then applicable thereunder, or is received as compensation for the loss of tax benefits by the tax equity investors. In no event will Buyer be required to make a payment to Seller in connection with any Loss Event.

## ARTICLE 5

### METERING

5.1 Metering Devices. Seller shall provide, and/or cause to be provided, at no cost to Buyer, a billing metering system that conforms with the minimum standard requirements of PJM, as specified in PJM Rules applicable to new meter installations, backup/secondary Metering Equipment, and any replacements and/or upgrades which impact the billing metering system used for transactions with PJM, which metering system shall be installed at a location electrically close to the Delivery Point with a programmed loss compensation to allow calculation of the Energy delivered to the Delivery Point, (the "Metering Equipment"). The Energy generation from the Facility delivered to the Delivery Point (expressed in MWh) shall be measured in accordance with the metering methodology recognized by the PJM Rules for settlement purposes without deduction for transmission losses from and after the Delivery Point for any reason, provided that if the Facility is metered on the low side of the main step-up transformer, the transformer and line losses between the Metering Equipment and Delivery Point will be calculated by Seller and deducted from the metered quantity (or programmed as a percentage loss into the Metering Equipment) to determine the Energy generation from the Facility. Seller consents to allowing Buyer, to the extent Buyer is permitted to do so pursuant to (and subject to any restrictions or other requirements of) the Interconnection Agreement, the PJM Rules (including the OATT) and other applicable Laws, to read the Metering Equipment for informational purposes and to otherwise inspect the Metering Equipment, provided that (i) Buyer's inspection does not interfere with the construction, operation, maintenance or repair of the Facility or any portion thereof or pose a safety hazard, (ii) occurs no more than once per year, provided Buyer shall have the right to conduct additional inspections as necessary with respect to any issues impacting the functionality or performance of the Metering Equipment to the extent Buyer is permitted to do so pursuant to (and subject to any restrictions or other requirements of) the Interconnection Agreement, the PJM Rules (including the OATT) and other applicable Laws, and (iii) the individuals performing the inspection comply with Seller's

safety and security rules. Any adjustment to prior meter readings shall be made and settled in accordance with the Interconnection Agreement, the PJM Rules (including the OATT) and other applicable Laws, and the amount of Metered Output shall be appropriately adjusted to reflect such adjustment to prior meter readings. Any disputes involving any aspect of the billing metering standards or their application to either Buyer or Seller, shall be resolved consistent with applicable PJM Rules.

5.2 Back-Up/Secondary Metering Equipment. To the extent permitted pursuant to the Interconnection Agreement and the relevant PJM Rules, each of Buyer and Seller may, at their own expense, install and maintain additional metering, and/or communication equipment for purposes of monitoring, recording or transmitting data relating to the amount of Metered Output generated by the Facility (each, a “Back-Up/Secondary Metering Equipment”). Each Party will provide the other with reasonable advance notice of, and will permit a representative of the other to witness and verify any inspections or tests of, such Back-Up/Secondary Metering Equipment; provided, however, that each Party will not unreasonably interfere with such inspections or testing. Upon Buyer’s request, Seller will provide reasonable assistance with Buyer’s installation of its Back-Up/Secondary Metering Equipment and associated equipment, including arranging for a reasonable location at the Delivery Point, for such Back-Up/Secondary Metering Equipment.

## **ARTICLE 6**

### **PURCHASE AND SALE OF THE PRODUCTS**

#### **6.1 Deliveries and Scheduling**

6.1.1 Seller shall, directly or through its scheduling coordinator or a qualified third party, serve as Market Participant for the Facility and will be responsible for any scheduling of the Metered Output to the Delivery Point, in compliance with the PJM Rules and the Scheduling Procedures set forth in Exhibit B (the “Scheduling Procedures”). Seller will be responsible for (a) all interconnection arrangements, electric losses, transmission arrangements, scheduling arrangements and other fees, costs, charges and penalties of every kind (whether assessed by PJM or another third party), required to deliver the Metered Output from the Facility to the Delivery Point, (b) any costs, losses and charges that are now or may in the future be assessed against the Market Participant with respect to the Facility’s participation in the PJM area to which the Facility will be interconnected, including any PJM Settlement Amounts, and (c) any penalties, including PJM Penalties, resulting from a failure by Seller to comply with PJM Rules or the Scheduling Procedure.

6.1.2 Buyer and Seller shall schedule the delivery of the Metered Output in accordance with the procedures set forth in Exhibit B to this Agreement. Subject to the terms of this Agreement, and, specifically, the treatment of Curtailed Energy as set forth herein as well as the provisions of Section 7.3, Seller shall generate, make available, schedule and deliver all available Energy that can be generated by the Facility in such Settlement Interval.

6.1.3 The Parties acknowledge and agree that all Energy delivered to Buyer hereunder shall be sales for resale, with Buyer reselling the Energy from Seller hereunder for use in satisfying its native load requirements or that of other Market Participants. Buyer shall provide

Seller with documentation reasonably requested by Seller to evidence that the delivery of Energy hereunder constitute sales for resale. Further, the Parties acknowledge and agree that this Agreement constitutes a wholesale purchase agreement, and not a retail sale of electricity, under applicable Law.

6.2 Title and Risk of Loss. As between the Parties, Seller shall be deemed to be in control of, and responsible for, any damage or injury caused by, the Energy up to the Delivery Point and Buyer shall be deemed to be in control of, and responsible for, any damage or injury caused by, the Energy at and beyond the Delivery Point. Title and risk of loss related to the Energy shall transfer from Seller to Buyer at the Delivery Point (or, with respect to RECs, at such point at which the RECs are transferred to Buyer in accordance with the terms of this Agreement). Seller will convey good title to the Energy to Buyer at the Delivery Point and at the time of transfer of any Energy as provided herein, the Products shall be free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to the Delivery Point.

6.3 Test Energy. Seller shall have no obligation to sell and deliver, and Buyer shall have no obligation to purchase and accept, any Products generated prior to the Term Effective Date. Seller shall have the right to sell Test Energy and associated Environmental Attributes to PJM or any third party and to retain all proceeds associated with any such sales.

6.4 RECs.

6.4.1 Transfer of RECs. Seller shall transfer to Buyer, and Buyer shall receive from Seller, all rights, title and interest in and to RECs in an amount equivalent to the Metered Output generated and purchased by Buyer from Seller under this Agreement in accordance with Section 6.4.4. The Parties agree and acknowledge that the RECs to be transferred from Seller to Buyer hereunder will not be associated with the Metered Output of the Facility, but will be generated from one or more CRS Listed Facilities.

6.4.2 Clean Title. Seller represents and warrants that, at the time of transfer of any RECs as provided herein, (a) Seller has good and marketable title to such RECs, (b) such RECs have not been sold to any other Person or used to meet compliance requirements of any other regulatory or voluntary renewable Energy program or standard, including any greenhouse gas reduction requirements and (c) Seller is transferring to Buyer all of Seller's right, title to and interest in such RECs, free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person other than Buyer.

6.4.3 Voluntary Standard. Seller shall, contemporaneously with the Commercial Operation Date or as soon as practicable thereafter, take all actions necessary to establish and maintain its REC Trading Account with the applicable Tracking System designated by Seller in order to enable Seller to deliver RECs to Buyer. Seller shall be responsible for all costs and other fees and expenses assessed against Seller or otherwise in connection ensuring that the RECs transferred to Buyer, via Seller's REC Trading Account, comply with the Voluntary Standard and are equivalent to the quantity of Metered Output generated by Seller and transferred to Buyer.

6.4.4 Transfer of RECs. (a) On or prior to June 1 of each calendar year, Seller shall in accordance with rules of the applicable Tracking System, take such commercially reasonable actions as are necessary to transfer to Buyer, and (b) Buyer shall in accordance with rules of the applicable Tracking System, take such commercially reasonable actions as are necessary to receive from Seller, the quantity of RECs into Buyer's REC Trading Account at least equal to the quantity of Metered Output generated and purchased by Buyer during the prior calendar year. Promptly after request of Buyer, (i) Seller shall deliver or cause to be delivered to Buyer such attestations/certifications of such RECs as may be reasonably requested by Buyer, and (ii) Seller shall provide full cooperation in connection with Buyer's certification of such RECs pursuant to the Voluntary Standard.

6.4.5 REC Amendment. If the Voluntary Standard is amended, supplemented, or otherwise modified following the Effective Date (including the enactment of a successor or replacement renewable portfolio standard) (in each such instance, a "REC Amendment"), Seller shall take such actions as are reasonably necessary to cause the RECs to be transferred to Seller hereunder to qualify under the Voluntary Standard following the applicable REC Amendment.

6.5 Tax Credits. Seller is entitled to all Tax Credits (whether authorized under a federal, state or local statute), whether such Tax Credits now exist or come into existence at a later date.

6.6 NERC Requirements. Notwithstanding anything to the contrary in this Agreement, Buyer is not and will not be assuming the role of or be required under this Agreement to register with NERC as the "Generator Operator" or "Generator Owner", as such terms are defined by NERC, with respect to the Facility and this Agreement shall not constitute a "Joint Registration Organization" or a "Coordinated Functional Registration," as such terms are defined by NERC, of the Facility or on behalf of either Buyer or Seller. Buyer shall not have the right to direct the operation or maintenance of the Facility, or to modify the design of the Facility or any component thereof, for purposes of affecting the production, quantity, nature or value of Capacity in respect of the Facility.

6.7 Capacity Benefits, Capacity Costs, Ancillary Services and Environmental Attributes. During the Term, all Capacity Benefits, Capacity Costs, Ancillary Services and Environmental Attributes associated with the Metered Output and/or the Facility and any benefits and obligations derived therefrom are exclusively dedicated to and vested in and an obligation of Seller. During the Term, to the extent available under applicable Law, Seller shall have the right to transfer all Capacity Benefits and Capacity Costs associated with the Facility to any third party or through the PJM capacity auction and to retain any proceeds associated with any sales of the Capacity Benefits.

6.8 Excess Energy. With respect to any quantity of Metered Output delivered during a Commercial Operation Quarter that qualifies as Excess Energy, Seller shall pay Buyer, or Buyer shall pay Seller, as applicable, the Excess Energy Credit Payment for the Products associated with such Excess Energy in accordance with Section 7.6 of this Agreement.



6.9 Failure to Transfer RECs. If Seller fails to transfer the RECs to Buyer as provided herein, then Seller shall, for each REC not so transferred, pay to Buyer an amount equal to the Spot RECs Price.

## ARTICLE 7

### PRICING AND PAYMENT CALCULATIONS

#### 7.1 Payment for Products.

(a) On and after the Term Effective Date, Buyer shall pay to Seller for each Month in accordance with terms herein, an amount equal to the sum of (i) the product of (A) the Energy Payment Rate for such Month and (B) the total MWhs of Metered Output of Energy in such Month and (ii) an amount equal to the summation of the following calculation for each Settlement Interval during such Month: the product of (A) the Day-Ahead Delivery Point LMP for such Settlement Interval minus the Day-Ahead Hub LMP for such Settlement Interval, and (B) the total MWhs of Metered Output of Energy during such Settlement Interval (the “Energy Payment”).

(b) To implement the calculation set forth in Section 7.1(a), when determining the Energy Payment each Month, for each Settlement Interval, when the Day-Ahead Hub LMP is (i) greater than the Day-Ahead Delivery Point LMP, the Energy Payment shall reflect a credit to Buyer for such difference, and (ii) less than the Day-Ahead Delivery Point LMP, the Energy Payment shall reflect a credit to Seller for such difference.

#### 7.2 Curtailed Energy.

7.2.1 Notwithstanding anything in this ARTICLE 7 to the contrary, no payment shall be due to Seller with respect to Energy that is not delivered by Seller to the Delivery Point (such Energy, “Curtailed Energy”) for any of the following reasons:

(a) delivery of Energy is curtailed by PJM or the Transmission System Owner through any PJM mechanism or procedure of any sort for economic dispatch not including an Economic Curtailment pursuant to Section 7.3, redispatch, transmission loading, renewable integration procedures, or any similar or successor operating rules, procedures or systems;

(b) there is any curtailment by PJM or the Transmission System Owner of delivery of Energy from the Facility, including Planned Outages for PJM or the Transmission System Owner Network Upgrades impacting the Interconnection Facilities; or

(c) an event of Force Majeure or Emergency affecting the Transmission System or the Facility (but only for so long as the circumstances continue to constitute an event of Force Majeure or Emergency).

7.2.2 The amount of the Curtailed Energy shall be the quantity of Energy that was not, but would have been, produced by the Facility and delivered to Buyer at the Delivery Point during the applicable curtailment period, determined by taking into account (a) the actual 10-minute (or more frequent) solar data (interpolated over time intervals, if necessary) measured by

weather monitoring equipment located at the Facility that was available for operation for the duration of the period in question or prorated accordingly, or, if such monitoring equipment is unavailable during a relevant period, then using other available data or interpolated data determined using industry standard practices, as reasonably acceptable to Seller and Buyer, and (b) the generation determined by the power curve provided by the manufacturer of the solar photovoltaic panels and Inverters reflecting the Energy that would be produced by such solar photovoltaic panels and Inverters (adjusted based on the results of the latest power curve test, if any), as applied to the solar data referred to in clause (a), as adjusted for line and step-up transformer losses to the Delivery Point, using historical data compiled by Seller and reasonably agreed or confirmed by Buyer.

