

January 11, 2018

434 Fayetteville Street  
Suite 2800  
Raleigh, NC 27601

Ms. Lynn Jarvis  
Chief Clerk  
North Carolina Utilities Commission  
430 N. Salisbury Street  
Raleigh, NC 27603

**RE:           North Carolina Clean Energy Business Alliance  
              In the Matter of Petition for Approval of Competitive Procurement of  
              Renewable Energy Program  
              NCUC Dockets E-2, Sub 1159 and E-7, Sub 1156  
              ATTACHMENT TO JOINT COMMENTS OF NORTH CAROLINA  
              CLEAN ENERGY BUSINESS ALLIANCE AND NORTH CAROLINA  
              SUSTAINABLE ENERGY ASSOCIATION  
              PART 1 OF 2**

Dear Ms. Jarvis:

On behalf of the North Carolina Clean Energy Business Alliance ("NCCEBA") and North Carolina Sustainable Energy Association ("NCSEA"), we hereby submit the Attachment as referenced in the Joint Comments of NCCEBA and NCSEA that were filed with the Commission on January 10, 2018 in the above referenced dockets.

This Attachment was filed on January 10, 2018 as well, but was rejected. Notice of same was received this morning. The Attachment to the Joint Comments was rejected because a docket number was not shown on the Attachment itself. Docket numbers have now been noted on the Attachment.

The Commission's system also rejected the filing yesterday evening when filed as a whole due to the size of the document being too large. Therefore, we are herewith submitting the Attachment in two parts – Part 1 of 2 and Part 2 of 2. Please accept **Part 1 of 2 as attached**. We will follow with Part 2 of 2.

Thank you in advance for your assistance. If you have any questions or comments regarding this filing, please do not hesitate to call me.

Very truly yours,

/s/Karen M. Kemerait

pbb

Karen M. Kemerait | Direct: 919-755-8764 | karen.kemerait@smithmoorelaw.com | www.smithmoorelaw.com

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RALEIGH 524825.1

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Enclosure

cc: Christopher J. Ayers, Esq.  
Parties of Record

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DUKE NOTICE: THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON BUYER'S RECEIPT OF ALL REQUIRED APPROVALS (INCLUDING MANAGEMENT, CREDIT AND LEGAL APPROVAL). ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS AGREEMENT IS FULLY NEGOTIATED, APPROVED BY BUYER IN ITS SOLE DISCRETION, AND EXECUTED BY BOTH PARTIES, NO PARTY WILL HAVE ANY LEGAL OBLIGATION OR LIABILITY, WHETHER EXPRESSED OR IMPLIED, OR OTHERWISE ARISING IN ANY MANNER UNDER THIS DRAFT OR IN THE COURSE OF NEGOTIATIONS.



**AGREEMENT TO PURCHASE THE OUTPUT  
OF THE [NAME] SOLAR FACILITY**

**Buyer:** Duke Energy Carolinas, LLC OR Duke Energy Progress, LLC

Overnight Mail: 400 South Tryon Street  
Mail Code: ST 13A  
Charlotte, North Carolina 28202  
Regular Mail: PO Box 1010  
Mail Code: ST 13A  
Charlotte, NC 28201-1010  
Attn.: Wholesale Renewable Manager  
[DERContracts@duke-energy.com](mailto:DERContracts@duke-energy.com)

*With Additional Notices of Events of Default  
Or Potential Event of Default to:*  
Overnight Mail: 550 S. Tryon St.  
Charlotte, North Carolina 28202  
Regular Mail: P.O. Box 1321, DEC45  
Charlotte, North Carolina 28201-1321  
Attn.: VP Commercial Legal Support

**Seller:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**DUKE ENERGY PROGRESS/CAROLINAS, LLC**

This Agreement to Purchase the Output of the [NAME] Solar Facility, including Exhibits 1-5\_\_\_ hereto, which are incorporated into and made part hereof (collectively, the "Agreement"), is made and entered into by and between [insert full legal name of Seller] (the "Seller") and [Duke Energy Carolinas, LLC] [Duke Energy Progress, LLC] (the "Buyer") under the terms specified herein. Buyer and Seller may be referred to individually as a "Party" and collectively as the "Parties." Notwithstanding anything set forth herein, neither this Agreement nor any transaction contemplated hereunder will be effective **unless and until both Parties have executed** and delivered this Agreement, and the later of such date shall be the "Effective Date" of this Agreement.

NOW THEREFORE, IN CONSIDERATION OF THE PROMISES AND MUTUAL COVENANTS SET FORTH HEREIN, FOR GOOD AND VALUABLE CONSIDERATION, THE SUFFICIENCY OF WHICH IS ACKNOWLEDGED, AND INTENDING TO BE BOUND HEREBY, THE PARTIES AGREE AS FOLLOWS:

**1. Definitions**

Unless defined in the body of the Agreement, any capitalized term herein shall have the meaning set forth below:

- 1.1. "AAA" is defined in Section 23.2.1.
- 1.2. "Abandon(s)" means the relinquishment of control or possession of the Facility and/or cessation of operations of or at the Facility by Seller. "Abandon" excludes cessation of generation to comply with Prudent Utility Practices, Permitted Excuse to Perform, or due to maintenance or repair of the Facility (including Maintenance Outages and Planned Outage), provided that such maintenance or repair activities are being performed in a Commercially Reasonable Manner and with Prudent Utility Practice.
- 1.3. "Account" means a Party's electronic account with the Tracking System.
- 1.4. "Act" means the North Carolina Renewable Energy and Energy Efficiency Portfolio Standard, N.C. Gen. Stat. 62-133.8, including all rules promulgated by the Commission associated therewith, as each may be amended or modified from time-to-time, and any successor renewable energy standards, statutes, regulations, or rules.
- 1.5. "Affiliate" means, with respect to any entity, each entity that directly or indirectly controls, is controlled by, or is under common control with, such designated entity, with "control" meaning the possession, directly or indirectly, of the power to direct management and policies, or otherwise have control of an entity, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, with respect to Buyer the term Affiliate does not include any subsidiaries or affiliates whose activities are subject to the oversight or regulation of any state commission(s) and/or federal energy regulatory commission.
- 1.6. "Agreement" is defined in the introductory paragraph hereof.
- 1.7. "Annual Payment Threshold" is defined in Section 8.9.
- 1.8. "Assignment" is defined in Section 24.1.
- 1.9. "Back-Up Tapes" is defined in Section 16.3.
- 1.10. "Bankrupt" means, with respect to a Party ~~or its credit support provider~~, that such Party ~~or its credit support provider~~: (a) makes an assignment or any general arrangement for the benefit of creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law



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for the protection of creditors; (c) has such a petition filed against it as debtor and such petition is not stayed, withdrawn, or dismissed within thirty (30) Business Days of such filing; (d) seeks or has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; (e) has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (f) is unable to pay its debts as they fall due or admits in writing of its inability to pay its debts generally as they become due; and/or (g) otherwise becomes bankrupt or insolvent (however evidenced).

- 1.11. "Billing Meter" is defined in Section 10.
- 1.12. "Billing Period" is defined in Section 11.
- 1.13. "Business Day" means any day on which the Federal Reserve member banks in New York City are open for business. A Business Day shall run from 8:00 a.m. to 5:00 p.m. Eastern Prevailing Time.
- 1.14. "Buyer" shall have the meaning specified in the first paragraph of this Agreement
- 1.15. "Capacity" means and includes the electric generation capability and ability of the Facility and all associated characteristics and attributes, inclusive of the ability to contribute to peak system demands, as well as reserve requirements.
- 1.16. "Certificate" means the electronic instrument created and issued by the Tracking System.
- 1.17. "Change of Control" means a transaction or series of related transactions (by way of merger, consolidation, sale of stock or assets, or otherwise) with any person, entity or "group" (within the meaning of Section 13(d)(3) of the U.S. Securities Exchange Act of 1934) of persons pursuant to which such person, entity, or group would acquire (i) 50% or more of the voting interests in Seller or (ii) substantially all of the assets of Seller.
- 1.18. "Commercial Operation" means that the Facility is operational and placed into service such that all of the following have occurred and remain simultaneously true and accurate: (a) the Facility has been constructed, tested, and is fully capable of operating for the purpose of generating the Product and delivering as required herein; (b) the Facility has received written authorization from the Transmission Provider for interconnection and synchronization of the Facility with the System; and, (c) the Facility has obtained all Permits and Required Approvals; ~~(d) the Facility has met all requirements to be deemed commercially operational under any applicable state and/or federal tax credit, grant, subsidy, or any other similar incentives or benefit that the Facility is eligible for and pursuing in connection with financing or the overall economics of the Facility;~~ and, (d) the Facility has met all requirements necessary for safely and reliably generating the Product and delivering the Product to Buyer in accordance with Prudent Utility Practice.
- 1.19. "Commercial Operation Date" means the date on which the Facility achieves or achieved Commercial Operation.
- 1.20. "Commercially Reasonable Manner" or "Commercially Reasonable" means, with respect to a given goal or requirement, the manner, efforts and resources a reasonable person in the position of the promisor would use, in the exercise of its reasonable business discretion and industry practice, so as to achieve that goal or requirement, which in no event shall be less than the level of efforts and resources standard in the industry for comparable companies with respect to comparable products. Factors used to determine whether a goal or requirement has been performed in a "Commercially Reasonable Manner" may include, but shall not be limited to, any specific factors or considerations identified in the Agreement as relevant to such goal or requirement.

