

STANDARD POWER PURCHASE AGREEMENT FOR QUALIFYING FACILITIES

(Nameplate Capacity Rating of the Facility may not exceed 100 kW)

Buyer: North Carolina Electric Membership Corporation

Attention: Power Supply
3400 Sumner Blvd
Raleigh, NC 27616
NCEMCRenewables@ncemcs.com

*With Additional Notices of Events of Default
Or Potential Event of Default to:*
North Carolina Electric Membership Corporation
Attention: Tim Dodge, Regulatory Counsel
3400 Sumner Boulevard
Raleigh, NC 27616
tim.dodge@ncemcs.com
(919) 875-3111

Seller: _____

This Power Purchase Agreement, including Exhibits hereto, which are incorporated into and made part hereof (collectively, the "Agreement"), is made and entered into by and between Seller and Buyer under the terms specified herein. Buyer and Seller are sometimes herein 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. Reserved
- 1.2. Reserved
- 1.3. "Affiliate" means, with respect to Seller, each entity that directly or indirectly controls, is controlled by, or is under common control with, Seller, 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.

- 1.4. "Agreement" is defined in the introductory paragraph hereof.
- 1.5. "Assignment" is defined in Section 24.
- 1.6. Reserved
- 1.7. "Bankrupt" means, with respect to a Party or entity, that such Party or entity: (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 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).
- 1.8. "Billing Meter" is defined in Section 10.
- 1.9. "Billing Period" is defined in Section 11.
- 1.10. "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.
- 1.11. "Buyer" (or "NCEMC") means North Carolina Electric Membership Corporation
- 1.12. "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.
- 1.13. "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, (ii) substantially all of the assets of Seller, or (iii) the Facility.
- 1.14. "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 to, tested at, and is fully capable of operating at the full Nameplate Capacity Rating for the purpose of generating and delivering the Product as required herein, including but not limited to the metering and telemetry requirements set out in Exhibit 6; (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, (e) 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.
- 1.15. "Commercial Operation Date" means the date on which the Facility achieves or achieved Commercial Operation.

- 1.16. "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.
- 1.17. "Commission" means the North Carolina Utilities Commission or any successor thereto.
- 1.18. "Contract Price" is defined in Section 4.4.
- 1.19. "Contract Quantity" is defined in Section 4.2.
- 1.20. "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.
- 1.21. Reserved
- 1.22. "Defaulting Party" is defined in Section 19.1.
- 1.23. "Delivery Period" is defined in Section 4.1.
- 1.24. "Delivery Point" means the point of interconnection between the Facility and the System on the high side (Buyer or Transmission Provider side) of any step-up transformer located between the Facility and the System.
- 1.25. "Dispute(s)" is defined in Section 23.1.
- 1.26. "Early Termination Date" is defined in Section 20.1.
- 1.27. "Effective Date" is defined in the introductory paragraph hereto.
- 1.28. "Emergency Condition" means (a) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is existing on the System; (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 and/or the System, (ii) disruption of generation by the Facility, (iii) disruption of service or stability on the System, and/or (iv) endangerment to human life or public safety; and/or, (c) any circumstance that requires action by a 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 failure to perform as required under this Agreement, including, without limitation, failure to perform with Prudent Utility Practice.
- 1.29. "Energy" means either single-phase or three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh, as the case may be.
- 1.30. "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.

- 1.31. "Event of Default" is defined in Section 19.1.
- 1.32. "Expected Annual Output" means the quantity of Energy identified in Exhibit 4 for each calendar year during the Delivery Period of the Facility.
- 1.33. "Facility" means Seller's _____ electric generating facility located in _____ County, North Carolina at _____, as further set forth in Exhibit 3.
- 1.34. "FERC" means the Federal Energy Regulatory Commission or any successor thereto.
- 1.35. Reserved
- 1.36. "Force Majeure" is defined in Section 14.1.
- 1.37. Reserved
- 1.38. "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).
- 1.39. "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.
- 1.40. "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 and the requirements for transmission service. For purposes of Section 7.3, "Interconnection Agreement" shall refer to the Interconnection Agreement, including the Final System Design incorporated therein, in effect as of the Commercial Operation Date.
- 1.41. "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%); and, (b) the maximum rate permitted by applicable law.
- 1.42. "kW" means kilowatt.
- 1.43. "kWh" means kilowatt-hour.
- 1.44. Reserved
- 1.45. "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.
- 1.46. "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).

- 1.47. "Maintenance Outage" means the temporary operational removal of the Facility or related equipment from service, which removal from service can be deferred beyond the next weekend but must be scheduled 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, and which removal from service is necessary to perform work on specific components of the Facility or related equipment. Characteristically, Maintenance Outages may occur throughout the year, have flexible start dates, are much shorter than Planned Outages, and have a predetermined duration and scope of work established at the start of the outage.
- 1.48. Reserved
- 1.49. Reserved
- 1.50. "MW" means megawatt.
- 1.51. "MWh" means megawatt-hour.
- 1.52. "Nameplate Capacity Rating" means the installed nameplate capacity rating of the Facility set forth in Exhibit 3. The Nameplate Capacity Rating of the Facility may not exceed 100 kW.
- 1.53. "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").
- 1.54. "Non-Defaulting Party" is defined in Section 20.1.
- 1.55. Reserved
- 1.56. Reserved
- 1.57. "Party" or "Parties" is defined in the introductory paragraph hereto.
- 1.58. Reserved
- 1.59. "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.
- 1.60. "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; (b) a System Operator Instruction; and/or, (c) a Force Majeure event.
- 1.61. "Person" means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or Governmental Authority.
- 1.62. "Planned Outage" means the temporary operational removal of the Facility or related equipment from service to perform work on specific components in accordance with a pre-planned operations schedule. Characteristically, Planned Outages occur only once or twice per

years, are scheduled at least thirty (30) days in advance of the start of the outage, occur during seasons when the peak demand on the System is the lowest, and are accompanied by a predetermined duration and scope of work established at the time the outage is scheduled. Examples of Planned Outages are planned annual overhauls, inspections, or testing of specific component of the Facility or related equipment.

1.63. Reserved

1.64. "Product" means the Capacity of the Facility, if any, and Energy generated by the Facility.

1.65. Reserved

1.66. "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.

1.67. "PURPA" means the Public Utility Regulatory Policies Act of 1978, as amended, and as may be amended from time to time.

1.68. "PURPA Fuel Requirements" means the requirements, as applicable, set forth in 18 C.F.R. § 292.204 (qualifying small power production facilities) or 18 C.F.R. § 292.205 (qualifying cogeneration facilities), as may be amended and/or restated.

1.69. "Qualifying Facility" means an electric generating facility that has been registered and certified by FERC as a generator that qualifies for and meets the requirements set forth in PURPA, as it may be amended, and associated rules, regulations, orders.

1.70. "Regulatory Event" is defined in Section 15.1.

1.71. "Required Approval" is defined in Section 6.1.

1.72. "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) PURPA, (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 or any other environmental damage.

1.73. Reserved

1.74. Reserved

1.75. "Seller" means _____.

1.76. Reserved

- 1.77. "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.
- 1.78. "System" means the transmission, distribution, and generation facilities that are owned, directed, managed, interconnected, controlled, and/or operated by Buyer and/or the Transmission Provider, including, without limitation, facilities to provide retail and/or wholesale service, substations, circuits, reinforcements, meters, extensions, and equipment associated with or connected to any interconnected facility or customer.
- 1.79. "System Operator" means the operator(s) of the System that have the responsibilities for ensuring that the System as a whole operates safely 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, and to provide dispatch and curtailment instructions to generators supplying Energy to the System, and includes any person or entity delivering any such instruction to Seller.
- 1.80. "System Operator Instruction" means any order, action, requirement, demand, or direction, from the System Operator in accordance with Prudent Utility Practice to operate, manage, and/or otherwise maintain safe and reliable operations of the System, including, without limitation those undertaken and implemented by the System Operator, in its sole discretion based on relevant System factors and considerations, including any and all operating characteristics, maintenance requirements, operational limitations, reliability (including, without limitation, standing NERC regulations or standards), safety, 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, an order or action to: (i) interconnect, disconnect, integrate, operate in parallel, or synchronize with the System, (ii) increase (based on generator characteristics and Prudent Utility Practices), reduce, or cease generation output to comply with standing NERC regulations or standards; (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 or interrupt any operational activity for an Emergency Condition or Force Majeure event.
- 1.81. "Taxes" means all taxes, fees, levies, licenses or charges imposed by any Governmental Authority, together with any interest and penalties thereon.
- 1.82. "Term" is defined in Section 3.1.
- 1.83. Reserved
- 1.84. "Transmission Provider" means the entity or entities, including but not limited to any relevant balancing area authority, that will provide interconnection and/or electric transmission service to the Facility to enable delivery of the Energy to Buyer, and any such entity will include any successor or replacement thereto, including without limitation, a consolidated control area or a regional transmission organization. The Transmission Provider will frequently be an "electric membership corporation," as the term is defined in Chapter 117 of the North Carolina General Statutes, operating the System to which the Facility is interconnected.
- 1.85. "Uncontrolled Solar" means solar generation where the Qualifying Facility does not demonstrate that its facility is capable of operating, or does not contractually agree to operate, in a manner that reduces its average daylight volatility to 6% or less of its average daylight

power output.