**7.3 Economic Curtailment.** To the extent any offer submitted by Seller that is greater than \$0/MWh that results in the Facility being dispatched down or curtailed by PJM, then Buyer's sole and exclusive remedy will be to receive with respect to the quantity of Energy that as a result of such dispatch down or curtailment by PJM was not, but would have been, produced by the Facility and delivered to Buyer at the Delivery Point, calculated separately for the Day-Ahead Market during each applicable Settlement Interval, liquidated damages in an amount equal to the greater of (x) zero dollars (\$0) per MWh, and (y) the amount equal to (i) the Day-Ahead Hub LMP for such Settlement Interval *plus* (ii) the Spot RECs Price *minus* (iii) the Energy Payment Rate. The Parties agree that in the event Seller submits an offer to PJM for any amount that is equal to or less than \$0/MWh to PJM and is subsequently curtailed or dispatched down by PJM, any such dispatch down or curtailment of the Facility under such circumstances shall not be deemed a Seller Economic Curtailment which requires a payment from Seller to Buyer pursuant to this Section 7.3. Except for implementing any curtailment pursuant to the foregoing provisions related to economic bidding, Seller agrees and acknowledges that it shall have no right to curtail or interrupt delivery of all or part of the Real-Time production capability of the Facility in any Settlement Interval for economic reasons or to satisfy the output requirements of any other third parties in connection with any expansion of the Facility or otherwise.

**7.4 Production Damages Payment.** On or before the twenty-fifth (25th) Day of January of the calendar year following the calendar year in which the Commercial Operation Date occurred and then on each twenty-fifth (25<sup>th</sup>) Day of January thereafter (or, if such Day is not a Business Day, then the next Business Day), Buyer shall prepare and deliver to Seller a statement detailing the following with respect to the immediately preceding Rolling Period: (a) actual amount of Metered Output delivered in such Rolling Period, (b) a calculation of the excess (if any) of (i) the Minimum Performance Volume *minus* (ii) the sum of the Metered Output and Curtailed Energy in such Rolling Period (the "Deficient Volume"), and (c) a calculation of the Production Damages Payment owed by Seller to Buyer in connection with such Deficient Volume (if any). If Seller owes a Production Damages Payment, it shall pay such amount to Buyer within ten (10) Days after delivery of such statement. If such Day is not a Business Day, then the payment shall be due on the next Business Day.

**7.5 Production Damages Payment is Sole Remedy.** The payment of the Production Damages Payment shall be Buyer's sole and exclusive remedy, and Seller's sole and exclusive liability, for the Deficient Volume for the applicable Rolling Period. The Parties acknowledge and agree that the terms, conditions and amounts determined according to Section 7.5 for the payment of the Production Damages Payment are reasonable considering the losses and expenses that Buyer

would be expected to sustain in the event of a Deficient Volume. The Parties have agreed upon and established the amounts of the Production Damages Payment because of the difficulty of ascertaining the exact amount of such losses and expenses in such event or circumstance and because otherwise obtaining an adequate remedy would be difficult or inconvenient. The Production Damages Payment is not a penalty and shall be paid regardless of the amount of losses and expenses that Buyer actually sustains.

7.6 Excess Energy Credit Payment. On or before the fifteenth (15<sup>th</sup>) Day of the first Month following each Commercial Operation Quarter (or if the fifteenth (15<sup>th</sup>) Day is not a Business Day, then the next Business Day), Buyer shall prepare and deliver to Seller a statement detailing the following with respect to the immediately preceding Commercial Operation Quarter: (a) actual amount of Metered Output delivered in such Commercial Operation Quarter, (b) a calculation of the Excess Energy in such Commercial Operation Quarter (if any), and (c) a calculation of the Excess Energy Credit Payment (if any) owed by Seller to Buyer, or by Buyer to Seller, as applicable, in connection with such Excess Energy (if any). The Party that owes an Excess Energy Credit Payment shall pay such amount to the other Party within ten (10) Days after delivery of such statement. If such Day is not a Business Day, then the payment shall be due on the next Business Day. If a Commercial Operation Quarter for which the calculations under this Section 7.6 apply is less than a full calendar quarter, the application amounts will be as set forth in Exhibit F for such Commercial Operation Quarter.

## **ARTICLE 8**

### **BILLING AND PAYMENT**

#### **8.1 Invoices and Payment Schedules.**

8.1.1 On or before tenth (10<sup>th</sup>) Day of each Month (or if the tenth (10<sup>th</sup>) Day is not a Business Day, then the next Business Day), Seller shall prepare and deliver to Buyer a statement detailing the amounts owed by either Party pursuant to this Agreement for the immediately preceding Month. The statement shall include a summary (a) of Metered Output, (b) Curtailed Energy, (c) any payments pursuant to Section 7.1 or Section 7.4 in the preceding Month and (d) any other amounts due between the Parties with respect to such ended Month other than amounts separately invoiced by Seller or Buyer. Each such statement provided by Seller must be accompanied by supporting documentation of the amounts specified in the invoice, and if applicable, a statement of all transfers of RECs made during the ended Month.

8.1.2 All payments not disputed in writing and in accordance with Section 8.3 shall be due and payable on or before thirty (30) Days after receipt of an invoice or statement from the other Party. If such Day is not a Business Day, then the payment shall be due on the next Business Day. Each Party shall make payments by wire transfer of funds, or by other mutually agreeable method(s), to the account designated by the other Party. Seller shall provide Buyer with the initial address and wire transfer instructions for Seller no later than thirty (30) Days before COD. The initial address and wire transfer instructions for Buyer is as follows:

Constellation NewEnergy, Inc.  
1310 Point Street Baltimore, MD 21231

Bank: Citibank  
ABA: 031100209  
Account: 38780719

Any undisputed amounts not paid by the due date set forth in the invoice or as otherwise set forth herein shall be deemed delinquent and shall accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

8.2 Netting. The Parties hereby agree that they shall discharge undisputed mutual debts and payment obligations due and owing to each other pursuant to this Agreement through netting, in which case all amounts owed by each Party to the other Party under this Agreement during the Monthly billing period, shall be netted during the invoicing process so that only the excess amount remaining due shall be paid by the Party who owes such excess amount.

8.3 Disputed Charges. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error. Neither Party may dispute or adjust any invoice more than two (2) years from the date of the applicable invoice. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within thirty (30) Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Any overpayments shall, at the option of the Party making the overpayment, be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is timely notified of such dispute in accordance with this Section 8.3.

#### 8.4 Records and Audits.

8.4.1 Each Party shall keep complete and accurate records and all other data required by each Party for the purposes of proper administration of this Agreement, including such records as may be required by applicable Governmental Authorities. Each Party shall maintain such records and data for a period of not less than two (2) years following the creation thereof (or such longer period as may be required under applicable Law).

8.4.2 Each Party has the right during normal business hours and upon reasonable prior notice, at any time during the Term and for a period of two (2) years thereafter, to audit and to examine the records and data kept by the other Party relating to the performance of obligations under, and the administration of, this Agreement. Each Party is responsible for its own costs and expenses associated with any audit or examination unless the audit or examination conducted by the Party reveals an error that resulted in a material overpayment by the Party or a material underpayment by the other Party, in which case the other Party shall within five (5) Business Days

following demand by the Party performing the audit or examination, reimburse such Party for the reasonable third party costs and expenses it incurred in connection with such audit or examination. If any such examination reveals any inaccuracy in any invoice or calculation, the necessary adjustments in such invoice or calculation, and the payment of any adjustment thereto, shall be paid, with interest at the Interest Rate calculated from the date the overpayment or underpayment was made until paid, by the responsible Party within thirty (30) Days after it receives an invoice from the other Party setting forth in reasonable detail the calculation of such adjustments; provided, however, that neither Party may dispute or adjust any invoice delivered or payment received more than two (2) years from the date of such invoice or payment, as applicable.

8.4.3 Data. As permitted by the Interconnection Agreement, Seller shall install and maintain all supervisory control and data acquisition (together with any successor thereto, “SCADA”) system equipment and data circuits necessary to determine and transmit Real-Time data from the Metering Equipment recognized by PJM for operational and settlement purposes. Seller shall, within thirty (30) Days after written request from Buyer, and without cost to Buyer, provide Buyer with access to the telemetry and communications equipment at the Facility and in Seller’s data center necessary to make available the data set forth on Exhibit I. Buyer shall be responsible for any telemetry and communications equipment in Buyer’s facilities necessary to achieve the data feeds set forth in Exhibit I and for the other matters assigned to Buyer in Exhibit I.

8.5 Adjustments to Invoices. In the event that either Party discovers an error in billings or payments under this Agreement due to metering, billing or other errors, or a prior invoice was prepared on an estimated basis pursuant to Section 8.1, or PJM revises the Day-Ahead Hub LMP or Day-Ahead Delivery Point LMP for one or more Settlement Intervals, each Party shall be entitled to an adjustment of the amount payable hereunder to reflect such revised price, error discovery, or the availability of actual (as opposed to estimated) invoicing information. A Party that seeks an adjustment to invoices as described in this Section 8.5 must provide the other Party with notice and a description of the desired adjustment within two (2) years after the date the invoice that is to be adjusted was received by Buyer. Such notice shall include a calculation of the payment necessary to correct the prior invoice. Any invoice for which neither Party has proposed to make an adjustment pursuant to this Section 8.5 within two (2) years after the date it was received by Buyer shall be deemed final and not subject to adjustment under this Section 8.5. Any differences in the Metered Output as determined by the PJM and Seller (as determined by the Facility’s revenue meter) shall be trued-up to reflect the PJM settlement data on receipt by Seller of such settlement data.

## ARTICLE 9

### SELLER OBLIGATIONS

9.1 Maintenance. Seller shall maintain the Facility in accordance with PJM Rules, Prudent Utility Practice(s), Major Equipment manufacturer’s recommendations and all applicable Laws.

9.2 Standard of Operation. Seller shall staff, control, and operate the Facility in a manner materially consistent at all times with Prudent Utility Practice(s) any Operating Procedures developed pursuant to Section 9.4 and all applicable Laws. Subject to the terms of this Agreement,

to the extent that the Facility is available to generate Energy in any Settlement Interval, Seller shall make available, schedule and deliver to Buyer all available Energy that can be generated in such Settlement Interval subject to Seller's right to submit economic schedules and bid curves to PJM in a manner consistent with Section 7.3. Personnel capable of starting, operating, and stopping the Facility shall be continuously available, either at the Facility, or capable of remotely starting, operating, and stopping the Facility within any applicable time period specified under relevant PJM or NERC requirements and rules. In all cases, personnel capable of starting, operating and stopping the Facility shall be continuously reachable by phone.

### 9.3 Outage and Performance Reporting.

9.3.1 Seller shall comply with all NERC and PJM generating unit outage reporting requirements, as they may be revised from time to time, and to the extent they apply to the Facility.

9.3.2 For each Commercial Operation Year, no later than December 1 of the preceding Commercial Operation Year (or with respect to the first Commercial Operation Year, at least sixty (60) Days prior to the Term Effective Date), Seller shall provide Buyer with a proposed schedule of Planned Outages of the Facility for the following Commercial Operation Year. The proposed schedule shall include the expected start and end date of each Planned Outage, the amount of Capacity of the Facility that will not be available during each Planned Outage and a description of the maintenance to be performed during each Planned Outage. Seller shall finalize the proposed schedule of Planned Outages at least three (3) Months prior to the first Planned Outage planned for any Commercial Operation Year, and shall promptly notify Buyer of any change to such schedule of Planned Outages. Buyer shall grant Seller the right to access GenManager on a Real-Time basis and Seller shall update Planned Outages, maintenance outages, and Forced Outages, via GenManager on a Real-Time basis. Seller shall provide all outage information required pursuant to this Section 9.3, and any corresponding updates, to Buyer as soon as practicable. Notwithstanding anything to the contrary herein and without limiting any other remedies of Buyer hereunder, (a) Seller may not schedule or take any Planned Outage from 12:00 p.m. through 7:00 p.m. EPT during the Months of May through October without Buyer's consent, such consent not to be unreasonably withheld, delayed or conditioned and (b) Seller and Buyer shall use commercially reasonable efforts to minimize the impact and duration of any outages.

9.3.3 When Forced Outages of more than 1 MW of the Facility occur, Seller shall orally notify Buyer of the existence, nature, and expected duration of the Forced Outage as soon as practical, but in no event later than thirty (30) minutes after the Forced Outage commences. Seller shall, in accordance with Prudent Utility Practice, inform Buyer of material changes in the expected duration of the Forced Outage. As soon as practicable, all such oral reports shall be submitted into Buyer's GenManager system by Seller.

9.3.4 Commencing upon the Commercial Operation Date and continuing through the Term, Seller shall: (a) electronically provide Energy production data from the Facility in Real-Time, twenty-four (24) hours a Day, three hundred sixty-five (365) Days a year to Buyer in accordance with Good Utility Practice and (b) in addition to providing the information required pursuant to Exhibit I, promptly deliver to Buyer any other reports provided by PJM or Seller

regarding Metered Output or performance of the Facility. All information delivered to Buyer by Seller under this Section 9.3.4 shall be subject to the confidentiality provisions set forth in ARTICLE 18 of this Agreement. All information delivered to Buyer by Seller under this Section 9.3.4 shall be subject to the confidentiality provisions set forth in ARTICLE 18 of this Agreement.

9.4 Operating Procedures. Buyer and Seller shall cooperate to develop operating arrangements for the generation, delivery and receipt of the Products as described hereunder, in accordance with the PJM Rules.