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- 1.21. "Commission" means the North Carolina Utilities Commission or any successor thereto.
- 1.22. "Contract Price" is defined in Section 4.5.
- 1.23. "Contract Quantity" is defined in Section 4.3.
- 1.24. "Control Compensation" is defined in Section 8.9.1.
- 1.25. "Control Equipment" is defined in Section 8.7.
- 1.26. "Control Instruction" means any System Operator Instruction to dispatch, operate, and/or control the Facility in the same manner and/or for any reason as the System Operator may, in its sole discretion, dispatch, operate, and/or control Buyer's own generating resources and power purchase arrangements used to provide service to Buyer's native load customers.
- 1.27. "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, and other similar third party transaction costs and expenses, and other costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated transaction(s), and all reasonable attorneys' fees and other legal expenses incurred by the Non-Defaulting Party in connection with the termination.
- 1.28. "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as a corporate or issuer rating.
- 1.29. "Defaulting Party" is defined in Section 19.
- 1.30. "Delivery Period" is defined in Section 4.1.
- 1.31. "Dispatch Down" means any reduction or cessation of Energy generation by the Facility in response to an order or instruction by or direct action taken by the System Operator.
- 1.32. "Disputes" is defined in Section 23.1.
- 1.33. "Early Termination Date" is defined in Section 20.1.
- 1.34. "Delivery Point" means the point of interconnection between the Facility and the System on the high side (Buyer or Transmission Provider side) of the System.
- 1.35. "Effective Date" is defined in the introductory paragraph hereto.
- 1.36. "Emergency Condition" means, no matter the cause: (a) any urgent, abnormal, operationally unstable, dangerous, or public safety condition that is existing on the System or any portion thereof; (b) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is likely to result in any of the following: (i) loss or damage to the Facility or the System, (ii) disruption of generation by the Facility, (iii) disruption of service or stability on, to or of the System, or (iv) condition that may result in endangerment of human life or public safety; or (c) any circumstance that requires action by the System Operator to comply with standing NERC regulations or standards, including without limitation actions to respond to, prevent, limit, or manage loss or damage to the Facility, loss or damage to the System, disruption of generation by the Facility, disruption of service on the System, an abnormal condition on the System, and/or endangerment to human life or safety. An Emergency Condition will be an excuse to Seller's performance only if such condition is not due to Seller's negligence, willful misconduct, and/or Seller's failure to perform as required under this Agreement.
- 1.37. "Emergency Condition Instruction" means any System Operator Instruction relating to, due to, in response to, or to address an Emergency Condition.



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- 1.38. "Energy" means three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh, as the case may be.
- 1.39. "EPT" or "Eastern Prevailing Time" means the time in effect in the Eastern Time Zone of the United States of America, whether it be Eastern Standard Time or Eastern Daylight Savings Time.
- 1.40. "Estimation Methodology" is defined in Section 8.9.3.
- 1.41. "Event of Default" is defined in Section 19.
- 1.42. "Expected Annual Output" means the quantity of Energy identified in Exhibit 5 for each calendar year during the Delivery Period of the Facility.
- 1.43. "Facility" means Seller's solar photovoltaic electric generating facility located in [\_\_\_\_\_] County, [\_\_\_\_\_] [State], at [\_\_\_\_\_] , as further identified in Exhibit 4.
- 1.44. "FERC" means the Federal Energy Regulatory Commission or any successor thereto.
- 1.45. "First COD Date" is defined in Section 20.5.
- 1.46. "Force Majeure" is defined in Section 14.1.
- 1.47. "Force Majeure Instruction" means any System Operator Instruction relating to, due to, in response to, or to address a Force Majeure.
- 1.48. "GAAP" is defined in Section 9.1.
- 1.49. "Gains" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.50. "Governmental Authority" means any federal, state or local government, legislative body, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory authority or instrumentality or authorized arbitral body, including, without limitation, the Commission.
- 1.51. "Interconnection Agreement" means the separate interconnection and transmission service agreement (or agreements) to be negotiated and executed between Seller and the Transmission Provider concerning the interconnection of the Facility with the System, upgrade to the System to accommodate the Facility's interconnection with and operation in parallel with the System, and the requirements for transmission service.
- 1.52. "Interconnection Instruction" means any order, action, signal, requirement, demand, and/or direction, howsoever provided or implemented by the System Operator due to, in response to, or to address any condition relating to any service and/or obligation occurring under the Interconnection Agreement.
- 1.53. "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



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permitted by applicable law.

- 1.54. "kW" means kilowatt.
- 1.55. "kWh" means kilowatt-hour.
- 1.56. "Letter(s) of Credit" means one or more irrevocable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank, which is not an Affiliate of Seller, which has and maintains a Credit Rating of at least A- from S&P and A3 from Moody's, for the Security Period, permitting Buyer to draw the entire amount if either such amount is owed or such Letter of Credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date, and is otherwise acceptable in all respects to Buyer in its sole discretion.
- 1.57. "Lien" means any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right of way, restriction, equity, or encumbrance of any nature whatsoever.
- 1.58. "Losses" means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to the Non-Defaulting Party, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Term, determined in a Commercially Reasonable Manner. Factors used in determining the economic loss or loss of economic benefit may include, without limitation, reference to information available either internally or supplied by third parties, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, or other relevant market data, comparable transactions, settlement prices or market prices for comparable transactions, forward price curves, production by comparable facilities, expected and historical production, all calculated for the remaining Term of the Agreement for the Product (inclusive of all components).
- 1.59. "Maintenance Outage" means the temporary operational removal of the Facility from service to perform work on specific components of the Facility, at a time when the Facility must be removed from service before the next Planned Outage in the interest of safety or the prevention of injury or damage to or undue wear and tear on the Facility or any component thereof.
- 1.60. "Milestone Deadline" means the deadline for Seller to achieve each Operational Milestone as set forth in Exhibit 3.
- 1.61. "Moody's" means Moody's Investors Service, Inc. or any successor-rating agency thereto.
- 1.62. "MW" means megawatt.
- 1.63. "MWh" means megawatt-hour.
- 1.64. "Nameplate Capacity Rating" means the installed nameplate capacity rating of the Facility set forth in Exhibit 4.
- 1.65. "NERC" means the North American Electric Reliability Corporation. For purposes of this Agreement, NERC includes any applicable regional entity with delegated authority from NERC, such as the SERC Reliability Corporation (SERC).
- 1.66. "New Renewable Energy Facility" is defined in the Act.
- 1.67. "Non-Defaulting Party" is defined in Section 20.
- 1.68. "Operational Milestone" means each operational event and result that Seller must achieve as set forth in the Operational Milestone Schedule, with such supporting documentation as may be requested by Buyer from time-to-time in its Commercially Reasonable discretion.

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- 1.69. "Operational Milestone Schedule" means the schedule established in Exhibit 3 setting forth each Operational Milestone that Seller must fully complete by the Milestone Deadline.
- 1.70. "Party" or "Parties" is defined in the introductory paragraph hereto.
- 1.71. "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security that is acceptable to Buyer in its sole discretion, in each case that meets the requirements set forth in this Agreement (including, without limitation, Section 5) provided by Seller to Buyer for the benefit of Buyer pursuant to this Agreement, as credit support, adequate assurances, and security to secure Seller's performance under this Agreement.
- 1.72. "Permit" means any permit, license, registration, filing, certificate of occupancy, certificate of public convenience and necessity, approval, variance or any authorization from or by any Governmental Authority and pursuant to any Requirements of Law.
- 1.73. "Permitted Excuse to Perform" means that Seller's obligation to generate, deliver, and sell and Buyer's obligation to receive and purchase is excused and no damages will be payable by either Party to the other Party, if and to the extent such failure is due solely to any of the following occurrences: (a) an Emergency Condition Instruction; (b) a Control Instruction; (c) an Interconnection Instruction; or, (d) a Force Majeure Instruction.
- 1.74. "Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.
- 1.75. "Planned Outage" means the temporary operational removal of the Facility from service to perform work on specific components in accordance with a pre-planned operations schedule, such as for a planned annual overhaul, inspections, or testing of specific equipment of the Facility.
- 1.76. "Posting Cap" is defined in Section 5.3.
- 1.77. "Product" means the Capacity of the Facility, Energy generated by the Facility, and the RECs associated with the Energy generated by the Facility.
- 1.78. "Protected Information" is defined in Section 16.1
- 1.79. "Prudent Utility Practice" means those practices, methods, equipment, specifications, standards of safety, and performance, as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgment and in light of the facts known at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices; (ii) are in accordance with generally accepted standards of safety, performance, dependability, efficiency, and economy in the United States; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the United States; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy generation and utility industry.
- 1.80. "PSC" means the Public Service Commission of South Carolina, or successor thereto.
- 1.81. "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended, and as such may be amended from time to time.
- 1.82. "PURPA Fuel Requirements" means the requirements set forth in 18 C.F.R. § 292.204 OR

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205, as may be amended and/or restated.