2. **Interpretation**

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, restated, modified, replaced and/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"), when following any general 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 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 force and effect through and until 11:59:59 PM EPT on the fifth anniversary of commencement of the Delivery Period ("Term"), unless terminated earlier as provided for herein.
- 3.2. **Termination and Survival.** This Agreement may be terminated as provided for herein prior to the expiration of the Term. 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.

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 pursuant to its terms and conditions.

- 4.1.1. The Facility must achieve Commercial Operation by eighteen (18) months following the Effective Date.
 - 4.2. Contract Quantity. The "Contract Quantity" will be one hundred percent (100%) of the Product, less that associated with Station Power.
 - 4.2.1. 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.
 - 4.2.2. 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.
 - 4.2.3. Reserved
 - 4.2.4. The Contract Quantity of the Product delivered shall not exceed the Nameplate Capacity Rating. In cases where the actual capacity delivered exceeds the Nameplate Capacity Rating, Buyer shall have no obligation to receive, purchase, pay for, or pay any damages associated with not receiving the Product above the Nameplate Capacity Rating.
 - 4.3. Reserved
 - 4.4. Contract Price. The "Contract Price" for the Product shall be determined based on the Facility balancing area and Seller's election of either the fixed five-year rates or the variable rates as provided in Exhibit 3. This election will continue for the Delivery Period. Rates are specified in Exhibit 5.
 - 4.5. Energy Delivery. Seller shall deliver the Contract Quantity of the Product at the Delivery Point, and Seller shall be fully responsible for all costs, charges, expenses, and requirements associated with delivering the Product to the Delivery Point. Buyer will have no obligation to pay for any Product not delivered to the Delivery Point.
 - 4.6. Payment for Product. During the Term of this Agreement, Buyer agrees to pay Seller the product of (i) the Contract Price for the Product, as applicable, multiplied by (ii) the amount of Energy delivered by Seller to Buyer at the Delivery Point during the Delivery Period.
 - 4.7. Transfer. In no event will 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. 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. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after the Delivery Point.
 - 4.8. Monthly Service Charge. Seller agrees to pay to Buyer a monthly service charge in the amount of fifty U.S. dollars (\$50.00). The invoice delivered by Buyer for the Billing Period shall include the applicable monthly service charge owed by Seller to Buyer and any applicable power factor charges. The amount of the monthly service charge and any applicable power factor charges may be deducted and offset from any payment amounts owed by Buyer to Seller under this Agreement as reflected on the invoice.
5. **Credit and Related Provisions**.

5.1. Reserved

5.2. Reserved

5.3. Reserved

5.4. 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. 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.

5.5. 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 of the obligation is ascertained.

5.6. Reserved

5.7. Reserved

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 (definition follows) during the Term of this Agreement. "Required Approvals" means all of the following:

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

6.1.2. 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 and meet its requirements under this Agreement.

6.2. Seller Covenants. Seller covenants and warrants to Buyer as of the Effective Date of this Agreement and throughout the Term of this Agreement that: (a) Seller has filed a valid report of proposed construction for the Facility with the Commission or obtained an approved and valid certificate of public convenience and necessity for the Facility from the Commission ; (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 covenants and

warranties set forth above 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 five (5) 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. 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.

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 any underlying fuel, install and 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 Product to Buyer.
- 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. 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, obligation, and liabilities hereunder. 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.
- 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 Transmission Provider, 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 either the applicable home owner's insurance policy with liability coverage of at least \$100,000 per occurrence or the applicable comprehensive general liability insurance policy with liability coverage in the amount of at least \$300,000 per occurrence, which protects the Seller from claims for bodily injury and/or property damage. 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 an additional insured, excluding, however, for Workers' 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 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

8.1. Reserved

8.2. Reserved

8.3. Reserved

8.4. Performance. Seller shall fully satisfy the PURPA Fuel Requirements during the Term of this Agreement. Seller will operate the Facility in a safe manner. Further, Seller will minimize the occurrence, extent, and duration of any event adversely affecting the generation of the Product 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.

8.6. System Operator Instructions. Seller agrees to fully comply with all System Operator Instructions.

8.6.1. Seller is responsible for all costs associated with communication and equipment necessary to receive electronic curtailment signals.

8.6.2. In the event Seller demonstrates to Buyer's satisfaction that an instruction issued by Buyer does not fall within the definition of a System Operator Instruction and that the Facility actually reduced Product production pursuant to such instruction, Seller shall be entitled to a compensatory payment from Buyer in the amount of the Contract Price for the Product not generated due to compliance with the instruction (starting with the first MWh of Product not generated) as Seller's sole and exclusive payment and remedy for its compliance with such instruction. Buyer shall not, however, be liable for Seller's compliance with an instruction issued by a System Operator other than Buyer (and simply relayed to Seller by Buyer in good faith) that is later demonstrated not to fall within the definition of a System Operator Instruction.

9. **Information Requirements**

9.1. Reserved

9.2. Facility Information. 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 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.

9.4. Reserved

10. **Metering**

The Seller shall be responsible for providing 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").

- 10.1. Installation by Transmission Provider. 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 or curtail the output of the Facility. 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.
- 10.2. Installation by Seller. Seller shall comply with the metering, telemetry, and curtailment requirements set out in Exhibit 6.

11. Billing Period and Payment

- 11.1 On or before the tenth (10th) day of an applicable month, Buyer shall provide the Seller a statement based upon the meter data for the Facility's output delivered in such previous calendar month and the applicable Contract Price. Seller will review the statement and notify Buyer by the 15th day of the month if it disagrees with the amount to be paid. If Seller does not notify Buyer by the 15th day of the month, Seller shall be deemed to have agreed with the amount specified in Buyer's statement. Buyer will pay Seller by the 25th day of the month, or within 10 days following notification that Seller is in agreement with Buyer's statement or such agreement is established by Seller's not having responded otherwise.
- 11.2 If it is not possible to read the meter for any reason, Seller's production may be estimated by Buyer on the basis of Seller's production during the most recent preceding billing period for which readings were obtained, unless some unusual condition is known to exist. A bill or payment rendered on the basis of such estimate shall be as valid as if made from actual meter readings.
- 11.3 Meter Stoppage or Error. In the event a meter fails to register accurately, in excess of a 2% margin for error, Buyer will adjust the measured Energy for the period of time the meter was shown to be in error, and shall pay to Seller, or Seller shall refund to Buyer, the difference between the amount billed and the estimated amount which would have been billed had the meter not exceeded the 2% margin.
- 11.4 Data Requirements. Seller shall make billing quality data available to Buyer daily in the manner specified in Exhibit 6. In the event a System Operator, Transmission Provider, or

Buyer requires detailed telemetry data, including but not limited to real time data and ambient condition data, Seller is responsible for all data delivery and any associated charges to comply with the requirements.

- 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 twelve (12) months after the date of such invoice, statement, charge, computation, or payment.

12. **Reserved**

13. **Taxes**

- 13.1. **Seller.** Seller shall be liable for and shall pay Buyer, or Seller shall reimburse Buyer if Buyer has paid, or caused to be paid, any 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, any 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 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.
- 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 obligation 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 negligence of such claiming Party, and which, by the exercise of Commercially Reasonable Efforts, the claiming Party is unable to overcome or avoid or cause to be avoided; and, (E) delays in obtaining goods or services from any subcontractor or supplier caused solely by the occurrence of any of the events described in the immediately preceding subparts (A) through (D). The acts, events or conditions listed in subparts (A) through (E) above shall only be deemed a Force Majeure if and to the extent they actually and materially delay or prevent the performance of a Party's obligations under this Agreement and: (i) are beyond the reasonable control of the Party, (ii) are not the result of the willful misconduct or negligent act or omission of such Party (or any person over whom that Party has control), (iii) are not an act, event or condition that reasonably could have been anticipated, or the risk or consequence of which such Party has assumed under the Agreement; and, (iv) cannot be prevented, avoided, or otherwise overcome by the prompt exercise of Commercially Reasonable diligence by the Party (or any Person over whom that Party has control).