9.5 Access to Facility. Appropriate representatives of Buyer and Buyer's Affiliates shall with reasonable prior notice, have access to the Facility during normal business hours of Seller (a) for the presentment, "ribbon cutting", and other commemoration activities of the Facility at and following COD and (b) to perform all inspections permitted hereunder. While at the Facility, such representatives shall observe such safety precautions as may be required by Seller and shall conduct themselves in a manner that shall not interfere with the operation of the Facility. Any damage to the Facility caused by the negligence of such representatives shall be the sole responsibility of Buyer and such amounts shall be due and payable within sixty (60) Days of Seller's written request (including reasonable supporting documentation).

9.6 Reliability Standards. Seller shall operate the Facility and perform its obligations hereunder in a manner that complies with the rules and requirements of any Governmental Authority or successor agencies imposing reliability requirements for the operation of generation facilities, including requirements pursuant to NERC Reliability Standards, and the reliability requirements imposed by PJM and FERC. If applicable, Buyer shall perform its obligations hereunder in a manner that complies with the rules and requirements of any Governmental Authority or successor agencies, including PJM and FERC.

9.7 Losses; Transmission; Ancillary Services.

9.7.1 Seller shall be responsible for all interconnection, electric losses, transmission and ancillary service arrangements and costs required to deliver Metered Output from the Facility to Buyer at the Delivery Point.

9.7.2 Buyer shall be responsible for all electric losses, transmission and ancillary service arrangements and costs required to receive the Metered Output at the Delivery Point and delivery of such Metered Output to points beyond the Delivery Point.

9.8 Mitigation Efforts in Case of Scarcity Events. The Parties acknowledge and agree that from time to time during the Term of this Agreement, PJM may issue a notice, any other Governmental Authority may issue an order, or either of the Parties otherwise may determine that an event may be forthcoming, occurring or have occurred that limits the availability of power and is expected to materially affect power prices during such period (a "Scarcity Event"). In order to mitigate the economic impact of any such Scarcity Event, the Parties agree that if and to the extent there is reason to believe that the Facility may be unable to generate power at the Expected Generation level during any such Scarcity Event, whether due to a Force Majeure or otherwise (a "Reduced Generation Event"), then Buyer or Seller will as soon as practicable under the

circumstances contact the other Party in accordance with the Operating Procedures and seek (i) all material facts and information available to Seller or obtainable by Seller with reasonable efforts with respect to the timing and anticipated impact of the Scarcity Event on the Facility and (ii) any mitigation efforts available to Seller in order to reduce the timing of the Reduced Generation Event, including any costs in order to implement any such mitigation efforts that are reasonably likely to exceed the commercially reasonable efforts under this Agreement (the “Incremental Costs”). Within thirty (30) minutes after receipt of such information, Buyer shall notify Seller in accordance with the Operating Procedures whether Seller shall either proceed with employing (i) commercially reasonable efforts only in order to remedy the Reduced Generation Event or (ii) additional efforts in order to remedy the Reduced Generation Event subject to Buyer’s commitment to reimburse Seller for any Incremental Costs up to one hundred ten percent (110%) of the Incremental Costs initially estimated by Seller. In either case, Seller shall proceed expeditiously in remedying the Reduced Generation Event in accordance with the level of effort agreed to between the Parties per the preceding sentence. If during the employment of additional efforts Seller determines that its initial estimate of the Incremental Costs is likely to be exceeded by more than ten percent (10%), Seller shall seek approval from Buyer prior to incurring such additional costs.

## **ARTICLE 10**

### **SECURITY**

#### **10.1 Seller Security.**

10.1.1 During the Term and on the timelines set forth in Section 10.4 below, Seller shall provide the Seller Security in accordance with this Section 10.1 in the amount required pursuant to Section 10.4 (as such amount shall be adjusted in accordance with Section 10.4, the “Seller Required Amount”) to support Seller’s obligations under this Agreement. Seller shall not be required to replenish the Seller Security if drawn upon by Buyer.

10.1.2 The Seller Security shall be maintained at Seller’s expense in the form of: (i) cash deposited with Buyer; (ii) a Letter of Credit; (iii) a Guaranty by Guarantor; or (iv) a Surety Bond. Such Seller Security must be in an amount that, in the aggregate, is equivalent to at least the Seller Required Amount then required, as reduced by any drawings by Buyer. For purposes of such calculation, such amount shall be calculated based on the (a) amount of cash deposited, (b) the face amount of a Letter Credit (c) the maximum amount of “Guaranteed Obligations” set forth in the Guaranty or (d) the face amount of a Surety Bond.

10.1.3 If Seller provides Seller Security in the form of a Letter of Credit, such Letter of Credit must be issued for a minimum term of three hundred sixty-five (365) Days. At least thirty (30) Days prior to the expiration of any Letter of Credit provided by Seller as Seller Security, Seller shall notify Buyer in writing, and at least thirty (30) Days prior to the expiration of such Letter of Credit, Seller shall renew or substitute such outstanding Letter of Credit, establish one or more additional Letters of Credit, or provide replacement Seller Security in an amount not less than the amount of the expiring Letter of Credit. If Seller fails to comply with its obligations under this Section 10.1.3, Buyer may, prior to the expiration date of the affected Letter of Credit, draw upon the entire, undrawn portion of the affected Letter of Credit (the “Seller LC Proceeds”)



and deposit the Seller LC Proceeds with Buyer (or, if Buyer does not have an Investment Grade Credit Rating at such time, a Qualified Issuer pursuant to an escrow agreement in form and substance reasonably acceptable to Buyer). Upon Seller's providing, at a later time, replacement Seller Security, Buyer shall return to Seller an amount equal to the lesser of (x) the amount of replacement Seller Security and (y) the amount equal to (a) the Seller LC Proceeds, *minus* (b) any undisputed amounts due Buyer by Seller under this Agreement, and *minus* (c) any amounts previously applied against Seller's obligations from such Seller LC Proceeds by Buyer in accordance with this Agreement.

10.1.4 If at any time during which the Seller Security provided to Buyer includes a Letter of Credit and a Letter of Credit Default occurs with respect to such Letter of Credit, Seller shall, within three (3) Business Days following Buyer's demand, either replace the Letter of Credit with replacement Seller Security so that the aggregate amount of Seller Security provided to Buyer equals the Seller Required Amount then required, as reduced by any drawings by Buyer or instruct Buyer to draw on the Letter of Credit (if reasonably expected to be possible). Seller shall have the right, upon no less than five (5) Business Days written notice to Buyer, to replace the Seller Security then outstanding with replacement Seller Security, provided that the aggregate amount of Seller Security provided to Buyer equals the Seller Required Amount then required, as reduced by any drawings by Buyer. If Seller provides replacement Seller Security to Buyer, the Seller Security being replaced by such replacement Seller Security shall be cancelled, and the obligations thereunder released, effective as of the date of Seller's posting to Buyer of the replacement Seller Security.

10.1.5 If at any time during which the Seller Security provided to Buyer includes a Guaranty and the Guarantor that provided such Guaranty experiences a Downgrade Event, Seller shall, within three (3) Business Days of Notice of such occurrence, replace the Guaranty with replacement Seller Security so that the aggregate amount of Seller Security provided to Buyer equals the Seller Required Amount then required, as reduced by any drawings by Buyer.

10.1.6 If at any time during which the Seller Security provided to Buyer includes a Surety Bond and a Surety Bond Default occurs with respect to such Surety Bond, Seller shall, within three (3) Business Days following Buyer's demand, either replace the Surety Bond with replacement Seller Security so that the aggregate amount of Seller Security provided to Buyer equals the Seller Required Amount then required, as reduced by any drawings by Buyer or instruct Buyer to draw on the Surety Bond (if reasonably expected to be possible).

10.1.7 Upon any reduction of the Seller Required Amount pursuant to Section 10.4 and promptly following the end of the Term and the satisfaction of all of Seller's obligations under this Agreement, Buyer shall release the applicable portion of the Seller Security (including any accumulated interest thereon, if any) to Seller and, if requested by Seller or the issuer of such security following the end of the Term and the satisfaction of all of Seller's obligations under this Agreement, Buyer shall provide a written form of release and termination of such Seller Security in a form reasonably acceptable to Seller (or such issuer of the security) and Buyer.

10.2 Buyer Security. During the Term, Buyer shall provide Seller with security in the amount required pursuant to Section 10.4 (as such amount shall be adjusted in accordance with Section 10.4, the "Buyer Required Amount"). Buyer's security provided pursuant to this

Section 10.2 (“Buyer Security”) shall be in the form of: (a) cash deposited with a Qualified Issuer pursuant to an escrow agreement in form and substance reasonably acceptable to Seller, (b) an irrevocable standby Letter of Credit from a Qualified Issuer, substantially in the form of Exhibit C, or (c) a Guaranty. If Buyer provides Buyer Security to Seller pursuant to this Section 10.2, and Buyer’s Credit Rating subsequently improves to at least Investment Grade, then Seller shall within five (5) Business Days return to Buyer the security provided by Buyer pursuant to this Section 10.2. Buyer shall not be required to replenish the Buyer Security if drawn upon by Seller.

10.2.1 If Buyer provides Buyer Security in the form of a Letter of Credit, such Letter of Credit must be issued for a minimum term of three hundred sixty-five (365) Days. At least thirty (30) Days prior to the expiration of any Letter of Credit provided by Buyer as Buyer Security, Buyer shall notify Seller and, at least thirty (30) Days prior to the expiration of such Letter of Credit, Buyer shall renew or substitute such outstanding Letter of Credit, establish one or more additional Letters of Credit in form and substance satisfactory to Seller, or provide replacement Buyer Security to Seller in an amount not less than the expiring Letter of Credit. If Buyer fails to comply with its obligations under this Section 10.2.1, Seller may, prior to the expiration date of the affected Letter of Credit, draw upon the entire, undrawn portion of any outstanding Letter of Credit and deposit the proceeds thereof (the “Buyer LC Proceeds”) with a Qualified Issuer pursuant to an escrow agreement in form and substance reasonably acceptable to Seller; provided that upon Buyer’s providing, at a later time, replacement Buyer Security, Seller shall return to Buyer an amount equal to the lesser of (x) the amount of the replacement Buyer Security and (y) the amount equal to (a) the Buyer LC Proceeds, *minus* (b) any undisputed amounts due Seller by Buyer under this Agreement, and *minus* (c) any amounts previously applied against Buyer’s obligations from such Buyer LC Proceeds by Seller in accordance with this Agreement.

10.2.2 If at any time during which the Buyer Security provided to Seller includes a Letter of Credit and a Letter of Credit Default occurs with respect to such Letter of Credit, Buyer shall, (a) within three (3) Business Days following Seller’s demand, replace the Letter of Credit with an acceptable form of Buyer Security so that the aggregate amount of Buyer Security provided to Seller equals the Buyer Required Amount then required, as reduced by any drawings by Seller or (b) instruct Seller to draw on the Letter of Credit (if reasonably expected to be possible). Buyer shall have the right, upon no less than five (5) Business Days’ written notice to Seller, to replace the Buyer Security then outstanding with an acceptable form of Buyer Security, provided that the aggregate amount of Buyer Security provided to Seller equals the Buyer Required Amount then required, as reduced by any drawings by Seller. If Buyer provides replacement Buyer Security to Seller, the Buyer Security being replaced by such replacement Buyer Security shall be cancelled, and the obligations thereunder released, effective as of the date of Buyer’s posting to Seller of the replacement Buyer Security.

10.2.3 If at any time during which the Buyer Security provided to Seller includes a Guaranty and the Guarantor that provided such Guaranty experiences a Downgrade Event, Buyer shall, within three (3) Business Days of notice of such occurrence, replace the Guaranty with an acceptable form of Buyer Security so that the aggregate amount of Buyer Security provided to Buyer equals the Buyer Required Amount then required, as reduced by any drawings by Seller.

10.2.4 Upon any reduction of the Buyer Required Amount pursuant to Section 10.4 and promptly following the end of the Term and the satisfaction of all of Buyer’s obligations under

this Agreement, Seller shall release to Buyer the applicable portion of the security held by Seller pursuant to Section 10.2 (including any accumulated interest thereon, if any) to Buyer, and, if requested by Buyer or the issuer of such security following the end of the Term and the satisfaction of Buyer's obligations under this Agreement, Seller shall provide a written form of release and termination of such security in a form reasonably acceptable to Buyer (or such issuer of the security) and Seller.

### 10.3 General Provisions Regarding Security.

10.3.1 Security Interest in Cash Collateral. To the extent permitted by Law, each Party hereby grants to the other Party a continuing first priority security interest in, lien on, and right of setoff against all security provided by that Party in the form of cash pursuant to this ARTICLE 10. Upon the return by a Party or release to the other Party of such security, the security interest and lien granted hereunder shall be released automatically and, to the extent possible, without any further action by either Party. In addition to any other remedy available to it, a Party may draw on the security posted by the other Party, to recover amounts due pursuant to this Agreement, including amounts due for any damages or indemnification payments owed hereunder.

10.3.2 Application of Security. To the extent a Party looks to security posted by the other Party to pay amounts due hereunder, that Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the non-performing Party's obligations under this Agreement.

10.3.3 Entirety of Credit Support. This ARTICLE 10 sets forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as set forth in this ARTICLE 10 neither Buyer nor Seller shall have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever. Neither Party shall have reasonable grounds for insecurity with respect to the creditworthiness of the other Party that is complying with the relevant provisions of this ARTICLE 10.