- 1.83. "Qualifying Facility" means an electric generating facility that has been registered and certified by FERC as generator that qualifies for and meets the requirements set forth in PURPA, as it may be amended, and associated rules, regulations, orders.
- 1.84. "REA Reporting Rights" means the right of the reporting person or entity to report that it owns the Renewable Energy Attributes to any Governmental Authority or other party under any compliance, voluntary, trading, or reporting program, public or private and to any person, customers, or potential customers for, including without limitation, purposes of compliance, marketing, publicity, advertising, or otherwise.
- 1.85. "Regulatory Event" is defined in Section 15.1.
- 1.86. "Renewable Energy Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation of Energy by the Facility, the use of such Energy, or such Energy's displacement of conventional Energy generation, including any and all renewable or environmental characteristics and benefits of the Energy generated by the Facility. Renewable Energy Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs), ozone depleting substances, ozone, and non-methane volatile organic compounds that have been or may be determined by the United Nations Intergovernmental Panel on Climate Change (UNIPCC), by law, or otherwise by science or in the voluntary markets to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) any credit, allowance or instrument issued or issuable pursuant to a state implementation plan under regulations promulgated by the Environmental Protection Agency under the Clean Air Act and (4) the reporting rights to any of the foregoing, including, without limitation, REA Reporting Rights and any and all renewable and/or environmental characteristics and benefits of the Energy generated by the Facility. Renewable Energy Attributes do not include: (i) any Energy or Capacity of the Facility; (ii) investment tax credits, production tax credits, or other tax credits, cash grants in lieu of tax credits associated with the construction, ownership or operation of the Facility, or (iii) any adverse wildlife or environmental impacts.
- 1.87. "Renewable Energy Certificate(s)" or "REC(s)" means and, notwithstanding anything to the contrary set forth in the Act includes, all of the Renewable Energy Attributes and REA Reporting Rights associated with one (1) megawatt hour (MWh) of Energy generated by the Facility. The REC represents all title to and claim over all of the Renewable Energy Attributes and REA Reporting Rights associated with in any manner with the Energy generated by the Facility.
- 1.88. "Renewable Energy Resource" is defined in the Act.
- 1.89. "Required Approval" is defined in Section 6.
- 1.90. "Requirements of Law" means any federal, state, and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment, decree or Permit enacted, adopted, issued or promulgated by any Governmental Authority, including, without limitation, (i) the Act, (ii) those pertaining to the creation and delivery of the Product, (iii) those pertaining to electrical, building, zoning, occupational safety, health requirements or to pollution or protection of the environment, and (iv) principles of common law under which a person may be held liable for the release or discharge of any hazardous substance into the environment



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or any other environmental damage.

- 1.91. "Second COD Date" is defined in Section 20.5.1.
- 1.92. "Security Period" is defined in Section 5.7.
- 1.93. "Seller" shall have the meaning specified in the first paragraph of this Agreement.
- 1.94. "S&P" means Standard & Poor's Ratings Services, Inc. or any successor-rating agency thereto.
- 1.95. "Station Power" means the Energy generated by the Facility and, whether metered or unmetered, used on-site to supply the Facility's auxiliary load and parasitic load and/or for powering the electric generation equipment.
- 1.96. "System" means the transmission, distribution, and generation facilities that are owned, directed, managed, interconnected, controlled, or operated by Buyer and/or the Transmission Provider, including, without limitation, facilities to provide retail or wholesale service, substations, circuits, reinforcements, meters, extensions, or equipment associated with or connected to any interconnected facility or customer.
- 1.97. "System Operator" means the operators of the System that have the responsibilities for ensuring that the System as a whole or any part thereof operates safely, efficiently, and reliably, including without limitation the responsibilities to comply with any applicable operational or reliability requirements, the responsibilities to balance generation supply with customer load, the responsibilities to comply with any other regulatory obligation including least cost dispatch and System optimization, and the responsibilities to provide dispatch and curtailment instructions to generators supplying Energy to the System. The System Operator includes any person or entity delivering any such instructions or signals to Seller or taking any action relating to, due to, in response to, or to address such instructions.
- 1.98. "System Operator Instruction" for purposes of this Agreement means any order, action, signal, requirement, demand, dispatch decision, and/or direction, howsoever provided or implemented by the System Operator to operate, dispatch, control, manage, or otherwise operate the System in accordance with any applicable obligation and/or regulatory requirement, including, without limitation, those undertaken and implemented by the System Operator, in its sole discretion based on relevant System factors and dispatch considerations, including any and all operating characteristics, maintenance requirements, operational limitations, operational or dispatch planning, reliability (including standing NERC regulations or standards), safety, least cost dispatch, constraints, discharge, emissions limitations, compliance requirements, communications, resource ramp-up and ramp-down constraints and implementation, and any other System considerations, which may include, without limitation, any such instruction to: (i) interconnect, disconnect, integrate, operate in parallel, or synchronize with the System, (ii) increase, reduce, or cease generation output to comply with standing NERC regulations or standards or any other regulatory obligation applicable to the dispatch or operation of the System; (iii) respond to any transmission, distribution, or delivery limitations or interruptions; (iv) perform or cease performing any activity so as to operate in accordance with System limitations, including, without limitation, operational constraints that would require the System Operator to force offline or reduce generation output from reliability generators to accommodate generation by the Facility; and, (v) suspend, interrupt, dispatch, increase or decrease any operational and/or generation activity occurring on or into the System pursuant to Control Instructions, Emergency Condition Instructions, and Force Majeure Instructions.
- 1.98.1. For purposes of this Agreement, a System Operator Instruction shall not include any Interconnection Instruction.

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- 1.99. "Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.
- 1.100. "Term" is defined in Section 3.1.
- 1.101. "Testing Period" is defined in Section 4.3.4.
- 1.102. "Tracking System" means the verification system that accounts for the generation, sale, purchase, and/or retirement of renewable energy and credits, which will be the North Carolina Renewable Energy Tracking System, administered by the Commission pursuant to the Act.
- 1.103. "Transmission Provider" means the entity or division within [Duke Energy Carolinas, LLC] [Duke Energy Progress, LLC] that will provide interconnection and/or electric distribution or transmission service to enable delivery of Energy generated by the Facility to Buyer, and any such entity or division will include any successor or replacement thereto, including without limitation, a consolidated control area or a regional transmission organization.
- 1.104. "Vintage" means the moment when the MWh of Energy is generated by the Facility, and therefore, when the REC associated with that MWh of Energy is generated by the Facility.

## 2. Interpretation

- 2.1. Intent. Unless a different intention clearly appears, the following terms and phrases shall be interpreted as follows: (a) the singular includes the plural and vice versa; (b) the reference to any Person includes such Person's legal and/or permitted successors and assignees, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually; (c) the reference to any gender includes the other gender and the neuter; (d) reference to any document, including this Agreement, refers to such document as it may be amended, amended and restated, modified, replaced or superseded from time to time in accordance with its terms, or any successor document(s) thereto; (e) reference to any section or exhibit means such section or exhibit of this Agreement unless otherwise indicated; (f) "hereunder", "hereof", "hereto", "herein", and words of similar import shall be deemed references to this Agreement as a whole and not to any particular section or other provision; (g) "including" (and with correlative meaning "include"), means "including without limitation" and when following any statement or term, is not to be construed as limiting the general statement or term to the specific items or matters set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope; (h) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including"; (i) reference to any Requirements of Law refers to such Requirements of Law as it may be amended, modified, replaced or superseded from time to time, or any successor Requirements of Law thereto; and (j) all exhibits and attachments to this Agreement are hereby incorporated into this Agreement. Other terms used, but not defined in Section 1 or in the body of the Agreement, shall have meanings as commonly used in the English language and, where applicable, in the electric utility industry. 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.

## 3. Term and Termination

- 3.1. Term. This Agreement shall be effective as of the Effective Date and shall remain in full



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force and effect until the [twentieth (20<sup>th</sup>)] anniversary of the Commercial Operation Date ("Term"), unless terminated earlier pursuant to the provisions of this Agreement.

- 3.2. Termination and Survival. This Agreement may be terminated earlier than the expiration of the Term as provided for herein. If this Agreement is terminated earlier than the expiration of the Term for any reason, including, without limitation, whether by its terms, mutual agreement, early termination, and/or event of default, such termination shall not relieve any Party of any obligation accrued or accruing prior to the effectiveness of such termination. Furthermore, any obligations, limitations, exclusions and duties which by their nature or the express terms of this Agreement extend beyond the expiration or termination of this Agreement, including, without limitation, provisions relating to compliance requirements, accounting, billing, billing adjustments, limitations or liabilities, dispute resolution, Performance Assurance, and any other provisions necessary to interpret or enforce the respective rights and obligations of the Parties hereunder, shall survive the expiration or early termination of this Agreement.
- 3.3. [FOR FACILITIES LOCATED IN SOUTH CAROLINA ONLY] Condition Precedent for Buyer. It is a condition to the continuing obligations of each Party under this Agreement that the Public Service Commission of South Carolina (the "PSC") shall have delivered to Buyer written notice that the PSC has: (i) completed its review of this Agreement; and, (ii) has accepted this Agreement for filing with the PSC without any modification (unless such modification is acceptable to all Parties), condition, suspension, or investigation. Buyer will not challenge or oppose the PSC's acceptance of the Agreement. No later than twenty (20) Business Days after both Parties have executed this Agreement, Buyer will submit the Agreement for filing with the PSC. Seller agrees that Buyer will have sole discretion over all aspects of such submittal, including without limitation, the form and substance of the submittal, confidentiality, procedure, responding to any data requests, and providing any information to the PSC and the South Carolina Office of Regulatory Staff. Seller will not oppose or challenge the PSC's acceptance of this Agreement, and upon request by Buyer will promptly and fully support the PSC's acceptance of this Agreement without any modification, condition, suspension, or investigation. Buyer will make a good faith request that the PSC and the South Carolina Office of Regulatory Staff keep confidential the terms and conditions of this Agreement; *provided, however*, Seller agrees and acknowledges that information (including Protected Information) contained in this Agreement may become public by its submission to the PSC and the South Carolina Office of Regulatory Staff, and Seller hereby consents to any such disclosure, without any reservations and without any prior notice to Seller. If the PSC issues an order or any other directive to modify, condition, suspend, or investigate any aspect of this Agreement prior to its acceptance, then this Agreement will immediately terminate, and upon any such termination neither Party shall have any obligation, duty, or liability to the other Party under this Agreement. In the event of such termination, each Party will retain its respective rights under PURPA. Buyer will provide notice to Seller after Buyer has received written notice of the PSC's determination in regards to Buyer's request that the PSC accept the Agreement for filing, and if such written notice from the PSC accepts this Agreement without any modification, condition, suspension, or investigation then Buyer will notify Seller that the condition precedent under this Section 3.3 has been satisfied.