14.1.1. Notwithstanding anything to the contrary herein, Force Majeure will not include the following: (a) any strike or labor dispute of the employees of either Party or any subcontractor that is not part of a nationwide strike or labor dispute; (b) any difficulty in obtaining or maintaining sufficient, or appropriately skilled, personnel to perform the work in accordance with the requirements of this Agreement; (c) normal wear and tear or obsolescence of any equipment; (d) Buyer's inability to economically use or resell the Product delivered and purchased hereunder; (e) Seller's ability to sell the Product (or any component of the Product) at a more advantageous price; (f) loss by Seller of any contractual arrangement; (g) any Regulatory Event; (h) loss or failure of Seller's supply of the Product or inability to generate the Product that is not caused by an independent Force Majeure event; (i) the cost or availability or unavailability of fuel, solar energy, wind, or motive force, as applicable, to operate the Facility; (j) economic hardship, including, without limitation, lack of money or financing or Seller's inability to economically generate the Product or operate the Facility; (k) any breakdown or malfunction of Facility equipment (including any serial equipment defect) that is not directly caused by an independent event of Force Majeure; (l) the imposition upon Seller of costs or taxes allocated to Seller hereunder or Seller's failure to obtain or qualify for any tax incentive, preference, or credit; (m) delay or failure of Seller to obtain or perform any Permit; (n) any delay, alleged breach of contract, or failure under any other agreement or arrangement between Seller and another entity, including without limitation, an agent or sub-contractor of Seller (except as a direct result of an event of Force Majeure defined in Section 14.1(E)); (o) Seller's failure to obtain, or perform under, the Interconnection Agreement, or its other contracts and obligations to Transmission Provider; (p) increased cost of electricity, steel, materials, equipment, labor, or transportation; or, (q) without limiting the generality of sub-section 14.1.1(i) above, loss or failure of Seller's supply of the underlying fuel source.

14.2. Event. If either Party is rendered unable by Force Majeure to carry out, in whole or in part,

any material obligation hereunder, such Party shall provide notice and reasonably full details of the event to the other Party as soon as reasonably practicable after becoming aware of the occurrence of the event (but in no event later than three (3) Business Days after the initial occurrence of the event of Force Majeure). Such notice may be given orally but shall be confirmed in writing as soon as practicable thereafter (and in any event within ten (10) days of the initial occurrence of the event of Force Majeure); provided however, a reasonable delay in providing such notice shall not preclude a Party from claiming Force Majeure but only so long as such delay does not prejudice or adversely affect the other Party.

14.3. Effect. Subject to the terms and conditions of Section 14, for so long as the event of Force Majeure is continuing, the specific obligations of the Party that are demonstrably and specifically adversely affected by the Force Majeure event, shall be suspended to the extent and for the duration made necessary by the Force Majeure, will not be deemed to be an Event of Default, and performance and termination of this Agreement will be governed exclusively by this Section 14. Notwithstanding anything to the contrary in this Agreement, Force Majeure will *not* be applicable to and will *not* be available as an excuse to Seller's performance of the obligations set forth in Sections 19.3 through and including 19.24. Notwithstanding anything to the contrary herein, and without limiting the generality of the preceding sentence Force Majeure will *not* be available as an excuse to any delays or failures in Seller timely achieving Commercial Operations by the Commercial Operations Date, and any such delays or failures shall be governed exclusively by Section 19.9. A Force Majeure shall not toll the Term or the Delivery Period.

14.4. Remedy. The Party claiming Force Majeure shall act in a Commercially Reasonable Manner to remedy the Force Majeure as soon as practicable and shall keep the other Party advised as to the continuance of the Force Majeure event. If a bona fide Force Majeure event persists for a continuous period of ninety (90) days, then the Party not claiming Force Majeure shall have the right, in its sole and unfettered discretion, to terminate this Agreement upon giving the other Party ten (10) Business Days advance written notice.

14.4.1. Remedy for Significant Physical Damage to the Facility. In the case of significant and material physical damage to the Facility due to a Force Majeure event, if within fifteen (15) Business Days of such damage Seller notifies Buyer of its intent and ability to implement a Commercially Reasonable plan to remedy such damage to the Facility, then Buyer shall not have the right to terminate the Agreement if Seller successfully implements the remedial plan as soon as practicable or within one hundred and eighty (180) days, whichever is sooner; *provided, however*, that where despite the Commercially Reasonable Efforts of Seller such Force Majeure event cannot be remedied within the initial one hundred and eighty (180) days and the Seller can demonstrate to Buyer its intention and ability to implement a Commercially Reasonable plan to remedy such Force Majeure event within an additional one-hundred and eighty days (180) days, or sooner if practicable, and the Seller uses Commercially Reasonable efforts to implement such plan, then Buyer shall not have the right to terminate the Agreement until the expiration of such additional one hundred and eighty (180) days.

14.5. Termination. Unless otherwise agreed upon by the Parties in writing and in each Party's sole discretion, upon the expiration of the periods set forth above in Sections 14.4 and 14.4.1, this Agreement may be terminated without any further notice and further opportunity to cure any non-performance. Upon termination becoming effective pursuant to a Force Majeure under Section 14, neither Party will have any liability to the other Party or recourse against the other Party, other than for amounts arising prior to termination. Notwithstanding the claimed existence of a Force Majeure event or any other provisions of this Agreement, nothing herein

shall relieve any Party from exercising any right or remedy provided under this Agreement with respect to any liability or obligation of the other Party that is not excused or suspended by the Force Majeure event, including, without limitation, the right to liquidate and early terminate the Agreement for any Event of Default not excused by the Force Majeure event. Nothing herein shall be construed so as to obligate any Party to settle any strike, work stoppage or other labor dispute or disturbance or to make significant capital expenditures, except in the sole discretion of the Party experiencing such difficulty.

15. **Change in Law**

15.1. **Regulatory Event**. A "Regulatory Event" means one or more of the following events:

15.1.1. **Illegality**. After the Effective Date, due to the adoption of, or change in, any applicable Requirements of Law or in the interpretation thereof by any Governmental Authority with competent jurisdiction, it becomes unlawful for a Party to perform any material obligation under this Agreement.

15.1.2. **Adverse Government Action**. After the Effective Date, there occurs any adverse material change in any applicable Requirements of Law (including material change regarding a Party's obligation to sell, deliver, purchase, or receive the Product) and any such occurrence renders illegal or unenforceable any material performance or requirement under this Agreement.

15.2. **Process**. Upon the occurrence of a Regulatory Event the Party affected by the Regulatory Event may notify the other Party in writing of the occurrence of a Regulatory Event, together with details and explanation supporting the occurrence of a Regulatory Event. Upon receipt of such notice, the Parties agree to undertake, during the thirty (30) days immediately following receipt of the notice, to negotiate such modifications to reform this Agreement to remedy the Regulatory Event and attempt to give effect to the original intention of the Parties. Upon the expiration of the 30-day period, if the Parties are unable to agree upon modifications to the Agreement that are acceptable to each Party, in each Party's sole discretion, then either Party shall have the right, in such Party's sole discretion, to terminate this Agreement with a 30-day advance written notice.