### 10.3.4 Draws Upon Security.

(a) Upon, or at any time after, the occurrence a Default by a Party, or if an Early Termination Date has occurred or been designated as a result of a Default for which there exists any unsatisfied payment obligations, then the Non-Defaulting Party may draw on any undrawn portion of any outstanding security in its possession after specifying that such Default or Early Termination Date has occurred.

(b) Cash proceeds received from drawing upon the security shall be deemed cash collateral security and the Non-Defaulting Party shall have the rights and remedies set forth in Section 10.3.1 with respect to such cash proceeds.

(c) Notwithstanding the Non-Defaulting Party's receipt of cash proceeds of a drawing under the security, the defaulting Party shall remain liable for any amounts owing to the Non-Defaulting Party and remaining unpaid after the application of the amounts so drawn by the Non-Defaulting Party.

(d) In all cases, the costs and expenses of establishing, renewing, substituting, and canceling the amount of the security shall be borne by the Party with the obligation to post security.

10.4 Adjustments. Notwithstanding the provisions and requirements of this ARTICLE 10, the Seller Required Amount and Buyer Required Amount shall be adjusted from time to time in accordance with the following table (each, a “Performance Assurance Modification Date”):

<b>Time Period</b>	<b>Required Amount</b>
No later than three (3) Business Days after the Effective Date (the “ <u>Development Security</u> ”) until the thirtieth (30 <sup>th</sup> ) Day following Commercial Operation Date	Seller Required Amount: \$40,000.00/MW of Expected Installed Capacity  Buyer Required Amount: \$50,000.00/MW of Expected Installed Capacity
On the thirtieth (30 <sup>th</sup> ) Day following the Commercial Operation Date (the “ <u>Operating Security</u> ”)	Seller Required Amount: \$40,000.00/MW of Expected Installed Capacity until the Final Installed Capacity is established and then such amount thereafter  Buyer Required Amount: \$50,000.00/MW of Expected Installed Capacity until the Final Installed Capacity is established and then such amount thereafter
On the thirtieth (30 <sup>th</sup> ) Day following ten (10) years into the Delivery Term	Seller Required Amount: \$20,000.00/MW of Expected Installed Capacity until the Final Installed Capacity is established and then such amount thereafter

provided, however, if, on any date that any Seller Security or the Buyer Security (collectively, the “Performance Assurance”) is to be released in accordance with this Agreement, there are outstanding any claims that (a) were validly made prior to such date against the Performance Assurance then being released and (b) in the case of any Performance Assurance being released because it is being replaced, are not fully secured by the combination of the replacement Performance Assurance and any other Performance Assurance then in place from the Performance Assurance Provider, then, on such date, (i) the amount of the applicable Performance Assurance shall be deemed reduced to the amount of such outstanding claims (in the case of Performance Assurance being replaced, to the extent not fully secured by the combination of the replacement Performance Assurance and any other Performance Assurance from the same Performance Assurance Provider), provided, however, that if the amount of such outstanding claims exceed the

amount of the applicable Performance Assurance, then same shall not be reduced, (ii) to the extent the Performance Assurance Modification Date shall reduce the amount of Performance Assurance, such Performance Assurance Modification Date shall be extended until the final resolution and (if applicable) full payment of such outstanding claims according to such final resolution and (iii) at the election of Performance Assurance Provider, the scope of such Performance Assurance may be reduced to secure only such outstanding claims (subject to the proviso in clause (i) above). In the event of a reduction in the amount and/or scope of any Performance Assurance in accordance with clause (i) or clause (iii) of the immediately preceding sentence, the Party benefiting from the Performance Assurance shall promptly execute any documents and take any other actions reasonably requested by the Performance Assurance Provider to effect and/or confirm such reduction in amount and/or scope, including by executing and delivering an amendment to such Performance Assurance, by exchanging such Performance Assurance, by causing any depository bank holding any cash collateral to immediately return any excess amount to Performance Assurance Provider or by other reasonable means. If, on any date that any Performance Assurance is scheduled to be reduced in accordance with this Agreement, (x) there are outstanding any claims that were validly made prior to such date against Buyer's Security or Seller's Security then being reduced and (y) the aggregate amount of such outstanding claims exceed the aggregate amount of Performance Assurance that would exist following such reduction, then, on such scheduled reduction date, the amount of the applicable Performance Assurance shall be reduced to the aggregate amount of such outstanding claims, rather than the reduced amount that would otherwise set forth with respect to the applicable Performance Assurance Modification Date amount.

## **ARTICLE 11**

### **DEFAULT**

11.1 Default. The occurrence of any of the following with respect to a Party shall constitute an event of default ("Default") of such Party:

11.1.1 Seller fails to achieve Commercial Operation by the one hundred eightieth (180th) Day after the Guaranteed Commercial Operation Date, as such date may be extended in accordance with Section 4.1.2;

11.1.2 Seller fails to obtain and maintain the insurance required pursuant to ARTICLE 16, and such failure is not remedied within thirty (30) Days after written notice thereof;

11.1.3 Seller experiences a Change of Control without Buyer's prior written consent;

11.1.4 Seller fails to perform any of its material obligations under this Agreement, not otherwise provided for as a separate Default under this Agreement, and such failure is not corrected within thirty (30) Days after written notice thereof; provided, however, that such period shall be extended for an additional reasonable period if a cure cannot be reasonably effected within thirty (30) Days and if corrective action is instituted by Seller within the 30 Day-period and so long as such action is diligently pursued until such default is corrected; provided, further, that the cure period shall in no event exceed sixty (60) Days from Seller's receipt of the notice of the performance failure;

11.1.5 Except for charges arising under this Agreement which are disputed in good faith in writing within any required period, such Party fails to pay any amounts due hereunder, which failure continues for a period of five (5) Business Days after the date on which written notice of a failure to pay is received by the Party failing to pay;

11.1.6 Failure by such Party to provide and maintain security required under this Agreement, including security requirements as set forth in ARTICLE 10, and such failure continues for the applicable cure period set forth in ARTICLE 10, provided that is no cure period is provided, such Party shall have a period of ten (10) Business Days after the date on which written notice thereof is received by the Party that is breaching the security requirements;

11.1.7 Buyer fails to perform any of its material obligations under this Agreement, not otherwise provided for as a separate Default under this Agreement, and such failure is not corrected within thirty (30) Days after written notice thereof; provided, however, that such period shall be extended for an additional reasonable period if a cure cannot be reasonably effected within thirty (30) Days and if corrective action is instituted by Buyer within the 30 Day-period and so long as such action is diligently pursued until such Default is corrected; provided, further, that the cure period shall in no event exceed sixty (60) Days from Buyer's receipt of the notice of the performance failure;

11.1.8 Any representation or warranty set forth herein made by such Party proves to have been incorrect or misleading in any material respect when made, or deemed to be made, or repeated, and such inaccuracy is not remedied within thirty (30) Days after written notice thereof; provided, however, that such period shall be extended for an additional reasonable period if a cure cannot be reasonably effected within thirty (30) Days and if corrective action is instituted by Seller within the 30 Day-period and so long as such action is diligently pursued until such default is corrected; provided, further, that the cure period shall in no event exceed sixty (60) Days from Seller's receipt of the notice of the incorrect or misleading representation or warranty;

11.1.9 Seller's sale of the Products generated by the Facility to any Person other than Buyer in violation of the terms of this Agreement;

11.1.10 Such Party becomes Bankrupt;

11.1.11 The aggregate amount of Metered Output delivered to Buyer in any Rolling Period (starting with January 1<sup>st</sup> of the calendar year following the calendar year in which the Commercial Operation Date occurred) plus the Curtailed Energy for such period is less than seventy-five percent (75%) of the Expected Generation for that same period; and/or

11.1.12 [Reserved].

11.2 Remedies. In the event of a Default, the Non-Defaulting Party shall have the right to pursue any one or all of their remedies, which shall consist of:

11.2.1 The Non-Defaulting Party may immediately suspend performance of its obligations under this Agreement until the Day the Default has been cured in accordance with the terms of this Agreement;

11.2.2 The Non-Defaulting Party may in accordance with ARTICLE 12, terminate this Agreement, and may calculate, and make demand on the defaulting Party for, a Termination Payment or Damage Payment, as applicable;

11.2.3 The Non-Defaulting Party may draw on the full amount of any Performance Assurance posted by the defaulting Party in accordance with its terms and the terms of this Agreement; and

11.2.4 The Non-Defaulting Party may exercise any other remedy available at Law or in equity, unless otherwise limited by Section 12.3 of this Agreement.

11.3 No Waiver in Event of Default. Pursuit by either Party of any remedy for Default pursuant to this ARTICLE 11 shall not constitute a forfeiture or waiver of any amount due by the defaulting Party or of any damages occurring by reason of the violation of any terms, provisions, or conditions of this Agreement. No waiver of any Default or breach of this Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms, provisions, or conditions of this Agreement. Forbearance to enforce one or more of the remedies available upon the occurrence of a Default shall not constitute a waiver of that or any subsequent Default or breach.

## **ARTICLE 12**

### **EARLY TERMINATION**

12.1 Default. If a Default occurs and is continuing with respect to a defaulting Party at any time during the Term, the other Party (the “Non-Defaulting Party”) may (a) establish by written notice to the defaulting Party a date no later than twenty (20) Days after such notice is effective, that is an early termination date (the “Early Termination Date”) on which this Agreement shall terminate; (b) collect (i) for an Event of Default of Seller prior to the Commercial Operation Date, the Damage Payment, and (ii) for an event of Default of Seller after the Commercial Operation Date, and for any Event of Default of Buyer, the Termination Payment; and (c) suspend performance of any obligations and withhold to the extent of its damages and subject to applicable limitations of liability, any payments due in respect of this Agreement.

12.2 Termination Payment. If an Early Termination Date has been designated by the Non-Defaulting Party, the Non-Defaulting Party shall calculate in a commercially reasonable manner the present value of the economic benefit (the “Gain”) or economic loss (the “Loss”) to the Non-Defaulting Party for the remaining Term resulting from the early termination of this Agreement plus or minus, as applicable, any other amounts that are due but unpaid by or to the Non-Defaulting Party under this Agreement, plus any Break-Up Costs incurred by the Non-Defaulting Party (collectively, the “Termination Payment”). The Gain or Loss shall be the difference, expressed as a positive or negative amount, as applicable, between the price which would have been paid for the Products which would have been delivered under this Agreement during the remaining Term but for the Early Termination Date (the “Undelivered Quantities”) compared to the cost to replace the Undelivered Quantities of the Products inclusive of the cost to replace the Undelivered Quantities in whole or in part for any arrangement pursuant to which it has hedged its obligations, as applicable, whether or not the Products are actually replaced. Such

replacement cost shall be determined under then current market conditions with respect to an assumed price for the Products that Seller is obligated to provide hereunder as of the Early Termination Date. Factors used in determining the Gains or Loss may include third party quotations from leading dealers in Energy contracts, forward price curves based on economic analysis of the relevant markets, the remaining Term and the Non-Defaulting Party's reasonable discount rates. As soon as practicable after the occurrence of an Early Termination Date designated by the Non-Defaulting Party, written notice shall be given by the Non-Defaulting Party to the defaulting Party of the amount of the Termination Payment, and whether the Termination Payment is due to or due from the defaulting Party; provided, however, if the Termination Payment calculation results in a payment to the defaulting Party, the Termination Amount will be deemed to be equal to Zero Dollars (\$0). The notice shall include a written statement explaining in reasonable detail the calculation of the Termination Payment. Seller and Buyer shall resolve any dispute regarding such Default and the calculation of the Termination Payment pursuant to the provisions of ARTICLE 21. The undisputed Termination Payment (if any) shall be due to the Non-Defaulting Party, and shall be made by the defaulting Party within thirty (30) Days after such notice is received by the defaulting Party. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a replacement transaction to determine and receive or pay the Termination Payment.

12.3 Sole and Exclusive Remedy. Subject to Section 14.3 and except in the case of Seller's obligation to pay Buyer the Loss Event Buy-Down Amount for an early termination of this Agreement due to a Loss Event, the Damage Payment or Termination Payment, as applicable, shall be the sole and exclusive monetary remedy associated with the early termination of this Agreement.

12.4 Damage Payment. The Parties agree that the Damage Payment to be paid by Seller for an Event of Default prior to the Commercial Operation Date shall be considered liquidated damages and not a penalty in accordance with Section 13.2.

12.5 Effect of Termination. Termination shall not affect or excuse the performance of any obligation that accrued prior to the date of such termination.

## **ARTICLE 13**

### **INDEMNIFICATION; LIMITATION OF LIABILITY**

13.1 Indemnification Obligations. Each Party (the "Indemnifying Party") agrees to and shall indemnify, defend, and hold harmless the other Party, its members, and all of its Affiliates, and all of their respective officers, directors, shareholders, employees, servants, and agents ("Indemnified Party"), from and against all third party claims, demands, losses, liabilities, and expenses (including reasonable attorneys' fees) (collectively, "Losses") arising from (a) any Claims for personal injury, death, or damages to property arising out of the Indemnifying Party's negligence or willful misconduct in connection with this Agreement and (b) any Claims related to the Products during the period that such Party has risk of loss for such Products according to Section 6.2. This indemnification obligation will apply notwithstanding any negligent or intentional acts, errors or omissions of the Indemnified Parties but the Indemnifying Party's liability to pay Losses to the Indemnified Parties will be reduced in proportion to the percentage



by which the Indemnified Parties' negligent or intentional acts, errors or omissions caused the Losses. Neither Party may be indemnified for its Losses resulting from its sole negligence or willful misconduct. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, TO THE EXTENT THERE IS AN OBLIGATION OF INDEMNITY WITH RESPECT TO EITHER PARTY CONTAINED HEREIN, SUCH PROVISION IS EXPRESSLY LIMITED IN SCOPE BY, AND IS MADE SUBJECT TO, APPLICABLE LAW.