**4. Purchase and Sale Obligations**

- 4.1. Delivery Period. The "Delivery Period" for the Product to be generated by the Facility and sold by Seller to Buyer shall be for all hours starting at 12:00:01 AM EPT on the Commercial Operation Date through the end of the Term, unless this Agreement is terminated earlier



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pursuant to its terms and conditions.

- 4.2. Vintage. The RECs shall be of the same Vintage as the MWh of Energy generated by the Facility, and the RECs shall arise due to the generation of Energy by the Facility.
- 4.3. Contract Quantity. The "Contract Quantity" will be one hundred percent (100%) of the Capacity, output of Energy, and associated RECs produced by the Facility, less that associated with Station Power.
  - 4.3.1. Seller shall sell and deliver the Contract Quantity of the Product exclusively and solely to Buyer. Seller's failure to generate, sell, and deliver the Contract Quantity of the Product to Buyer will be excused with no damages payable to Buyer solely to the extent such failure is due to a Permitted Excuse to Perform.
  - 4.3.2. Buyer shall have no obligation to receive, purchase, pay for, or pay any damages associated with not receiving the Product due to a Permitted Excuse to Perform. Buyer shall have full and exclusive rights to the Product (inclusive of all components), and will be entitled to full and exclusive use of the Product (inclusive of all components) for its purposes and in its sole and exclusive discretion.
  - 4.3.3. The estimated monthly and annual Energy production of the Facility during the Delivery Period is set forth in Exhibit 1 hereto.
- 4.4. Testing Period. Prior to the Facility's Commercial Operation Date Seller may test the capability of the Facility to operate and generate the Product in accordance with this Agreement (such operational period, the "Testing Period"). Seller shall provide Buyer with written notice of a date certain on which Seller desires to initiate the Testing Period. After the Facility has achieved the Commercial Operation Date, the Buyer shall, expressly subject to the limitations set forth below, purchase the Product produced by the Facility during the Testing Period at the applicable Contract Price set forth in Exhibit 2, but expressly subject to the Buyer fully satisfying the following conditions: (i) the Testing Period shall not exceed sixty (60) days; (ii) the RECs shall meet all of the requirements set forth in this Agreement; and, (iii) Seller shall certify in writing to Buyer, and to Buyer's satisfaction, together with supporting details, that each unit of the Product (including the associated REC) to be sold and purchased during the Testing Period was generated in compliance with the requirements of this Agreement. To the extent Seller is unable to satisfy the foregoing requirements; the Buyer shall purchase the Energy generated by the Facility at the rate for the Energy-only component of the Product set forth in Exhibit 2.
- 4.5. Contract Price. The "Contract Price" for the Product shall be the price corresponding to the relevant portion of the Delivery Period as set forth in Exhibit 2.
- 4.6. Energy Delivery. Seller shall deliver the Contract Quantity of the Energy component of Product at the Delivery Point, and Seller shall be fully responsible for all costs, charges, expenses, and requirements associated with delivering the Energy to the Delivery Point. Buyer will have no obligation to pay for any Energy not delivered to the Delivery Point.
- 4.7. REC Delivery. Seller shall deliver to Buyer's Account the Contract Quantity of the REC component of the Product in the form of Certificates. Seller agrees that in addition to representing the attributes and characteristics under the Tracking System's operating rules and requirements, the Certificate will also represent the REC, Renewable Energy Attributes, and REA Reporting Rights as defined in this Agreement. No later than fourteen (14) calendar days after the meter data is delivered to Seller's Account, Seller shall review the meter data and complete all acts necessary to create the Certificates in the Tracking System and shall transfer the Certificates into Buyer's Account. Each Party shall establish an Account with the Tracking System for the creation, transfer, and/or receipt of the

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Certificates. Seller agrees to establish the Account for the Facility no later than fifteen (15) Business Days prior to the Commercial Operation Date.

- 4.8. Payment for Product. Buyer agrees to pay Seller for the Product generated and delivered in accordance with this Agreement by Seller to Buyer in accordance with the pricing set forth in Exhibit 2. Seller agrees that to the extent Buyer has already paid for the Product prior to Seller transferring the REC component of the Product in the manner noted above, Buyer shall have ownership of the REC component of the Product, and Seller shall hold the same in trust for Buyer until the transfer is completed as provided for herein. Buyer shall not be obligated to pay for, and shall receive a full refund with respect to, any RECs for which the Certificates are not delivered to Buyer's Account.
- 4.9. Transfer. In no event shall Seller procure or have the right to procure the Product or any component of the Product from any source other than the Facility for sale and delivery pursuant to this Agreement. Title to and risk of loss to the Product sold and delivered hereunder shall transfer from Seller to Buyer after completion of delivery at the Delivery Point and after completion of transfer of the REC component of the Product. Seller shall be responsible for any costs and charges imposed on or associated with the Product and the delivery of the Product at the Delivery Point and upon completion of transfer of the REC component. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after the Delivery Point and after completion of transfer of the REC.

## 5. Credit and Related Provisions.

- 5.1. Pre-COD Performance Assurance Requirements. No later than five (5) business days after the Effective Date, Seller shall provide and deliver to Buyer Performance Assurance in the amount of  $[4\% \times \text{total projected revenue under the Agreement during the first year of the Term as determined by Buyer in its reasonable discretion}]$ , as such Performance Assurance may be adjusted pursuant to Section 20.5.1.

~~5.2. Post-COD Performance Assurance. After the Facility achieves Commercial Operation, Seller shall continue to provide Buyer with Performance Assurance in the amount of  $[\text{for each year during the Term the greater of (i) } 2\% \times \text{total projected revenue under the Agreement during the Term as determined by Buyer in its reasonable discretion and (ii) the overpayment to the Seller under the contract price relative to Buyer's actual avoided cost in the applicable year}]$  set forth in the below table corresponding to the applicable period during the Term of this Agreement. Seller may request and Buyer may, subject to Section 5.2, adjust the amount of such Performance Assurance within fifteen (15) Business Days of Seller's written request to coincide with the amount set forth in the below table. Seller's failure to provide the Performance Assurance and/or to maintain the Performance Assurance in the required amount and in full force and effect throughout the Term of this Agreement will be an Event of Default under this Agreement. Notwithstanding and without limiting the foregoing, Buyer may request additional credit support security from Seller pursuant to Section 5.3.~~

[TABLE — Annual Performance Assurance]

~~5.3. Adequate Assurances. Notwithstanding and without limiting any payment obligations or any other existing performance assurance obligation, if any, set forth herein, Buyer may, from time to time, request, in writing, that Seller provide Buyer with Performance Assurance, including an additional amount of Performance Assurance, in an amount reasonably determined by Buyer relative to Seller's performance obligations under this Agreement, if at any time Buyer has reasonable grounds for insecurity concerning Seller's ability to perform~~



~~any of its obligations under this Agreement; provided, however, such amount shall not exceed \_\_\_\_\_ [e.g. highest amount identified in accordance with Section 5.1/5.2] (the "Posting Cap"). Expressly without limiting the generality of the foregoing, reasonable grounds for insecurity include, but are not limited to knowledge that (i) Seller or its guarantor or any direct or indirect parent company is defaulting under other material contracts or transactions (including, without limitation, contracts or transactions with third parties); or, (ii) any imminent or threatened material adverse change in the financial condition of a Party or its guarantor. Upon receipt of such notice, Seller shall have five (5) Business Days to provide such Performance Assurance to Buyer. In the event that Seller fails to provide the required amount of such Performance Assurance to Buyer within five (5) Business Days of receipt of notice, then Buyer may declare such failure an Event of Default and exercise any or all other remedies provided for hereunder or pursuant to law or equity. Seller requirement to refresh or replenish the required amount of Performance Assurance at Buyer's request up to the Posting Cap, including, without limitation, where Buyer has exercised its right to draw upon any Performance Assurance.~~

5.4.5.2. Financial Disclosures. Seller shall timely provide to Buyer financial information of Seller as follows: (i) within sixty (60) days after the end of each fiscal quarter of each fiscal year that this Agreement is effective, a copy of Seller's quarterly report containing unaudited consolidated financial statements for such fiscal quarter signed and verified by an authorized officer of Seller attesting to their accuracy; and, (ii) within 120 days after the end of each fiscal year that this Agreement is effective a copy of Seller's annual report containing audited consolidated financial statements for such fiscal year. The statements shall be prepared in accordance with generally accepted accounting principles or other procedures with which Seller is required to comply with under applicable law.