16. **Reserved**

17. **Mutual Representations and Warranties**

17.1. As of the Effective Date and throughout the Term, each Party represents and warrants to the other Party that:

17.1.1. It is duly organized, validly existing and in good standing under the Requirements of Law of the jurisdiction of its organization or formation and has all requisite power and authority to execute and enter into this Agreement;

17.1.2. It has all authorizations under the Requirements of Law (including but not limited to the Required Approvals), necessary for it to legally perform its obligations and consummate the transactions contemplated hereunder or will obtain such authorizations in a timely manner prior to the time that performance by such Party becomes due;

17.1.3. The execution, delivery, and performance of this Agreement will not conflict with or violate any Requirements of Law or any contract, agreement or arrangement to which it is a party or by which it is otherwise bound;

- 17.1.4. This Agreement constitutes a legal, valid, and binding obligation of such Party enforceable against it in accordance with its terms, and such Party has all rights necessary to perform its obligations to the other Party in accordance with the terms and conditions of this Agreement;
- 17.1.5. Each Party is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether or not this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the representations, advice or recommendations of the other Party in so doing, is capable of assessing the merits of this Agreement, and understands and accepts the terms, conditions, and risks of this Agreement for fair consideration on an arm's length basis;
- 17.1.6. No Event of Default or event which with notice or lapse of time, or both, would become an Event of Default, has occurred with respect to such Party, and that such Party is not Bankrupt and there are no proceedings pending or being contemplated by it, or to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- 17.1.7. There is no pending, or to its knowledge, threatened legal proceeding at law or equity against it or any Affiliate, that materially adversely affects its ability to perform its obligations under this Agreement; and;
- 17.1.8. Each person who executes this Agreement on behalf of such Party has full and complete authority to do so, and that such Party will be bound by such execution.

18. Seller Representations and Warranties to Buyer

- 18.1. For all Product and every aspect thereof, Seller represents, warrants, and reaffirms to Buyer as a continuing warranty and representation that:
 - 18.1.1. All Product will meet the specifications and requirements in this Agreement, including without limitation, compliance with PURPA;
 - 18.1.2. Seller has provided and conveyed and will provide and convey to Buyer all Capacity rights associated with the Facility and Energy Produced by the Facility;
 - 18.1.3. Seller holds all the rights to all the Product from the Facility, Seller has the right to sell the Product to Buyer, and Seller agrees to convey and does convey to Buyer all rights and good title to the Product free and clear of any Liens, encumbrances, or title defects;
 - 18.1.4. Seller has not and will not double claim or double count the Product (including, without limitation, any Capacity of the Facility) in any manner (including, for example, by issuing a press release or otherwise claiming that Seller is creating any Capacity benefit, or selling the Product to any person other than exclusively to and for Buyer); and,
 - 18.1.5. Seller has not and will not in any manner interfere with, encumber or otherwise impede Buyer's use, transfer, and sale of the Product.

19. Events of Default

- 19.1. An "Event of Default" means with respect to the non-performing Party (such Party, the "Defaulting Party"), the occurrence of any one or more of the events set forth below in this Section 19, each of which, individually, shall constitute a separate Event of Default:
- 19.2. The failure to make, when due, any payment required pursuant to this Agreement if such

- failure is not remedied within ten (10) Business Days after the Defaulting Party's receipt of written notice; *provided, however*, a Party will have two (2) Business Days to remedy any failure to make payment required under Section 21;
- 19.3. Any covenant or warranty made by Seller is false or misleading in any respect when made or when deemed made or repeated.
 - 19.4. Any representation or warranty made by a Party under Section 17 and elsewhere in this Agreement (except Section 18 which is a separate Event of Default) is false or misleading in any material respect when made or when deemed made or repeated;
 - 19.5. Reserved
 - 19.6. Any representation or warranty made by Seller under Section 18 (Seller Representations and Warranties to Buyer) is false or misleading in any respect when made or when deemed made or repeated;
 - 19.7. Reserved
 - 19.8. Reserved
 - 19.9. Seller fails to achieve Commercial Operation by the Commercial Operation Date as specified in Section 4.1.1.;
 - 19.10. The actual Nameplate Capacity Rating of the Facility is higher than the Nameplate Capacity Rating set forth in Exhibit 3 or the actual Nameplate Capacity Rating of the Facility is greater than 100 kW.
 - 19.11. Reserved
 - 19.12. Reserved
 - 19.13. Seller fails to fully meet all the insurance requirements set forth in Section 7.5, and such failure is not cured within five (5) Business Days.
 - 19.14. Seller fails to achieve the Net Output Requirement specified in Section 8.5.
 - 19.15. Seller fails to comply with the metering requirements specified in Section 10.
 - 19.16. Seller fails to obtain or maintain the Facility's registration or certification as a Qualifying Facility under PURPA.
 - 19.17. Seller fails to fully comply with the PURPA Fuel Requirements.
 - 19.18. Seller delivers or attempts to deliver to Buyer any Product (or any component thereof) that was not generated by the Facility.
 - 19.19. Seller fails to promptly and fully comply with a System Operator Instruction.
 - 19.20. Reserved
 - 19.21. Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
 - 19.22. An assignment by or Change of Control with respect to Seller, other than in compliance with Section 24;
 - 19.23. A Party becomes Bankrupt;

- 19.24. Seller transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another Person in violation of the terms and conditions of this Agreement;
- 19.25. Reserved
- 19.26. Except to the extent constituting a separate Event of Default (in which case the provisions applicable to that separate Event of Default shall apply) the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within twenty (20) days after the Defaulting Party's receipt of written notice; provided, however, that if it is not reasonably practicable to effect such cure within twenty (20) days and a Party is working in good faith and in a Commercially Reasonable manner to effect a cure, such Party shall have an additional twenty (20) days to cure such failure.

20. **Early Termination.**

- 20.1. **Early Termination Date.** If an Event of Default with respect to a Defaulting Party has occurred and, if curable, has not been cured, then the other Party (such Party, the "Non-Defaulting Party") shall have the right, in its sole discretion and upon written notice to the Defaulting Party, to pursue any or all of the following remedies: (a) withhold payments due to the Defaulting Party under this Agreement; (b) suspend performance under this Agreement; and/or (c) designate a day (which day shall be no earlier than the day such notice is effective and shall be no later than twenty (20) days after the delivery of such notice is effective) as an early termination date to accelerate all amounts owing between the Parties, liquidate, net, recoup, set-off, and early terminate this Agreement and any other agreement between the Parties (such day, the "Early Termination Date").
- 20.2. **Effectiveness of Default and Remedies.** Where an Event of Default is specified herein and is governed by a system of law which does not permit termination to take place after the occurrence of the relevant Event of Default in accordance with the terms of this Agreement an Event of Default and Early Termination Date shall be deemed to have occurred immediately upon any such event and no prior written notice shall be required. All of the remedies and provisions set forth in this section shall be without prejudice to any other right of the Non-Defaulting Party to accelerate amounts owed, net, recoup, setoff, liquidate, and early terminate this Agreement.
- 20.3. **Net Settlement Amount.** If the Non-Defaulting Party establishes an Early Termination Date, then the Non-Defaulting Party shall calculate its Gains or Losses and Costs resulting from the termination as of the Early Termination Date, in a Commercially Reasonable Manner. The Non-Defaulting Party shall aggregate such Gains or Losses and Costs with respect to the liquidation of the termination and any other amounts due under this Agreement and any other agreement between the Parties into a single net amount expressed in U.S. dollars (the "Net Settlement Amount"). The Non-Defaulting Party shall then notify the Defaulting Party of the Net Settlement Amount. The Defaulting Party shall pay the Non-Defaulting Party the full amount of the Net Settlement Amount within two (2) Business Days of delivery to the Defaulting Party of the notice of the Net Settlement Amount that the Defaulting Party is liable for.
- 20.4. **Payment.** Any Net Settlement Amount will only be due and payable to the Non-Defaulting Party from and by the Defaulting Party. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the Net Settlement Amount will be deemed to be zero and no payment will be due or payable. The Non-Defaulting Party shall under no circumstances be required to account for or otherwise credit or pay the Defaulting Party for economic benefits accruing to the Non-Defaulting Party

as a result of the Defaulting Party's default. The Non-Defaulting Party shall be entitled to recover any Net Settlement Amount by netting or set-off or to otherwise pursue recovery of damages. Additionally, Buyer will be entitled to recover any Net Settlement Amount by drawing upon any Performance Assurance or by netting or set-off, or to otherwise pursue recovery of damages. Any calculation and payment of the Net Settlement Amount will be independent of and in addition to Seller's obligation to reimburse Buyer for overpayments pursuant to Section 20.6.

20.5. Reserved

20.6. Reserved

20.7. Survival. This Section 20 will survive any expiration or termination of this Agreement.

21. **Remedies**.

21.1. Exclusive Remedies. The remedies set forth in this Section shall be a Party's exclusive remedies prior to termination for the other Party's failure to deliver the Product or to receive the Product pursuant to and in accordance with this Agreement.