13.2 Cooperation Regarding Claims. An Indemnified Party who receives notice or has knowledge of any claim, cause of action, suit or other proceeding that may result in a claim for indemnification or obligation to defend or hold harmless under this Section 13.1, (a "Third-Party Claim") by such Indemnified Party against the Indemnifying Party shall (or if a non-party must), promptly notify the other Party of the Third-Party Claim, including, a reasonably detailed description of the facts and circumstances relating to the Third-Party Claim, and a complete copy of all notices, pleadings and other papers related thereto, and in reasonable detail, the basis for its potential claim for indemnification with respect thereto. Such notice must be given as soon as reasonably practicable after the Indemnified Party obligated to give such notice becomes aware of such Third-Party Claim. Failure to give such notice does not excuse an indemnification obligation hereunder except to the extent failure to provide notice adversely affects the Indemnifying Party's interests in a material respect or could give rise to additional liability on the part of the Indemnifying Party, in which case the Indemnifying Party will not be responsible for such additional liability.

13.3 Defense of Third-Party Claims.

(a) The Indemnifying Party is entitled, at its option, and expense, to assume the defense of any Third-Party Claim with counsel designated by the Indemnifying Party subject to the prior approval of the Indemnified Party, which may not unreasonably be withheld.

(b) Following the acknowledgment of the indemnification and the assumption of the defense by the Indemnifying Party, the Indemnified Party has the right to employ its own counsel, at its option and sole expense, unless (x) the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to, or inconsistent with, those available to the Indemnifying Party or (y) the Indemnified Party is or may become subject to criminal liability, in which cases the Indemnified Party will have the right to select and be represented by separate counsel reasonably acceptable to the Indemnified Party and at the expense of the Indemnifying Party.

(c) Notwithstanding the foregoing, unless and until the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party and assumes the defense of a Third-Party Claim, the Indemnified Party has the right, but not the obligation, to contest, defend and litigate, with counsel of its own selection, the Third-Party Claim and the reasonable costs and expenses thereof are subject to the indemnification obligations of the Indemnifying Party to indemnify and defend the Indemnified Party. These indemnity provisions will not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

(d) The Indemnifying Party shall not settle any Third-Party Claim without the prior written consent of the Indemnified Party unless such settlement is solely for the payment of money satisfied by the Indemnifying Party and does not include any admission of guilt or liability by the Indemnified Party.

(e) The provisions of this ARTICLE 13 survive the termination of this Agreement.

13.4 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, INCLUDING SECTIONS 4.1.3, 7.5, 10.3, 14.2, 18.4, AND ARTICLE 11, ARTICLE 12 AND ARTICLE 13, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. SELLER'S LIABILITY UNDER THIS AGREEMENT FOR COD DELAY LDS, THE BUY DOWN PAYMENT AND FAILURE TO ACHIEVE COMMERCIAL OPERATION SHALL NOT EXCEED IN THE AGGREGATE THE AMOUNT OF THE SELLER REQUIRED AMOUNT. UNLESS EXPRESSLY PROVIDED HEREIN OR INCLUDED IN A THIRD PARTY CLAIM COVERED BY THE INDEMNIFICATION PROVISIONS IN ARTICLE 13 OR ARISING FROM FRAUD OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES (TO THE EXTENT SUCH LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES ARE NOT DIRECT DAMAGES), BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. THE PARTIES HEREBY AGREE, HOWEVER, THAT ANY LIQUIDATED DAMAGES PROVIDED FOR IN THIS AGREEMENT ARE A REASONABLE ESTIMATION OF THE LOSS TO SELLER OR BUYER, AS APPLICABLE, AS A RESULT OF A BREACH OR TERMINATION OF THIS AGREEMENT BY BUYER OR SELLER, AS APPLICABLE, ARE NOT A PENALTY AND ARE NOT CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES, LOST PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

## ARTICLE 14

### FORCE MAJEURE

14.1 General. If either Party is rendered unable by Force Majeure to carry out, in whole or in part, its obligations under this Agreement and such Party gives prompt telephonic notice, as well as written notice and full details of the event to the other Party (including an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement) as soon as practicable after the occurrence of the event, then during the pendency of such Force Majeure, the obligations of the Party affected by the event (other than the obligation to make payments for amounts due at the time of the occurrence of the Force Majeure) shall be suspended to the extent required. The Party affected by the Force Majeure shall use commercially reasonable efforts to remedy the Force Majeure and shall expeditiously take commercially reasonable action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is reasonably dictated by the problem. When the Party claiming Force Majeure is able to resume performance of its obligations under this Agreement, it shall give the other Party prompt telephonic notice (followed by written notice) to that effect and shall promptly resume performance.

14.2 Termination for Long Term Force Majeure. In the event of a Force Majeure following the Term Effective Date, this Agreement may be terminated by the non-impacted Party if such Force Majeure event prevents the performance of a material portion of the other Party's obligations hereunder and such Force Majeure event is not resolved within two hundred seventy (270) Days after the commencement of such Force Majeure event, provided that during a Force Majeure event impacting the Facility or Seller's ability to perform its obligations under this Agreement, Seller shall make quarterly reports to Buyer regarding Seller's efforts to overcome such Force Majeure event; and further provided that, if the Force Majeure can be corrected through repair or restoration work to the Facility or other actions by Seller, and Seller provides evidence that it is diligently pursuing such actions, then the applicable corrective period in the prior sentence shall be extended for an additional ninety (90) Days so long as (i) prior to expiration of the initial corrective period, Seller informs and provides reasonable proof to Buyer of Seller's intention and ability to undertake and complete such repair or restoration work or other actions, and (ii) thereafter Seller diligently pursues such repair work, restoration or other actions to completion. Any such termination under this Section 14.2, shall be effective five (5) Business Days after notice of such termination is provided. For clarification, if this Agreement is terminated pursuant to this Section 14.2, no Damage Payment or Termination Payment, as applicable, under ARTICLE 12 shall be due, and neither Party shall owe the other Party any sums or damages, associated with the early termination of this Agreement except for sums or damages that arose prior to termination pursuant to Section 14.3 and any payment of the Loss Event Buy-Down Amount owing by Seller pursuant to Section 4.6.3, in each case, if applicable. Notwithstanding the foregoing, if the event of Force Majeure affects some, but not all, of the Facility, either Party may elect to exclude the affected portion of the Facility for purposes of this Agreement, in which case the Minimum Performance Volume shall be reduced accordingly, provided that the remainder of the Agreement will remain in effect for the remaining portion of the Facility.

14.3 Obligations. No Party shall be relieved by operation of this ARTICLE 14 of any liability for breach of any obligations of either Party (a) that were to be performed or that accrued

prior to the event of Force Majeure including any obligation to make payments then due or becoming due with respect to performance prior to the event of Force Majeure, (b) that arose in connection with an event of Force Majeure that results in the occurrence of a Loss Event, and (c) with respect to the payment of the Loss Event Buy-Down Amount or, if applicable, termination of this Agreement in connection with such Loss Event as set forth in Section 4.6.

## **ARTICLE 15**

### **REPRESENTATIONS AND COVENANTS**

15.1 Representations and Warranties. Each Party represents and warrants to the other Party as of the Effective Date that:

15.1.1 Such Party has the full power and authority to execute, deliver and perform its obligations under this Agreement and the execution, delivery and performance of this Agreement have been duly authorized by such Party.

15.1.2 This Agreement constitutes a legal, valid and binding obligation of such Party, except as the enforceability of this Agreement may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditor's rights generally and by general principles of equity.

15.1.3 Neither the execution nor delivery of this Agreement results in any breach of or constitutes any default under any material agreement to which such Party is bound or causes such Party to be in violation of any law, regulation, administrative or judicial order or process or decision to which such Party is a party or by which it or its properties are bound or affected.

15.1.4 It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt.

15.1.5 It is duly organized and validly existing under the Laws of the jurisdiction of its organization or incorporation and, if relevant under such Laws, is in good standing.

15.1.6 All governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to its entering into this Agreement have been obtained and are in full force and effect or have been submitted and all conditions of any such obtained authorizations, approvals, consents, notices and filings have been complied with.

15.1.7 No Default with respect to it, or event which with notice and/or lapse of time would constitute such a Default, has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement.

15.1.8 There is not pending or, to its knowledge, threatened against it or any of its Affiliates any action, suit or proceeding at law or in equity or before any court, tribunal, Governmental Authority, agency or official or any arbitrator that is likely to affect the legality,

validity or enforceability against it of this Agreement, or other document relating hereto or thereto to which it is a party nor its ability to perform its obligations under the same.

## 15.2 Covenants.

15.2.1 Facility Ownership. During the Term, Seller shall own or otherwise control all Major Equipment and shall own, lease or otherwise have the right to use all remaining Personal Property constituting the Facility, provided, however, that this Section 15.2.1 shall only apply to such Personal Property and real property rights as are reasonably needed to operate the Facility in accordance with Prudent Utility Practices.

15.2.2 Facility Debt Notices. Seller agrees to notify Buyer in writing within ten (10) Business Days of receipt of a default notice under any Facility Debt agreements into which Seller has entered.

15.2.3 Trading Agreements. Except as provided under Section 4.2.2, Seller shall not, and shall not permit any subsidiary of Seller (if any) to, create, incur, assume or permit to exist any physically or financially settled agreements related to the Products to be purchased by Buyer under this Agreement that, when taken together with this Agreement, represents Capacity greater than one hundred percent (100%) of the Final Installed Capacity; provided, however, that this Section 15.2.3 does not apply to (i) Seller's delivery or sale of Energy from the Facility to PJM (which in all events is not considered to be a delivery or sale of Energy to a Person other than Buyer), (ii) any transaction associated with the sale or disposition of Products or Environmental Attributes not sold to Buyer under this Agreement, (iii) Seller's purchase of electricity for consumption by the Facility or (iv) any contract associated with basis, congestion, or transmission rights between the Delivery Point and Settlement Point other than any such contract solely entered into for speculative purposes.

15.2.4 As of each date that RECs are transferred to Buyer, Seller hereby represents and warrants to Buyer that:

- (a) it has the right to sell the RECs;
- (b) the RECs have never been sold for any other purpose or use;
- (c) the RECs are free and clear of all liens or other encumbrances;
- (d) the RECs were generated during the eligible vintage(s); and
- (e) the facility from which the RECs were generated is not located in a state subject to a greenhouse gas emissions cap-and-trade program.

## ARTICLE 16

### INSURANCE

16.1 Seller's Insurance. Seller shall obtain, and maintain at its own expense, the insurance coverage set forth on Exhibit J to cover all of Seller's activities in connection with the performance of this Agreement throughout the Term.

16.2 Seller's Builder's Risk Insurance. During the construction phase of the Facility, Seller shall obtain and maintain (or cause to be so obtained and maintained), at Seller's expense, "Builder's Risk" insurance for Seller's Facility on an "all-risk" replacement-cost basis and providing the insurance coverage set forth on Exhibit J.

16.3 Seller's Policy Insuring the Facility. Upon completion of the Facility, Seller agrees to maintain a special-form (or equivalent) insurance policy upon the Facility in an amount equal to the full replacement cost of the Facility and its associated improvements. The policy maintained by Seller shall contain (a) an agreed amount provision in lieu of a co-insurance clause, (b) an increased cost of construction clause, (c) debris removal coverage, and (d) a waiver of subrogation clause in favor of Buyer.

16.4 [Reserved].

16.5 Insurance Requirement. Buyer and Seller shall assume responsibility for their own deductible amounts and losses in excess of policy limits.

16.6 Certificates of Insurance. Seller shall cause its insurer or broker to provide Buyer with certificates of insurance: (a) evidencing Buyer as an additional insured of all of the above-mentioned coverage, except workers compensation, and employers' liability insurance and operational property insurance, for all events connected with this Agreement; and (b) stating that the above insurance is primary coverage to any other insurance that may be available to Buyer. The purchase of appropriate insurance coverage by Seller or the furnishing of the certificate(s) of insurance shall not release Seller from its respective obligations or liabilities under this Agreement.