5.5.5.3. Netting. If an Event of Default has not occurred and a Party is required to pay an amount to the other Party under this Agreement, then such amounts shall be netted, and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. All outstanding obligations to make payment under this Agreement or any other agreement between the Parties may be netted, offset, set off, or recouped therefrom, and payment shall be owed as set forth above. Unless Buyer notifies Seller in writing (except in connection with a liquidation and termination) all amounts netted pursuant to this section shall not take into account or include any credit support, which may be in effect to secure Seller's performance under this Agreement. The netting set forth above, shall be without prejudice and in addition to any and all rights, liens, setoffs, recoupments, counterclaims and other remedies and defenses (to the extent not expressly herein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement.

5.6.5.4. Set-off. In addition to any rights of set-off a Party may have as a matter of law or otherwise and subject to applicable law, upon the occurrence of an Event of Default, the Non-Defaulting Party shall have the right (but shall not be obligated to) without prior notice to the Defaulting Party or any other person to set-off any obligation of the Defaulting Party owed to the Non-Defaulting Party under this Agreement ~~and any other agreement between the Parties (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation)~~ against any obligations of the Non-Defaulting Party owing to the Defaulting Party under this Agreement ~~and any other agreement between the Parties (whether or not matured, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation)~~. If any such obligation is unascertained, the Non-Defaulting Party may in a Commercially Reasonable Manner estimate that obligation and set-off in respect of the estimate, subject to the relevant Party providing an accounting and true-up to the other Party after the amount



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of the obligation is ascertained.

5.7.5.5. Performance Assurance Requirements. Seller shall ensure that the Performance Assurance in the required amount remains in full force, effect, outstanding, in the required amount, and for the duration required by this Agreement. All applicable Performance Assurance, as the amount thereof may be increased, decreased, and/or replenished pursuant to the terms of this Agreement, shall remain in full force, effect, and outstanding for the benefit of Buyer until ~~thirtyone-hundred-and-fifty~~ (3150) days following the later of: (a) the end of the Term or (b) the date on which Seller has fully satisfied all obligations to Buyer under this Agreement (the "Security Period"). If at any time any Performance Assurance fails to meet any of the requirements under this Agreement, Seller shall replace such Performance Assurance with alternative Performance Assurance that meets each of the requirements under this Agreement. Seller will be solely responsible for any and all costs incurred with providing and maintaining any Performance Assurance to the full amount required by this Agreement. If Seller fails to replace, renew, or otherwise maintain the required Performance Assurance as and when required by this Agreement, then Buyer: (a) shall be entitled to draw and retain hereunder the full amount of the Performance Assurance; (b) shall not be obligated to make any further payments to Seller until Seller shall have provided Buyer with the replacement Performance Assurance; and, (c) shall be entitled to give Seller notice of an Event of Default and pursue the termination rights and remedies provided for in this Agreement.

5.8.5.6. Grant of Security Interest. To secure its obligations and liabilities under this Agreement to Buyer, Seller hereby grants to Buyer a present and continuing first priority security interest in, and lien on (and right of netting and set-off against), and assignment of, all present and future Performance Assurance, including, without limitation, cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer; and, furthermore Seller agrees to take such actions as Buyer reasonably requires to perfect Buyer's first-priority security interest in, and lien on (and right of netting, recoupment, and set-off against), such Performance Assurance and any and all products and proceeds resulting therefrom or from the liquidation thereof, including without limitation proceeds of insurance. Upon or any time after the occurrence or deemed occurrence of an Event of Default or upon an Early Termination Date, Buyer (if it is the Non-Defaulting Party) may do any one or more of the following with respect to Seller (if it is the Defaulting Party): (i) exercise any of the rights and remedies of a secured party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of netting, recoupment, and set-off against any and all property of Seller in the possession of Buyer or its agent; (iii) draw on any outstanding applicable forms of Performance Assurance provided for the benefit of Buyer; and, (iv) liquidate all Performance Assurance then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

**6. Seller Compliance Requirements.**

6.1. Required Approvals. Seller shall at its sole cost and expense timely obtain, maintain, and comply with all Required Approvals during the Term of this Agreement. Without limiting the generality of the following, "Required Approvals" means all of the following:

6.1.1. Commission approval and certification that the Facility is registered and certified as a New Renewable Energy Facility for Buyer to use the Product, including, without limitation, for use to comply with the Act.

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6.1.2. All approvals and certifications that the Facility is a Qualifying Facility.

6.1.3. All Permits, authorizations, certifications, and/or approvals from any Governmental Authority and under any Requirements of Law, including, without limitation, from the Commission or FERC, for Seller to construct, build, own, operate, and maintain the Facility and sell and deliver the Product to Buyer.

6.2. Seller Covenants. Seller covenants to Buyer that it shall comply with all of the requirements of the Act and other Requirements of Law applicable to Seller, the Facility, and/or Seller's obligations under the Agreement. Without limiting the generality of the foregoing Seller represents and warrants to Buyer as of the Effective Date of this Agreement and throughout the Term of this Agreement that: (a) Seller has obtained an approved and valid report of proposed construction or certificate of public convenience and necessity for the Facility from the [Commission][PSC]; (b) Seller has submitted to the Transmission Provider and the Transmission Provider has accepted the completed interconnection request for the Facility; and (c) Seller has obtained all applicable certifications and/or approvals for the Facility from FERC. Seller agrees and acknowledges that Buyer has entered into this Agreement in reliance upon the representations and warranties set forth in this section, and in the event of a breach or failure of or relating to any of the foregoing covenants and warranties, including without limitation for being false or misleading in any respect, then this Agreement will terminate upon Buyer providing Seller with a ~~thirtyfive~~ (305) Business Days written notice. Seller will indemnify and hold Buyer harmless for any breach or failure relating to any of the foregoing covenants and warranties, notwithstanding anything else to the contrary in this Agreement.

~~6.3. Seller Requirements~~. Seller agrees and acknowledges that the Act requires Buyer to make certain filings and/or submissions relating to Buyer's obligations under the Act. Within twenty (20) Business Days of a written request from Buyer, Seller agrees to provide Buyer with all information, documents, and affidavits from a duly authorized representative of Seller certifying that the Facility fully complies with PURPA, including without limitation, the PURPA Fuel Requirements and that the Facility and/or the Product complies with the Act and the requirements of the Tracking System. ~~If Seller fails to promptly provide Buyer with such documentation, and Buyer is unable to use the Product for compliance in the calendar year that Buyer desires to use such Product for compliance purposes, then Seller shall be liable to Buyer for cover cost damages as set forth in Section 21 and Seller will also reimburse Buyer for any payments previously made by Buyer for such Product.~~

~~6.3.~~

## 7. Seller's Facility Requirements.

7.1. Seller Requirements. Seller covenants (except to the extent expressly set forth in this Agreement) that: the Facility shall be designed, constructed, operated, controlled, maintained, and tested at Seller's sole cost and expense; the Facility shall be designed, constructed, operated (inclusive, without limitation, of control, metering equipment, and personnel and staffing levels), controlled, maintained, and tested by Seller to perform as required by this Agreement and in compliance with all applicable Requirements of Law and Prudent Utility Practice; the Facility shall be capable of supplying the Product in a safe and reliable manner consistent with the requirements of each applicable Requirements of Law and Prudent Utility Practice; and, that all contracts, agreements, arrangements, and/or Permits (including, without limitation, those necessary or prudent for the construction, ownership and operation of the Facility, such as land use permits, site plan approvals, real property titles and easements, environmental compliance and authorizations, grading and building permits, and contracts and/or licenses to obtain the underlying fuel, install and

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operate the Facility, and deliver and sell the Product of the Facility) shall be timely obtained and maintained by Seller, at Seller's sole cost and expense. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility. Seller shall construct, interconnect, operate, and maintain the Facility in accordance with Prudent Utility Practice. Seller shall be responsible for all costs, charges, and expenses associated with generating, scheduling, and delivering the Energy to Buyer.