21.2. Seller's Failure to Deliver. If Seller fails to deliver Product that complies with the requirements set forth in this Agreement or fails to deliver all or part of the Contract Quantity (each will be deemed as a failure to deliver for purposes of calculating damages), and such failure is not excused by a Permitted Excuse to Perform or Buyer's failure to perform, then Buyer shall elect in its sole discretion: (i) to terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Buyer shall calculate its termination payment (i.e., Net Settlement Amount) in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) to require Seller to pay Buyer within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Seller failed to deliver to Buyer multiplied by the per unit Contract Price (or component thereof). Buyer shall calculate the number of units of Product that Seller failed to deliver within the relevant portion of the Delivery Period by using the Output Requirement set out in Section 8.5 and, to the extent proration is required within a year, Exhibit 1.

21.3. Buyer's Failure to Accept Delivery. If Buyer fails to receive all or part of the Contract Quantity that Seller attempted to deliver to Buyer in accordance with this Agreement, and such failure by Buyer is not excused by a Permitted Excuse to Perform or Seller's failure to perform, then Seller shall elect in its sole discretion either to: (i) terminate and liquidate this Agreement if such failure is an Event of Default as set forth herein, and in which case Seller shall calculate its termination payment (i.e., Net Settlement Amount) in accordance with this Agreement as though it were the Non-Defaulting Party; or, (ii) require Buyer to pay Seller within three (3) Business Days of invoice receipt, liquidated damages in the amount obtained by multiplying the number of units of Product (or component thereof) that Buyer failed to receive multiplied by the per unit Contract Price (or component thereof). Seller shall calculate the number of units of Product that Seller failed to receive within the relevant portion of the Delivery Period by using the Output Requirement set out in Section 8.5 and, to the extent proration is required within a year, Exhibit 1.

21.4. Event of Default. Any failure by Seller to pay amounts due under this Section 21 will be an Event of Default under Section 19.2.

21.5. Survival. This Section 21 will survive any expiration or termination of this Agreement.

22. **Limitation of Liabilities & Liquidated Damages**.

22.1. Reasonableness. THE EXPRESS REMEDIES AND MEASURES OF DAMAGES, INCLUDING

WITHOUT LIMITATION DETERMINATION OF LIQUIDATED DAMAGES AND NET SETTLEMENT AMOUNT DAMAGES PROVIDED FOR IN THIS AGREEMENT (i) ARE REASONABLE AND SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH THE EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, AND (ii) UNLESS OTHERWISE STATED IN SUCH PROVISIONS, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISIONS, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE EXTENT ANY PROVISION OF THIS AGREEMENT PROVIDES FOR, OR IS DEEMED TO CONSTITUTE OR INCLUDE, LIQUIDATED DAMAGES, THE PARTIES STIPULATE AND AGREE THAT THE ACTUAL DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO ESTIMATE OR DETERMINE, THE LIQUIDATED AMOUNTS ARE A REASONABLE APPROXIMATION OF AND METHODOLOGY TO DETERMINE THE ANTICIPATED HARM OR LOSS TO THE PARTY, AND OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT. THE PARTIES FURTHER STIPULATE AND AGREE THAT ANY PROVISIONS FOR LIQUIDATED DAMAGES ARE NOT INTENDED AS, AND SHALL NOT BE DEEMED TO CONSTITUTE, A PENALTY, AND EACH PARTY HEREBY WAIVES THE RIGHT TO CONTEST SUCH PROVISIONS AS AN UNREASONABLE PENALTY OR AS UNENFORCEABLE FOR ANY REASON.

- 22.2. Limitation. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, (i) THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED; AND (ii) NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, EVEN IF SUCH DAMAGES ARE ALLOWED OR PROVIDED BY STATUTE, STRICT LIABILITY, ANY TORT, CONTRACT, OR OTHERWISE.
- 22.3. Damages Stipulation. Each Party expressly agrees and stipulates that the terms, conditions, and payment obligations set forth in Sections 20 and 21 are a reasonable methodology to approximate or determine harm or loss, each Party acknowledges the difficulty of determining actual damages or loss, and each Party hereby waives the right to contest such damages and payments as unenforceable, as an unreasonable penalty, or otherwise for any reason. The Parties further acknowledge and agree that damages and payments determined under Sections 20 and 21 are direct damages, will be deemed to be Losses, and will not be excluded from liability or recovery under the Limitations of Liabilities provisions of this Section 22.
- 22.4. Survival. This Section 22 will survive any expiration or termination of this Agreement.

23. **Disputes and Arbitration**

- 23.1. Resolution by the Parties. The Parties shall attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, "Dispute(s)") promptly by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. A Party may give the other Party written notice of a Dispute that has not been resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within ten (10) Business Days after delivery of the notice, the receiving Party shall respond with (a) a statement of

that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within twenty (20) Business Days after delivery of the initial notice, the executives of both Parties shall meet at Buyer's offices, and thereafter as often as they reasonably deem necessary, to attempt to resolve the Dispute. At the request of either Party, the Parties shall enter into a confidentiality agreement to cover any Dispute and discussions related thereto.

23.2. Reserved

23.3. Reserved

23.4. Reserved

23.5. Reserved

23.6. Reserved

23.7. Remedies. The procedures specified in this Section 23 shall be the sole and exclusive procedures for the resolution of Disputes between the Parties arising out of or relating to this Agreement; provided, however, that a Party may file a judicial claim or action on issues of statute of limitations or repose or to seek injunctive relief, sequestration, garnishment, attachment, or an appointment of a receiver, subject to and in accordance with the provisions of Section 26.5 (Venue/Consent to Jurisdiction).

23.8. Settlement Discussions. All negotiations and discussion concerning Disputes between the Parties pursuant to Section 23 of this Agreement are to be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence and settlement privilege. No statement of position or offers of settlement made in the course of the dispute resolution process can be or will be offered into evidence for any purpose, nor will any such statements or offers of settlement be used in any manner against any Party. Further, no statement of position or offers of settlement will constitute an admission or waiver of rights by either Party. At the request of either Party, any such statements or offers, and all copies thereof, shall be promptly returned to the Party providing the same.

23.9. Survival. This Section 23 will survive any expiration or termination of this Agreement.

24. **Assignment**

24.1. Limitation. Except as set forth below in Section 24.2 with respect to pledging as collateral security, Seller shall not assign, pledge, and/or encumber (collectively, the "Assignment") this Agreement, any rights or obligations under the Agreement, or any portion hereunder, without Buyer's prior written consent. Seller shall give Buyer at least thirty (30) days prior written notice of any requested Assignment. Subject to Seller providing Buyer with information demonstrating to Buyer, in Buyer's sole Commercially Reasonable Discretion, that Seller's proposed assignee has the technical, engineering, financial, and operational capabilities to perform under this Agreement, Buyer may not unreasonably withhold its consent; *provided, however*, that any such assignee shall agree in writing to be bound by the terms and conditions hereof and shall deliver to Buyer such tax, credit, Performance Assurance in the required amount, and enforceability assurance as the Buyer may request in its sole Commercially Reasonable discretion.

24.2. Pledge. Seller may, without prior consent of Buyer but with no less than ten (10) Business Days prior written notice to Buyer, pledge as collateral security this Agreement to a financing party in connection with any loan, lease, or other debt or equity financing arrangement for the Facility. Any pledge of this Agreement as collateral security will not relieve Seller of any

obligation or liability under this Agreement, and it will not create any rights, including any third party beneficiary rights, for any person under this Agreement.

24.3. Change of Control. Any Change of Control of Seller (however this Change of Control occurs) shall require the prior written consent of Buyer, which shall not be unreasonably withheld or delayed. Seller shall give Buyer at least thirty (30) days prior written notice of any such requested consent to a Change of Control.

24.4. Delivery of Assurances & Voidable. Any assignment or Change of Control will not relieve Seller of its obligations hereunder, unless Buyer agrees in writing in advance to waive the Seller's continuing obligations under this Agreement. In case of a permitted assignment and/or Change of Control, such requesting party or parties shall agree in writing to assume all obligations of Seller and to be bound by the terms and conditions of this Agreement and shall deliver to Buyer such tax, credit, performance, and enforceability assurances as Buyer may request, in its sole Commercially Reasonable discretion. Further, Buyer's consent to any assignment may be conditioned on and subject to Seller's proposed assignee having first obtained all approvals that may be required by any Requirements of Law and from all applicable Governmental Authorities. Any sale, transfer, Change of Control, and/or assignment of any interest in the Facility or in the Agreement made without fully satisfying the requirements of this Agreement shall be null and void and will be an Event of Default hereunder with Seller as the Defaulting Party.