## ARTICLE 17

### NOTICES

All notices and other communications required or permitted by this Agreement or by Law to be served upon or given to a Party by the other Party may be delivered by hand, by reputable overnight courier, by courier service, or sent by certified mail, return receipt requested, postage prepaid, to the following address:

To Buyer:      Constellation NewEnergy, Inc.  
                     Attn: Associate General Counsel  
                     1310 Point Street, 8th Floor  
                     Baltimore, MD 21231  
                     Fax: (410) 470-2600

With a copy to:

Wholesale Trading – PJM Desk  
1310 Point Street, 8th Floor  
Baltimore, MD 21231

Credit related notices to Buyer:

Constellation NewEnergy, Inc.  
Attn: Credit Risk Department  
1310 Point Street, 12th Floor  
Baltimore, MD 21231  
Fax: (410) 470-2600

With a copy to:

Constellation NewEnergy, Inc.  
Attn: Associate General Counsel  
1310 Point Street, 8th Floor  
Baltimore, MD 21231  
Fax: (410) 470-2600

To Seller: UN-School House LLC  
c/o Birch Creek Development, LLC  
880 Apollo Street, Suite 333  
El Segundo, CA 90245  
Email: [utility@birchcreekdev.com](mailto:utility@birchcreekdev.com)

With a copy to:

UN-School House LLC  
Attn: [utility@pgrenewables.com](mailto:utility@pgrenewables.com)  
130 Roberts Street  
Asheville, NC 28801

Notices shall, unless otherwise specified herein, be in writing. Notice shall be effective on documented receipt or refusal of receipt thereof, except that any notices that are received (or refused) after 5:00 pm in the location of the recipient on a Business Day, or on a Day other than a Business Day, shall be deemed to be received on the next Business Day. A Party shall provide notice of a change of address in accordance herewith.

## **ARTICLE 18**

### **CONFIDENTIALITY**

18.1 Confidential Information. Except as set forth in Section 18.3 and as may otherwise be required by applicable Law (but subject to the remainder of this Section 18.1), the terms of this

Agreement, and all information provided by the Parties to one another pursuant to this Agreement (“Confidential Information”) shall be treated as confidential and proprietary material of the providing Party (the “Disclosing Party”) and shall be kept confidential by the Receiving Party (the “Receiving Party”). Confidential Information shall not include (i) information that is or becomes available to the public through no breach of this Agreement, (ii) information that was previously known by the Receiving Party without any obligation to hold it in confidence, (iii) information that the Receiving Party receives from a third party who is not known by the Receiving Party to be bound by a confidentiality agreement with the disclosing Party, (iv) information that the Receiving Party develops independently without using the Confidential Information, and (v) information that the providing Party approves for release to the general public in writing. Each Party shall use all reasonable efforts to maintain the confidentiality of the Confidential Information in any litigation or administrative or regulatory proceeding or in any other instance where disclosure is required by applicable Laws, and shall to the extent practical and legally permissible promptly notify the providing Party of any attempt by a third party to obtain the Confidential Information through legal process or otherwise. A Receiving Party may disclose information where required to do so in litigation, administrative or regulatory proceedings or otherwise by applicable Laws, but only after notice to the providing Party and affording the providing Party an opportunity to obtain a protective order or other relief to prevent or limit disclosure of the Confidential Information.

18.2 Associated Parties. Notwithstanding the foregoing, the Parties may provide any Confidential Information: (i) to any Affiliate, PJM, another Governmental Authority or any other Person (including subcontractors, consultants, accountants, financial advisors, experts, legal counsel and other professional advisors to the Parties) as required for scheduling, settlement and billing or otherwise to negotiate, document, execute, deliver, perform under or administer this Agreement, or in the case of Buyer’s Affiliates, to perform under any agreement with a Customer; (ii) in the case of Seller, to financing parties or potential financing parties, Affiliates, lessors, power purchasers and owners of and potential bidders and bidders for, and Potential Purchasers and purchasers of, direct or indirect interests in the Facility (including direct or indirect interests in the equity interests of Seller) and to any credit rating agency that has issued a Credit Rating for Seller or any of its Affiliates; and (iii) in the case of Buyer, to Potential Purchasers and Customers and to any credit rating agency that has issued a Credit Rating for Buyer or any of its Affiliates. Each Party shall cause its personnel and all Persons to whom it discloses the Confidential Information to treat it confidentially, to not disclose it to any other Person in any manner whatsoever except as provided herein and to use it only for the purpose permitted by this Agreement for which it was disclosed. The obligation to provide confidential treatment to Confidential Information shall not be affected by the inadvertent disclosure of Confidential Information by either Party.

18.3 Exceptions. The Receiving Party may, without violating this ARTICLE 18, disclose Confidential Information to Governmental Authorities and parties involved in any proceeding in which Seller or Buyer is seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement, but the Receiving Party shall, if applicable and practicable, make reasonable efforts to restrict public access to the information disclosed, by protective order or otherwise; to Governmental Authorities or the public as required by any Law, regulation, or order, including Laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports.



18.4 Remedies. In the event of a breach or threatened breach of the provisions of Section 18.1 by any Receiving Party, the Disclosing Party shall be entitled to an injunction restraining such Party from such breach. Nothing contained herein shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available at Law or in equity for such breach or threatened breach of this Agreement.

18.5 Marketing Rights; Press Releases; Naming Rights.

18.5.1 Buyer and Seller hereby agree that the Parties will coordinate and mutually agree upon the content of a press release which will constitute the initial public disclosure with respect to (a) the execution of this Agreement and (b) the Facility achieving (or being deemed to achieve) the Commercial Operation Date (such content, the “Communication Plan”).

18.5.2 Except as otherwise provided in this Section 18.5, neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information to the public, or respond to any inquiry from the media, concerning this Agreement or the participation of the other Party in the transactions contemplated hereby nor will either Party use the other Party’s name, logo or tagline, in each case without the prior written approval of the other Party. For the avoidance of doubt, the foregoing shall cover releases through any public medium of communication, including information distributed through blogs or social media postings. This provision shall not prevent the Parties from releasing information (i) which is required to be disclosed in order to obtain Permits, licenses, releases and other approvals relating to the Facility, (ii) as necessary to fulfill such Party’s obligations under this Agreement or as otherwise required by applicable Law, or (iii) if the Party seeking approval makes prompt and commercially reasonable efforts to obtain such approval but the other Party fails to give a definitive response within ten (10) Business Days. For the avoidance of doubt, this Section 18.5.2 shall apply to the Parties and their respective successors and assigns. Notwithstanding anything to the contrary in this Section 18.5, Seller acknowledges and agrees that Buyer, Buyer’s Affiliates and Customers shall have the right, following such initial press release and in accordance with the Communication Plan, (A) to publicly identify the Facility as the source of Metered Output and RECs purchased pursuant to this Agreement, (B) to advertise, market, and promote to the general public the benefits of this Agreement and the RECs transferred to Buyer under this Agreement and delivered to Buyer during the Term, including the exclusive and assignable right, in any such advertising, marketing or promotional material, and (C) to associate itself with any claimed or actual environmental or societal benefits arising from this Agreement and the creation, sale or retirement of such RECs.

18.5.3 Notwithstanding anything in this ARTICLE 18 to the contrary, Buyer and/or Buyer’s Affiliates may disclose certain information about the Facility to potential downstream purchasers (each a “Potential Purchaser”) who may be interested in buying from Buyer and/or Buyer’s Affiliates some of all of the Products sold by Seller to Buyer under this Agreement (each, a “Potential Downstream Transaction”); provided, however, neither Buyer nor Buyer’s Affiliates shall disclose any such information to the Potential Purchaser unless Buyer and/or the applicable Buyer Affiliate on the one hand and the Potential Purchaser on the other hand have executed an agreement that requires the Potential Purchaser to: (a) treat any Confidential Information provided by Seller to as confidential, (b) use such information only for the purpose of evaluating the Potential Downstream Transaction, and (c) only disclose such information to officers, managers, members, directors, employees, counsel, contractors, agents, and other

representatives for purposes of evaluating the Potential Downstream Transaction. Subject to the satisfaction of the foregoing requirements, for purposes of this Section 18.5.3, Buyer and/or Buyer's Affiliates shall be permitted to disclose the following terms with respect to this Agreement to Potential Purchasers: (i) Party names; (ii) renewable resource type; (iii) type of RECs to be provided; (iv) Term; (v) Facility location; (vi) total Capacity; (vii) Guaranteed Commercial Operation Date and Final Installed Capacity; (viii) Delivery Point; and (ix) actual and forecasted Metered Output, RECs and Expected Generation to be generated by the Facility.

18.5.4 Buyer and Seller hereby agree that the Parties shall mutually agree upon the content of the form of any press release that a Customer may issue (each, a "Customer Press Release"); provided, that a Customer Press Release may contain the following information without requiring Seller consent: (a) the name and location of the Facility; (b) renewable resource type; (c) type of RECs to be provided; (d) Term; (e) total Capacity of the Facility; (f) Guaranteed Commercial Operation Date of the Facility; (g) Customer's support for the development of the Facility; and (h) Delivery Point.

18.5.5 Notwithstanding anything in this ARTICLE 18 to the contrary, Buyer and Buyer's Affiliates may disclose certain information about the Facility obtained pursuant to this Agreement to Customers, including the data set forth on Exhibit I.

18.5.6 Buyer and Buyer's Affiliates shall have the right to advertise, market, and promote to the general public the benefits of the RECs that are sold to Buyer under this Agreement, including the exclusive and assignable right, in any such advertising, marketing or promotional material, to associate itself with any claimed or actual environmental or societal benefits arising from this Agreement and the sale or retirement of such RECs, in each case alone or in connection with a Customer.

18.5.7 Seller shall name the Facility "School House" and (a) shall not change the name of the Facility during the Term without Buyer's prior written consent, and (b) shall use the name "School House" in all press releases, marketing materials and other public statements made or released by Seller or any of its Affiliates regarding the Facility. Buyer shall obtain Seller's prior written consent to change the name of the Facility during the Term; provided, however, that Buyer shall have the right to change the name of the Facility to any of the names listed on Schedule 18.5.7 without obtaining Seller's prior written consent.

18.5.8 Survival. The obligations of the Parties under this ARTICLE 18 will survive for a period of two (2) years following any termination of this Agreement.

## **ARTICLE 19**

### **ASSIGNMENT**

19.1 General Prohibition on Assignment. Except as provided otherwise in this Agreement, neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party; provided, however, Seller may, without the consent of Buyer, transfer, sell, pledge, encumber or assign this Agreement and/or the accounts, revenues or proceeds hereof to a Facility Lender in connection with any financing or other financial arrangements and,

in the case of a sale/leaseback arrangement, Seller may assign this Agreement to a lessor party; and provided, further, Buyer may, without the consent of Seller, assign this Agreement or its rights hereunder to any of Buyer's Affiliates; provided that Buyer remains jointly and severally liable for all Buyer's obligations hereunder.

19.2 Accommodation of Financing Parties. To facilitate Seller's obtaining of financing in connection with the Facility, Buyer shall provide such consents to assignments and estoppels as may be reasonably requested by Seller or the Facility Lenders in connection with the debt or Tax equity financing of the Facility, as applicable; provided that in responding to any such request, Buyer shall have no obligation to (a) provide any consent that adversely affects, or that could reasonably be expected to have or result in an adverse effect on, any of Buyer's rights, benefits, risks and/or obligations under this Agreement (other than an agreement providing Facility Lenders with customary notice, extended cure periods and assignment rights) or (b) incur any unreimbursed third-party expense. Seller shall reimburse, or shall cause the Facility Lender to reimburse, Buyer for the incremental direct third party expenses (including the reasonably documented fees and expenses of Buyer's outside counsel) incurred by Buyer in the preparation, negotiation, execution and/or delivery of any documents requested by Seller or the Facility Lenders, and provided by Buyer, pursuant to this Section 19.2.

## **ARTICLE 20**

### **GOVERNMENTAL CHARGES AND CREDITS**

20.1 Governmental Charges. Except as otherwise provided in this ARTICLE 20, Seller shall pay or cause to be paid all Governmental Charges on or with respect to Metered Output arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to Products at and from the Delivery Point (other than ad valorem, franchise or Income Taxes which are related to the sale of Metered Output hereunder by Seller and are, therefore, the responsibility of Seller). Each Party shall use commercially reasonable efforts to mitigate and minimize the costs to the other Party of Governmental Charges. In the event Seller is required by applicable Law to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Seller shall include a charge for such amounts in the next invoice provided under Section 8.1. If either Party is required by Law to remit or pay Governmental Charges which are the other Party's responsibility hereunder, such remitting Party may deduct the amount of any such Governmental Charges from the sums due to the other Party under this Agreement and provide the other Party with reasonably detailed evidence of such Governmental Charges. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under applicable Law.

20.2 Changes in Law or Governmental Charges. The Energy Payment Rate will not be affected by any change in any applicable Law that alters either Party's costs in connection with this Agreement, and each of Seller and Buyer shall bear its own costs and benefits associated with any change in applicable Law that affects (a) Governmental Charges imposed or borne by either Party under this Agreement, (b) Seller's operation of the Facility in accordance with this Agreement, (c) the value of the Products, including any RECs, delivered or transferred under this Agreement, or (d) in any other material way the purpose or economics of this Agreement.

## ARTICLE 21

### DISPUTE RESOLUTION

21.1 Step Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of or relating to this Agreement or any of the transactions contemplated hereby promptly by negotiation, as follows. Either Party may give the other Party written notice of any such dispute not resolved in the normal course of business. Executives of both Parties at one level above the Facility personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) Days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) Days from the referral of the dispute to such executives, or if no meeting of such executives has taken place within fifteen (15) Days after such referral, either Party may seek all remedies available at Law or in equity.

21.2 Preliminary Injunctive Relief. Nothing in this ARTICLE 21 shall preclude, or be construed to preclude, the resort by either Party to a court of competent jurisdiction solely for the purposes of securing a temporary or preliminary injunction or other relief to preserve the status quo or avoid irreparable harm.

21.3 Performance During Pendency. The Parties shall continue to perform each of their respective obligations under this Agreement during the pendency of any dispute; provided that this obligation shall not apply after the termination of this Agreement (except with respect to payments of amounts due and owing under this Agreement).