- 7.1.1. Notice Requirement. For each Operational Milestone, Seller shall deliver written notice to Buyer within ~~fiveone~~ (51) Business Days of Seller having met such Operational Milestone. If Seller will be unable to timely meet any Operational Milestone, Seller shall also deliver written notice to Buyer informing Buyer that Seller will be unable to meet an Operational Milestone, but in any event Seller shall deliver notice to Buyer no later than ~~fiveone~~ (51) Business Days after the due date of the Operational Milestone that Seller failed to achieve. Seller shall also notify Buyer of the amount of time necessary to cure the delay. Buyer shall have no obligation or liability to Seller for Buyer failing to advise Seller of any condition, damages, circumstances, infraction, fact, act, omission or disclosure discovered or not discovered by Buyer with respect to any Operational Milestone, the Facility, the System or any contractor.
- 7.2. Seller Responsibilities. Notwithstanding any provision of this Agreement to the contrary, the Seller agrees that: (a) Buyer shall have no responsibility whatsoever for any costs and/or Taxes relating to the design, development, construction, maintenance, ownership, or operation of the Facility (including but not limited to any financing costs, and any costs and/or Taxes imposed by any Governmental Authority on or with respect to emissions from or relating to the Facility, and including but not limited to costs and/or Taxes related to any emissions allowances *inter alia* for oxides for sulfur dioxide or nitrogen, carbon dioxide, and mercury), all of which shall be entirely at Seller's sole cost and expense; and, (b) any risk as to the availability of production tax benefits, investment tax credits, grants or any other incentives relating to the design, development, construction, maintenance, ownership, or operation of the Facility shall be borne entirely by Seller.
- 7.2.1. No Exclusions. If any production or investment tax credit, grants, subsidy, or any other similar incentives or benefit relating, directly or indirectly, to the Facility is unavailable or becomes unavailable at any time during the Term of this Agreement, Seller agrees that such event or circumstance will not: (a) constitute a Force Majeure or Regulatory Event; (b) excuse or otherwise diminish Seller's obligations hereunder in any way; and, (c) give rise to any right by Seller to terminate or avoid performance under this Agreement. Seller agrees that it will solely and fully bear all risks, financial and otherwise throughout the Term, associated with Seller's or the Facility's eligibility to receive any such tax treatment or otherwise qualify for any preferential or accelerated depreciation, accounting, reporting, or tax treatment.
- 7.3. Transmission Provider. Seller agrees and acknowledges that the Interconnection Agreement is (and will be) a separate agreement (or agreements) between Seller and Transmission Provider, and will exclusively govern all requirements and obligations between Seller and Transmission Provider. Only the Interconnection Agreement will govern all obligations and liabilities set forth in the Interconnection Agreement, and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible for under the Interconnection Agreement. Seller shall comply with all Interconnection Instructions.
- 7.3.1. Nothing in the Interconnection Agreement, nor any other agreement between Seller on the one hand and Transmission Provider on the other hand, nor any alleged event of default thereunder, shall affect, alter, or modify the Parties' rights, duties,



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obligation, and liabilities under this Agreement. This Agreement shall not be construed to create any rights between Seller and the Transmission Provider, and the terms of this Agreement are not (and will not) be binding upon the Transmission Provider. Seller agrees and acknowledges that Seller's performance under this Agreement depends on Seller's performance under the Interconnection Agreement, and Seller hereby grants Buyer the right and entitlement to obtain information from the Transmission Provider in regards to Seller's performance under the Interconnection Agreement. Buyer agrees and acknowledges that if its actions cause Seller's inability to perform under the Interconnection Agreement, such non-performance or delay in performance shall not create and event of default or a claim for liquidated damages.

- 7.4. System Operations. Seller agrees and acknowledges that the System Operator will be solely responsible for its functions, and that nothing in this Agreement will be construed to create any rights between Seller and the System Operator. Seller agrees that it is obligated to engage in interconnected operations with Buyer and the System, and Seller agrees to fully comply with all System Operator Instructions.
- 7.5. Insurance Obligations. Commencing with the initiation of construction 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 \$500,000 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 and explosion, collapse, and underground hazard coverage; (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, property damage and contractual liability; (d) Property Damage insurance on the Facility written on an all risk of loss basis; and, (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- VII" or higher; (ii) specifically include Buyer as additional insured's, excluding, however, for Worker's Compensation/Employer's Liability and Property Damage 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. Any deductibles or retentions shall be the sole responsibility of Seller or the applicable party. 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 and 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 a copy of any or all of its required insurance policies, including endorsements in which Buyer is included as an additional insured for any claims filed relative to the Facility or this Agreement.

8. Facility Performance Requirements

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- 8.1. Planned Outages. No later than fifteen (15) Business Days prior to the end of each year during the Term, Seller shall provide to Buyer a Planned Outage schedule for the upcoming year. Seller shall provide Buyer with reasonable advance notice of any material change in the Planned Outage schedule. Seller shall determine the number and extent of Planned Outages in a Commercially Reasonable Manner recognizing that it is the intent of the Parties to maximize production of the Facility and to such extent Seller shall be excused from providing the Product during such Planned Outage(s). Unless both Parties expressly agree otherwise, any Planned Outage shall only occur during the months of March, April, May, September, October, or November.
- 8.2. Maintenance Outages. If Seller needs or desires to schedule a Maintenance Outage of the Facility, Seller shall notify Buyer, as far in advance as reasonable and practicable under the circumstances, of such proposed Maintenance Outage, and the Parties shall plan such outage to mutually accommodate the reasonable requirements of Seller and delivery expectations of Buyer. Notice of a proposed Maintenance Outage shall include the expected start date of the outage, the amount of output of the Facility that will not be available and the expected completion date of the outage. Buyer may request reasonable modifications in the schedule for the outage. Subject to its operational and maintenance needs, Seller shall comply with such requests to reschedule a Maintenance Outage. If rescheduled, Seller shall notify Buyer of any subsequent changes in the output that will not be available to Buyer and any changes in the Maintenance Outage completion date. As soon as practicable, any such notifications given orally shall be confirmed in writing.
- 8.3. Notice. Seller shall promptly provide to Buyer an oral report of all outages, Emergency Conditions, de-ratings, major limitations, or restrictions affecting the Facility, which report shall include the cause of such restriction, amount of generation from the Facility that will not be available because of such restriction, and the expected date that the Facility will return to normal operations. Seller shall update such report as necessary to advise Buyer of any material changed circumstances relating to the aforementioned restrictions. As soon as practicable, all oral reports shall be confirmed in writing. Seller shall promptly dispatch personnel to perform the necessary repairs or corrective action in an expeditious and safe manner in accordance with Prudent Utility Practice.
- 8.4. Performance. Seller shall act in a Commercially Reasonable Manner to maximize the output of the Facility in a safe manner to generate the Product and to minimize the occurrence, extent, and duration of any event adversely affecting the generation of the Product, in each case consistent with Prudent Utility Practice.
- 8.5. Output Requirement. Starting the first full calendar year after the Commercial Operation Date of the Facility, for each year during the Delivery Period, Seller shall deliver to Buyer no less than seventy percent (70%) of the Expected Annual Output averaged over two consecutive calendar years on a rolling basis during the Delivery Period (the "Net Output Requirement"). Where a Permitted Excuse to Perform adversely affects actual generation output of the Facility, the Net Output Requirement shall be reduced by the amount of Energy not generated due to the Permitted Excuse to Perform; provided, however, Seller agrees that it must demonstrate to Buyer, in Buyer's Commercially Reasonable discretion, that the Facility's generation output was actually reduced due to a Permitted Excuse to Perform. Buyer's sole remedy for Seller's failure to deliver the Net Output Requirement for any period of two consecutive years shall be to receive a credit against the Contract Price for each month during the immediately following full calendar year. The foregoing monthly credit to Buyer shall be determined by (a) multiplying (i) the difference between the Net Output Requirement and the actual Energy (expressed in MWh) delivered by Seller and received by Buyer during the applicable period by (ii) ~~25%~~50% of contract price] and (b) then dividing



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the amount calculated by (a) above by twelve (12). If Seller fails to satisfy the Net Output Requirement for any two-year period, to determine compliance with the Net Output Requirement in the next rolling two-year period, then the amount of Energy generated in the first year of such two-year rolling period will be deemed to be the higher of (i) seventy percent (70%) of the Expected Annual Output for such year, or (ii) the actual amount of Energy generated by the Facility in such year.

- 8.6. System Operator Instructions. ~~Buyer shall conduct all curtailment and dispatch actions in a non-discriminatory fashion.~~ Seller shall take all steps needed of it to implement and shall cooperate with Buyer in the implementation of all aspects of all System Operator Instructions. Seller shall immediately and fully comply with all System Operator Instructions, including without limitation all Control Instructions, Emergency Condition Instructions, and Force Majeure Instruction. Seller shall also immediately and fully comply with all Interconnection Instructions provided pursuant to the independent and separate Interconnection Agreement with the Transmission Operator.

8.6.1. Seller hereby expressly agrees to and fully authorizes and grants to Buyer the right to fully control the Facility in any manner necessary to enable Buyer to directly take all actions required to implement or otherwise effectuate all System Operator Instructions, including Control Instructions, Emergency Condition Instructions, and Force Majeure Instructions. ~~Except for the payments provided by Buyer pursuant to Section 8.9 hereof, Seller hereby releases and holds Buyer harmless from and against all harm to Seller or the Facility in any way arising from or relating to any direct or indirect control of the Facility to implement or otherwise effectuate any System Operator Instructions.~~

- 8.7. Control Equipment. To implement the control rights Seller has granted Buyer under Section 8.6, Seller shall design and construct the Facility to provide for Buyer and System Operation to have full or incremental and instantaneous control over the Facility to directly implement or otherwise effectuate any System Operator Instructions as currently or hereafter specified by Buyer, including installing automatic generation control with the current requirements further described in Exhibit 4 hereto ("Control Equipment"). Seller shall design the Facility to provide for the inclusion and operation of the Control Equipment and shall install and maintain the Control Equipment so that Buyer and System Operator shall have full or incremental instantaneous control over the Facility to take any action based in any manner to implement or otherwise effectuate any System Operator Instruction.

- 8.8. Control Instructions. The System Operator shall be entitled to and is hereby authorized to require the Facility to take or to directly take all actions to dispatch or otherwise control the generation output and operations of the Facility for any Control Instruction. Such actions to dispatch or otherwise control the generation output an operations of the Facility shall be conducted in a non-discriminatory fashion. Except to the extent expressly set forth in Section 8.9, Seller shall not receive any compensation for any losses due to a Dispatch Down. Except as set forth in Section 8.9, all Seller losses for a Dispatch Down shall be borne solely and entirely by Seller, including, without limitation, for any losses arising due to the lost or reduced generation by the Facility, lost tax benefits, lost investment tax credits, grants or any other incentives or monetary opportunity relating to the design, development, generation from, construction, maintenance, ownership, or operation of the Facility.