24.5. Reserved

24.6. Notwithstanding anything to the contrary herein, Buyer may pledge, encumber, or assign this Agreement to any person, including any affiliate or subsidiary of Buyer, whether or not an Affiliate, without any restriction. Buyer may transfer, sell, pledge, encumber or assign (collectively, for purposes of this sub-section, "assign") this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements (including, without limitation, to an indenture trustee or to the RUS), and the assignee shall have the right upon written notice to Seller, to assume all of the obligations of Buyer under this Agreement. In such case, said assignee shall be allowed, without the prior consent of Seller, to assign this Agreement to a third party, on the condition that such third party shall be required to use the output purchased pursuant to this Agreement to serve Buyer's load. Buyer's right to otherwise assign this Agreement shall be subject only to the requirement that any assignee expressly assumes Buyer's obligations, and that the assignee first obtains such approvals as may be required by all applicable regulatory bodies.

25. **Notices**.

25.1. Process. All notices, requests, or invoices shall be in writing and shall be sent to the physical address and/or email address of the applicable Party as specified on the first page of this Agreement; provided, however, that all notices pertaining to an event of default must, at a minimum, be sent to the physical address of the applicable Party as specified on the first page of this Agreement. A Party may change its information for receiving notices by sending written notice to the other Party. Notices shall be delivered by hand, certified mail (postage prepaid and return receipt requested), or sent by overnight mail or courier. This section shall be applicable whenever words such as "notify," "submit," "give," or similar language are used in the context of giving notice to a Party.

25.2. Receipt of Notices. Hand delivered notices shall be deemed delivered by the close of the Business Day on which it was hand delivered. Notices provided by certified mail (postage prepaid and return receipt requested), mail delivery or courier service, or by overnight mail or courier service will be deemed received on the date of delivery recorded by the delivery service or on the tracking receipt, as applicable. Notwithstanding anything to the contrary,

if the day on which any notice is delivered or received is not a Business Day or is after 5:00 p.m. EPT on a Business Day, then it shall be deemed to have been received on the next following Business Day. Emails sent after 5:00 p.m. EPT on a Business Day or on a day that is not a Business Day shall be deemed submitted on the next Business Day.

26. Miscellaneous.

- 26.1. Costs. Each Party shall be responsible for its own costs and fees associated with negotiating or disputing or taking any other action with respect to this Agreement, including, without limitation, attorney costs.
- 26.2. Access. Upon reasonable prior notice, Seller shall provide to Buyer and its authorized agents (including contractors and sub-contractors), employees, auditors, and inspectors reasonable access to the Facility to: (i) tour or otherwise view the Facility; (ii) ascertain the status of the Facility with respect to construction, start-up and testing, or any other obligation of Seller under this Agreement; and, (iii) read meters and perform all inspections, maintenance, service, and operational reviews as may be appropriate to facilitate the performance of this Agreement or to otherwise audit and/or verify Seller's performance under this Agreement. Upon reasonable prior notice, Seller shall provide to Buyer and its guests or customers reasonable access to the Facility to only tour or otherwise view the Facility. While at the Facility, the foregoing agents, employees, auditors, inspectors, guests, and customers shall observe such reasonable safety precautions as may be required by Seller, conduct themselves in a manner that will not interfere with the operation of the Facility, and adhere to Seller's reasonable rules and procedures applicable to Facility visitors. Seller shall have the right to have a representative of Seller present during such access.
- 26.3. Safe Harbor and Waiver of Section 366. Each Party agrees that it will not assert, and waives any right to assert, that the other Party is performing hereunder as a "utility," as such term is used in 11 U.S.C. Section 366. Further, each Party hereby waives any right to assert and agrees that it will not assert that 11 U.S.C. Section 366 applies to this Agreement or any transaction hereunder in any bankruptcy proceeding. In any such proceeding each Party further waives the right to assert and agrees that it will not assert that the other Party is a provider of last resort with respect to this Agreement or any transaction hereunder or to otherwise limit contractual rights to accelerate amounts owed, net, recoup, set-off, liquidate, and/or early terminate. Without limiting the generality of the foregoing or the binding nature of any other provision of this Agreement on permitted successors and assigns, this provision is intended to be binding upon all successors and assigns of the Parties, including, without limitation, judgment lien creditors, receivers, estates in possession, and trustees thereof.
- 26.4. Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED, AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW, AND, IF APPLICABLE, BY THE FEDERAL LAW OF THE UNITED STATES OF AMERICA.
- 26.5. Venue/Consent to Jurisdiction. Any judicial action, suit, or proceedings arising out of, resulting from, or in any way relating to, this Agreement, or any alleged breach or default under the same or the warranties and representations contained in the same, shall be brought only in a state or federal court of competent jurisdiction located in Wake County, North Carolina. The Parties hereto irrevocably consent to the jurisdiction of any federal or state court within in Wake County, North Carolina and hereby submit to venue in such courts. Without limiting the generality of the foregoing, the Parties waive and agree not to assert by way of motion, defense, or otherwise in such suit, action, or proceeding, any claim that (i) such Party is not subject to the jurisdiction of the state or federal Courts within North

Carolina; or (ii) such suit, action, or proceeding is brought in an inconvenient forum; or (iii) the venue of such suit, action, or proceeding is improper. The exclusive forum for any litigation between them under this Agreement shall occur in federal or state court within in Wake County, North Carolina.

- 26.6. Limitation of Duty to Buy. If this Agreement is terminated due to a default by Seller, neither Seller, nor any affiliate and/or successor of Seller, nor any affiliate and/or successor to the Facility, including without limitation owner and/or operator of the Facility will require or seek to require Buyer to purchase any Product (Energy or otherwise) from the Facility under any Requirements of Law (including without limitation PURPA) or otherwise for any period that would have been covered by the Term of this Agreement had this Agreement remained in effect. Seller, on behalf of itself and on behalf of any other entity on whose behalf it may act, and on behalf of any successor to the Seller or successor to the Facility, hereby agrees to the terms and conditions in the above sentence, and hereby waives its right to dispute the above sentence.
- 26.7. Entire Agreement and Amendments. This Agreement represents the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, binding documents, representations and agreements, whether written or oral. No amendment, modification, or change to this Agreement shall be enforceable unless agreed upon in a writing that is executed by the Parties.
- 26.8. Drafting. Each Party agrees that it (and/or its counsel) has completely read, fully understands, and voluntarily accepts every provision, term, and condition of this Agreement. Each Party agrees that this Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties, and no Party shall have any provision hereof construed against such Party by reason of such Party drafting, negotiating, or proposing any provision hereof, or execution of this Agreement. Each Party irrevocably waives the benefit of any rule of contract construction that disfavors the drafter of a contract or the drafter of specific language in a contract.
- 26.9. Headings. All section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.
- 26.10. Reserved
- 26.11. Waiver. No waiver by any Party of any of its rights with respect to the other Party or with respect to any matter or default arising in connection with this Agreement shall be construed as a waiver of any subsequent right, matter or default whether of a like kind or different nature. Any waiver under this Agreement will be effective only if it is in writing that has been duly executed by an authorized representative of the waiving Party.
- 26.12. Partnership and Beneficiaries. Nothing contained in this Agreement shall be construed or constitute any Party as the employee, agent, partner, joint venture, or contractor of any other Party. This Agreement is made and entered into for the sole protection and legal benefit of the Parties, and their permitted successors and assigns. No other person or entity, including, without limitation, a financing or collateral support provider, will be a direct or indirect beneficiary of or under this Agreement, and will not have any direct or indirect cause of action or claim under or in connection with this Agreement.
- 26.13. Severability. Any provision or section hereof that is declared or rendered unlawful by any applicable court of law, or deemed unlawful because of a statutory change, shall not, to the extent practicable, affect other lawful obligations under this Agreement.
- 26.14. Counterparts. This Agreement may be executed in counterparts, including facsimiles hereof, and each such executed document will be deemed to be an original document and together

will complete execution and effectiveness of this Agreement.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, Seller and Buyer have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION

BY: _____
NAME:
TITLE:
DATE:

SELLER _____

BY: _____
NAME: _____
TITLE: _____
DATE:

Exhibit 1

Estimated Monthly Energy Production of the Facility

<u>Month</u>	<u>Estimated Facility Energy Production (MWh)</u>
January	
February	
March	
April	
May	
June	
July	
August	
September	
October	
November	
December	
Total	