21.4 Submission to Jurisdiction. Seller and Buyer, to the fullest extent permitted by Law, irrevocably (a) submit to the exclusive jurisdiction of courts of the State of New York and of the United States District Court Southern District of New York, in each case located in the Borough of Manhattan in New York City, and any appellate court thereof; and (b) waive any objection which either may have to (i) the laying of venue of any proceedings brought in any such court, (ii) that such proceedings have been brought in an inconvenient forum, or (iii) that such court lacks jurisdiction over the Party. Nothing in this provision shall prohibit a Party from bringing an action to enforce a money judgment in any other jurisdiction where the courts of such jurisdiction have jurisdiction over the other Party.

21.5 Waiver of Jury Trial. EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES ANY RIGHT IT MAY NOW OR HEREAFTER HAVE TO A TRIAL BY JURY IN ANY LITIGATION BASED HEREIN, OR ARISING OUT OF, UNDER, OR IN RESPECT OF THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF THE PARTIES.

## ARTICLE 22

### MISCELLANEOUS

22.1 Counterparts. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

22.2 Governing Law. This Agreement is governed by and shall be construed under the Laws of the State of New York excluding any conflict of laws rules (other than Sections 5-1401 and 5-1402 of the New York General Obligations Law).

22.3 Waiver. No waiver of any breach of the terms of this Agreement shall be effective unless such waiver is in writing and signed by the Party against whom such waiver is claimed. No waiver of any breach shall be deemed to be a waiver of any subsequent breach.

22.4 Modification; Fixed Price Contract. The provisions of this Agreement, including any Exhibits, may only be modified by written agreement duly executed by each Party. The Parties hereby stipulate and agree that this Agreement was entered into as a result of arm's-length negotiations between the Parties. Further, the Parties believe that the price, terms and conditions of this Agreement are just and reasonable and shall remain so over the life of the Agreement. The Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the entire Term, and hereby agree to make no filings with any state or federal agency, board, court or tribunal challenging the price, terms and conditions of this Agreement as to whether they are just and reasonable or in the public interest. The Parties hereby further stipulate and agree that neither Party may bring or support any action, proceeding or complaint seeking to modify, cancel, suspend, or abrogate the price, terms and conditions of this Agreement. Absent the agreement of the Parties to the proposed change, the standard of review for changes to any portion of this Agreement proposed by a non-party, or the FERC acting *sua sponte*, shall be the strictest standard of review permissible to preserve the intent of the Parties to uphold the sanctity of contracts without modification, which in no event shall be lower than the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Sierra Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

22.5 Severability. If any provision of this Agreement shall be determined to be unenforceable, void or otherwise contrary to Law, rendered inapplicable, such condition shall in no manner operate to render any other provision of this Agreement unenforceable, void or contrary to Law, and this Agreement shall continue in force in accordance with the remaining terms and provisions hereof, unless such condition invalidates the purpose or intent of this Agreement. In the event that any of the provisions, or portions or applications thereof, of this Agreement are held unenforceable or invalid by any court of competent jurisdiction or rendered inapplicable or invalid, Buyer and Seller shall negotiate in good faith to attempt to implement an equitable adjustment to the provisions of this Agreement with a view toward effecting the purposes of this Agreement by replacing the provision(s) that is unenforceable, void, or contrary to Law with a valid provision the economic effect of which comes as close as practicable to that of the provision that has been found to be unenforceable, void, contrary to Law.

22.6 Entirety. This Agreement contains all terms, conditions, and protections in any way related to, or arising out of, the sale and purchase of Energy and RECs as contemplated herein, and supersedes all prior agreements regarding the subject matter hereof, whether written or oral. The Parties acknowledge and agree that the Original Agreement is terminated.

22.7 Captions, Titles and Headings. Captions, titles and headings used in this Agreement are for ease of reference only and do not constitute a part of this Agreement.

22.8 Forward Contract. The Parties acknowledge and agree that this Agreement constitutes a “forward contract” and that they are “forward contract merchants” within the meaning of the United States Bankruptcy Code.

22.9 Further Assurances. Each Party shall, from time to time, upon the written request of any other Party, execute and deliver such further instruments and documents as shall be necessary to perform its obligations hereunder.

22.10 Survival. The confidentiality and audit provisions, indemnities, releases from liability, and limitations on liability or damages expressed in this Agreement shall, unless otherwise provided herein, survive the termination of this Agreement, and shall apply whether in contract, equity, or otherwise. Notwithstanding the foregoing, the statute of limitations for bringing any action with respect to this Agreement or either Party’s performance hereunder is not extended by the provisions of this Section 22.10.

22.11 Setoff Rights. To the extent that any damages are required to be paid under this Agreement, the Non-Defaulting Party may setoff those damages against any amounts owed from the defaulting Party, subject to applicable limitations on liability specified in this Agreement.

22.12 Third Party Beneficiaries. Except as provided in ARTICLE 13, this Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns. Nothing herein shall be construed to give any Person, other than the Parties and their respective successors and assigns, any legal or equitable rights hereunder.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed in their respective names by their duly authorized officers.

**SELLER**

**BUYER**

**UN-SCHOOL HOUSE LLC,**  
a Delaware limited liability company

**CONSTELLATION NEWENERGY, INC.,**  
a Delaware corporation

By: BCD Project Holdings 2, LLC,  
its manager

By: Birch Creek Development, LLC,  
its sole member

By:   
Michael Cohen (Sep 15, 2021 14:57 PDT)

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

Name: Michael Cohen

Name:

Title: Authorized Representative

Title:

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed in their respective names by their duly authorized officers.

**SELLER**

**BUYER**

**UN-SCHOOL HOUSE LLC**,  
a Delaware limited liability company

**CONSTELLATION NEWENERGY, INC.**,  
a Delaware corporation

By: BCD Project Holdings 2, LLC,  
its manager

By: Birch Creek Development, LLC,  
its sole member

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

Name: Michael Cohen

Title: Authorized Representative

By: Bryan P. Wright

Name: Bryan P. Wright

Title: Chief Financial Officer

*gml*



## **EXHIBIT A**

### **DESCRIPTION OF FACILITY AND SITE**

The Facility shall consist of solar photovoltaic panels, Inverters, access roads, an electrical collection system, transformers, overhead transmission lines and other associated equipment and facilities necessary to deliver Energy to the Delivery Point pursuant to the terms and conditions set forth in this Agreement.

The term “Site” as defined in the Agreement means the approximately 114 acres generally depicted below.

All that certain lot or tract of land situate in Morris Township, Clearfield County, Pennsylvania, more fully described as follows:

BEGINNING at an Iron Pipe, said point being the northeastern most corner of said property, thence along lands now or formerly of Matthew J Fenush and Lyndsey Nicole & Richard Alan Nybeck South 0 degrees 36 minutes 34 seconds East, a distance of 1251.49 feet to an Iron Pin; thence along lands now or formerly of Roger L & Alan R Larson North 88 degrees 15 minutes 08 seconds West, a distance of 1259.83 feet to a point; thence along the subject parcel of lands now or formerly of Madeline Fornaro, thence along lands now or formerly of Roger L & Alan R Larson North 0 degrees 00 minutes 24seconds West, a distance of 805.79 to an Iron Pin; thence along lands now or formerly of Justin C OConnor and Matthew J Fenush South 89 degrees 58 minutes 52 seconds East, a distance of 1956.46 feet to the place of BEGINNING.

Containing 2,081,539.76 sq ft, 47.79 acres

AND

Lease Area Descriptions of Roger L & Alan R Larson Parcels #1240R0900000064, #1240R0900000156, #1240R0900000061, #1240R0900000121, #1240R0900000158 & #1240R0900000066

Lease Area 1

All that certain lot or tract of land situate in Morris Township, Clearfield County, Pennsylvania, more fully described as follows:

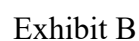
BEGINNING at an Iron Pin, said point being the northeastern most corner of said property, thence along lands now or formerly of Lyndsey Nicole & Richard Alan Nybeck South 0 degrees 20 minutes 32 seconds East, a distance 584.93 feet to a point; thence along the subject parcels of lands now or formerly of Roger L & Alan R Larson.

Thence following along School House Road South 26 degrees 17 minutes 58 seconds West, a distance of 66.00 feet to a point in the road; thence leaving School House Road along the subject parcels of lands now or formerly of Roger L & Alan R Larson.

Containing 2,591,135.29 sq ft, 59.48 acres

All that certain lot or tract of land situate in Morris Township, Clearfield County, Pennsylvania, more fully described as follows:

Containing 316,738.78 sq ft, 7.27 acres



## **EXHIBIT B**

### **SCHEDULING PROCEDURES**

Prior to Commercial Operation Date, Seller shall create a new contract in the PJM InSchedule system. The contract will designate the start date of the new contract as the first Day on which Metered Output could be scheduled from Seller to Buyer per the terms of this Agreement, and the end date of such new contract shall be entered as the Day following the final Day of the Term. The following additional details shall be used for the new contract:

Seller: Shortname for UN-School House LLC (or its agent)

Buyer: Shortname for Exelon Generation Company, LLC

Pricing Type: Day-Ahead

Schedule Confirmation Type: Seller (unilateral)

Service Type: INT BIL TRAN

Source: Delivery Point per the Agreement

Sink: Delivery Point per the Agreement

Throughout the Delivery Term, commencing on the Term Effective Date, Seller shall use commercially reasonable efforts to submit schedules to PJM via the InSchedule system, subject to the contracts as described above, by no later than 10:00 a.m. EST each Business Day, provided that in every case Seller shall submit each schedule no later than three (3) hours prior to the PJM deadline for submission of such schedule, for the Metered Output (in MWs) in each hour of the previous Day. Such PJM schedule shall comply with all PJM Rules and scheduling parameters. Seller may adjust such submitted schedule in accordance with the PJM Rules and scheduling parameters. The purpose of the PJM schedule is to transfer financial responsibility for the Metered Output from Seller to Buyer at the Delivery Point.

**EXHIBIT C**

**FORM OF LETTER OF CREDIT**

[Attached]

**SPECIMEN LETTER OF CREDIT (Flat Form 6/07)**

\_\_\_\_\_  
\_\_\_\_\_  
Bank  
(address)

**IRREVOCABLE STANDBY LETTER OF CREDIT**

DATE: \_\_\_\_\_

AMOUNT U.S. \$ \_\_\_\_\_

Expiration: \_\_\_\_\_

**FOR INTERNAL IDENTIFICATION PURPOSES ONLY**

Beneficiary:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Applicant:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

WE HEREBY ESTABLISH THIS IRREVOCABLE, AND UNCONDITIONAL LETTER OF CREDIT IN YOUR FAVOR FOR DRAWINGS UP TO U.S. \$ \_\_\_\_\_ EFFECTIVE IMMEDIATELY AND EXPIRING AT OUR OFFICE (**bank address**) WITH THE CLOSE OF BUSINESS ON \_\_\_\_\_ (**date of expiration**)

WE HEREBY UNDERTAKE TO PROMPTLY HONOR YOUR SIGHT DRAFT (\$ ) DRAWN ON US, INDICATING OUR CREDIT NO. \_\_\_\_\_, FOR ALL OR ANY PART OF THIS CREDIT IF PRESENTED AT (**bank address**) ON OR BEFORE THE EXPIRATION DATE OR ANY AUTOMATICALLY EXTENDED EXPIRATION DATE.

DRAFTS HEREUNDER MUST BE MARKED "DRAWN UNDER \_\_\_\_\_ BANK LETTER OF CREDIT NO. \_\_\_\_\_ DATED \_\_\_\_\_."

EXCEPT AS EXPRESSLY STATED HEREIN, THIS UNDERTAKING IS NOT SUBJECT TO ANY AGREEMENT, CONDITION OR QUALIFICATION. OUR OBLIGATION UNDER THIS LETTER OF CREDIT SHALL BE OUR INDIVIDUAL OBLIGATION AND IS IN NO WAY CONTINGENT UPON THE REIMBURSEMENT WITH RESPECT THERETO, OR UPON OUR ABILITY TO PERFECT ANY LIEN, SECURITY INTEREST OR ANY OTHER REIMBURSEMENT.

IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE DEEMED AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ONE YEAR FROM THE PRESENT OR ANY FUTURE EXPIRATION DATE HEREOF, UNLESS AT LEAST THIRTY (30) DAYS BEFORE ANY SUCH EXPIRATION DATE WE NOTIFY YOU BY REGISTERED MAIL OR OVERNIGHT COURIER ADDRESSED TO: \_\_\_\_\_, THAT WE ELECT NOT TO RENEW THIS LETTER FOR SUCH ADDITIONAL PERIOD.

THIS LETTER OF CREDIT IS SUBJECT TO AND GOVERNED BY THE UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS OF THE INTERNATIONAL CHAMBER OF COMMERCE (PUBLICATION 600). HOWEVER, IF THIS CREDIT CONTAINS A DRAWING SCHEDULE OR A SCHEDULE OF AVAILABILITY, THEN ARTICLE 32 OF THE UCP IS HEREBY EXPRESSLY DELETED. IN ADDITION, IF THIS CREDIT EXPIRES DURING AN INTERRUPTION OF BUSINESS AS DESCRIBED IN ARTICLE 36 OF SAID PUBLICATION 600, THE BANK HEREBY SPECIFICALLY AGREES TO EFFECT PAYMENT IF THIS CREDIT IS DRAWN AGAINST WITHIN THIRTY (30) DAYS AFTER RESUMPTION OF OUR BUSINESS.