- ~~8.9. Limited Payments for Control Instruction Dispatch Down. During any calendar year during the Term hereof, Seller shall not receive any additional compensation from Buyer for the Dispatch Down of [first tranche ten (10) % for DEP and five (5) % for DEC % of annual expected output] (e.g. 20,000) MWhs of Energy that the Facility would have generated but did not generate due to compliance with and implementation of Control Instructions (such~~



quantity, the "Annual Payment Threshold"). For any partial calendar year during the Term hereof, the Annual Payment Threshold shall be ratably prorated for the number of days in such partial calendar year.

~~8.9. In any calendar year, except as set forth in Section 8.10, after satisfaction of the Annual Payment Threshold, Seller shall receive compensation from Buyer for the Dispatch Down of Energy that the Facility would have generated but did not generate due to compliance with and implementation of Control Instructions, starting with the [e.g. 20,001] MWh of Energy that is not so generated. Buyer shall calculate such amount payable to Seller by multiplying the Contract Price times the amount of Energy that could have been generated but was not generated due to compliance with and implementation of the Control Instruction ("Control Compensation"). The Control Compensation shall be determined using the Estimation Methodology set forth in Section 8.9.3. The Control Compensation shall be included in the invoice for the month of March in the calendar year immediately following the completed year of service.~~

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8.9.1. Replace with payment options for curtailment or Dispatch Down in Comments of NCCEBA and NCSEA.

8.9.2. Buyer shall pay Seller a Control Compensation for the Dispatch Down of Energy if, and only if: (i) the Facility was operating at the time of the Control Instruction and meteorological and Facility operating conditions were such that the Facility would have actually reduced produced Energy at the time of the Dispatch Down instruction; (ii) the actual cumulative reduction of Energy generation by the Facility due to the Dispatch Down exceeds the Annual Payment Threshold for the calendar year; and, (iii) the Dispatch Down was due to a System Operator Instruction that was a Control Instruction, but not due to an Emergency Condition Instruction, Force Majeure Instruction, or Interconnection Instruction. The Control Compensation shall be Seller's sole and exclusive payment and remedy for compliance with the Control Instructions in excess of the Payment Threshold, and any and all other Seller losses or payments are expressly disclaimed and waived.

8.9.3. The Parties shall determine in a Commercially Reasonable Manner the quantity of Energy that could not be generated due to compliance with and implementation of the Dispatch Down instruction(s) based on: (w) the duration of the Dispatch Down (x) the amount of the generating capability of the Facility that is curtailed by the applicable Dispatch Down (e.g. 10% generation capability is curtailed), (y) the solar exposure, irradiance, and meteorological circumstances actually recorded at the Facility during the Dispatch Down period, and (z) the Facility design, performance capability, and historic performance using a modeling program agreed upon by the Parties in a Commercially Reasonable Manner (the "Estimation Methodology").

8.10. Emergency Condition and Force Majeure Instructions. Notwithstanding any exceedance of the Annual Payment Threshold for any calendar year due to Control Instructions that the System Operator may provide or implement, the System Operator shall be entitled to and is hereby authorized to require the Facility to take or to directly take all actions to dispatch or otherwise control the generation output and operations of the Facility for Emergency Condition Instructions and Force Majeure Instructions. Except to the extent expressly set forth in Sections 8.10.1, Seller shall not receive any compensation for any losses due to a Dispatch Down for Emergency Condition Instructions or Force Majeure Instructions. Except as set forth in Section 8.10.1, all Seller losses for a Dispatch Down for Emergency Condition Instructions and Force Majeure Instructions shall be borne solely and entirely by Seller, including, without limitation, for any losses arising due to the lost or reduced generation by the Facility, production tax benefits, investment tax credits, grants or any other incentives or

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monetary opportunity relating to the design, development, construction, maintenance, ownership, or operation of the Facility.

8.10.1. In the event Seller proves that a Dispatch Down instruction issued by or action taken by the System Operator does not fall within the definition of an Emergency Condition Instruction or a Force Majeure Instruction and that the Facility actually reduced Energy production pursuant to such Dispatch Down instruction, then such Dispatch Down shall administered as provided for in Section 8.9 hereof (*Limited Payments for Control Instruction Dispatch Down*).

9. **Information Requirements**

- 9.1. **Accounting Information.** Generally Accepted Accounting Principles ("GAAP") and SEC rules can require Buyer to evaluate various aspects of its economic relationship with Seller, e.g., whether or not Buyer must consolidate Seller's financial information. To evaluate if certain GAAP requirements are applicable, Buyer may need access to Seller's financial records and personnel in a timely manner. In the event that Buyer determines that consolidation or other incorporation of Seller's financial information is necessary under GAAP, Buyer shall require the following for each calendar quarter during the term of this Agreement, within 90 days after quarter end: (a) complete financial statements, including notes, for such quarter on a GAAP basis; and, (b) financial schedules underlying the financial statements. Seller shall grant Buyer access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with GAAP standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002). Any information provided to Buyer pursuant to this section shall be considered confidential in accordance with the terms of this Agreement and shall only be disclosed, as required by GAAP, on an aggregate basis with other similar entities for which Buyer has power purchase agreements.
- 9.2. **Facility Information.** As of Effective Date and continuing for a period of three months after the Commercial Operation Date, Seller shall promptly provide to Buyer reports relating to the progress of the Facility's development and construction, financing, interconnection activities and performance under the Interconnection Agreement, testing, Seller's good faith estimate of the date for occurrence of the Commercial Operation Date, operational activities, and other information that Buyer may request in its Commercially Reasonable discretion to inform Buyer of Seller's performance under this Agreement. Within ten (10) days after the end of each calendar month until the Commercial Operation Date is achieved, Seller shall prepare and submit to Buyer a written status report which shall cover the previous calendar month, shall be prepared in a manner and format (hard copy or electronic) reasonably acceptable to Buyer and shall include (a) a detailed description of the progress of the Facility's construction, (b) a statement of any significant issues which remain unresolved and Seller's recommendations for resolving the same, (c) a summary of any significant events which are scheduled or expected to occur during the following thirty (30) days; and, (d) all additional information reasonably requested by Buyer. If Seller has reason to believe that the Facility is not likely to timely achieve any Milestone Deadline, including the Commercial Operation Date, Seller shall promptly provide written notice to Buyer with all relevant facts, and will provide Buyer with any other information Buyer may request from Seller in respects to such failure of Seller. Seller shall give written notice to Buyer no later than 30 days before Seller projects that the Facility will achieve Commercial Operation. Seller shall provide written notice to Buyer when the Commercial Operation Date has occurred. Following the Commercial Operation Date, Seller shall promptly provide to Buyer information requested by Buyer to verify any amounts of delivered Product, or to otherwise audit the Product delivered to Buyer. Seller shall, within ten (10) Business Days of electronic or



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written request provide Buyer with any other information germane to this Agreement and/or Seller's performance under and compliance with this Agreement, requested by Buyer in its Commercially Reasonable discretion.

- 9.3. Other Information. Seller shall provide to Buyer all information, instruments, documents, statements, certificates, and records relating to this Agreement and/or the Facility as requested by Buyer concerning any administrative, regulatory, compliance, or legal requirements determined by Buyer to fulfill any Requirements of Law, regulatory reporting requirements or otherwise relating to any request by any Governmental Authority. Seller will, at its own expense, provide Buyer with all information requested by Buyer to register, verify, or otherwise obtain Commission or any other third party recognition of the Product for use by Buyer, and at Buyer's request Seller shall register, verify, or otherwise validate or obtain Commission and/or any other third party recognition of the Product for use by Buyer.
- 9.3.1. Information Under the Act. Seller agrees and acknowledges that the Act requires Seller to make certain filings and/or submissions, including, without limitation, to maintain registration and certification of the Facility under the Act and to use the Product for compliance under the Act. Seller shall provide Buyer, for informational purposes only, a copy of any report, certification or filing that Seller submits to the Commission, within a reasonable time after making such submission, but in any event no later than five (5) Business Days after such submission. Notwithstanding anything to the contrary, Seller agrees and acknowledges that it shall be solely responsible for timely complying with all requirements under the Act.
- 9.4. Forecasts. Seller shall prepare and provide Buyer with the Facility's forecasted Energy production by fuel type, if applicable. These non-binding forecasts of production will be determined and prepared in a Commercially Reasonable Manner with the intent of being as accurate as possible. Seller shall update a forecast any time information becomes available indicating a change in the forecast relative to the most previously provided forecast.
- 9.4.1. Year-Ahead Forecasts. Seller shall, by December 1 of each year during the Term (except for the last year of the Term), provide Buyer with a forecast of each month's average-day Energy production from the Facility, by hour, for the following calendar year. This forecast shall include an expected range of uncertainty based on historical operating experience. Seller shall update the forecast for each month at least five (5) Business Days before the first Business Day of such month.
- 9.4.2. Week-Ahead Forecasts. By 0800 EPT on the Friday preceding the immediately upcoming week of delivery, Seller shall provide Buyer with a daily forecast of deliveries for the upcoming week (Monday through Sunday). Seller shall update a forecast any time information becomes available indicating a change in the forecast of generation relative to the most previously provided forecast.
- 9.4.3. Day-Ahead Forecasts. By 0500 EPT on the Business Day immediately preceding the day of delivery, Seller shall provide Buyer with an hourly forecast of deliveries for each hour of the next day; provided, however, that a forecast provided on a day before any non-Business Day shall include forecasts for each day to and including the next Business Day. In the event that Seller has any information or other Commercially Reasonable basis to believe that the production from the Facility on any day will be materially lower or higher than what would otherwise be expected based on the forecasts provided, then Seller will inform Buyer of such circumstance by 0500 EPT on the preceding Business Day.
- 9.4.4. Communication. Seller shall communicate forecasts in a form, template, substance, and manner as requested by Buyer (e.g. Excel template), which form, template,



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substance, and manner may be modified by Buyer from time to time. Forecasts shall be transmitted by email (to be sent to: [RenewableEnergyForecast@duke-energy.com](mailto:RenewableEnergyForecast@duke-energy.com)) or by other media (e.g. website upload), as Buyer may instruct Seller from time to time.