Exhibit 2

Reserved

Exhibit 3

Facility Information

1. Facility Name:
2. Facility Address:
3. Balancing Area (Duke Energy Progress, Duke Energy Carolinas, or Dominion North Carolina Power):
4. Description of Facility (include number, manufacturer and model of Facility generating units, layout, AC/DC ratio, storage equipment if applicable):
5. Nameplate Capacity Rating (total AC rating of inverters):
6. Fuel Type/Generation Type: Solar/Biomass/etc.
7. Rate election (fixed five-year or variable):

Exhibit 4

Expected Annual Output

<u>Year</u>	<u>Output (MWh)</u>

Exhibit 5

Cost Schedule

Duke Energy Progress (DEP):

Energy Credits (¢/kWh)

		Uncontrolled Solar		All Others	
		Variable	Fixed Five Year	Variable	Fixed Five Year
ON	SU	2.58	2.80	2.82	3.04
	AM	1.89	2.84	2.13	3.08
	PM	3.51	3.70	3.75	3.94
	PPS	3.49	3.32	3.73	3.56
	PPW	3.87	3.17	4.11	3.41
	SH	2.79	2.92	3.03	3.16
OFF	SUM	2.56	2.70	2.80	2.94
	W	2.48	2.94	2.72	3.18
	SHO	2.02	2.12	2.26	2.36

Capacity Credits (¢/kWh)

	Variable	Fixed Five Year
SU	0	-
AM	0	9.09
PM	0	3.90

There are nine pricing periods for DEP's energy payments:

- Summer On-peak Hours (SU): Monday-Friday 1-4pm, 8-9pm
- Winter On-peak Hours:
 - Winter AM Hours (AM): Monday-Friday 4-6am, 9-11am
 - Winter PM Hours (PM): Monday-Friday 6-10pm
- Shoulder On-peak Hours (SH): Monday-Friday 5-10am, 5-11pm
- Summer Premium Peak Hours (PPS): Monday-Friday 4-8pm
- Winter Premium Peak Hours (PPW): Monday-Friday 6-9am
- All other hours, plus the following holidays, shall be off-peak [Summer (SUM), Winter (W), or Shoulder (SHO)]: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, and Christmas Day. When a holiday falls on a Saturday, the Friday before the holiday will be considered off-peak; when the holiday falls on a Sunday, the following Monday will be considered off-peak.

The table below summarizes the different energy pricing periods for DEP:

DEP		HE																							
Energy Credit	Months	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Winter	1	W	W	W	W	AM	AM	PPW	PPW	PPW	AM	AM	W	W	W	W	W	W	W	PM	PM	PM	PM	W	W
Winter	2	W	W	W	W	AM	AM	PPW	PPW	PPW	AM	AM	W	W	W	W	W	W	W	PM	PM	PM	PM	W	W
Shoulder	3	SHO	SHO	SHO	SHO	SHO	SH	SH	SH	SH	SHO	SHO	SHO	SHO	SHO	SHO	SHO	SHO	SH	SH	SH	SH	SH	SHO	SHO
Shoulder	4	SHO	SHO	SHO	SHO	SHO	SH	SH	SH	SH	SHO	SHO	SHO	SHO	SHO	SHO	SHO	SHO	SH	SH	SH	SH	SH	SHO	SHO
Shoulder	5	SHO	SHO	SHO	SHO	SHO	SH	SH	SH	SH	SHO	SHO	SHO	SHO	SHO	SHO	SHO	SH	SH	SH	SH	SH	SH	SHO	SHO
Summer	6	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SU	SU	SU	PPS	PPS	PPS	PPS	SU	SUM	SUM	SUM
Summer	7	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SU	SU	SU	PPS	PPS	PPS	PPS	SU	SUM	SUM	SUM
Summer	8	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SU	SU	SU	PPS	PPS	PPS	PPS	SU	SUM	SUM	SUM
Summer	9	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SUM	SU	SU	SU	PPS	PPS	PPS	PPS	SU	SUM	SUM	SUM
Shoulder	10	SHO	SHO	SHO	SHO	SHO	SH	SH	SH	SH	SHO	SHO	SHO	SHO	SHO	SHO	SHO	SHO	SH	SH	SH	SH	SH	SHO	SHO
Shoulder	11	SHO	SHO	SHO	SHO	SHO	SH	SH	SH	SH	SHO	SHO	SHO	SHO	SHO	SHO	SHO	SHO	SH	SH	SH	SH	SH	SHO	SHO
Winter	12	W	W	W	W	AM	AM	PPW	PPW	PPW	AM	AM	W	W	W	W	W	W	W	PM	PM	PM	PM	W	W

There are three pricing periods for capacity payments:

1. Summer – PM hours
2. Winter – AM hours
3. Winter – PM hours

The table below summarizes the different capacity pricing periods for DEP:

DEP/DEC		HE																							
Capacity Credit	Months	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Winter	1							AM	AM	AM											PM	PM	PM		
Winter	2							AM	AM	AM											PM	PM	PM		
Shoulder	3							AM	AM	AM											PM	PM	PM		
Shoulder	4																								
Shoulder	5																								
Summer	6																								
Summer	7																	SU	SU	SU	SU				
Summer	8																	SU	SU	SU	SU				
Summer	9																								
Shoulder	10																								
Shoulder	11																								
Winter	12							AM	AM	AM											PM	PM	PM		

Duke Energy Carolinas (DEC):

Energy Credits (¢/kWh)

	Uncontrolled Solar		All Others	
	Variable	5 year	Variable	5 year
On Peak	4.02	3.82	4.13	3.93
Peak SU	5.75	4.86	5.86	4.96
Peak W	7.45	7.30	7.56	7.41
Off Peak	3.14	3.14	3.24	3.24

Capacity Credits (¢/kWh)

	Variable	5 year	Variable	5 year
SU	0	0	0	0

Peak/Non-Peak Period Hours Definition

- Peak Period Hours

- For the period starting on June 1st and ending Sep 30th
 - Peak Period Hours are defined as those hours, Monday through Friday, beginning at 1:00 p.m. and ending at 9:00 p.m., excluding those holidays considered Non-Peak.
- For the period starting on Oct 1st and ending May 31st
 - Peak Period Hours are defined as those hours, Monday through Friday, beginning at 6:00 a.m. and ending at 1:00 p.m., excluding those holidays considered Non-Peak.
- Non-Peak Period Hours
 - All other weekday hours not defined in above, plus weekends and holidays
 - Holidays: New Year’s Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day & day after, Christmas Day
 - If the holiday falls on Saturday, the Friday before will be considered Non-Peak
 - If the holiday falls on Sunday, the Monday after will be considered Non-Peak
- Capacity credit is received during hours beginning at 3:00 pm and ending at 6:00 pm during Summer months
 - Summer months are June, July, August, and September

Power factor corrections may be made in accordance with Buyer’s obligations to its wholesale supplier(s). Buyer reserves the right to require the installation of facilities necessary for the measurement of power factor and to recover associated costs.

PJM:

Energy Credits (¢/kWh)

On Peak
Peak SU
Peak W
Off Peak

**Uncontrolled Solar
Variable 5 year**

4.05	3.82
5.20	4.54
7.34	6.98
2.99	3.09

All Others

Variable 5 year

4.24	4.01
5.39	4.73
7.52	7.16
3.18	3.27

Capacity Credits (¢/kWh)

SU

Variable 5 year

3.11	6.12
------	------

Variable 5 year

3.11	6.12
------	------

Peak/Non-Peak Period Hours Definition

- Peak Period Hours
 - For the period starting on June 1st and ending Sep 30th
 - Peak Period Hours are defined as those hours, Monday through Friday, beginning at 1:00 p.m. and ending at 9:00 p.m., excluding those holidays considered Non-Peak.
 - For the period starting on Oct 1st and ending May 31st
 - Peak Period Hours are defined as those hours, Monday through Friday, beginning at 6:00 a.m. and ending at 1:00 p.m., excluding those holidays considered Non-Peak.
- Non-Peak Period Hours
 - All other weekday hours not defined in above, plus weekends and holidays

- Holidays: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day & day after, Christmas Day
 - If the holiday falls on Saturday, the Friday before will be considered Non-Peak
 - If the holiday falls on Sunday, the Monday after will be considered Non-Peak
- Capacity credit is received during hours beginning at 3:00 pm and ending at 6:00 pm during Summer months
 - Summer months are June, July, August, and September

Power factor corrections may be made in accordance with Buyer's obligations to its wholesale supplier(s). Buyer reserves the right to require the installation of facilities necessary for the measurement of power factor and to recover associated costs.