\_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_  
PRINTED NAME & TITLE

\_\_\_\_\_  
EMAIL & TELEPHONE

**EXHIBIT D**

**[Reserved]**

**EXHIBIT E**

**[Reserved]**

**EXHIBIT F****EXPECTED GENERATION**

Commercial Operation Quarter	Expected Generation (MWh) (Commercial Operation Quarter)	Commercial Operation Year	Expected Generation (MWh) (Commercial Operation Year)
1	6663.76	-	-
2	12724.71	-	-
3	12680.27	-	-
4	5027.55	1	37096.29
1	6635.77	-	-
2	12671.26	-	-
3	12627.01	-	-
4	5006.43	2	36940.47
1	6607.78	-	-
2	12617.82	-	-
3	12573.76	-	-
4	4985.32	3	36784.68
1	6579.13	-	-
2	12563.10	-	-
3	12519.23	-	-
4	4963.70	4	36625.16
1	6550.47	-	-
2	12508.39	-	-
3	12464.71	-	-



4	4942.08	5	36465.65
1	6521.82	-	-
2	12453.67	-	-
3	12410.18	-	-
4	4920.46	6	36306.13
1	6492.50	-	-
2	12397.68	-	-
3	12354.39	-	-
4	4898.34	7	36142.91
1	6463.18	-	-
2	12341.69	-	-
3	12298.60	-	-
4	4876.22	8	35979.69
1	6433.86	-	-
2	12285.70	-	-
3	12242.80	-	-
4	4854.10	9	35816.46
1	6404.54	-	-
2	12229.72	-	-
3	12187.01	-	-
4	4831.98	10	35653.25
1	6,374.36	-	-
2	12,173.75	-	-
3	12,130.70	-	-

Exhibit F

4	4,810.19	11	35489.00
1	6,344.36	-	-
2	12,116.47	-	-
3	12,073.62	-	-
4	4,787.55	12	35322.00

**EXHIBIT G**

**DEVELOPMENT SCHEDULE**

Milestone	2021					2022					
	8	9	10	11	12	1	2	3	4	5	6
Site Control Secured											
Interconnection Studies and Agreement											
Zoning Approval											
NEPA Environmental Assessment											
Engineering											
Financial Close											
Notice to Proceed											
Construction											
Commercial Operation Date											

## **EXHIBIT H**

### **MAJOR MILESTONES**

<b>Major Milestone</b>	<b>Required Date</b>
Seller has obtained debt and/or equity financing commitments from one or more Persons sufficient to construct the Facility, including such financing commitments from Seller's owner(s), and that such financing will be applied to the planning, development, construction and completion of the Facility	1/31/2022
Seller has executed and placed the required deposits as required under the terms and conditions of the purchase and supply agreements for the Major Equipment	3/31/2022
Seller and/or its Affiliate has entered into an engineering, procurement and construction contract under which a contractor is obligated to deliver the completed Facility	1/31/2022
Seller has issued "Notice to Proceed" under the EPC Contract	1/31/2022
Seller has obtained all discretionary Permits (including all environmental Permits) required for construction	Complete

## **EXHIBIT I**

### **DATA**

The data points to be made available by Seller to Buyer shall include, but not be limited to, the following and shall be made available to Buyer on a Real-Time basis, in each case to the extent such information is made available by PJM:

<b>Data Point</b>	<b>Frequency</b>	<b>Buyer Interface</b>
Net MW (to be used in LFC and SCED)	Instantaneous*	ICCP or equivalent
Net MVAR	Instantaneous*	ICCP or equivalent
Gross MW	Instantaneous*	ICCP or equivalent
Gross MVAR	Instantaneous*	ICCP or equivalent
Breaker Status	Instantaneous*	ICCP or equivalent
AVR Status	Instantaneous*	ICCP or equivalent
PSS Status	Instantaneous*	ICCP or equivalent
Up Ramp Rate	Instantaneous*	ICCP or equivalent
Down Ramp Rate	Instantaneous*	ICCP or equivalent
Emergency Max	Instantaneous*	ICCP or equivalent
Economic Max	Instantaneous*	ICCP or equivalent
Emergency Min	Instantaneous*	ICCP or equivalent
Economic Min	Instantaneous*	ICCP or equivalent
Number of Inverters Online	Instantaneous*	ICCP or equivalent
Number of Inverters Offline	Instantaneous*	ICCP or equivalent
Number of Inverters Unknown Status	Instantaneous*	ICCP or equivalent
Number of Inverters in fault status	Instantaneous*	ICCP or equivalent
Number of Inverters with communication fault	Instantaneous*	ICCP or equivalent
Commit Status	Instantaneous*	ICCP or equivalent
System Frequency	Instantaneous*	ICCP or equivalent
Barometric Pressure	Instantaneous*	ICCP or equivalent
Wind Direction	Instantaneous*	ICCP or equivalent
Wind Speed	Instantaneous*	ICCP or equivalent
Temperature	Instantaneous*	ICCP or equivalent
Back Panel Temperature	Instantaneous*	ICCP or equivalent
Plane of Array Irradiance	Instantaneous*	ICCP or equivalent
Capacitor Vars	Instantaneous*	ICCP or equivalent
High Side KV	Instantaneous*	ICCP or equivalent
Unit Real Time LMP	Instantaneous*	ICCP or equivalent
Facility's Real-Time production capability	Instantaneous*	ICCP or equivalent
PJM SCED	Instantaneous*	ICCP or equivalent
Curtailment flag	Instantaneous*	ICCP or equivalent
Current Active Power Limit setpoint	Instantaneous*	ICCP or equivalent

Solar Forecast	As available (min Hourly)	ICCP or equivalent/web service
Revenue Meter MWH	Instantaneous*	ICCP or equivalent
Revenue Meter MVARH	Instantaneous*	ICCP or equivalent
Any point transmitted to PJM		
* Instantaneous as defined in under normal operations in PJM. Maximum update would be every minute		

Additional data points will be provided by Seller to Buyer according to reasonable terms mutually agreed to by the Parties.

## **EXHIBIT J**

### **INSURANCE**

Commencing with the initiation of operational activities of the Facility and continuing until the termination of this Agreement, and at no additional cost to Buyer, Seller shall maintain or cause to be maintained by contracted parties at the Facility, occurrence form insurance policies as follows:

- (a) Workers' Compensation in accordance with the statutory requirements of the state in which the Services are performed and Employer's Liability Insurance of not less than \$1,000,000 each accident/employee/disease;
- (b) Commercial General Liability Insurance having a limit of at least \$1,000,000 per occurrence/\$2,000,000 in the aggregate for contractual liability, personal injury, bodily injury to or death of persons, and damage to property, premises and operations liability;
- (c) Commercial/Business Automobile Liability Insurance (including owned (if any), non-owned or hired autos) having a limit of at least \$1,000,000 each accident for bodily injury, death, and property damage;
- (d) All Risk Property Coverage during construction and operation, in an amount not less than the full replacement cost of the Facility, with commercially reasonable sublimits, and subject to a deductible not to exceed \$500,000 with the exception of deductible for natural catastrophe perils;
- (e) if Seller will be handling or the Facility will have present environmentally regulated or hazardous materials, Pollution Legal Liability, including coverage for sudden/accidental occurrences for bodily injury, property damage, environmental damage, cleanup costs and defense with a minimum of \$1,000,000 per occurrence (claims-made form acceptable with reporting requirements of at least one (1) year).

All insurance policies provided and maintained by Seller or applicable party shall:

- i. be underwritten by insurers which are rated A.M. Best "A- VIII" or higher;
- ii. specifically include Buyer as additional insured's, excluding, Worker's Compensation/Employer's Liability and Operational Property insurance;
- iii. be endorsed to provide, where permitted by law, waiver of any rights of subrogation against Buyer; and
- iv. provide that such policies and additional insured provisions are primary and without right of contribution from any other insurance, self-insurance or coverage available to Buyer.

Buyer and Seller shall assume responsibility for their own deductible amounts and losses in excess of policy limits. Seller's compliance with these provisions and the limits of insurance specified herein shall not constitute a limitation of Seller's liability pursuant to this Agreement. Any failure to comply with any of these provisions shall not be deemed a waiver of any rights of Buyer under

this Agreement or with respect to any insurance coverage required hereunder. Buyer at its sole discretion may request Seller to provide evidence of coverage for insurance coverage required herein , including endorsements in which Buyer is included as an additional insured for any claims filed relative to the Facility or this Agreement.



## **EXHIBIT K**

### **APPROVED EQUIPMENT SUPPLIERS**

#### **1. PV Modules**

- a. Trina
- b. VSUN
- c. Canadian Solar
- d. ZNShine
- e. ET Solar

#### **2. Piles/Racking**

- a. RBI (fixed only);
- b. Game Change;
- c. ATI
- d. Nextracker
- e. AP Alternatives
- f. TerraSmart
- g. Sunfolding
- h. Soltec
- i. FTC

#### **3. Inverter**

- a. Sungrow
- b. SMA;
- c. TMEIC
- d. Siemens
- e. Power Electronics
- f. Chint Power Systems;
- g. Solectria Solar

#### **4. Switchgear**

- a. SolarBos
- b. EMI
- c. Eaton/Cooper
- d. QT Corp

5. Step-up Pad-Mount Transformers

- a. GE Prolec
- b. Eaton/Cooper;
- c. Sanil
- d. Square D
- e. ABB

6. SCADA/Monitoring

- a. Also Energy
- b. Solar Operations
- c. Norcal

7. GSU

- a. Virginia Transformers
- b. GE Prolec

**EXHIBIT L**

**FORM OF QUARTERLY/MONTHLY REPORT**

**Project:** [     ]

**Month:** [     ]

**Year:** [     ]

**Date of Report Completion:** [     ]

		Status		
Item #	Major Milestone	Last Month	Current Month	Milestone Date
1	CPCN Certificate	[insert notes]	[insert notes]	
2	Solar Resource Assessment	[insert notes]	[insert notes]	
3	EPC Contract	[insert notes]	[insert notes]	
4	Module Supply Agreement	[insert notes]	[insert notes]	
5	Inverter Supply Agreement	[insert notes]	[insert notes]	
6	Deposits made under MSA	[insert notes]	[insert notes]	
7	Deposits Made under the ISA	[insert notes]	[insert notes]	
8	LNTP under the EPC Contract	[insert notes]	[insert notes]	
9	FNTP under the EPC Contract	[insert notes]	[insert notes]	
10	Entered into Interconnection Agreement	[insert notes]	[insert notes]	
11	Obtained debt and/or equity commitments	[insert notes]	[insert notes]	
12	Accepted delivery of Modules	[insert notes]	[insert notes]	

**Forecast of major activities scheduled for the upcoming month:**

**If applicable, note any material planned changes to the Facility as described in Exhibit A:**

**If applicable, list issues that could potentially impact Seller's ability to meet upcoming Major Milestones as described in Exhibit H:**

**If applicable, list any requests from Seller of Buyer:**

**Development Schedule Update**

**SCHEDULE 3.3****REPLACEMENT FACILITY**

<b>Project Name</b>	<b>State</b>	<b>MW DC</b>	<b>MW AC</b>
Belsena	PA	28.00	20.00
Big Bell	PA	28.00	20.00
Kinley	PA	26.00	20.00
Evergreen	PA	25.00	20.00
Franklin	PA	28.73	20.00
Gratz	PA	24.50	17.00
Hanks	PA	19.66	15.73
Jakes Hollow	PA	28.00	20.00
Julia	PA	28.00	20.00
Liberty	PA	50.16	44.00
Long Bridge	PA	28.00	20.00
Magenta	PA	16.80	12.00
Mefferts Run	PA	26.00	20.00
Naftzinger	PA	20.00	15.00
Naftzinger 2	PA	19.50	15.00
Naftzinger 3	PA	19.50	15.00
Pearl	PA	21.00	15.00
Ponytail	PA	14.00	10.00
Richardson	PA	21.00	15.00
Salt	PA	16.80	12.00
Viaduct	PA	24.56	20.00
Williamsport	PA	25.00	20.00

**SCHEDULE 18.5.7**

**BUYER'S NAMING RIGHTS**

1. The GIANT CO I
2. The GIANT CO II
3. The GIANT CO III
4. The GIANT CO IV


# PJM REC Arbitrage PPA\_PineGate (School House) (Round 2)\_Execution Copy (002)


Final Audit Report


2021-09-15


Created:	2021-09-15
By:	Kelly Westropp (kwestropp@pgrenewables.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAQFCO_AhM-ICpAF5OYhvX4pxVAij6xgHw


## "PJM REC Arbitrage PPA\_PineGate (School House) (Round 2)\_Execution Copy (002)" History

 Document created by Kelly Westropp (kwestropp@pgrenewables.com)  
2021-09-15 - 9:48:13 PM GMT- IP address: 71.81.218.231

 Document emailed to Michael Cohen (mcohen@birchcreekdev.com) for signature  
2021-09-15 - 9:49:10 PM GMT

 Email viewed by Michael Cohen (mcohen@birchcreekdev.com)  
2021-09-15 - 9:56:46 PM GMT- IP address: 174.193.129.126

 Document e-signed by Michael Cohen (mcohen@birchcreekdev.com)  
Signature Date: 2021-09-15 - 9:57:00 PM GMT - Time Source: server- IP address: 174.193.129.126

 Agreement completed.  
2021-09-15 - 9:57:00 PM GMT