**10. Metering**

- 10.1. Billing Meter. In the Interconnection Agreement between Seller and Transmission Provider, Seller shall arrange with the Transmission Provider to construct and install such meters and metering equipment as are necessary to measure the Energy delivered and received in accordance with the terms and conditions of this Agreement (the "Billing Meter"). Buyer shall provide to Seller the reasonable allowable accuracy limits relating to the performance of the Billing Meter, and Seller shall arrange with Transmission Provider to install and operate a Billing Meter that meets the allowable accuracy limits. Seller shall be responsible for paying the Transmission Provider for all costs relating to the Billing Meter, including, without limitation, its procurement, installation, operation, calibration, and maintenance. Seller shall ensure in its arrangement with the Transmission Provider for the Billing Meter to include communication equipment that enables Buyer to access and read the meter from a remote location. Seller hereby grants Buyer with rights to physically access the Billing Meter. Seller shall provide Buyer (at Seller's cost) with appropriate telephonic/electronic communication to allow Buyer to remotely read the meter. Seller may, at its own expense, install and maintain additional metering equipment for purposes of monitoring, recording or transmitting data relating to its sale of Energy from the Facility, so long as such equipment does not interfere with the Billing Meter. Seller shall arrange with the Transmission Provider to test the Billing Meter at regular intervals. Seller shall also arrange for either Party to have the right to request and obtain, at reasonable intervals and under reasonable circumstances, additional/special tests of the Billing Meter. The Party making such request for the test shall incur the costs associated with such test.

**11. Billing Period and Payment**

- 11.1. Billing Period. Subject to Seller authorizing Transmission Provider to provide Buyer with electronic access to the Billing Meter, Buyer shall read/obtain data from the Billing Meter at regular intervals, which shall be not less than twenty-seven (27) consecutive days and not more than thirty-three (33) consecutive days (each, a "Billing Period"). Within twenty-five (25) days after reading/obtaining data from the Billing Meter, Buyer shall provide Seller with an invoice detailing the amount of Product (Energy and an equal amount of RECs) delivered during the relevant Billing Period and the associated amount owed by Buyer to Seller for the Product, subject to Seller cooperating with Buyer and providing Buyer with such information and/or data that Buyer may request to accurately prepare the invoice. Buyer shall pay Seller the invoiced amounts for each Billing Period, subject to Seller having transferred (or caused to be transferred) the REC Certificates from Seller's Account to Buyer's Account in the Tracking System. Payment by Buyer shall be due by the later of thirty (30) days after the invoice date or fifteen (15) days after Buyer receives notification that the Seller has transferred the REC Certificates into Buyer's Account. If such amounts are not paid by the deadline, they shall accrue interest at the Interest Rate from the applicable due date until the date paid. Amounts not paid by such deadline shall accrue interest at the Interest Rate from the original due date until the date paid in accordance with this Agreement.

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- 11.2. Meter Malfunction. In the event the Billing Meter fails to register accurately within the allowable accuracy limits as set forth above, then for purposes of preparing (or adjusting) any affected invoice Buyer shall adjust the amount of measured Energy for the period of time the Billing Meter was shown to be in error. If the time the Billing Meter became inaccurate can be determined, then the adjustment to the amount of measured Energy shall be made for the entire time from the time that the Billing Meter became inaccurate until the recalibration of the Billing Meter. If the time the Billing Meter became inaccurate cannot be determined, then the Billing Meter shall be deemed to have failed to register accurately for fifty percent (50%) of the time since the date of the last calibration of the Billing Meter.
- 11.3. Out-of-Service. If the Billing Meter is out of service, then for purposes of preparing any affected invoice, the Parties shall negotiate in good faith to determine an estimate of the amount of Energy delivered during the relevant Billing Period. Seller's meter (if any), may be used to establish such estimate, if both Parties agree. If, within twenty (20) days after the date that the Billing Meter is read as set forth above, the Parties have not reached agreement regarding an estimate of the amount of Energy delivered during the relevant Billing Period, then the amount of Energy delivered during the relevant Billing Period shall be determined using the Estimation Methodology.
- 11.4. Errors. If any overcharge or undercharge in any form whatsoever shall at any time be found for an invoice, and such invoice has been paid, the Party that has been paid the overcharge shall refund the amount of the overcharge to the other Party, and the Party that has been undercharged shall pay the amount of the undercharge to the other Party, within forty-five (45) days after final determination thereof; provided, however, that no retroactive adjustment shall be made for any overcharge or undercharge unless written notice of the same is provided to the other Party within a period of twelve (12) months from the date of the invoice in which such overcharge or undercharge was first included. Any such adjustments shall be made with interest calculated at the Interest Rate from the date that the undercharge or overcharge actually occurred.
- 11.5. Invoice/Payment Dispute. If a Party in good faith reasonably disputes the amount set forth in an invoice, charge, statement, or computation, or any adjustment thereto, such Party shall provide to the other Party a written explanation specifying in detail the basis for such dispute. The Party disputing the invoice, if it has not already done so, shall pay the undisputed portion of such amount no later than the applicable due date. If the Parties are thereafter unable to resolve the dispute through the exchange of additional documentation, then the Parties shall pursue resolution of such dispute according to the dispute resolution and remedy provisions set forth in the Agreement. Notwithstanding any other provision of this Agreement to the contrary, if any invoice, statement charge, or computation is found to be inaccurate, then a correction shall be made and payment (with applicable interest) shall be made in accordance with such correction; provided, however, no adjustment shall be made with respect to any invoice, statement, charge, computation or payment hereunder unless a Party provides written notice to the other Party questioning the accuracy thereof within twenty-four (24) months after the date of such invoice, statement, charge, computation, or payment.

**12. Audit Rights**

- 12.1. Process. Buyer shall have the right, at its sole expense and during normal business hours, without Seller requiring any compensation from Buyer, to examine and copy the records of Seller to verify the accuracy of any invoice, statement, charge or computation made



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hereunder or to otherwise verify Seller's performance under this Agreement, including, without limitation, verifying that the delivered Product complies with the Agreement.

- 12.2. Survival. All audit rights shall survive the expiration or termination of this Agreement for a period of twenty-four (24) months after the expiration or termination. Seller shall retain any and all documents (including, without limitation, paper, written, and electronic) and/or any other records relating to this Agreement and the Facility for a period of twenty-four (24) months after the termination or expiration of this Agreement.

**13. Taxes**

- 13.1. Seller. Seller shall be liable for and shall pay Buyer, or Seller shall reimburse Buyer if Buyer has paid or cause to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising prior its delivery to and at the Delivery Point (including ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Seller shall indemnify, defend, and hold harmless Buyer from any liability for such Taxes, including related audit and litigation expenses.
- 13.2. Buyer. Buyer shall be liable for and shall pay Seller, or Buyer shall reimburse Seller if Seller has paid or caused to be paid, all Taxes imposed by a Governmental Authority on or with respect to the Product delivered hereunder and arising after the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product by Seller to Buyer and are, therefore, the responsibility of Seller). Buyer shall indemnify, defend, and hold harmless Seller from any liability for such Taxes, including related audit and litigation expenses.
- 13.3. Remittances. In the event Seller is required by any Requirements of Law to remit or pay Taxes that are Buyer's responsibility hereunder, Seller may request reimbursement of such payment from Buyer by sending Buyer an invoice, and Buyer shall include such reimbursement in the next monthly invoice and Buyer shall remit payment thereof. Conversely, if Buyer is required by any Requirements of Law to remit or pay Taxes that are Seller's responsibility hereunder; Buyer may deduct the amount of any such Taxes from the sums otherwise due to Seller under this Agreement. Any refunds or remittances associated with such Taxes shall be administered in accordance with Section 11.1.
- 13.4. Documentation. A Party, upon written request of the other Party, shall promptly provide a certificate of exemption or other reasonably satisfactory evidence of exemption if such Party is exempt from any Tax. Nothing herein shall obligate a Party to pay or be liable to pay any Taxes from which it is exempt pursuant to applicable law.

**14. Force Majeure**

- 14.1. Definition. "Force Majeure" means: (A) war, riots, floods, hurricanes, tornadoes, earthquakes, lightning, ice-storms, excessive winds, and other such extreme weather events and natural calamities; (B) explosions or fires arising from lightning or other natural causes unrelated to acts or omissions of the Party; (C) insurrection, rebellion, nationwide strikes; (D) an act of god or other such significant and material event or circumstance which prevents one Party from performing a material and significant obligations hereunder, which such event or circumstance was not anticipated as of the Effective Date, is not within the Commercially Reasonable control of, or the result of the