Exhibit 6

Metering, Telemetry, and Curtailment Requirements

This exhibit is intended establish the requirements between the Parties in accordance with the NCEMC QF Metering Telemetry, and Curtailment Requirements document on the Buyer's website.

Material Installation for Metering and Real-time Data

1. Seller will install an MV-90 compatible Meter to be used by NCEMC for accounting and billing purposes, Attachment 4 of the NCEMC QF Metering, Telemetry, and Curtailment Requirements located on the Buyer's website contains a list of acceptable meters that is not all inclusive. The Meter shall be installed so that generation from the site is shown as positive kW on the real time telemetry at the point of interconnection defined in the Interconnection Agreement between the NCEMC Member and the Seller. Seller shall ensure that any Metering PT/CTs installed are revenue grade with an accuracy class of 0.3% or better. In the case that metering equipment is installed on the low side of the step-up transformer, compensation to reflect the losses associated with the transformer shall be programmed into the meter.
2. Seller will make the following data available through a dedicated Ethernet connection:
 - a. MV-90 protocol to be utilized by NCEMC for interrogation of the meter on site for billing purposes (kWh). The Meter will be programmed for Standard Time.
 - b. DNP 3.0 protocol to be utilized by NCEMC for real-time data transmittal (kW, kVAR).
3. Seller will procure a Hoffman A30H2412GQRLP fiberglass cabinet ("NCEMC Communication Cabinet") and A30P24 Subpanel. The Seller may propose an alternative box to NCEMC for consideration; this box shall be similar in size, construction, material, include a subpanel, and offer ability to be secured with a padlock.
4. Seller will install the NCEMC Communication Cabinet, including a 2' x 2' HIDEK type 11407 grounding mats ground pad in front of the Cabinet connected to earth ground, either directly to a Developer owned pole located outside of the fence or mounted flush outside the fence around the project site in accordance with Attachment 2 of the QF Metering, Telemetry, and Curtailment Requirements posted on the NCEMC website. The Subpanel shall be installed inside the NCEMC Communication Cabinet and grounded to the NCEMC Communication Cabinet ground.
5. Seller shall provide NCEMC unrestricted access to the existing NCEMC Communication Cabinet to monitor, maintain, and replace equipment in the NCEMC Communication Cabinet as necessary. Seller shall coordinate with NCEMC for final location of the NCEMC Communication Cabinet prior to installation.
6. Seller will install conduits to the NCEMC Communication Cabinet as outlined in Attachment 1 of the QF Metering, Telemetry, and Curtailment Requirements posted on the NCEMC website:
 - a. One 1-1/2" conduit from the location of Seller's station service to the NCEMC Communication Cabinet.
 - b. One 2" conduit from the Meter to the NCEMC Communication.
7. Seller will provide NCEMC with a 120V power circuit via the 1-1/2" conduit, terminating at a junction

box with two outlet receptacles inside the NCEMC Communication Cabinet. The junction box should be mounted near the bottom right corner attached to the Subpanel.

8. Seller will install a fiber optic cable with a minimum of six strands inside the 2" conduit from the meter to the NCEMC Communication Cabinet. Seller will install ST connectors at both ends of the fiber optic cable. NCEMC typically uses a 62.5 multimode fiber with ST connects.
9. Seller will procure two MOXA IMC-21A-M-ST fiber converters and two Mean Well DR-45-24 power supplies in accordance with Attachment 3 of the QF Metering, Telemetry, and Curtailment Requirements posted on the NCEMC website.
10. Seller will install one fiber converter and power supply inside the NCEMC Communication Cabinet and one fiber converter and power supply at the location where billing and real-time data is transmitted. The fiber converter at the Meter will need 120V power and needs to be installed in NEMA 4X enclosure.
11. NCEMC will procure, install and maintain communications equipment necessary to transmit and receive billing and real-time data from the site to NCEMC's office as outlined in Attachment 1 of the QF Metering, Telemetry, and Curtailment posted on the NCEMC website.
12. Seller will complete the Metering and Real-Time Data Specification form in Attachment 6 of the QF Metering, Telemetry, and Curtailment Requirements posted on the NCEMC website and send it to NCEMC upon installation and programming of the Meter and real-time data equipment. Seller shall change the default password to a password, the password should meet National Institute of Standards and Technology (NIST) standards.
13. Seller is required to have a 3rd party perform and certify a calibration on the meter(s) required by the PPA and send NCEMC the calibration test report upon commissioning. Seller is required to send NCEMC datasheets showing the accuracy class of installed metering equipment. In the event that metering is done on the Seller side of the transformer, Seller shall provide NCEMC with the transformer datasheet so that the compensation for losses associated with the transformer can be verified in the meter.
14. Upon commissioning, ownership and maintenance of the NCEMC Communication Cabinet and fiber converters inside the NCEMC Communication Cabinet will be transferred to NCEMC. All other equipment, cabling, and wiring necessary to fulfill the above requirements will be maintained in good working order and repaired or replaced as necessary by the Seller.
15. The Generating Facility must support Modbus and DNP 3.0 protocols for the purpose of exchanging real-time telemetry (kW & kVAR) information and responding to curtailment commands. The QF Metering, Telemetry, and Curtailment Requirements posted on the NCEMC website contains the acceptable and preferred methods of accomplishing this requirement.

Billing

Buyer estimates the cost for materials and labor related to fulfill its requirements above will be \$2,500. NCEMC will bill the Seller for the actual cost of the labor and materials necessary to fulfill the above requirements by sending the final bill to

Primary

Name:

Company:

Address:

City/State/Zipcode:

Email:

Phone Number:

Seller agrees to reimburse NCEMC by remitting payment of the invoice in accordance with the terms outlined on the invoice.

Installation

NCEMC's contact for the installation of the communications equipment:

Greg Allen
North Carolina Electric Membership Corporation
3400 Sumner Boulevard
Raleigh, NC 27616
greg.allen@ncemcs.com
919-875-3201

NCEMC's contact for metering and telemetry coordination:

Chris Walton
North Carolina Electric Membership Corporation
3400 Sumner Boulevard
Raleigh, NC 27616
chris.walton@ncemcs.com
919-875-3108

Operational Issues

Upon commissioning of the project during the PPA term, should NCEMC need to contact the Seller regarding but not limited to operational issues with equipment and wiring used to communicate to the Meter, the following is the Seller's contact:

Primary
Name:
Company:
Address:
City/State/Zipcode:
Email:
Phone Number:

Seller agrees to make a good faith effort to resolve operational issues within three (3) business days. Should the Seller determine that additional time is needed, Seller shall contact NCEMC's billing department contact below to describe the nature of the problem and provide an estimate of when the issue will be resolved

Aaron Parlier
North Carolina Electric Membership Corporation
3400 Sumner Boulevard
Raleigh, NC 27616
aaron.parlier@ncemcs.com and billinganalyst@ncemcs.com
919-645-2404

Timeline

Receiving permission to operate (PTO) is the final step under the Interconnection Agreement with the Transmission Provider and is not the same as fulfillment of your obligations with NCEMC under this

PPA. The following steps describe NCEMC's process for the purposes of declaring COD to begin payment under the PPA:

1. Seller installs the metering, telemetry, and curtailment equipment as required in the QF Metering, Telemetry, and Curtailment Requirements posted on the NCEMC website.
2. NCEMC installs its communications equipment needed to satisfy requirements of the QF Metering, Telemetry, and Curtailment Requirements posted on the NCEMC website.
3. NCEMC confirms that Seller has installed the metering and telemetry equipment per the Metering, Telemetry, and Curtailment Requirements letter and notifies the Seller of any deficiencies, if any are noted the Seller will complete any needed corrections.
4. NCEMC configures the telemetry and DERMS systems. Testing of the curtailment functionality will be verified.
5. Seller correctly programs the meter and provides NCEMC the settings needed to communicate with the Meter. These settings will be documented in the Metering and Real-Time Data Specifications sheet – Attachment 6.
6. If the site metering is installed on the low side of the step-up transformer, NCEMC will verify the meter has been properly programmed to reflect the power losses associated with the transformer.
7. NCEMC configures its billing system and verifies the meter programming based on the Metering and Real-Time Data Specifications sheet.
8. Once these steps have been completed, a COD date will be recommended for payment.
9. Seller and NCEMC execute a COD Notice for the PPA.

Exhibit 7

Buyer's Written Requests for Notice

Reserved